

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.4691/DEL/2016
Assessment Year 2012-13

Income Tax Officer, Ward-2(4), New Delhi.	v.	M/s. Angel Cement Pvt. Ltd., 58, 1 st Floor, Jaipuria Enclave, Kaushambi, Ghaziabad.
TAN/PAN: AAHCA6602J		
(Appellant)		(Respondent)

I.T.As. No.5974/DEL/2017 & 6401/DEL/2017
Assessment Years 2012-13 & 2014-15

Income Tax Officer, Ward-7(1), New Delhi.	v.	M/s. Delight Resorts Pvt. Ltd., F-1-200/13, Sector-3A, Vaishali, Ghaziabad.
TAN/PAN: AAACE0061C		
(Appellant)		(Respondent)

I.T.A. No.5398/DEL/2017
Assessment Year 2012-13

M/s. Jawahar Credit & Holdings Pvt. Ltd., Bhushan Center, 11 th Floor, Hyatt Regency Complex, Bhikaji Cama Place, New Delhi.	v.	ITO, Ward-13(3), New Delhi.
TAN/PAN: AAACJ2322D		
(Appellant)		(Respondent)

I.T.A. No.5526/DEL/2017
Assessment Years 2012-13

ITO, Ward-13(3), New Delhi.	v.	M/s. Jawahar Credit & Holdings Pvt. Ltd., Bhushan Center, 11 th Floor, Hyatt Regency Complex, Bhikaji Cama Place, New Delhi.
TAN/PAN: AAACJ2322D		
(Appellant)		(Respondent)

I.T.A. No.5397/DEL/2019
Assessment Year 2012-13

M/s. Jingle Bells Aluminium Pvt. Ltd., 116A, 1 st Floor, Somdutt Chambers-1, 5, Bhikaji Cama Place, New Delhi.	v.	ITO, Ward-13(3), New Delhi.
TAN/PAN: AACCCJ1177G		
(Appellant)		(Respondent)

I.T.A. No.5527/DEL/2019
Assessment Year 2012-13

ITO, Ward-13(3), New Delhi.	v.	M/s. Jingle Bells Aluminium Pvt. Ltd., 116A, 1 st Floor, Somdutt Chambers-1, 5, Bhikaji Cama Place, New Delhi.
TAN/PAN: AACCCJ1177G		
(Appellant)		(Respondent)

I.T.A. No.9287/DEL/2019
Assessment Year 2012-13

ITO, Ward-14(2), New Delhi.	v.	M/s. Kasper Information Technology Pvt. Ltd., 77, 3 rd Floor, Vidyut Nikuni, 112 I.P. Extn. Patparganj, New Delhi.
TAN/PAN: AAECK1995R		
(Appellant)		(Respondent)

I.T.As. No.9357/DEL/2019 & 510/DEL/2019
Assessment Years 2012-13 & 2013-14

M/s. Kasper Information Technology Pvt. Ltd., 77, 3 rd Floor, Vidyut Nikuni, 112 I.P. Extn. Patparganj, New Delhi.	v.	ITO, Ward-14(2), New Delhi.
TAN/PAN: AAECK1995R		
(Appellant)		(Respondent)

I.T.A. No.509/DEL/2019
Assessment Year 2013-14

Landsky Real Estates Pvt. Ltd., C-17, Flat No.4, Marg No.4A, Vinod Nagar, Delhi.	v.	ITO, Ward-15(1), New Delhi.
TAN/PAN: AAABCL9271E		
(Appellant)		(Respondent)

I.T.A. No.5736/DEL/2016
Assessment Year 2012-13

ITO, Ward-23(4), New Delhi.	v.	M/s. Sintex Consumers Electronics Pvt. Ltd., 3573, 2 nd Floor, Kucha Raja Daya Ram Chawri, Bazar, Delhi
TAN/PAN: AAMCS9874K		
(Appellant)		(Respondent)

I.T.A. No.6070/DEL/2016
Assessment Year 2012-13

ACIT, Central Circle-3, New Delhi.	v.	Star Light Consumer Electronics Pvt. Ltd., R/o 315, 3 rd Floor, E-Block, International Trade Tower, Nehru Place, New Delhi.
TAN/PAN: AAKCS9791D		
(Appellant)		(Respondent)

I.T.A. No.5744/DEL/2016
Assessment Year 2012-13

ITO, Ward-24(2), New Delhi.	v.	Stylish Construction Pvt. Ltd., 1027, Top Floor, Ward No.08, Mehra Chowk, Mehrauli, New Delhi.
TAN/PAN: AAICS4664H		
(Appellant)		(Respondent)

I.T.A. No.5741/DEL/2016
Assessment Year 2012-13

ITO, Ward-24(3), New Delhi.	v.	Sukhna Steel Pvt. Ltd., F-Block, 1 st Floor, International Trade Tower, Nehru Place, New Delhi.
TAN/PAN: AACCS2511F		
(Appellant)		(Respondent)

I.T.A. No.5742/DEL/2016
Assessment Year 2012-13

ITO, Ward-24(3), New Delhi.	v.	Sukhna Real Estate Pvt. Ltd., 125, Shakti Khand-I, Indirapuram, Ghaziabad.
TAN/PAN: AAJCS5947E		
(Appellant)		(Respondent)

I.T.A. No.5740/DEL/2016
Assessment Year 2012-13

ITO, Ward-24(3), New Delhi.	v.	Sunlight Tour and Travels Pvt. Ltd., Plot No.206, Aparna Apartments, B-17, Shalimar Bagh, Sahibabad. Uttar Pradesh.
TAN/PAN: AAJCS6819H		
(Appellant)		(Respondent)

I.T.A. No.5832/DEL/2016
Assessment Year 2012-13

ACIT, Central Circle-3, New Delhi.	v.	Superstar Agency Pvt. Ltd., 211, Somdutt Chamber-II, Bhikaji Cama Place, New Delhi.
TAN/PAN: AAKCS9725M		
(Appellant)		(Respondent)

I.T.A. No.5650/DEL/2016
Assessment Year 2012-13

ITO, Ward-24(4), New Delhi.	v.	Supreme Placement Services Pvt. Ltd., E-60, Near Anand Pradhan, Om Vihar Phase-V, Uttam Nagar, New Delhi.
TAN/PAN: AAICS4665G		
(Appellant)		(Respondent)

I.T.A. No.2920/DEL/2017
Assessment Year 2013-14

Globus Real Infra Pvt. Ltd., (Formerly Sur Buildcon Pvt. Ltd.), 211 Somdutt Chamber-2, Bhikaji Cama Place, New Delhi.	v.	DCIT, Circle-10(1), New Delhi.
TAN/PAN: AALCS7467F		
(Appellant)		(Respondent)

I.T.A. No.2024/DEL/2012
Assessment Year 2012-13

ITO, Ward-25(3), New Delhi.	v.	M/s. Track Casting India Pvt. Ltd., 117, Shubham Appartments, 34, I.P. Extension, New Delhi.
TAN/PAN: AABCT4544N		
(Appellant)		(Respondent)

I.T.A. No.5831/DEL/2016
Assessment Year 2012-13

ACIT, Central Circle-3, New Delhi.	v.	Sur Buildcon Pvt. Ltd., 211, Somdutt Chamber-II, Bhikaji Cama Place, New Delhi.
TAN/PAN: AALCS7467F		
(Appellant)		(Respondent)

Assessee by:	S/Shri S.K. Tulsiyan, Adv., Ashwani Kumar, CA, Bhoomija Verma, Adv., Aditya Kumar, CA and Bhavesh Jindal, CA		
Department by:	Ms. Sunita Singh, CIT-D.R.		
Date of hearing:	21	12	2020
Date of pronouncement:		03	2021

ORDER

PER BENCH:

The aforesaid bunch of 22 appeals relating to above named 16 assessees pertain to quantum of assessment passed u/s 143(3) for the assessment years 2012-13 and 2013-14 arising out of 9 separate impugned appellate orders. The issues involved in all the 22 appeals are arising out of identical set of facts and are inextricable interconnected with each other and common issue is permeating in all the appeals with similar additions.

Brief Background of the case

2. The above named assessee-companies are essentially controlled and managed by the promoters of the erstwhile company, M/s Bhushan Steel Ltd., now known as TATA Steel Ltd. (TSL) after the acquisition of BSL by Bannipal Steel Ltd. which is a wholly owned subsidiary of TATA Steel Ltd on 18th

May, 2018 under the Insolvency and Bankruptcy Code, 2016. In nutshell the primary addition in all the appeals pertain to additions u/s.68 on the credits in the form of share capital/share premium and/ or loan and advances appearing in the books of assessee companies in the Assessment Year 2012-13 in 15 cases; in A.Y. 2013-14 in 3 cases; and Assessment Year 2014-15 in one case. The core contention of the assessee before us has been in a nutshell is that the funds have been channeled from the regular books of account of Bhushan Energy Ltd. which is a subsidiary of Bhushan Steel Ltd. into a maze of group companies in the form of share capital and/or loan and advances. The accounted funds, i.e., recorded in the Bhushan Energy Ltd. have been routed through web of group companies and finally re-routed back into the books of Bhushan Energy Ltd. The Assessing Officer on the other hand has treated the share capital/ share premium and or loan and advances appearing in the balance sheet of aforesaid assessee companies as alleged introduction of unaccounted funds of the assessee companies into the regular books of account which has been added u/s.68. In six cases, the bonus share issued by the respective assessee company has also been added by the Assessing Officer which was merely in the nature of transfer entries representing capitalization of reserve and surplus. Apart from that, commission expenses on notional basis u/s.69C alleged to have been paid by the assessee for availing such accommodation entries from the group companies has also

been added by Ld. CIT (A) by way of enhancement. Though in majority of cases Ld. CIT (A) has deleted the addition made u/s 68. At a glance the addition made in the case of the assessee can be tabulated in the following manner:

Sl. No.	Name of the Assessee & nature of additions made by the A.O.	Date of Asst. Order	A.Y	Assesment Order u/s	Quantum of addition(s) made by the Ld. A.O	Details of original return – date of filing of ITR & income declared
1.	Angel Cement Pvt. Ltd. - Share Capital – sec 68 - Current liabilities (payables) – sec 68	31.03.2015	2012-13	143(3)	66,00,00,000 54,70,00,000	26.09.2012 3,803/-
2.	Delight Resorts Pvt. Ltd. - Share Capital – section 68 - Advance – section 68 - 50% disallowance of employee benefit expenses	30.03.2015	2012-13	143(3)	10,00,00,000 66,56,47,519 5,22,890	29.09.2012 (-) 3,80,468/-
3.	Delight Resorts Pvt. Ltd. - Advance – section 68	30.11.2016	2014-15	143(3)	37,70,00,000	30.09.2014 47,080/-
4.	Jawahar Credit & Holdings Pvt. Ltd. - Share Capital – section 68	27.03.2015	2012-13	143(3)	73,50,00,000	24.09.2012 2,70,000/-
5.	Jingle Bells Aluminium Pvt. Ltd. - Share Capital – section 68	27.03.2015	2012-13	143(3)	62,00,00,000	26.09.2012 3,167/-
6.	Kasper Information Technology Pvt. Ltd. - Share Capital – section 68	16.03.2015	2012-13	143(3)	46,00,00,000	27.09.2012 1,738/-
7.	Kasper Information Technology Pvt. Ltd. - Share Capital – section 68	28.03.2016	2013-14	143(3)	16,00,00,000	22.09.2013 2,47,050/-
8.	Landsky Real Estate Pvt. Ltd. - Share Capital – section 68 - Advances – section 68	31.03.2015	2013-14	143(3)	16,00,00,000 2,60,00,000	22.09.2013 2,48,450/-
9.	Sintex Consumer Electronics Pvt. Ltd. - Share Capital (including bonus shares of Rs. 18,22,80,000/-) – section 68	25.03.2015	2012-13	143(3)	78,22,80,000	26.09.2012 4,026/-
10.	Starlight Consumer Electronic Pvt. Ltd. - Share Capital – section 68 - Current Liabilities – section 68	24.03.2015	2012-13	143(3)	32,25,00,000 30,18,00,000	22.09.2012 5,340/-
11.	Stylish Construction Pvt. Ltd. - Share Capital – section 68 - Current Liabilities – section 68 - 14A	24.03.2015	2012-13	143(3)	30,00,00,000 31,60,00,000 23,32,000	29.09.2012 15,48,189/-
12.	Sukhna Real Estates Pvt. Ltd. - Share Capital (including	26.03.2015	2012-13	143(3)	80,63,40,000	29.09.2012 2,77,294/-

	bonus shares of Rs. 20,63,40,000/-) – section 68					
13.	Sukhna Steel Pvt. Ltd. - Share capital (including bonus shares of Rs. 16,80,000/-) – section 68	26.03.20 15	2012- 13	143(3)	26,16,80,000	20.09.2012 7,844/-
14.	Sunlight Tours & Travel Pvt. Ltd. - Share Capital (including bonus share of Rs. 12,01,68,000/-) – section 68	26.03.20 15	2012- 13	143(3)	52,01,68,000	29.09.2012 3,69,875/-
15.	Super Star Agency Pvt. Ltd. Share Capital – section 68	27.03.20 15	2012- 13	143(3)	42,25,00,000	22.09.2012 4,840/-
16.	Supreme Placement Services Pvt. Ltd. - Share capital (including bonus shares of Rs. 12,43,00,000/-) – section 68	27.03.20 15	2012- 13	143(3)	72,43,00,000	29.09.2012 9,73,438/-
17.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) - Share Capital (including bonus shares of Rs. 17,09,40,000/-) - sec 68	26.03.20 15	2012- 13	143(3)	98,49,40,000	24.09.2012 7,18,936/-
18.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) - Share Capital – section 68 - Unsecured loans – section 68	31.03.20 16	2013- 14	143(3)	5,60,00,000 2,95,00,000	28.09.2013 34,44,000/-
19.	Track Casting India Pvt. Ltd. - Share Capital – section 68 - Unexplained expenses (alleged commission expenses) - sec 69C	27.03.20 15	2012- 13	143(3)	31,00,00,000 7,75,000	28.09.2012 69,015/-
	TOTAL				10,65,22,85,409	

Apart from that there were certain minor additions of disallowance of employee benefit expenses in the case of Delight Resort Pvt. Ltd. for Assessment Year 2012-13 which has been deleted by CIT(A) and no appeal has been filed by the Revenue; and disallowance u/s.14A in the case of Stylish Construction Pvt. Ltd. which has been contested.

3. In so far as the addition made u/s.68 and 69 is concerned, the ld. CIT(A) in the various cases have adopted divergent view in the case of different assessee despite there

were identical set of facts and circumstances. In majority of the cases the addition made u/s.68 and 69C by the Assessing Officer have been deleted by CIT(A) primarily on the ground that assessee has discharged the onus of establishing the requisite ingredients u/s.68 and after examining the fund flow statement as to how the money has originated from Bhushan Energy Ltd and gone back to same company. In certain cases additions have been confirmed by the Id. CIT(A) mainly relying upon the reasoning given by the Assessing Officer. In tabular form the additions confirmed and deleted by the Id. CIT (A) in all the appeals are as under:

Sl. No.	Name of the Assessee & nature of addition made by the Ld. A.O	A.Y	Asst. Order u/s	Quantum of Addition	Confirmation (C) or Deletion (D) by the Ld. C.I.T (A)	Appeal before the Hon'ble ITAT filed by Revenue (R) or Assessee(A)
1.	Angel Cement Pvt. Ltd. - Share Capital – sec 68 - Current liabilities (payables) – sec 68	2012-13	143(3)	66,00,00,000 54,70,00,000	Deleted (D) D	R R
2.	Delight Resorts Pvt. Ltd. - Share Capital – section 68 - Advance – section 68 - 50% disallowance of employee benefit expenses	2012-13	143(3)	10,00,00,000 66,56,47,519 5,22,890	D D D	R R Not challenged
3.	Delight Resorts Pvt. Ltd. - Advance – section 68	2014-15	143(3)	37,70,00,000	D	R
4.	Jawahar Credit & Holdings Pvt. Ltd. - Share Capital – section 68 - Alleged Undisclosed Commission Income [added by C.I.T (A)]	2012-13	143(3)	73,50,00,000 1,47,00,000	D Fresh addition made by C.I.T (A)	R A
5.	Jingle Bells Aluminium Pvt. Ltd. - Share Capital – section 68 - Alleged Undisclosed Commission Income [added by C.I.T (A)]	2012-13	143(3)	62,00,00,000 1,24,00,000	D Fresh addition made by C.I.T (A)	R A
6.	Kasper Information Technology Pvt. Ltd. - Share Capital – section 68 - Alleged Undisclosed Commission Income [added by C.I.T (A)]	2012-13	143(3)	46,00,00,000 92,00,000	D Fresh addition made by C.I.T (A)	R A

Sl. No.	Name of the Assessee & nature of addition made by the Ld. A.O	A.Y	Asst. Order u/s	Quantum of Addition	Confirmation (C) or Deletion (D) by the Ld. C.I.T (A)	Appeal before the Hon'ble ITAT filed by Revenue (R) or Assessee(A)
7.	Kasper Information Technology Pvt. Ltd. - Share Capital – section 68	2013-14	143(3)	16,00,00,000	C	A
8.	Landsky Real Estate Pvt. Ltd. - Share Capital – section 68 - Advances – section 68	2013-14	143(3)	16,00,00,000 2,60,00,000	C C	A A
9.	Sintex Consumer Electronics Pvt. Ltd. - Share Capital (including bonus shares of 18.228 crores) – section 68	2012-13	143(3)	78,22,80,000	D	R1
10.	Starlight Consumer Electronic Pvt. Ltd. - Share Capital – section 68 - Current Liabilities – section 68	2012-13	143(3)	32,25,00,000 30,18,00,000	D D	R R
11.	Stylish Construction Pvt. Ltd. - Share Capital – section 68 - Current Liabilities – section 68 - 14A	2012-13	143(3)	30,00,00,000 31,60,00,000 23,32,000	D D Restricted to 5 lacs	R R R
12.	Sukhna Real Estates Pvt. Ltd. Share Capital (including bonus shares of Rs. 20,63,40,000) – section 68	2012-13	143(3)	80,63,40,000	D	R
13.	Sukhna Steel Pvt. Ltd. - Share capital (including bonus shares of 16.80 lacs)- section 68	2012-13	143(3)	26,16,80,000	D	R
14.	Sunlight Tours & Travel Pvt. Ltd. - Share Capital (including bonus share of 12,01,68,000) – section 68	2012-13	143(3)	52,01,68,000	D	R2
15.	Super Star Agency Pvt. Ltd. - Share Capital – section 68	2012-13	143(3)	42,25,00,000	D	R
16.	Supreme Placement Services Pvt. Ltd. - Share capital (including bonus shares of Rs. 12.43 crores) – section 68	2012-13	143(3)	72,43,00,000	D	R3
17.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) - Share Capital (including bonus shares of Rs. 17,09,40,000/-) - sec 68	2012-13	143(3)	98,49,40,000	D	R
18.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) - Share Capital – section 68	2013-14	143(3)	5,60,00,000 2,95,00,000	C4 C	A A

Sl. No.	Name of the Assessee & nature of addition made by the Ld. A.O	A.Y	Asst. Order u/s	Quantum of Addition	Confirmation (C) or Deletion (D) by the Ld. C.I.T (A)	Appeal before the Hon'ble ITAT filed by Revenue (R) or Assessee(A)
	- Unsecured loans – section 68					
19.	Track Casting India Pvt. Ltd. - Share Capital – section 68 - Unexplained expenses (alleged commission expenses) - sec 69C	2012-13	143(3)	31,00,00,000 7,75,000	D D	R Not challenged
	TOTAL			10,68,85,85,409		

4. Thus, out of total addition of Rs. 10,65,22,85,409/- made u/ss. 68, 69C & 14A in the cases of the Assessee herein, additions aggregating to Rs. 10,22,02,85,409/- have been deleted from the first appellate stage. The additions to the extent deleted by the Id. C.I.T (A)s have been contested in appeal before the Hon'ble ITAT by the Department. The confirmation of balance additions (as and where applicable) has been contested by the respective Assessee before the Hon'ble ITAT. Further, in the cases of three Assessee, namely i) Jawahar Credit & Hoidings Pvt. Ltd. (A.Y. 2012-13); ii) Jingle Bells Aluminium Pvt. Ltd, (A.Y. 2012-13); and iii) Kasper Information Technology Pvt. Ltd. (A.Y. 2012-13), the Ld. C.I.T (A), while deleting the additions made by the A.Os u/s. 68 has made fresh additions on account of alleged commission income aggregating to Rs. 3,63,00,000/- for providing facility to route the impugned transactions. Thus, the Ld. CIT(A) at the first appellate stage have adopted divergent views with respect to the sustainability of identical additions made by the Ld. A.O(s) u/s 68 in the cases of the

Assessee herein under identical facts and circumstances. Whereas in most of the captioned cases the additions made by the Ld. A.O(s) u/s 68 have been deleted by the Ld. CIT (A)s on the ground that the Assessee have effectively established the necessary ingredients of section 68, whereas in few cases the Ld. CIT(A)s have upheld the additions made by the A.Os u/s 68 on the ground that the concerned Assessee have availed accommodation entries in the garb of share capital and/or loans & advances. In the remaining cases the Ld. C.I.T(A)s have opined that the Assessee have essentially worked as entry providers for providing facility to route transactions in lieu of certain commission income. Another peculiar fact to be noted is that, even with respect to the same Assessee, divergent views have been taken by different officers at the first appellate stage in relation to similar additions u/s 68 made in different A.Ys. For instance:-

- In SI. No. 6 - Kasper Information Technology Pvt. ltd. wherein addition u/s 68 has been deleted by the Ld. CI.T(A) for A.Y. 2012-13 as against SI. No. 7 - Kasper Information Technology Pvt. ltd. wherein similar addition u/s 68 has been confirmed by the Ld. CIT (A) for A.Y. 2013-14.
- In Sl. No, 17- Globus Real Infra Pvt. Ltd. A.Y 2012-13 wherein addition u/s 68 has been deleted by the CIT(A) as against Sl. No. 18 - Globus Real Infra Pvt. Ltd. A.Y. 2013-14 wherein similar addition u/s 68 stands confirmed by

the Id. CIT(A).

5. In the grounds of appeal as raised by the assessee in respective appeals can be summarized as under:

Sl. No.	Name of the Assessee & ITA No.	A.Y	GROUNDS TAKEN BY THE ASSESSEE BEFORE THE HON'BLE ITAT	
			Ground challenging the upholding of addition u/s 68 on account of Share Capital/ Share Premium and/or Loans & Advances	Other Grounds
1.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) [ITA NO. 2920/DEL/2017]	2013-14	Ground 2: Ld. C.I.T(A) was not justified in upholding addition of Rs. Rs. 8.555 crores (comprising of share application money amounting to Rs. 5.6 crore and Unsecured Loans of Rs. 2.995 crores) received from various parties by resorting to section 68 on the ground that the appellant company had allegedly failed to discharge its onus as mandated by the said section.	Ground 1: Ld. C.I.T(A) was not justified in passing the order exparte order on the basis of material available on records without giving the Appellant a reasonable opportunity of being heard
2.	Jawahar Credit & Holdings Pvt. Ltd. (Cross appeal) [ITA NO. 5398/DEL/2019]	2012-13	N.A.	As per the Revised Grounds of Appeal filed on 19.10.2020 Ground 1: The Ld. C.I.T.(A)-05, New Delhi while correctly deleting the addition of Rs. 73,50,00,000/- made by the Ld. A.O. u/s 68, erred in making fresh addition of Rs. 1,47,00,000/- to the income of the Appellant Company on account of alleged charges received by the Appellant Company @ 2% for providing facility to route the impugned transaction of Rs. 73,50,00,000/- purely on the basis of surmises and conjectures although the same is not backed by any substantive or tangible evidence on record. Ground 2: That the Ld. C.I.T.(A)-05, New Delhi acted beyond jurisdiction in enhancing income of the Appellant u/s 251(1)(a) of the Income-tax Act, 1961 (the 'Act') by introducing and assessing new source of income to the extent of Rs. 1,47,00,000/- beyond the record

Sl. No.	Name of the Assessee & ITA No.	A.Y	GROUNDS TAKEN BY THE ASSESSEE BEFORE THE HON'BLE ITAT	
			Ground challenging the upholding of addition u/s 68 on account of Share Capital/ Share Premium and/or Loans & Advances	Other Grounds
				<p>(i.e. the return of income and assessment order) and outside the subject matter of assessment appealed against.</p> <p>Ground 3: That the Ld. C.I.T(A)-05, New Delhi erred in making fresh addition of Rs. 1,47,00,000/- and thus enhancing the income of the Appellant to the said extent without issuing a prior show cause notice as mandated u/s 251(2) of the Act for providing a reasonable opportunity to the Appellant of showing cause against such enhancement, thus resulting in gross violation of principles of natural justice.</p>
3.	<p>Jingle Bells Aluminium Pvt. Ltd.</p> <p>(Cross appeal)</p> <p>[ITA NO. 5397/DEL/2019]</p>	2012-13	N.A.	<p>As per the Revised Grounds of Appeal filed on 19.10.2020</p> <p>Ground 1: The Ld. C.I.T.(A)-05, New Delhi while correctly deleting the addition of Rs. 62,00,00,000/- made by the Ld. A.O. u/s 68, erred in making fresh addition of Rs. 1,24,00,000/- to the income of the Appellant Company on account of alleged charges received by the Appellant Company @ 2% for providing facility to route the impugned transaction of Rs. 62,00,00,000/- purely on the basis of surmises and conjectures although the same is not backed by any substantive or tangible evidence on record.</p> <p>Ground 2: That the Ld. C.I.T.(A)-05, New Delhi acted beyond jurisdiction in enhancing income of the Appellant u/s 251(1)(a) of the Income-tax Act, 1961 (the 'Act') by introducing and assessing new source of income to the extent of Rs. 1,24,00,000/- beyond the record (i.e. the return of income and assessment order) and outside the subject matter of assessment appealed against.</p> <p>Ground 3: That the Ld. C.I.T(A)-05, New Delhi erred in making fresh addition of Rs. 1,24,00,000/- and thus</p>

Sl. No.	Name of the Assessee & ITA No.	A.Y	GROUNDS TAKEN BY THE ASSESSEE BEFORE THE HON'BLE ITAT	
			Ground challenging the upholding of addition u/s 68 on account of Share Capital/ Share Premium and/or Loans & Advances	Other Grounds
				enhancing the income of the Appellant to the said extent without issuing a prior show cause notice as mandated u/s 251(2) of the Act for providing a reasonable opportunity to the Appellant of showing cause against such enhancement, thus resulting in gross violation of principles of natural justice.
4.	Kasper Information Technology Pvt. Ltd. [ITA NO. 357/DEL/2019]	2012-13	N.A.	<p><u>As per the Revised Grounds of Appeal filed on 19.10.2020</u></p> <p><u>Ground 1:</u> The Ld. C.I.T.(A)-05, New Delhi while correctly deleting the addition of Rs. 46,00,00,000/- made by the Ld. A.O. u/s 68, erred in making fresh addition of Rs. 92,00,000/- to the income of the Appellant Company on account of alleged charges received by the Appellant Company @ 2% for providing facility to route the impugned transaction of Rs. 46,00,00,000/- purely on the basis of surmises and conjectures although the same is not backed by any substantive or tangible evidence on record.</p> <p><u>Ground 2:</u> That the Ld. C.I.T.(A)-05, New Delhi acted beyond jurisdiction in enhancing income of the Appellant u/s 251(1)(a) of the Income-tax Act, 1961 (the 'Act') by introducing and assessing new source of income to the extent of Rs. 92,00,000/- beyond the record (i.e. the return of income and assessment order) and outside the subject matter of assessment appealed against.</p> <p><u>Ground 3:</u> That the Ld. C.I.T(A)-05, New Delhi erred in making fresh addition of Rs. 92,00,000/- and thus enhancing the income of the Appellant to the said extent without issuing a prior show cause notice as mandated u/s 251(2) of the Act for providing a reasonable opportunity to the Appellant of showing cause against such enhancement, thus resulting in gross violation of principles of natural justice.</p>

Sl. No.	Name of the Assessee & ITA No.	A.Y	GROUNDS TAKEN BY THE ASSESSEE BEFORE THE HON'BLE ITAT	
			Ground challenging the upholding of addition u/s 68 on account of Share Capital/ Share Premium and/or Loans & Advances	Other Grounds
5.	Kasper Information Technology Pvt. Ltd. [ITA NO. 510/DEL/2019]	2013-14	Ground 1: Ld. C.I.T(A) was not justified to uphold addition of Rs. 16 crores made by the A.O on account of balance share capital/premium as an alleged unexplained cash credit u/s 68 on the ground that appellant had failed to discharge the onus cast on it at mandated by the said section and that the appellant has failed to prove the creditworthiness, genuineness and identification of the Investors.	NA
6.	Landsky Real Estate Pvt. Ltd. [ITA NO.509/DEL/2019]	2013-14	Ground 1: Ld. C.I.T(A) was not justified to uphold addition of Rs. 16 crores received by the appellant company on account of balance share capital/premium as alleged unexplained cash credit u/s 68 on the ground that the appellant company had failed to discharge the onus cast on it by the said section. Ground 2: Ld. C.I.T(A) was not justified to uphold addition of Rs. 2.60 crores on account of advances taken by the appellant company from M/s. Cantabile Minerals & Minings Pvt. Ltd & M/s. Angel Cement Pvt. Ltd. by resort to section 68 on the ground that appellant company has failed to prove the identity, creditworthiness and genuineness of the transactions.	NA

- i) Grounds challenging the confirmation/deletion by the Ld. C.I.T(A) of **additions made by the A.O u/s 68** on account of alleged

- unexplained credit in the form of **share capital/ share premium and/or loans & advances** (as the case may be) received by the Assessee(s) – Challenged by the Department where the addition stands deleted by the Ld. C.I.T (A)(**16 cases**)and challenged by the Assessee(s)(**3 cases**)where the addition stands confirmed by the C.I.T (A).
- ii) Department's Ground challenging the deletion by the Ld. C.I.T(A) of the additions made by the A.O u/s **68** with respect to increase in share capital of the Assessee-company on account of **issue of bonus shares**(3 cases).
 - iii) Assessee's Ground challenging the **fresh addition (enhancement) made by the Ld. C.I.T (A)on account of alleged commission income @ 2%** for providing facility to route the impugned financial transactions without introducing new source of income beyond record without issuing prior show cause notice u/s 251(2) – challenged by the Assessee in the cases of **Jingle Bells Aluminium Pvt. Ltd. (A.Y. 2012-13), Kasper Information Technology Pvt. Ltd. (A.Y. 2012-13) and Jawahar Credit & Holding Pvt. Ltd. (A.Y. 2012-13)**.
 - iv) Department's Ground challenging the order of the Ld. C.I.T(A)**restricting addition to Rs. 5 lacs from an addition of Rs. 23,32,813/- made by the A.O u/s 14A** of the I.T. Act, 1961 read with Rule 8D of the I.T. Rules, 1962 – challenged by the Department in the case of **Stylish Construction Pvt. Ltd. for A.Y. 2012-13**.
 - v) Department's Ground challenging the alleged **admission of additional evidence** by the Ld. C.I.T(A) without giving opportunity to the Ld. A.O in violation of **Rule 46A** of the I.T. Rules, 1962 – challenged by the Department in the cases of **Angel Cement Pvt. Ltd. (A.Y. 2012-13), Delight Resorts Pvt. Ltd. (A.Y. 2012-13) and Stylish Construction Pvt. Ltd. (A.Y. 2012-13)**.
 - vi) Assessee's Ground challenging the passing of **ex parte** order by the Ld. C.I.T. (A) – urged by the Assessee in the case of **Globus Realinfra Pvt. Ltd. (earlier known as Sur Buildcon Pvt. Ltd.) for A.Y. 2013-14**.

6. Now we come to the grounds challenging confirmation of deletion by the ld. CIT (A) on the addition made by the

Assessing Officer u/s.68 on account of sums credited in the books of the assessee in the form of share capital/share premium and / or loans and advances as a lead case.

7. We will take up the appeal in the case of M/s. Jawahar Credit and Holdings Pvt. Ltd., in ITA No.5398/Del/2019 for the Assessment Year 2012-13 as a lead case. Ld. Assessing Officer noted that the company was engaged in the activities of investment in shares in various companies. On perusal of the balance sheet, he noticed that during the year under consideration the company has received Rs.4,35,00,000/- as share capital and Rs.69,15,00,000/- as share premium by issue of Rs.3 lac fully paid up share at the face value of Rs.10 each and a premium of Rs.190 per share; and further Rs.15 lac partly paid share converted into fully paid up share @ 90 from the following parties:-

Sl.No.	Name of the parties	Share Capital	Share Premium	Total
1	Bhushan Finance Pvt. Ltd.	15000000	285000000	300000000
2	NRA Iron & Steel Pvt. Ltd.	15000000	285000000	300000000
3	Sri Brij Bhushan Singal	4500000	40500000	45000000
4	B B Singal (HUF)	900000	8100000	9000000
5	Sri Kishori Lal(HUF)	675000	6075000	6750000
6	Smt. Uma Singal	2025000	18225000	20250000
7	Smt. Archana Mittal	1350000	12150000	13500000
8	Sri Neeraj Singal	900000	8100000	9000000
9	Neeraj Singal (HUF)	1350000	12150000	13500000
10	Smt. Ritu Singal	1800000	16200000	18000000
	Total	43500000	691500000	735000000

8. In response to the show cause notice Assessing Officer required to prove the genuineness and identity and creditworthiness of the subscribes from whom the assessee

company has received share capital and share premium aggregating to Rs.73,50,00,000/-, the assessee vide reply dated 22.12.2014 submitted the details of address along with PAN, their confirmation letters and their bank statements highlighting the relevant entries. In order to verify the genuineness of the transaction, the Assessing Officer sent u/s. 133(6) dated 09.01.2015 from the subscriber company, namely, Bhushan Finance Pvt. Ltd. and NRA Iron and Steel Pvt. Ltd. and asked to furnish the following details:-

- 1. Copy of Bank Statement from where funds have been given to above assessee company (JCHPL).*
- 2. Source of funds raised for making investment in the above company, (JCHPL). Please provide complete chain details of funds received in your bank account giving Name/Address/PAN of the person from whom the said funds have been received.*
- 3. Name of the person, who offered the shares of the company on behalf of JCHPL. Also submit offer prospects in this regard. Also provide justification of buying the share premium supporting with documentary evidences.*
- 4. Name of the person (Mediator) through whom the deal was negotiated for making investments in share/share application money.*
- 5. Copy of application form in respect of share application money paid to JCHPL.*
- 6. Copy of acknowledgement of receipt share application Form and share certificate.*
- 7. Copy of share certificate of the above company (JCHPL).*

8. Please state what is the current status of these shares, whether these are still in your possession or have been sold.

9. In case the above certificates have been sold, please confirm with respect to your bank statement. Also give the name/address/PAN of the party to whom these shares of JCHPL have been sold.

10. Please provide the copy of ITR/Balance Sheet/Computation of Income for the A. Y. 2012-13 and the year in which the transaction mentioned in point no.9 above has been made, reflecting clearly the above transactions in respective balance sheets of your company.

11. Provide copy of ITR of Director/Substantial share holders of your company.”

9. In response, these parties had given reply to the assessee. The Assessing Officer further sought for information u/s. 133(6) from the individual investors and in response to which again replies have been received. With regard to the details of security premium received during the year and justification of the premium charged on the issue of share the assessee vide letter dated 12.01.2015 had stated as under:

“(a) During the year the Assessee Company has issued 3000000 fully paid up shares each at a premium of Rs.190/-, 15,00,000 partly paid up shares converted into fully paid up shares at a premium of Rs. 90/- each to various parties (details already filed earlier) With regard to the issue of shares at a premium and the justification for the same it s submitted as under:

(b) Although the term share premium has not been defined in any

statute, the commonly accepted meaning thereof refers to it being the amount paid over and above the nominal value of the shares and securities of a company.

(g) The calculation of premium which a company can garner is the combined result of the interplay of various factors intrinsic, normative and even perceptual some or most of which are not capable of any degree of quantification/enumeration. The decision to ask for a premium was based on perceptions as to the company's ability to raise funds based on future business prospects, planning and outlook In the financial markets the ability of an investor to command a premium and the willingness of an investor to invest at the said premium are based on the intangible factors and issues such as the economic outlook, future business plans etc and the same should be considered as genuine reasons. Such decisions and activities are invariable based on intangible perceptions and thought processes and not based on any nuts and bolts, any physical genuine reasons. The decision of the Investor Companies to invest in the shares at a premium Mm based on the thought process, and ground realities prevailing at that, point of time. Moreover as already discussed above there are/were no specific guidelines/rectification/stipulations as to the manner of calculation of premium in the case of an unlisted company. As such it becomes the prerogative of the Board of Directors of a investor company to decide the premium which it can command and the wisdom of an investor as to whether he would be willing to pay the same. In the given case the calculation of premium which the Assessee Company could command was based on its future plans and the expected inflows therefrom with facts and projections were found to be acceptable to the investors and accordingly no adverse

view can be arrived at with regard to the same.”

10. The Assessing Officer further asked the assessee company to furnish details of business activities done by the company, year wise details of dividend received during the year and the last three years, year wise break up of profit and loss account incurred by the assessee during the year and last three years, details of EPS and book value of shares, details of declaration of premium received during the year. In response the assessee had filed its detailed reply vide letter dated 20.03.2015 as mentioned by the Assessing Officer. Further the assessee again was required the identity, genuineness and creditworthiness of the subscribers in view of Section 68 the assessee had filed confirmation and bank statement the gist of which have been reproduced in the assessment order which are as under:

1. NRA Iron & Steel Pvt. Ltd. Bank: IndusInd Bank., G.K, New Delhi, A/c No. :0012-B49553-060

Rs.

<i>Date</i>	<i>Debit</i>	<i>Credit</i>
22.03.2012		40,00,00,000
23.03.2012	30,00,00,000	

2. Bhushan Finance Pvt. Ltd. Bank: Axis Bank Ltd, New Delhi
A/c No.: 910020042325288

Rs.

<i>Date</i>	<i>Debit</i>	<i>Credit</i>
22.03,2012		30,00,00,000
23.03.2012	3,00,00,000	

4. Uma Singal. Bank: Punjab National Bank, C,P, New Delhi
A/c No. 0133002160006815

Rs.

Date	Debit	Credit
26.03.2012		2,00,00,000
26.03.2012		5,00,000
26.03.2012	2,02,50,000	

5. Neeraj Singal HUF. Bank: Punjab National Bank, C.P, New Delhi
A/c No. 0133002100006891

Rs.

Date	Debit	Credit
26.03.2012		1,35,00,000
26.03.2012	1,35,00,000	

6. Neeraj Singal Bank: Punjab National Bank, C.P, New Delhi
A/c No. 0133002100006792

Rs.

Date	Debit	Credit
26.03.2012		2,25,00,000
26.03.2012	90,00,000	

7. Kishori Lai HUF Bank: Punjab National Bank, C.P, New Delhi
A/c No. 0133002100006905

Rs.

Date	Debit	Credit
26.03.2012		68,00,000

26.03.2012	67,50,000	
------------	-----------	--

8. BB Singal (HUF). Bank: Punjab National Bank, C.P, New Delhi A/c No. 0133002100006706

Rs.		
Date	Debit	Credit
26.03.2012		92,00,000
26.03.2012	90,00,000	

On the perusal of the bank statement Assessing Officer observed that these subscriber company and individual investment did not have their own creditworthiness and they were just an accommodation entry. He further observed that on perusal of the financials of the assessee company it can be seen that it has not done any business activity and the major part of the turnover derived from the dividend and miscellaneous income. He has also analyzed the books profit of the assessee company before issue of share on premium as on 31.03.2011 which was as under:

A. Equity

1. Share Holder's funds	(in Rs.)
Share Capital	88000000
Reserves Reserve and Surplus	172746598
Total	260746598
No. of shares	10150000
Value per share	25.68 per share
2. Profit /Loss of the company	Profit/Loss
A.Y. 2011-12	114440

A.Y. 2012-13

(820515)

11. Thus, from the above he deduced his inference in the following manner:-

The assessee company has very nominal business profit. It is only common sense that past performance should be given suitable weight age for the valuation of a company and its shares but the same has been totally ignored in the instant case. Furthermore, no correspondence or any documentary evidence has been brought on record in the assessee company replies submitted in the course of the assessment proceedings to justify the so called bright future prospects of the company which would enhance the profitability and consequentially lead to higher valuation of the shares.

To test the credibility of the valuation, an effort was made to verify the future results of Assessee Company with reference to the financial results filed for A.Y. 2011-12 and 2012- 13. The comparative figures are as under:

A.Y.	income from Operation	Interest, Dividend & other Income	Total Income,	Net Profit	EPS Claimed by the assessee
2011-12	393934	2380822	2774756	114440	0.01
2012-13		368137	368137	(820515)	(0.05)

12. Thereafter, he has quoted the judgment of Hon'ble Supreme Court in the case of Mc. Dowell and Co. Ltd. in (1985) 154 ITR 148 and after detail reasoning and referring to catena of judgments, he held that the credits aggregating to Rs.73,50,00,000/- is to be taxed u/s.68, because the

assessee has failed to prove the genuineness of the transaction and the creditworthiness of the parties.

13. Ld. CIT(A) though held that on the facts and circumstances of the case, addition u/s.68 could not be made, but held that these companies must have charged 2% as commission on the total transaction as profit on such entries and in this case it was worked out at Rs.1,47,00,000/-. Before the ld. CIT (A), the assessee has filed the very elaborate submission containing all the details and information and also how the money has been routed through from the main company to through web of group companies and along with the cash flow chart. The detailed remand report of the Assessing Officer has been incorporated from pages 21 to 28 of the appellate order.

14. After considering the entire gamut of facts and the material on record, Ld. CIT(A) observed and held as under:-

“6.1 I have gone through the submissions by the appellant, assessment order, report of AO, rejoinder by appellant and perused the case laws relied upon.

6.2 The appellant has raised two grounds of appeals which is related to the addition of Rs.73,50,00,000/- and interlinked. Therefore, both the issues are taken together.

7. It is seen from the assessment order that appellant has not provided proper confirmation at the first instance, however, notices issued u/s 133(6) of the Act to the investors, has been replied with. There is no financial capacity of various investors

to subscribe share capital with high premium in the appellant company. The appellant expressed their inability to produce the directors of the investor companies or the individuals. It is also seen by the AO that the amount has been received by the investors, just before subscribing the shares in the appellant company. The subscribers did not have their own creditworthiness as in most of the cases the amount has been received on transfer and there is hardly any business activity by those investors.

7.1 It is observed by the AO that the appellant company is showing very nominal income having limited resources and reserves, therefore, such high premium is not justified. The origin of funds to the subscribers/investors is not clear and there is no economical/logical explanation for the transactions. Accordingly, the AO held that it is unexplained being a sham transaction in the guise of capital introduction, without the tax payments. Accordingly, after relying upon various case laws, this addition was made, invoking provisions of section 68 of the Act.

7.2 It is contended by the appellant that it has provided all the documents of the investors such as audited account, copy of ITR, confirmation, bank account and other details to substantiate that these transactions are genuine and payments have been received through banking channels. It is also contended, as reproduced above, that desired information has been duly provided in compliance to notice u/s 133(6) of the Act, all the investors are assessed to tax and assessment order u/s 143(3) of the Act has been provided in few cases. It

is also stated that for the year under consideration, there was no statutory requirement to evidence and justify the source of source of the funds invested. The appellant also relied upon various judgments, as quoted in its submission, reproduced above, to justify that these transactions are genuine and addition u/s 68 is not called for as onus cast upon the appellant company has been duly discharged. It is also argued that the issue of share premium is a matter to be decided upon by the various investors and the companies concerned and not within the powers of AO to step into the shoes of business entities. It is also stated that reasons for making impugned additions are generic in nature and based on the interpretation by AO without clinching evidence.

7.3 On going through the submissions of the appellant, it is observed that all the ten investors are submitting their return of income, the transactions has been done through the banking channels.

7.4 The appellant has cited a number of decisions of the jurisdictional High Court and other jurisdictions, wherein the Hon'ble Court has disapproved the attempt of the AO to look into the source of the source of the deposits, which was not the mandate of the law in the year under appeal. The amendment of section 68 w.e.f. 01.04.2013 cannot be held, or interpreted, to be retrospective in nature. The appellant has also relied on decisions of the Hon'ble High Court of Delhi wherein it has been held that share capital cannot be assessed in the hands of the company even if the subscribers to the increased share capital were held to be not genuine.

Such addition could only be made in the hands of the alleged bogus share holder. The order of the Hon'ble Delhi High Court in the case of CIT vs. Lovely Exports Pvt. Ltd. 299 ITR 268 has been upheld by the Apex Court. In the case of CIT vs. Kamdhenu Steel and Alloys Ltd. 206 Taxman 254, the Hon'ble Delhi High Court has held that the assessee cannot be fastened with the liability u/s 68 unless a causal connection between the cash deposit in the bank and the assessee is established. The Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters and Finlease (P) Ltd. has held that the AO is duty bound to investigate the creditworthiness of the creditor and genuineness of the transaction. Where the complete particulars of the share applications are furnished to the AO and the AO has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false, then no addition can be made in the hands of the company u/s 68.

7.5 *However, it is observed in this case that the appellant could not justify the immediate payment towards investment in shares for the funds received from investors and similarly the amount has been invested by appellant company in various investments made in shares immediately after receiving the share capital. The appellant could not produce the directors of few investor companies, who have heavily invested in the appellant company for no cogent reason. It is also observed from the assessment order of all such persons that they are not carrying out any worthwhile activities nor have actual worth to invest in the appellant company at such*

high premium. The source and destination companies are having common address. In the report of AO, it is also mentioned that appellant company is not having worth for which such heavy premium in shares can be invested and justified. Further, the appellant company is not showing any worthwhile income since past and it has limited reserves and surplus.

7.6 It is also stated in the report of AO that the investment made by various investors, in the appellant company has received funds from the companies and persons related to Bhushan Steel Ltd which was further routed through the appellant company and further invested in eight companies as share application. In its reply, the appellant has not given any satisfactory reply to this fund flow and also the payments made by investors, immediately after receiving the funds from above companies.

7.7 Further, the address of the investors and the investment made by appellant company are same.

7.8 All these features as discussed in the foregoing paragraphs, 7.5 to 7.7 indicates that though the documentations are complete with respect to the investors and the appellant/company, payments received and made through banking channels and other formalities are complete, however, inability to produce directors in the case of investor company, investment at such high premium without justification and having no net worth or reserves and surplus and immediate investment in appellant company after receiving the funds, which was further invested by the

appellant company to other companies for such amount received, same address etc. shows that the appellant company and its investors, especially companies are nothing but a creation of paper companies to transfer its funds from Bhushan Steel Ltd. and other individuals related to them, to various companies as shown in flow chart, through the appellant company.

7.8 *As stated earlier, there is no worth/reserve of the appellant company nor any business carried out, the investor companies and other persons are also not carrying out any visible business activity, therefore, this is nothing but routing of its funds by the Bhushan Steel Ltd. and its related parties where neither the investors and other persons nor the appellant company are ultimate beneficiary. The funds received were given to the other companies, as soon as it is received and the assets in the balance sheet is shown in the form of investment in shares for the share application money and premium thereon received. The appellant has also not given any cogent reasoning for the fund flow shown by the AO in his report.*

7.9 *Therefore, looking to the facts and circumstances of this case where basic requirement to justify the identity, creditworthiness and genuineness of transaction has been prima facie established but looking to the fact and analysis as narrated above, these transactions are found to be for routing finances of M/s Bhushan Steel Ltd. and other persons, through appellant Company and it is just paper company where appellant is not the ultimate beneficiary because it has*

further passed on those funds to various companies as shown in the flow chart.

7.10 In view of above, it is to be stated that as per the practice and also seen in various cases, the said person (in this case appellant) charges the amount to provide such entries which is generally 2% of the total transactions. Therefore, considering that the appellant has been providing the facility to route these financial transactions, the 2% of the total amount is treated as undisclosed income of the appellant, not shown in its return of income. This comes to Rs. 1,47,00,000/-.

7.11 Since the details have been duly provided with respect to the referred companies and the additions are out of the ambit of provisions of section 68 of the Act due to the reason that these investors companies are held to be just a paper company or conduit in the case of other investors for providing entries and

routing the finances, therefore, the addition to the extent of Rs. 1,47,00,000/- is sustained for charges received in providing such entries, not disclosed by the appellant. For the balance amount, the appellant gets a relief.”

15. By and large similar nature of finding has been given by the Assessing Officer in all the appeals before us. In tabular form, the summary of the finding and observation of the Assessing Officer and the finding of the ld. CIT (As) in all the appeals are as under:-

1.	Angel Cement Pvt Ltd. -Revenue's Appeal	2012-13	<u>Section 68:</u> Share capital (SC) share premium – Rs. 66 crores Other payables (current liability) - Rs. 54.70 crores Total: Rs. 120.7 crores	<ul style="list-style-type: none"> ➤ The assessee never came forward to prove identity, creditworthiness & genuineness (ICG) of the transactions. ➤ The summons addressed to contributors remained uncompiled with. Notice 133(6) returned back un-served from all the parties (Page – 4, Para 3.2) ➤ Summons returned back un-served from three parties namely Cantabile (Left), Sintex (No such firm), Supreme (no such firm) (Page– 4, Para 3.2) ➤ The assessee adopted a prevaricate and non-co-operation attitude (Page 6, Para 3.5) ➤ The confirmations submitted by the assessee are not even self-serving to prove ICG of the transactions. ICG of the transaction is not established. (Page 6, Para 3.5) ➤ Simply furnishing PAN or Assessment particulars/ address is not enough, as they do not facilitate cross verification. (Page – 7, Para 3.6 – AO's order) ➤ Genuineness and creditworthiness of these parties remain unverified. The assessee failed to discharge its onus completely. (Page – 7, Para – 3.7 – AO's order) ➤ No sufficient balance in bank accounts, cheque issued to assessee cleared by way of receipt of transfer entry from another associated concern, nature of transaction reveal they are not real business transactions, similar to trade of an entry operator. Thus amount received can be termed as 'bogus accommodation entry' received by assessee (Page – 7, Para – 3.7 – AO's order). 	<ul style="list-style-type: none"> ➤ Appellant companies are having adequate reserves to make investment. ➤ The assessee has discharged its burden cast upon it to prove identity, creditworthiness & genuineness (ICG) of the transactions (Page 37 – CIT(A) order). ➤ Investor companies have submitted documents to prove the ICG of the transactions. (Page 31 – 37 – CIT(A)'s order). The source of funds invested in share capital and share premium by each investor stands explained (Page 37 – CIT(A) order) ➤ The source of funds by the investor companies in the appellant in its share capital stands explained. (Page 37 – CIT(A) order). ➤ All the investor companies are assessed to tax in their jurisdiction either in Delhi or in Mumbai. The copies of assessment have been submitted (Page 37 – CIT(A) order). ➤ The appellant company has filed copies of bank statement, profit & loss account, balance sheets to establish source of funds in hands of investor companies (Page 37 – CIT(A) order). ➤ The AO contention in making the addition on ground that the notice U/s 133(6) and summons U/s 131 could not be served is not acceptable as the investor companies have been assessed to tax U/s 143 of the Act, therefore all the details must have been filed before their respective AO's. Therefore it can be said that these companies are very much
----	---	---------	--	--	--

			<p><u>List of case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • CIT V NR Portfolio Pvt Ltd. • CIT V Nova Promoters and Finlease Pvt Ltd. • Kale Khan Mohd. Hanif V CIT. • CIT V Lachhman Das Oswal • Nanak Chandra Laxman Dass V CIT (1982) 140 ITR 151 (All.) • R Dalmia V CIT (1976) 113 ITR 522 (Del.) • CIT V Debi Prasad Vishwanath Prasad (1968) 72 ITR 194 (SC) • CIT V Hero Cycles Pvt Ltd. • CIT V Stepwell Industries Ltd and Others. • SumatiDayal V CIT (1995) 214 ITR 801 (SC) • CGT V Dr. George Kuruvilla (1969) 74 ITR 328 (SC) • CIT V Joseph John (1967) 67 ITR 74 (SC) • RB Seth Champa Lal Swarup V CIT (1965) 60 ITR 493 (SC) • CIT V R Venkataswamy Naidu (1956) 29 ITR 529 (SC) • Sreelekha Banerjee V CIT (1963) 49 ITR 112 (SC) • AnrajNarainDass V CIT (1951) 20 ITR 562 (Punj.) • A.D. Jayaveerapandia Nadar V CIT (1964) 54 ITR 401 (Mad.) • Shankar Industries V CIT (1978) 114 ITR 689 (Cal.) • Oriental Wire Industries P Ltd. V CIT (1981) 131 ITR 688 (Cal.) • Sikri & Co. Pvt Ltd V CIT (1977) 106 ITR 682 (Cal.) • VeljiDeoraj& Co. V CIT (1968) 68 ITR 708 (Bom.) • KM Sandhu & Sons Pvt Ltd V CIT (1999) 239 ITR 77 (Cal.) • CIT V Kerala Roadlines Corporation • Roshan Di Hatti V CIT 	<p>present at the given address and has got all necessary establishments (Page 37/38 – CIT(A) order).</p> <ul style="list-style-type: none"> ➤ The AO did not bring any adverse material to reject the explanations and evidences submitted by the appellant except non-compliance of 131 and 133(6) (Page 38 – CIT(A) order). ➤ Neither any person has given any statement nor has made any allegation against these companies(Page 38 – CIT(A) order) ➤ The reasons given by AO are very generic in nature and not backed by any concrete evidence(Page 38 – CIT(A) order). ➤ There was no cash deposit in the bank accounts of the parties from share capital received(Page 38 – CIT(A) order). <p><u>List of case laws relied upon by CIT(A)</u></p> <ul style="list-style-type: none"> • MoD Creatiosn Pvt Ltd V Income Tax Officer (2013) 354 ITR 282 (Delhi) • CIT V Kamdhenu Steel and Alloys Ltd and Others 206 taxmann 254 Delhi • CIT V Gangeshwari Metals Pvt Ltd (2013) 30 taxmann.com 328 • CIT V Oasis Hospitalities (2011) 333 ITR 119 (Delhi) • ITO V Neelkanth Finbuild ITA No. 2821/Del/2009 dated 01/04/2015 • ITO V NC Cables Ltd 4122/Del/2009 • ITO V Rakam Money Matters P. Ltd 2821/Del/2011 • ACIT V Kisko Castings Pvt Ltd • CIT V Fair Finvest Ltd • CIT V Expo Globe India Ltd.
--	--	--	--	--

2.	Delight Resorts Pvt. Ltd. -Revenue's Appeal	2012-13	(i) Section 68: Share capital (SC) – 10 crores Advance received – 66.56 crore (ii) Adhoc disallowance (50% of employee benefit and other expenses) – Rs. 5.22 lacs	<ul style="list-style-type: none"> ➤ That the address mentioned by assessee in letter dated September 5, 2014 as "F-1-200/13, Sec-13A, Vaishali, Ghaziabad, Uttar Pradesh – 201010", notices sent at this address U/s 142(1), 143(2) and again 142(1) in the month of November, 2014 received back un-served with postal remarks "unclaimed", "unclaimed" and "no such person" respectively (Page – 2 – AO's order) ➤ No explanation submitted with regard to following: <ul style="list-style-type: none"> • Business dealing with the parties involved • Why interest not paid on huge loans (Page 4 – AO's Order) ➤ Transactions of heavy loans received without paying any interest fails the test of human probability (Page 4 – AO's Order). ➤ Mere proof of identity of a creditor or that transaction was by cheque is not sufficient to discharge onus lying on assessee to prove genuineness of transaction (Page 4 – AO's Order). ➤ No interest is even paid to parties who advanced hefty loans of about Rs. 30 crores namely Paras Placement and Cantabile Minerals (Page 4 – AO's Order). ➤ The facts of the case indicate that what is apparent is not real (Page 4 – AO's Order). ➤ Substance of transaction need be assessed by applying taxing statute to determine genuineness of a transaction (Page 4 – AO's Order). Transactions of advances 	<p><u>Regarding addition on account share capital received:</u></p> <ul style="list-style-type: none"> ➤ Replies filed by appellant stands corroborated by replies in response to notice U/s 133(6) of the Act (Page – 24, Para – 3.1 – CIT(A)'s Order). ➤ That Imperative Buildwell is an investment company and R&S as on March 31, 2011 are of Rs. 19.95 crores (Page – 24, Para – 3.1 – CIT(A)'s Order). Analysis of Sc and R&S has also been done by CIT(A), though CIT(A) has not made any comment on it but they are reasonable enough to make investment (Page – 24, Para – 3.1 – CIT(A)'s Order) ➤ That the assessment of both the companies has been done U/s 143(3) of the Act (Page – 25, Para – 3.1 – CIT(A)'s Order) ➤ Examination of Order Sheet and assessment order reveals that AO <i>per se</i> has not given any direction to assessee to produce the directors of such company (Page – 25, Para – 3.1 – CIT(A)'s Order). ➤ Documents were filed by appellant but AO did not do any further verification or investigation to deny the evidences and

				<p>have been undertaken with a purpose to defraud the revenue and is a colorful device (Page 4 – AO’s Order). The assessee failed to bring on record that why the Axis bank account is being maintained at Angul, Orrisa, detail of the person who maintains the account at such location (Page 4 – AO’s Order)</p> <p>➤ Bank account opened on March 22, 2012, major advances received in bank account maintained at Orrisa only (Page 4 – AO’s Order). All the bank accounts from where money transferred are apparently located at Angul, Orrisa (Page 5 – AO’s Order). All bank accounts are joint bank accounts including assessee’s bank account (Page 5 – AO’s Order)</p> <p>➤ ICG of the transaction and the investor are deeper and obstructive than mere completion of paper work or documentation (Page 8 – AO’s Order). Assessee is a private limited company, neither came out with any public issue nor issued any advertisement, still failed to produce the persons who invested towards share capital shows that the transactions are merely accommodation entry (Page – 8/9 – AO’s Order)</p> <p>➤ In a private limited company, it is generally not difficult on part of assessee to produce persons who have invested substantially toward share capital (Page 9 – AO’s Order). Sequence of events like, failure on assessee’s part to bring directors of subscriber companies, failure to file future project reports, huge investments made into assessee company in the second year of operation, indicates that what is apparent is not real and only a colorable device to convert unaccounted money without paying any</p>	<p>explanations of the Appellant (Page – 25, Para – 3.1 – CIT(A)’s Order).</p> <p>➤ That Pace Iron is an investment company and having SC of Rs 2.41 crores and advances of Rs. 32.7 crores as on March 31, 2011 (Page – 24, Para – 3.1 – CIT(A)’s Order).</p> <p>➤ There are no cash deposits in the bank accounts of in case of both the investors (Page – 24, Para – 3.1 – CIT(A)’s Order).</p> <p>➤ Group companies have filed various details in support of subscription made, replies U/s 133(6) filed by parties, AO having no credible information to deny explanations of appellant with either genuineness or creditworthiness (Page – 30, Para – 3.3 – CIT(A)’s Order).</p> <p>➤ Therefore it is held that appellant has filed necessary details regarding identity and creditworthiness(Page – 30, Para – 3.3 – CIT(A)’s Order)</p> <p><u>Regarding addition related to advances recived during the year:</u></p> <p>➤ That the amount received as advance have been adjusted against sale of shares in case of four companies and balance refunded and wholly refunded in case of one company (Page – 31, Table Para – 4.1 – CIT(A)’s Order).</p> <p>➤ Appellant filed relevant documents from the creditors (Page – 31, Table Para – 4.1 –</p>
--	--	--	--	---	---

				<p>taxes (Page 9 – AO’s Order). There is no presumption that a cash credit is genuine merely because a payment was made by cheque. Assessing authority shall accept cash credit only if the transaction is true and genuine (Page 10 – AO’s Order).</p> <p>➤ If the liability shown in the account is found to be bogus and there is no plausible and reasonable explanation by the assessee, the amount can certainly be added to income of the assessee (Page 10 – AO’s Order)</p> <p><u>Regarding expenses claimed and disallowed</u></p> <p>No evidence furnished in support of expenses claimed as employee benefit and other expenses amounting to Rs 3.79 lakhs and Rs. 6.22 lakhs being unverifiable expenses (Page – 11 – AO’s Order)</p> <p><u>Case laws relied upon by A.O:</u></p> <ul style="list-style-type: none"> • CIT-II V MAF Academy Pvt Ltd (2014) 42 taxmann.com 377 (Delhi) • Nova Promoters &Finlease, Delhi High Court • N. R. Portfolio (P) Ltd [2014] 42 taxmann.com 339 (Delhi HC) • V.I.S.P. (P) Ltd. V Commissioner Of Income-Tax 265 ITR 202 (MP HC) 	<p>CIT(A)’s Order)</p> <p>➤ Creditors doing regular business and advance adjusted against sale of shares (Page – 31, Table Para – 4.1 – CIT(A)’s Order).</p> <p>➤ Assessment in case of the most of the creditor have been completed U/s 143(3) of the Act (Page – 32, Table Para – 4.1 – CIT(A)’s Order). That AO did not conduct any further inquiry to suggest that creditors do not have creditworthiness or transactions are not genuine (Page – 32, Table Para – 4.1 – CIT(A)’s Order).</p> <p>➤ Ratios of judicial precedents discussed in previous ground (Share capital) are equally applicable to this ground of appeal. Therefore addition deleted. (Page – 32, Table Para – 4.1 – CIT(A)’s Order)</p> <p><u>Related to addition on employees benefit expenses and other expenses:</u></p> <p>The details produced during appellate proceedings shows that expenditure is incurred for the business of the company and bear a close and intimate nexus with the business of the company (Page – 33, Table Para – 5 – CIT(A)’s Order). Major portion of expenditure incurred for complying with statutory formalities and compliances necessary for operation of company. Therefore AO is directed to deleted the disallowance (Page – 33, Table Para – 5 – CIT(A)’s Order)</p> <p><u>Case laws relied upon by CIT(A)</u></p> <ul style="list-style-type: none"> • CIT V Lovely Exports 317
--	--	--	--	---	---

					<p>ITR 218 (SC)</p> <ul style="list-style-type: none"> • CIT V Fair Finvest Ltd • CIT V Kamdhenu Steel and Alloys Ltd 361 ITR 220 (Del. HC) • CIT V Vrindavan Farms (P) Ltd ITA NO. 71/2015 (Del. HC) • CIT V Rakam Money Matters ITA No. 778/2015 (Del. HC) • CIT V Gagandeep Infrastrucstre Pvt Ltd (Bombay HC)
3.	<p>Delight Resorts Pvt Ltd</p> <p>Revenue's Appeal</p>	2014-15	<p>Section 68 Advance received during the year Rs 37.70 crores</p>	<ul style="list-style-type: none"> ➤ The assessee company failed to file the requisite details (Page 5, Para (6a) – AO's order). ➤ The assessee has failed to discharge its onus to prove that the said transaction was legitimate (Page 5, Para (6a) – AO's order). ➤ Closely held companies usually receive share capital from friends, relatives and not from unknown third parties. In the present case there is no connection or relationship between the alleged subscribers and the assessee, for advance providers to become investors (Page – 6, Para 6(b) – AO's order). ➤ It is necessary to have some detail if not complete to establish identity and availability of funds and how these unconnected parties decided to become investor in absence of any business obligation (Page – 6, Para 6(b) – AO's order) ➤ No interest was paid, the purpose of advance is missing, huge fund transaction which clearly means dummy transactions (Page – 6, Para 6(b) – AO's order). ➤ Both the companies have meager income (Page – 6, 	<ul style="list-style-type: none"> ➤ The ICG of transactions have been established from the fact that both companies are having the closing balance of the R&S of Rs.261 crore (Janitor) and Rs.65 crore (Bhisham) as on 31.03.2013. (Page 19, Para 3.4 – CIT(A)'s order) ➤ Shri Dinesh Kumar Aggarwal, Director, M/s Janitor Infra attended the proceedings before CIT(A) dated June 29, 2017 and furnished the new address, explained the adjustment of advance towards purchase of shares, filed copy of accounts, order U/s 143(3) and also explained the opening balance of Reserves and Surplus being Rs 261 crores (Page 18, Para 3.2) ➤ Shri Rakesh Mehta, Director, Bhisham Energy, attended the proceedings before CIT(A), furnished the new address, explained the adjustment of advance towards purchase of shares in subsequent year, filed copy of accounts and also explained the opening balance of Reserves and Surplus being Rs. 65 crores (Page 19, Para 3.3) ➤ There are no cash deposits

				<p>Para 6(b) – AO’s order)</p> <ul style="list-style-type: none"> ➤ These facts indicate and reflect proper paperwork or documentation but genuineness, creditworthiness and identity are deeper and obstructive (Page 8, 2nd Para) ➤ It may, as in the present case, required entail a deeper scrutiny (Page 8, 2nd Para – AO’s order) ➤ It would be incorrect to state that the onus stands discharged if the transaction is done through banking channels or account payee instruments (Page 8, 3rd Para – AO’s order) <p>Case laws relied upon by A.O</p> <ul style="list-style-type: none"> • Kale Khan Mohammad Hanif V CIT (1963) 50 ITR 1,4 (SC) • Sreelekha Banerjee V CIT (1963) 49 ITR 112 (SC) • Nanak Chandra Laxman Dass V CIT (1983) 140 ITR 151 (All.) • A. D. Jayaveerapandia Nadar V CIT (1964) 54 ITR 401 (Mad.) • Oriental Wire Industries P Ltd V CIT (1981) 131 ITR 688 (Cal.) • Sikri & Co. Pvt Ltd V CIT (1977) 106 ITR 682 (Cal.) • VeljiDeoraj& Co. V CIT (1968) 68 ITR 708 (Bom.) • AnrajNarainDass V CIT (9151) 20 ITR 562 (Punj.) • K. M. Sandhukhan& Sons Pvt Ltd V CIT (1999) 107 Taxman 402/ 239 ITR 77 (Cal.) • Shankar Industries V CIT (1978) 114 ITR 689 (Cal.) • CIT V Kerala Road Lines (1986) 162 ITR 669 (Ker.) • Nova Promoters & Finance V CIT (1999) 239 ITR 407 (Delhi) 	<p>in the bank account of lenders, advances given are out of reserves available as on 31.03.2013 (Page – 19, Para - 3.4, CIT(A)’s order)</p> <ul style="list-style-type: none"> ➤ The present AO Ward 9(4), New Delhi was called in CIT(A)’s office dated July 27, 2017 and was informed of proceedings having been attended by the directors. The facts of case were discussed with AO in detail (Page – 19, Para – 3.4 – CIT(A)’s order). ➤ Both the companies have the requisite capacity to lend, basis the position of funds as on March 31, 2013 and during the assessment year (Page – 3.5, Para – 3.5 - CIT(A)’s order) ➤ CIT(A) has held that the additions if any be considered/ made in case of lenders and they have requisite capacity to lend as they have adequate balances lying under share capital and reserves, therefore the addition made in case of appellant is unwarranted. (Page 20 – CIT(A)’s order). <p>CIT(A) has not relied upon the case laws except in the case of Lovely Exports, on the basis of which CIT(A) has held that addition, if any, may be considered in case of lenders.</p>
4.	Jawahar Credit & Capital Pvt Ltd Revenue’s & Assessee’s	2012-13	Section 68: Share capital/ share premium Rs. 73.50	<ul style="list-style-type: none"> ➤ On perusal of bank statement, it is observed that subscriber companies and individual investors did not have their own creditworthiness, as the money come into their 	<ul style="list-style-type: none"> ➤ All the ten investors are submitting their return of income, transactions have been done through banking channel (Page – 34, Para – 7.3 – CIT(A)’s Order).

	Appeal		crores	<p>account seldom rests for a day, finds its destination immediately. It seems an accommodation entry to evade tax (Page 6, Para 3.6.1 – AO’s Order)</p> <ul style="list-style-type: none"> ➤ Assessee company has not done any business activity, major part of turnover is derived from dividend and miscellaneous income (Page 6, Para 3.7.1 – AO’s Order) ➤ Past performance totally ignored for valuation of company, did not bring anything on record to justify bright future prospect of the company which could enhance its profitability leading to higher valuation (Page – 7, Para – 3.7.2, Sub Para – (a)-AO’s Order) ➤ EPS is negative, major net income constitutes miscellaneous income nothing to do with objectives of company, difficult to digest why investors would invest in such a company which has no future objectives. ➤ Prima facie appears that subscribers are well aware of nature of transactions (Page – 8 – AO’s order) ➤ Assessee failed to justify charging of premium (Page – 8 – AO’s order) ➤ Transaction between assessee company and its investor’s are unusual in nature and character, transactions being off-market unable to verify, conclusion leading this transaction to be a sham transaction is that money received again invested in form of share capital (Page 8, Para 3.8 – AO’s order) ➤ Assessee did not explain case even after so many opportunities (Page 8, Para 3.8 – AO’s order) ➤ The onus is on the assessee to prove the ICG of the transactions. The assessee has failed to discharge its onus (Page 10, Para 3.9.1 – AO’s Order). 	<ul style="list-style-type: none"> ➤ The amendment of section 68 to look into the source of source w.e.f. 01.04.2014 cannot be held to be retrospective in nature (Page – 34, Para – 7.4 – CIT(A)’s Order) ➤ Appellant could not justify payment towards investment in shares and similar amount invested by appellant company (Page 35, Para 7.5 – CIT(A)’s order) ➤ Appellant could not produce directors for no cogent reason (Page 75, Para 3.5 – CIT(A)’s order) ➤ Investors not carrying any worthwhile activity (Page 35, Para 7.5 – CIT(A)’s order) ➤ Source and destination companies are having common address (Page 35, Para 7.5 – CIT(A)’s order) ➤ Appellant company is not showing any worthwhile income and has limited reserves and surplus (Page 35, Para 7.5 – CIT(A)’s order) ➤ Appellant company has not given any satisfactory reply regarding fund flow (Page 35, Para 7.6 – CIT(A)’s order) ➤ <u>Though the documentation is complete in all respects like banking channel, confirmation etc considering inability to produce directors, it seem that appellant company and its investor are nothing but a creation of paper companies to transfer funds from Bhushan Steel Ltd through appellant company</u> (Page 36, Para 7.7 – CIT(A)’s order) ➤ No reserves/ No funds nor any business, it is nothing but routing of funds by Bhushan Steel
--	--------	--	--------	---	--

				<p>➤ The assessee has also failed to submit the documents related to credits in the books(Page 13, Para 3.9,7 – AO's order).</p> <p>➤ Merely filing some papers in support of transaction cannot be termed as genuine transaction(Page 13, Para 3.9,7 – AO's order).</p> <p>Case laws relied upon by the A.O</p> <ul style="list-style-type: none"> • McDowell & Co Ltd. [1985] 154 ITR 148 • Workmen of Associated Rubber Industry Ltd V Associated Rubber Industry Ltd [1986] 157 ITR 77 (SC) • CIT V Durga Prasad More 82 ITR 540 (SC) • Bombay Oil Industries Ltd V DCIT [2000] 82 ITD 626 • CIT V Sree Meenakshi Mills Ltd 63 ITR 609 • CIT V Precision Finance Ltd (1994) 208 ITR 405 • Bharati Pvt Ltd V CIT W.B. (1978) 111 ITR 991 • CIT V Frostair (P) Ltd ITA No. 183 Of 2002 and 1638 of 2006 • CIT V Youth Construction (P) Ltd 44 taxmann 364 • Vaibhav Cotton Co Pvt Ltd, Indore V AssesseeITA No. 253/Ind/2010 Indore Bench • Bombay Oil Industries ltd V DCIT [2000] 82 ITD 626 • Mancherial cement V Income Tax Officer ITA No. 115/Hyd/2012 • Nipun Builders and Developers Pvt Ltd)Delhi HC) ITA No. 120/2012 • Nova Promoters &Finlease Pvt Ltd 	<p>(Page – 36, Para 7.8 – CIT(A)'s order)</p> <p>➤ The basic requirement to justify the identity, creditworthiness and genuineness of the transaction has been prima facie established.(Page – 36, Para 7.9 – CIT(A)'s order)</p> <p>➤ <u>Neither the appellant company nor the investors are ultimate beneficiary of the transactions but there is routing of funds from Bhushan Steel Ltd. The funds received are given to other companies as soon as they are received</u>(Page – 36, Para 7.9 – CIT(A)'s order)</p> <p>➤ <u>Therefore, the CIT(A) has deleted addition of Rs. 73.5 crores and made addition of Rs. 1.74 crores @ 2 percent for routing these transactions of having been providing a fluid mechanism from one company to another.</u> (Page – 37, Para 7.10 – CIT(A)'s order)</p>
5.	Jingle Bells Aluminium Pvt Ltd Revenue's & Assessee's Appeal	2012-13	Section 68 Share capital/ share premium Rs. 62 crores	<p>➤ No replied received from parties mentioned at Para 3.3(Page 3 – AO's order)</p> <p>➤ Replies received from 5 out of 7 parties, incomplete replies received for 6-7 points out of 11 points asked, replies received in same pattern, even print outs are same. So genuineness of transactions are doubtful</p>	<p>➤ The assessments U/s 143(3) of the Act in case of investor companies have been completed accepting the contention of the said companies and no major addition has been made on this count (Para 7.3 – Page 37 – CIT(A)'s order)</p> <p>➤ Though the documentation is</p>

				<p>(Para 3.7/ 3.7.1, Page 6 – AO's order)</p> <ul style="list-style-type: none"> ➤ Speed post booked from Delhi but registered office in Punjab and Chandigarh (Para 3.7.2 – Page 6 – AO's order) ➤ It shows that assessee itself replied to notices sent U/s 133(6), IG is dubious (Para 3.7.3 – Page 7 – AO's order) ➤ Registered offices of investor companies are located in different cities but are having their banks operated from Delhi just to facilitate assessee (Para 3.7.4, Page 7 – AO's order) ➤ Summons were issued to directors of Imperative Buildwell, Cantabile Minerals and Mining and Classic Transportation, as per inspector's report no such company exist at such address (Para 3.5, Page 3 – AO's order) ➤ Subscriber companies did not have creditworthiness as money seldom rests for a day in their accounts, finds its destination immediately; investor companies have no profit making apparatus no business activity. It is just an accommodation entry to evade taxes (Para 3.8.1, Page 8 – AO's order) ➤ Assessee company has very nominal business profit, (3.87) negative EPS, major miscellaneous income nothing to do with business objectives of assessee company, prima facie appears that assessee and as well as subscribers are well aware about nature of transactions (Para 3.9.1, Page 9/10 – AO's order) ➤ That the credits of Rs 62 crores are hit by Section 68 of the Act.(Para 3.10.9, Page 16 – AO's order). The onus is on the assessee to prove the ICG of the transactions.(Para 3.10.8, Page 15 – AO's order). The 	<p>complete in respect of investor companies, the findings of the AO that non availability of investor companies at the given address, inability to produce directors, no net worth, no justification for such a high premium, transferring of funds of Bushan Steel to various companies, shows that investor and appellant company are nothing but a creation of paper companies.(Page 39 – Para 7.8 - CIT(A)'s order)</p> <ul style="list-style-type: none"> ➤ CIT(A) has observed that <u>neither the appellant company nor the investors are ultimate beneficiary of the transactions but there is routing of funds from Bhushan Steel Ltd. The funds received are given to other companies as soon as they are received.</u> ➤ The basis requirement to justify ICG of transaction has prima facie been established (Page – 39, Para 7.10 – CIT(A)'s order) ➤ Looking to the fact and analysis, these transactions are found to be routing finances of Bhushan Steel and these are just paper companies where appellant company is not the ultimate beneficiary (Page – 39, Para 7.10 – CIT(A)'s order) ➤ <u>Considering the companies are paper companies and appellant has been providing facility to route these transactions, the 2% of total amount (comes to Rs. 1.24 cr) is treated as undisclosed income of the appellant, not shown in return of income</u> (Page 40, Para 7.11 – CIT(A)'s order) ➤ Since details have duly been provided with respect to referred companies, the additions
--	--	--	--	---	---

				<p>assessee has failed to discharge its onus. (Para 3.10.1, Page 12 – AO’s order).</p> <p>➤ The assessee has also failed to bring directors of the investor company (Para 3.10.2, Page 12 – AO’s order)</p> <p>➤ Merely filing some papers in support of transaction cannot be termed as genuine transaction.(Para 3.10.9. Page – 16 – AO’s order)</p> <p>Case laws relied upon by the A.O</p> <ul style="list-style-type: none"> • McDowell & Co Ltd. [1985] 154 ITR 148 • Workmen of Associated Rubber Industry Ltd V Associated Rubber Industry [1986] 157 ITR 77 (SC) • CIT V Sree Meenakshi Mills Ltd 63 ITR 609 (SC) • CIT V Durga Prasad More 82 ITR 540 (SC) • Bombay Oil Industries Ltd V DCIT [2000] 82 ITD 626 • CIT V Frostair (P) Ltd ITA No. 183 Of 2002 and 1638 of 2006 • CIT V Youth Construction (P) Ltd 44 taxmann 364 • CIT V Precision Finance Pvt Ltd (1994)208 ITR405 • Nova Promoters &Finlease (P) Ltd (High Court of Delhi) • Mancherial cement V Income Tax Officer ITA No. 115/Hyd/2012 • Nipun Builders and Developers Pvt Ltd)Delhi HC) ITA No. 120/2012 • Vaibhav Cotton Co Ltd Indore V Assessee ITA No. 253/Ind/2010 Indore Bench 	<p>are out of ambit of the provisions of section 68 of the Act. Addition to the extent of Rs 1.24 crore is sustained and for the balance amount the appellant gets a relief (Page 40, Para 7.11 – CIT(A) order)</p> <p>➤ Therefore, the CIT(A) has deleted addition of Rs. 62 crores and made addition of Rs. 1.24 crores @ 2 percent for routing these transactions of having been providing a fluid mechanism from one company to another.</p> <p>.CIT(A) has reiterated the following judgments in his order at Page 37 reproduced hereinafter:</p> <ul style="list-style-type: none"> • CIT V Lovely Exports 299 ITR 268 • CIT V Kamdhenu Alloys and Steel 206 Taxmann 254 • CIT V Nova Promoters and Finlease Pvt Ltd
6.	Kasper Information Technology Pvt Ltd - Revenue’s& Assessee’s Appeal	2012-13	<p>Section 68</p> <p>Share capital/ share premium Rs. 46 crores</p> <p>(Share Capital 8 cr and premium</p>	<p>➤ Assessee has not filed any confirmation from parties, but submitted a chart showing increase in share capital & share premium, giving names & addresses of parties (Page 5 & 6, Para 3, sub para 3(A)(i) –of AO’s order).</p> <p>➤ In order to verify ICG of introducers of share capital/ premium, notices U/s</p>	<p>➤ Basic requirement to justify the identity, creditworthiness and genuineness (ICG) of the transaction prima facie established.</p> <p>➤ Neither the appellant company nor the investors are ultimate beneficiary of the transactions but there is routing of funds from Bhushan Steel Ltd. The</p>

		thereon 38 cr)	<p>133(6), which remained un-complied, no confirmation ever received not even till date of passing of order. (Para 3(A)(ii) – Page 6 – AO’s order).</p> <ul style="list-style-type: none"> ➤ Assessee failed to bring the directors of the investor company along with books of accounts and confirmation to prove the identity of the contributors. ➤ No confirmations and return/PAN of parties – cross verification not possible – onus is on the assessee to prove the ICG - assessee failed to discharge onus. – assessee’s own money routed these concerns (Para 4(A)(i) – page 8 – AO’s order). ➤ Evidence available impeaching the credentials of the “investor companies” and their “directors” (Para 4(A)(i) – page 8 – AO’s order). ➤ Amt received through private placement – contributors personally known to assessee – must be aware of whereabouts - corporate veil needs to be lifted – assessee converted its unaccounted funds in the form of share capital from 4 concerns ➤ Assessee failed to submit documents related to credits in the books – assessee provided various addresses of alleged contributors of share application only to mislead dept. (Para 4(A)(vi) -AO’s order) ➤ Differentiated Lovely Exports (SC) on ground that it is not having binding effect under Article 141 of the constitution of India – summary dismissal by SC without laying any law is not declaration of law. For this relied upon S. Shanmugavel Nadar. V State of Tamil Nadu [2003] 263 ITR 658 (SC) <p>Case laws relied upon by the</p>	<p>funds received are given to other companies as soon as they are received.</p> <ul style="list-style-type: none"> ➤ Investor companies submitted their tax returns, provided confirmations, transactions done through bank, assessment U/s 143(3) completed, no major addition have been made on share capital/premium (investment) count. ➤ Nothing mentioned in the assessment order regarding any statement of any person, providing entry. No material brought on record to conclusively prove the share capital originated from appellant company returned in the form of share capital. ➤ No mandate of the law to look into the source of source for the year under consideration. The amendment of section 68 w.e.f. 01.04.2013 cannot be held, or interpreted, to be retrospective in nature ➤ Assessee cannot be fastened with the liability u/s 68 unless a causal connection between the cash deposit in the bank and the assessee is established. (relying upon Lovely Exports and Kamdhenu Steel Para 7.4 Page 22 & 23 of CIT(A)’s order) ➤ Where the complete particulars of the share applications are furnished to the AO and the AO has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false, then no addition can be made in the hands of the company u/s 68. (Para 7.4 Page 23 CIT(A)’s order) ➤ The appellant company and its investor companies are nothing but a creation of paper companies to transfer its funds from alleged Bhushan Steel Ltd. to
--	--	----------------	---	---

				<p>A.O</p> <ul style="list-style-type: none"> • Kale Khan Mohammad Hanif V CIT (1963) 50 ITR 1 (SC) • CIT V Lachhman Das Oswal (1980) 126 ITR 446 (P&H) • CIT V Hero Cycles Ltd&Ors (1997) 228 ITR 463 (SC) • CIT V Stepwell Industries Limited &Ors (1997) 228 ITR 171 (SC) • SumatiDayal V CIT (1976) 113 ITR 522 (Del). • R Dalmia V CIT (1976) 113 ITR 522 (Delhi) • CIT V Devi Prasad Vishwanath Prasad (1968) 72 ITR 194 (SC) • Sreelekha Banerjee V CIT (1963) 49 ITR 112 (SC) • Roshan Di Hatti V CIT (1977) 107 ITR 938 (SC) • CIT V Kerala Roadlines Corp. (1986) 162 ITR 669 (Ker.) • Active Traders Pvt Ltd [1995] 214 ITR 583 (Cal.) • Sri Krishna V CIT 142 ITR 618 [All] • Rashibari Tobacco Processors Ltd. V DCIT [1997] 57 TTJ 120 (Ahd.) • RidhiSidhi Commercial Co. Ltd V ACIT [1998] 62 TTJ 710 (Del.) • A GovindarajuluMudaliar V CIT [1958] 34 ITR 807 (SC) • CIT V Korlay Trading Co. Ltd. [1998] 230 ITR 820 (Cal.) • CIT V Precision Finance Ltd. (1994) 208 ITR 465 (cal.) 	<p>various companies, through the appellant company and its investor companies.</p> <ul style="list-style-type: none"> ➤ The appellant company has not given any cogent reasoning for the fund flow. <u>Appellant company is only routing transactions of alleged Bhushan Steel Ltd. and not the ultimate beneficiary.</u> It has further passed on funds to other companies. (Para 7.3 & 7.8, page 23 & 24) ➤ <u>CIT(A) deleted addition of Rs. 46 crores and made addition of Rs. 92 lakhs @ 2 percent as undisclosed income received by the appellant for routing these transactions of having been providing a fluid mechanism from one company to another.</u> Addition enhanced by Rs 92 lakhs for routing transactions. (Para 7.9 & 7.10, page 24) <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • CIT vs. Lovely Exports Pvt. Ltd. 299 ITR 268 • CIT vs. Kamdhenu Steel and Alloys Ltd. 206 Taxman 254 • CIT vs. Nova Promoters and Finlease (P) Ltd. (Delhi HC)
7.	Kaspers Information Technology Pvt Ltd Assessee's Appeal	2013-14	<u>Section 68</u> Share capital/ share premium Rs. 16 crores	<ul style="list-style-type: none"> ➤ The assessee company has not discharged its onus to prove genuineness and creditworthiness of transactions.(Para 4.5.1, Page 5 – AO's order). ➤ The assessee company has failed to produce the directors of the investor company and to prove the identity of the investor company.(Para 4.6.1, Para 5- AO's order). ➤ The assessee has not done any business activity during the year under assessment 	<ul style="list-style-type: none"> ➤ In a detailed discussion in assessment order AO has correctly held that amount of Rs. 16 crores in undisclosed income of the appellant. (Para 4, Page 32 – CIT(A)'s order) ➤ AO has discussed in detail the reasons for addition of Rs. 16 crores.(Para 4, Page 32 – CIT(A)'s order) ➤ The AO has discussed that the appellant has failed to establish ICG of the transaction. (Para 4, Page 32 – CIT(A)'s order).

				<p>and not received any business income except dividend income Rs. 6.65 lakhs and profit on sale of trade & non-trade investment of Rs 2.32 lakh and Rs 15 thousand respectively.(Para 2 Page 2, AO's order).</p> <p>➤ Both the investors to whom 133(6) and 131 were issued, nobody attended summons. (Para 4.3, page 4 – AO's order).</p> <p>➤ Both the parties have partially replied (four out of seven ques), replies filed in same pattern, from same post office, office in East Delhi, reply came from R.K. Puram, therefore genuineness is doubtful (Para 4.1 & 4.4.1, Page 4- AO's order)</p> <p>➤ The assessee has ignored the valuation criteria of past performance for valuation of the company.(Para 4.6.3, Page 5- AO's order).</p> <p>➤ It is common sense that past performance should be given suitable weight age for valuation of company and its shares but same has been totally ignored in the instant case. (Para 4.6.3, Page 5- AO's order)</p> <p>➤ The assessee has brought nothing on record to justify its bright future prospect to increase profitability and ultimately increasing its valuation.(Para 4.6.3, page 5 – AO's order.</p> <p>➤ Difficult to digest why investor invested in such a company which has no future for running any profit (Para 4.6.3, Sbu-Para (b), page 6 – AO's order)</p> <p>➤ Prima facie appears that subscribers and assessee company are well aware of transactions (Para 4.6.3, Sbu-Para (C), page 6 – AO's order)</p> <p>➤ The transaction entered into by the assessee is sham transaction, the credit of</p>	<p>➤ The submissions filed by the appellant have been considered and not found to be tenable and the case laws cited by the appellant are distinguishable in facts.(Para 4, Page 32 – CIT(A)'s order)</p> <p>➤ Reply U/s 133(6) not received (Para 4.2.3.1, Page 22).</p> <p>➤ Summons U/s 131 not attended (Para 4.2.3.1, Page 22)</p> <p>➤ Company has not done any business but has generated income from dividend and sale of investment in the instant year, previous assessment year and two subsequent years Ay 2013-14, AY 2012-13, AY 2014-15 and AY 2015-16</p> <p>➤ No reason to interfere in the order of the AO. CIT(A) has relied upon the finding of the AO that the assessee has failed to prove the ICG of teh transactions.</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • Navodaya Castle [56 taxmann.com 18 (SC)] • CIT V Sophia Finance Ltd 205 ITR 98 (Del.) • N. R. Portfolio Pvt Ltd [87 DTR 162 (Del)] • Titan Securities Ltd. 357 ITR 184 (del)] • Globus Securities and Finance Pvt Ltd [224 Taxman 237 (Delhi)] • Onassis Axles Private Limited [364 ITR 53 (Delhi)] • Focus Exports Pvt Ltd [111 DTR 0012 (Del)] • Rathi Finlease Ltd (215 CTR 429 MP) • Korlay Trading Co. (232 ITR 820 (Cal)) • SumatiDayal (214 ITR 801 (SC)) • Power Drugs Ltd (245 CTR 623 (P&H)) • Azeem Investment Pvt Ltd (252 CTR 0217 (Del.)) • Major Metals Ltd (359 ITR 450 (Bom))
--	--	--	--	--	--

				<p>funds in the form of share capital/ share premium being used for investing in other companies at premium.(Para 4.6.4 Sub-Point (3) Page 6/7 – AO’s order).</p> <p>➤ Efforts made by assessee to change the color of transaction and not justified it case in spite of opportunities(Para 4.6.4 Sub-Point (4) Page 6/7 – AO’s order).</p> <p>➤ The case of the assessee for the AY 2012-13 is also pending disposal in which addition on same ground was made and the assessee has failed to discharge its onus because merely filing some papers in support of transaction cannot be termed as genuine transaction.(Para 4.7.8 Page 11 – AO’s order)</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • McDowell & Co Ltd. [1985] 154 ITR 148 • CIT V Durga Prasad More 82 ITR 540 (SC) • Workmen of Associated Rubber Industry Ltd V Associated Rubber industry Ltd [1986] 157 ITR 77 (SC) • Bombay Oil Industries Ltd V DCIT [2000] 82 ITD 626 • CIT V Sree Meenakshi Mills Ltd 63 ITR 609 • CIT V Frostair (P) Ltd ITA No. 183 Of 2002 and 1638 of 2006 • CIT V Youth Construction (P) Ltd 44 taxmann 364 • Bombay Oil Industries Ltd V DCIT [2000] 82 ITD 626 • Mancherial cement V Income Tax Officer ITA No. 115/Hyd/2012 • Nipun Builders and Developers Pvt Ltd (Delhi HC) ITA No. 120/2012 • Nova Promoters &Finlease Ltd (P) Ltd [2012] 206 Taxman 207 • CIT V Precision Finance Pvt Ltd (1994) 208 ITR 405 	<ul style="list-style-type: none"> • Independent Media Pvt Ltd (25 taxmann.com 276 (Delhi)) • Neelkanth Ispat Udyog Pvt Ltd (81 DTR 0214) • Frostair Pvt Ltd [92 DTR 393 (Del)] • Rajani Hotels Ltd [79 DTR 185 (Mad)] • MAF Acedemy Pvt Ltd [361 ITR 02858 (Delhi)] • Tarika Investment Properties Pvt Ltd [221 taxmann 0014 (Del)] • Empire Buildtech Pvt Ltd [366 ITR 110 (Delhi)] • Kundan Investment Ltd (263 ITR 626 (Cal)) • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • Ultra Modern Exports Pvt Ltd [220 taxman 165 (Delhi)]
28.	LandskyReal Estate Pvt	2013-14	Section 68 Share	<u>Regarding share capital of Rs. 16 crores:</u>	➤ No reason to interfere with the AO on the issues and AO

	Ltd Assessee's Appeal		Capital - Rs. 16 crores Advances received - Rs. 2.6 crores	<p>➤ The assessee company has not discharged its onus to prove genuineness and creditworthiness of transactions even after so many opportunities (Page – 4, Para 4.11).</p> <p>➤ The assessee company has failed to produce the directors of the investor company prove the identity of the investor company (Page – 4, Para 4.10).</p> <p>➤ The assessee has not done any business activity during the year under assessment and in subsequent assessment years also. i.e, AY 2014-15 & AY 2015-16 (Page – 4, Para 4.12).</p> <p>➤ The assessee has ignored the valuation criteria of past performance for valuation of the company (Page – 4, Para 4.12).</p> <p>➤ The registered office of the investor companies (Winfiled and Quadrel) are located in Dilshad Garden and West Vinod Nagar (situated in east Delhi) but they have sent the part replies from RK Puram post office and pattern of both the replies are same. They may have been sent by a common person. Therefore, genuineness is doubtful. (Page 3, Para 4.4, 4.5 – AO's Order).</p> <p>➤ The assessee has failed to prove the ICG of the transaction (Page – 9, Para 5.4 – AO's Order).</p> <p>➤ The assessee has brought nothing on record to justify its bright future prospect to increase profitability and ultimately increasing its valuation (Page – 4, Para 4.12).</p> <p>➤ Transaction between assessee company and its investor is unusual in nature and character.</p> <p>➤ The money that comes to the bank account of entry operators seldom rests for a day and immediately finds its destination. The beneficiary</p>	<p>has already discussed in detail (Page –, 27, Para - 4.2.3.6 – CIT(A)'s Order).</p> <p>➤ AO has discussed that the appellant has failed to discharge the onus cast upon U/s 68 of the Act by failing to prove the ICG of the transactions (Page –, 27, Para - 4.2.3.6 – CIT(A)'s Order).</p> <p>➤ The submissions filed by the appellant have been considered and are not found tenable. The case laws cited by the appellant are distinguishable in facts (Page –, 27, Para - 4.2.3.6 – CIT(A)'s Order).</p> <p>➤ CIT(A) distinguished Lovely Exports [216 CTR 195] and Gourdin Herbals India Ltd ITA No. 665/2009 dated Sep 17, 2009</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • NR Portfolio Pvt Ltd [96 DTR 0281 (Delhi)] • CIT V Nova Promoters & Finlease (P) Ltd [ITA No. 342 of 2011] • GKN Driveshafts (India) Ltd. V ITO (259 ITR 19) (SC) • Navodaya Castle [56 taxmann.com 18 (SC)] (distinguishing Lovely exports) • CIT V Sophia Finance Ltd 205 ITR 98 (Del.) (F.B.) • Titan Securities Ltd [357 ITR 184 (Del)] • MAF Academy Pvt Ltd [361 ITR 02858 (Delhi)] • Tarika Properties Investment Pvt Ltd [221 Taxman 0014 (Del)] • Nova Promoters and Finlease Pvt Ltd (2012) 342 ITR 169 (Delhi) • Globus Securities and Finance Pvt Ltd [224 Taxman 237 (Delhi)] • Focus Exports Pvt Ltd [111 DTR 0012 (Del)] • Rathi Finlease Ltd (215 CTR
--	---------------------------------	--	--	---	--

				<p>who gets such money does not give back any dividend or share of profit or interest to entry operators. (para 416, page 7)</p> <p>➤ Merely filing some papers in support of transaction cannot be termed as genuine transaction. (Page – 8, Para 4.21).</p> <p><u>Regarding advances of Rs 2.6 crores received from Cantabile Minerals and Angel Cement:</u></p> <p>➤ The notices sent U/s 133(6) to the parties who advanced money to the assessee during the year under consideration returned unserved.</p> <p>➤ Although their reply has been sent from RK Puram post office (registered address is in chawri bazar) on same pattern and at same time.</p> <p>➤ This has created doubt about their genuineness (Page 9, Para 5 – AO’s Order)</p> <p>➤ Efforts made to serve summons but no such company exist at the given address(Page 9, Para 5.1 – AO’s Order)</p> <p>➤ Assessee failed to prove ICG of the transactions (Page 9, Para 5.4 – AO’s Order)</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • McDowell & Co Ltd. [1985] 154 ITR 148 • Workmen of Associated Rubber Industry Ltd V Associated Rubber Industry [1986] 157 ITR 77 (SC) • CIT V Durga Prasad More 82 ITR 540 (SC) • Bombay Oil Industries Ltd V DCIT [2000] 82 ITD 626 • CIT V Sri Meenakshi Mills Ltd 63 ITR 609 • CIT V Frostair (P) Ltd ITA No. 183 Of 2002 and 1638 of 2006 • CIT V Youth Construction (P) Ltd 44 taxmann 364 • Bombay Oil Industries ltd V DCIT [2000] 82 ITD 626 • CIT V Precision Finance Pvt Ltd (1994) 208 ITR 405 • Bharati Pvt Ltd V CIT W.B. (1978) 111 ITR 991 (Cal.) • Mancherial cement V Income 	<p>429 MP)</p> <ul style="list-style-type: none"> • Empire Buildtech Pvt Ltd [366 ITR 110 (Delhi)] • Onassis Axles Private Limited [364 ITR 53 (Delhi)] • Kundan Investment Ltd (263 ITR 626) (Cal) • Korlay Trading Co. Ltd (232 ITR 820 (Cal)) • SumatiDayal (214 ITR 801 (SC)) • Power Drugs Ltd. (245 CTR 623 P&H) • Azeem Investment Pvt Ltd (252 CTR 0217 Del) • Major Metals Ltd (359 ITR 0450 (Bom)) • Independent Media Pvt Ltd (25 taxmann.com 276 (Delhi)) • Neelkanth Ispat Udyog Pvt Ltd (81 DTR 0214) • Frostair Pvt Ltd [92 DTR 393 (Del)] • Rajani Hotels Ltd [79 DTR 185 (Mad)] • Ultra Modern Exports [220 Taxman 165 (Delhi)]
--	--	--	--	---	---

				<p>Tax Officer ITA No. 115/Hyd/2012</p> <ul style="list-style-type: none"> • Nipun Builders and Developers Pvt Ltd)Delhi HC) ITA No. 120/2012 • CIT V Nova Promoters &Finlease Pvt Ltd [2012] 206 Taxman 207 • Vaibhav Cotton Pvt Ltd, Indore V Assessee ITA No. 253/Ind/2010 	
9.	<p>Sintex Consumer Electronics Pvt Ltd</p> <p>Revenue's Appeal</p>	2012-13	<p>Section 68</p> <p>Share capital/ share premium</p> <p>Rs. 78.228 crores</p>	<ul style="list-style-type: none"> ➤ Out of 10 parties to whom notice U/s 133(6) were issued, 7 returned unserved, reply received from 2 and one party did not reply. (Page 5 – AO's order) ➤ The returned income of M/s Stance Consumer Electronics and Immense Minerals is Rs 413 and Rs. 4,43,811/- and their creditworthiness of investment is highly unlikely. Therefore, it is treated as assessee's own concealed income. (Page 6 – AO's Order) ➤ Because the assessee could not produce the principal officer(s) of the investor companies and notices sent U/s 133(6) returned or no reply is received lead to a conclusion that the said transaction is not genuine and the assessee has introduced his own money in the garb of share capital/ share application.(Page 6 – AO's order) ➤ Notices issued to majority of the parties returned unserved except in case of three parties of which reply was received from two parties only(Table at Page 5 – AO's order). ➤ Out of the parties who replied to notice sent U/ s 133(6) their creditworthiness is highly unlikely basis their returned income of Rs 413/- and Rs. 4,43,811/- and the amount contributed by them was Rs. 8,70,00,000 each (Page 6 – AO's order). ➤ The assessee neither has brand value nor it has any past performance history 	<ul style="list-style-type: none"> ➤ CIT(A) has made analysis of the net worth of the investor companies, which is running in crores, enough to make investment but has made no comment in its order (Table at page 22 – CIT(A)'s order) ➤ AO has not brought any adverse material to reject the explanations and evidences submitted by the appellant. ➤ It is not the case of Ld. AO that any person has given any statement or made any allegation against these companies (Page 23 – CIT(A)'s order). ➤ The reasons given by AO are generic in nature and not backed by any concrete evidence. (Page 23 – CIT(A)'s order) ➤ No cash deposit in the bank accounts of investor companies for making investment in the appellant company (Page 23 4– CIT(A)'s order). ➤ The appellant company has allotted shares for the application money received by it (Page 24 – CIT(A)'s order). ➤ Depositors have given confirmation, provided their income tax returns entire amount received through normal banking channels (Page 23/24 – CIT(A)'s order).

				<p>nor any future prospect not any such asset which would increase its profitability to attract such huge premium.(Page 6 – AO’s order)</p> <p>➤ In view of above share capital and share premium is being added back as its own concealed income introduced in the form of share capital and share premium.(Page 6 – AO’s order)</p>	<p>➤ The appellant has established the ICG of the transactions.(Page 27 – CIT(A)’s order).</p> <p>➤ Onus cast upon the appellant with regard duties enjoined by virtue of cash credit stands fulfilled and discharged, cannot be said that appellant failed to discharge creditworthiness and genuineness (Page 24 – CIT(A)’s order).</p> <p>➤ No adverse inference is warranted or sustainable (Page 24 – CIT(A)’s order).</p> <p>➤ The shares issued as bonus shares have not brought any inflow of income which is nothing but the credit in the books of accounts of the company, therefore when no sum has been credited, addition cannot be made U/s 68 of the Act.(Page 28 – CIT(A)’s order). The amount of issue of bonus shares does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by section 68 of the Act.(Page 28 – CIT(A)’s order)</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • CIT V Lovely Exports [2008] 216 CTR 195 (SC) • CIT V Orrisa Corporatiosn Pvt Ltd Pvt Ltd [(1986) 159 ITR 78 (SC)] • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119(Delhi)] • CIT V Paras Cotton Co [(2007) 288 ITR 211 (Raj.)] • CIT V Kamdhenu Steel & Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)]
--	--	--	--	--	---

					<ul style="list-style-type: none"> CIT has made analysis of the judgment in the case of <u>"Nova Promoters & Finlease (P) Ltd (342 ITR 169 (Del))"</u> and has reached a conclusion that appellant through various documents submitted to establish ICG, it would constitute acceptable proof or acceptable explanation by the assessed. (Page 26 – CIT(A)'s order)
10.	Starlight Consumer Electronics Pvt Ltd. Revenue's appeal	2012-13	Section 68 Share capital/ share premium - Rs. 32.25 crores Other liabilities - Rs Rs. 30.18 crores Total addition - Rs. 62.43 crores	<ul style="list-style-type: none"> ➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt.(Page 7 – AO's order) ➤ As the replies received so late after the assessee was apprised about the same, there is a possibility that assessee itself has sent the replies in response to notice U/s 133(6), therefore it shows the IG as dubious. (Page 4 – AO's order) ➤ Basis the inspectors report there is no such company, no signboard, neighbor also revealed that they are not aware about any such company. Incomplete replies received that too only after assessee was apprised about non-compliance to notice U/s 133(6) (Pag4 – CIT(A)'s order) ➤ No compliance to the summons issued to the director U/s 131 dated February 26, 2015. ➤ Assessee offered no explanation as to why the investors chose to make investment in assessee's company when there is no scope for making an exit out of investment. (Pafe 7 – AO's order). Assessee company has neither shown remarkable performance nor has any strong asset base, therefore transaction cannot be held as genuine. (Page 7 – AO's order). ➤ Merely that the transaction 	<ul style="list-style-type: none"> ➤ CIT(A) has made analysis of the net worth of the investor companies which is fair enough to make investment. Although CIT(A) has not commented upon the same. (Page 31 Table – CIT(A) order) ➤ AO has not brought any adverse material to reject the explanations/evidences filed by the appellant. ➤ It is not the case of AO that any person has given any statement or made allegation against these companies. ➤ The reasons given by AO are very generic and not backed by any concrete evidence (Page – 31/43 – CIT(A)'s order) ➤ No cash deposit in the bank accounts of investor companies for making investment in the assessee company (Page 31/32 – CIT(A)'s order) ➤ The appellant has furnished income tax returns, BS, bank statement of shareholders and share application money and their source had been satisfactorily explained (Page 46 – CIT(A)'s order) ➤ Entire amount received through normal banking channels, confirmation filed by parties, no proof of evidence to suggest

			<p>was conducted through proper banking channel does not substantiate the genuineness of transaction.(Page 6 – AO’s order)</p> <ul style="list-style-type: none"> ➤ Since the payments were transferred to other companies as and when they were received, the creditworthiness of the investor does not in any way get established. The bank accounts of all the investors are in same branch, no profit making apparatus, no business. ➤ It seems it is just an accommodation entry just to evade tax. (page 5 – AO’s order). ➤ Amount has been received through private placement, which means contributors were personally known to assessee. Since the existence of the investors could not be proved, there is no question of taking cognizance of the such non-existent person, meaning thereby money actually belonged to assessee itself and fraudulently routed through bank account of investors. (Page 6 – AO’s order) ➤ Regarding the other current liabilities, the assessee has failed to bring the directors of the eight companies from whom money received shown as other liability, to explain the nature of the current liabilities. (Page 12 – AO’ order) ➤ As it can be seen from the BS and P&L account of the assessee that these are not trade liabilities.(Page 12 – AO’ order) <p><u>Case laws relied upon by the A.O</u> Divine Leasing and Finance Ltd (Delhi HC)</p> <ul style="list-style-type: none"> • Mc Dowell & Co Ltd 154 ITR 148 (SC) • Anand Woolen Mills Pvt Ltd V CIT 174 ITR 477 (Delhi) • CIT V Sophia Finance Ltd (1994) 205 ITR 98 (Delhi) • Nova Promoters &Finlease 	<p>that amount actually emanated from assessee company, shares allotted for application money received (Page 32/43 – Cit(A) order)</p> <ul style="list-style-type: none"> ➤ Onus cast upon the appellant with regard duties enjoined by virtue of cash credit stands fulfilled and discharged, cannot be said that appellant failed to discharge creditworthiness and genuineness (Page 32/44 – CIT(A)’s order) ➤ No adverse inference is warranted or sustainable (Page 32/44 – CIT(A)’s order). There is no denial at any stage of assessment proceedings by any of the subscriber of share capital of having deposited money in the appellant company (Page 43 – CIT(A)’s order) ➤ The appellant has established the ICG of the transactions.(Page 47 – CIT(A)’s order) ➤ CIT has made analysis of the judgment in the case of <u>“Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del))”</u> and has reached a conclusion that appellant through various documents submitted to establish ICG, it would constitute acceptable proof or acceptable explanation by the assessed. (Page XX – CIT(A)’s order) <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creation Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel & Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)] • CIT V Gangeshwari Metals P. Ltd • ITO V Neelkanth Finbuild ITA No. 2821/Del/2009
--	--	--	--	---

				<p>(P) Ltd (342 ITR 169 (Del))</p> <ul style="list-style-type: none"> • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) • CIT V N.R. Portfolio Pvt Ltd (ITA No. 1018 & 1019 of 2011) • Mittal Belting and Machinery Stors V CIT 253 ITR 341 • CIT V Kariary Trading Co Ltd (1998) 232 ITR 820 • SumatiDayal V CIT 214 ITR 801 • CIT V L. N. Dalmia 207 ITR 89 • Sunil Sidhartha V CIT 156 ITR 507 • CIT V Biju Patnaik 160 ITR 674 (SC) • Shankar Industries V CIT 114 ITR 689 (Cal) • Dhanlakshmi Steel Re-rolling Mills V CIT 228 ITR 780 (AP) • Malabar Agricultural Co Ltd V CIT 229 ITR 548 (Ker) • CIT V Precision Finance P. Ltd 208 ITR 465 (Cal) • KNC Chandrashekhar V ACIT 66 TTJ 355 (ITAT Bangalore) • CIT V United Commercial and Industrial Co. Pvt Ltd 187 ITR 596 (Cal) • CIT V Durga Prasad More (1971) 82 ITR 540 (SC) • ITO V K. Jayaraman (1987) 168 ITR 757 (Mad.) • CIT V Neelkanthalspat Udyog 	<ul style="list-style-type: none"> • ITO V NC Cables ITA No. 4122/Del/2009 (ITAT Delhi) • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fair Fivest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Expo Globe India Ltd [2014] (51Taxmann.com 208)(Delhi HC) • CIT V Lovely Exports [2008] 216 CTR 195 (SC) <p><u>CIT(A) has differentiated the following judgments:</u></p> <ul style="list-style-type: none"> • Nova Promoters & Finance P Ltd, • Mc Dowell & Co • SumatiDayal • LN Dalmia • Sunil Siddhartha Bhai V CIT • CIT Durga Prasad More • ITO V K Jayaraman • CIT V Divine Leasing Finance • Anand Woolen Mills Pvt Ltd V CIT • CIT V Sophia Finance Ltd • CIT V Korlay Trading Co • Mittal Belting and Machinery Stores • CIT V Biju Patnaik • Roshan Di Hatti V CIT • Shankar Industries V CIT • Malabar Agricultural Co Ltd V CIT • CIT V Precision Finance Pvt Ltd • CIT V United Commercial & Industrial Co Ltd • CIT V Nipun Builders • CIT V NR Portfolio
11.	Stylish Construction Pvt Ltd Revenue's Appeal	2012-13	Section 68 Share capital/ share premium - Rs. 30 crores	<p>➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt.(Page 6/10 – AO's order)</p>	<p>➤ The appellant has established the ICG of the transactions.</p> <p>➤ The AO did not bring any finding on record to reject the explanations/evidences submitted by appellant Neither any</p>

		<p>Other liabilities - Rs 31.60 crores</p> <p>Dissallowance U/s 14A r.w. rule 8D - Rs. 23,32,813 [Rs. 5 lacs sustained by the CIT(A)]</p>	<ul style="list-style-type: none"> ➤ The replies to notice U/s 133(6) were received after the fact they being un-complied for a period of 10-15 days after they were issued, creates a doubt about their genuineness. (Page 3 – AO’s order). The replies were received after the fact of their non-compliance was made known to the AR.(Page 3 – AO’s order. There could be a possibility that assessee himself has sent the replies, as the replies received that too only after assessee was informed about same. This shows IG as dubious (Page 3 – AO’s order) ➤ Inspectors report reveal that none of the companies existed at given address. It is a residential society. (Pag3 – AO’s order). Identity could not be proved since investors did not exist at the given address, therefore it is assessee’s own money(Para (a), Page 4/5 – AO’s order) ➤ No explanation offered as to why these companies agreed to invest in assessee’s company when there is no scope for making an exit out of the investment (Page 5 – AO’s order). The assessee company neither has not shown any remarkable performance nor has any assets, therefore transaction cannot be genuine (Page 6 – AO’s order) ➤ Assessee failed to bring directors of the investors (page 10 – AO’s order). The subscribers did not have creditworthiness as money in their bank accounts seldom rests for a day and finds its destination, no profit making apparatus, no 	<p>person has given any statement nor made any allegation against the appellant company. (Page 33 – CIT(A)’s order). Reasons given by AO are generic in nature and not backed by concrete evidence (Page 33 – CIT(A)’s order)</p> <ul style="list-style-type: none"> ➤ Entire amount has been through normal banking channels has not been disputed, repudiated or challenged in any manner(Page 33 – CIT(A)’s order). Parties involved have confirmed of having made their deposits in the appellant company. (Page 33 – CIT(A)’s order). No evidence to prove that money actually emanated from appellant company. Any conclusion can be sustained only if backed by concrete evidence. (Page 33/34/43/44 – CIT(A)’s order) ➤ Appellant has allotted shares for share application money received by it (Page 34 – CIT(A)’s order). ➤ CIT(A) quoted that the Ld. AO has relied upon the judgment of Divine leasing but failed to bring forth on record any positive evidence that shareholders were either benamidars/ fictitious. (Page 40 – CIT(A)’s order) ➤ The judgment of Stellar Investment clearly lays down that the provision of Section 68 would be applicable only when shares have been issued in the name of non-existing persons, which is not the situation in the instant case (Page 40 – CIT(A)’s order) ➤ Documents submitted establish that money came from depositor’s account and nowhere connected with appellant company (Page 45 – CIT(A)’s order). No cash
--	--	---	---	--

				<p>business activity (Page 4 – AO’s order)</p> <p>➤ Merely that the transaction was conducted through proper banking channel does not substantiate the genuineness of transaction.</p> <p>➤ Since the payments were transferred to other companies as and when they were received, the creditworthiness of the investor does not in any way get established. The assessee company has not explained the nature of other liabilities. It is seen that above liabilities are not trade liabilities. The facts in regard to other liabilities are same as that of share capital which has been discussed at length and in view of case laws discussed above (Page 12 – AO’s order)</p> <p>Regarding section 14A, the assessee has not filed calculation sheet for disallowance made along with computation of income. In view of provisions of section 14A r.w.r. 8D disallowance is Rs. 25,56,473/-. Therefore balance is added to income of assessee. (Page 13 – AO’s order)</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • CIT V Divine Divine Leasing Finance Ltd • CIT V McDowell & Co 154 ITR 148 • M/s Anand Woolen Mills V CIT 174 ITR 477 (Delhi) • Nova Promoters & Finlease (P) Ltd (342 ITR 169 (Del)) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) • CIT V N.R. Portfolio Pvt Ltd (ITA No. 1018 & 1019 of 2011) • Mittal Belting and 	<p>deposits into bank accounts of the investors for purchase of shares (Page 33 – CIT(A)’s order).</p> <p>➤ No circumstances to suggest that transactions are not genuine and that onus cast upon it has not been discharged. (Page 30 – CIT(A)’s order). CIT(A) has made analysis of the creditworthiness of investors. No comments made but figures showing handsome creditworthiness (Page 33 – CIT(A)’s order)</p> <p>➤ The provisions of section 68 would be applicable only when shares have been issued in the name of non-existing person which is not the situation in the instant case.</p> <p>➤ No adverse inference drawn by Ld. AO with reference to funds received by appellant company. (Page 33 – CITR(A)’s order).</p> <p>➤ No denial by any of the subscribers of the appellant company’s share capital that they did not invest their money into it.</p> <p>➤ The AO has failed to bring any credible evidence on record to neutralize the evidences filed by the appellant. Therefore, addition cannot be sustained. (Page 47 – CIT(A) order). The appellant has established the ICG of the transaction.</p> <p><u>Regarding addition U/s 14A</u> The appellant company filed its return after making disallowance U/s 14A on account of expenses attributable to earning exempt income. (Page 56 – CIT(A)’s order). CIT(A) basis the case laws restricted the disallowance to the amount of Rs 5,00,000 for the sake of substantive justice, as it cannot exceed the amount of exempt income which in the instant case is Rs. 9,94,717 and</p>
--	--	--	--	---	--

				<p>Machinery Stores V CIT 253 ITR 341</p> <ul style="list-style-type: none"> • CIT V Kariary Trading Co Ltd (1998) 232 ITR 820 • SumatiDayal V CIT 214 ITR 801 • CIT V L. N. Dalmia 207 ITR 89 • Sunil Sidharatha V CIT 156 ITR 507 (SC) • CIT V Biju Patnaik 160 ITR 674 (SC) • Roshan Di Hatti V CIT 107 ITR 938 (SC) • Shankar Industries V CIT 114 ITR 689 (Cal.) • Dhanlakshmi Steel Re-rolling Mills V CIT 228 ITR 780 (AP) • Malabar Agricultural Co. V CIT 229 ITR 548 (Ker) • CIT V Precision Finance Ltd 208 ITR 465 (cal) • K. N. C. Chandrashekhar V ACIT 66 TTJ 355 (ITAT Bangalore) • CIT V united Commercial and Industrial Company Pvt. Ltd. 187 ITR 596 (Cal.) • CIT V Durga Prasad More (1971) 82 ITR 540 (SC) • ITO V K. Jayaraman (Mad.) (1987) 168 ITR 757 	<p>deleting the addition of Rs. 23,32,813 made by the AO.</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creation Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel & Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)] • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119(Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fivest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Gangeshwari Metals Pvt Ltd (2013) (30Taxmann.com328) • CIT V Lovely Exports [2008] 216 CTR 195 (SC) • ITO V Neelkanth Finbuild Ltd. ITA No. 2821/ Del/ 2009 • ITO V NC Cables Ltd. ITA No. 4122/Del/2009, ITAT Delhi • CIT V Expo Globe India Ltd [2014] 51 taxmann.com 208 (Delhi HC) <p>Differentiated <u>Roshan Di Hatti, Mittal Belting and Machinery Stores, Sophia Finance Ltd, McDowell & Co Ltd.Nova Promoters, Azadi BachaoAndolan(SC), Vodafone iNternationa l Holdings BV V Union of India(SC, SumatiDaya V CIT, ICIT V ,LN Dalmia, Sunil Sidhartha Bhai V CIT, CIT V Durga Prasad More,ITO V K Jayaraman (Page 36 to 43)</u></p> <p>CIT(A) for deciding the ground related to disallowance U/s 14A has relied upon the case laws:</p> <ul style="list-style-type: none"> • CIT V Holcim India Pvt Ltd [(2015) 57 taxmann.com 28 (Delhi)] • CIT V Lakhani Marketing [(2014) 49 taxmann.com 257 (P&H)] • CIT V Shivam Motors Pvt Ltd [(2015) 55
--	--	--	--	---	---

					taxmann.com (Allahabad)	262
12.	Sukhna Real Estate Pvt Ltd Revenue's Appeal	2012-13	Section 68 Share capital/ share premium - Rs. Rs. 80.634 crores	<ul style="list-style-type: none"> ➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt. (Page 7 – AO's order). ➤ Basis the inspector's report none of the parties (investor) existed at the given address (Page 2 – AO's order) ➤ Notice U/s 133(6) returned undelivered with remarks "none existed"(Page 3 – AO's order) ➤ Verification of bank statement revealed that companies received funds back to back (Page 3 – AO's order) ➤ After few days of local enquiry, confirmation of all parties received through speed post in the office of AO.(Page 2 – AO's order) ➤ Summons U/s 131 remain un-complied "(Page 3 – AO's order) ➤ Assessee offered no explanation about as to why these investors agreed to invest when there is no scope for making an exit out of investment. (Page 5- AO's order) ➤ Also not explained that why shares were not allotted and share application money returned (page 5 – AO's order) ➤ The entire approach of assessee for shying away from filing requisite documents and the necessary details strongly suggests that entries are accommodation entries ((Page 5- AO's order) ➤ Intent of assessee to avoid furnishing the details and then take spacious plea that addition made without making direct enquiries from persons who advanced money. (Page 6 – AO's 	<ul style="list-style-type: none"> ➤ The appellant has established the ICG of the transaction. ➤ The AO did not bring any finding on record which would indicate the shareholders were either benamidar/ fictitious.(Page 29/39 – CIT(A)'s order) ➤ Not the case of AO that any person has given any statement or made any allegation against these companies (Page 29 – CIT(A) order). ➤ Reasons recorded by AO are generic in nature and not backed by concrete evidences (Page 29 – CIT(A)'s order). ➤ No cash deposits in the bank accounts of investors (29/30 – CIT(A)'s order). ➤ In the instant case, there are no circumstances even to suggest that transactions are not genuine and that the onus cast upon it has not been discharged. (Page 27 – CIT(A)'s order). ➤ Investor companies are assessed to Tax (Page 27 – CIT(A)'s order) ➤ The provisions of section 68 would be applicable only when shares have been issued in the name of non-existing person which is not the situation in the instant case. ➤ No denial by any of the subscribers of the appellant company's share capital that they did not invest their money into it. ➤ The AO did not bring any documentary evidence to 	

				<p>order).</p> <ul style="list-style-type: none"> ➤ Since the assessee was well aware of the fact of bogus credits in its books, it has chosen not to subject itself investigation/ enquiry conducted by the department. ➤ Merely that the transaction was conducted through proper banking channel does not substantiate the genuineness of transaction. ➤ Since the payments were transferred to other companies as and when they were received, the creditworthiness of the investor does not in any way gets established. The assessee has failed to produce the directors of the investor companies. <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • CIT V Divine DivineLeasing Finance Ltd • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) • CIT V N.R. Portfolio Pvt Ltd (ITA No. 1018 & 1019 of 2011) • Kale Khan Mohammad Hanif V CIT [1963] 50 ITR 1 (SC) • CIT V Oasis Hospitalities 333 ITR 119 (Delhi) 2011 • Roshan Di Hatti [1977] 107 ITR (SC) • CIT V Kariary Trading Co Ltd (1998) 232 ITR 820 • SumatiDayal V CIT 214 ITR 801 • CIT V R. N. Dalmia 207 ITR 89 	<p>establish the live link/nexus between the material available with the department and the amount received by the appellant.</p> <ul style="list-style-type: none"> ➤ Entire amount received through normal banking channels (Page 30 – CIT(A)'s order). ➤ Parties involved have confirmed of having deposited their money in the appellant company (Page 30 – CIT(A)'s order) ➤ No iota of evidence to prove that money emanated from coffers of appellant company. Any conclusion can be sustained only if backed by concrete evidence (Page 30 – CIT(A)'s order) ➤ Provisions of section 68 not applicable in case of bonus shares (Page 30 – CIT(A)'s order). The shares issued as bonus shares have not brought any income which is nothing but the credit in the books of accounts of the company, therefore when no sum has been credited, addition cannot be made U/s 68 of the Act. The amount of issue of bonus shares does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by section 68 of the Act. ➤ Differentiated <i>Roshan Di Hatti, Mittal Belting and Machinery Stores, Sophia Finance Ltd, McDowell & Co Ltd</i> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creatiosn Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel &
--	--	--	--	---	--

					<p>Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)]</p> <ul style="list-style-type: none"> • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fivest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Oasis Hospitalities Pvt Ltd (333 ITR 119 Delhi) • CIT V Lovely Exports [2008] 216 CTR 195 (SC)
13.	Sukhna Steel Pvt Ltd Revenue's appeal	2012-13	<p>Section 68</p> <p>Share capital/ share premium- Rs. 26.168 crores</p> <p>(includes Rs. 16,80,000 on account of issue of bonus shares)</p>	<ul style="list-style-type: none"> ➤ As per inspector's report no company existed at such address, no directors were found, premises don't belong to investor company (Page 2, Table – AO's order) ➤ Verification of bank statement revealed that investor companies received funds back to back arrangement. Creditworthiness could not be found satisfactory with respect to huge amount of funds arrangement (Page 2 – AO's order) ➤ Assessee failed to explain why these companies agreed to invest in unlisted companies when there is no scope for making an exit out of investment (Page 6 – AO's order) ➤ The assessee intentionally avoided furnishing documents to take a plea that addition has made U/s 68 without making inquiries. A clear period of two months allowed to assessee to furnish documents. It suggested that these are nothing but accommodation entries (Page 2 – AO's order). ➤ Merely Pan and address were furnished, but no one was found at the address. Bank statement not 	<ul style="list-style-type: none"> ➤ CIT(A) has made analysis of creditworthiness, for making investment (Page 29/30, Table – CIT(A)'s order) ➤ No adverse material brought by AO to reject the explanations and evidences (Page 30 – CIT(A)'s order). ➤ Neither any person has given any statement nor made an allegation against the company (Page 30 – CIT(A)'s order). ➤ No cash deposits in the bank accounts of investors (Page 30 – CIT(A)'s order). ➤ Reasons given by AO are generic and not backed by any concrete evidence (Page 30 – CIT(A)'s order) ➤ Entire amount received through banking channels, investors confirmed, no evidence to prove funds actually emanated from coffers of appellant company, no concrete evidence against appellant company (Page 30/31 – CIT(A)'s order) ➤ Section 68 not applicable on bonus issue, it does not represent fresh credit (Page 31 – CIT(A)'s order). The amount of issue of

				<p>submitted properly showing available balance. NO explanation submitted by assessee to explain future cash flow, basis of share premium calculation and no. of shares to be issued (Page 8, Table – AO's order)</p> <p>➤ The assessee has failed to produce the directors of the investor companies.</p> <p>➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt. (Page – 7, AO's order).</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • Nova Promoters & Finlease (P) Ltd (342 ITR 169 (Del)) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) • CIT V N.R. Portfolio Pvt Ltd (ITA No. 1018 & 1019 of 2011) • Kale Khan Mohammad Hanif V CIT [1963] 50 ITR 1 (SC) • CIT V Oasis Hospitalities 333 ITR 119 (Delhi) 2011 • Roshan Di Hatti [1977] 107 ITR (SC) • CIT V Kariary Trading Co Ltd (1998) 232 ITR 820 • Sumati Dayal V CIT 214 ITR 801 • CIT V R. N. Dalmia 207 ITR 89 	<p>bonus shares does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by section 68 of the Act. (Page 42 – CIT(A)'s order)</p> <p>➤ The appellant has established the ICG of the transactions. (Page 41 – CIT(A)'s order)</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creation Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel & Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)] • CIT V Gangeshwari Metals Pvt Ltd (2013) 30 taxmann.com 328 • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V NC Cables Ltd. ITA No. 4122/Del/2209 • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fair Finvest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Oasis Hospitalities Pvt Ltd (333 ITR 119 Delhi) • CIT V Lovely Exports [2008] 216 CTR 195 (SC) • CIT V Expo Globe India Ltd. [2014] 51 taxmann.com 208 (Delhi) <p>Differentiated the following judgments:</p> <ul style="list-style-type: none"> • CIT V Nova Promoters & Finlease (P) Ltd [(2012) 342 ITR 169 (Delhi)] • Roshan Di Hatti V CIT [(1977) 107 ITR 938 (SC)] • CIT V Nipun Builders & Developers [(2013) 350 ITR 407 (Del)]
14.	Sunlight Tour &	2012-13	Share capital/	<p>➤ As per inspector's report none of the parties existed</p>	<p>➤ Appellant has discharged onus u/s 68</p>

	<p>Travels Pvt Ltd</p> <p>Revenue's Appeal</p>	<p>share premium</p> <p>Rs. 52.0168 crores</p> <p>(SC & premium RS. 40 crores and bonus shares Rs. 12,01,68,000)</p>	<p>at the given address. (Page 2- AO's order).</p> <ul style="list-style-type: none"> ➤ Summons issued to parties u/s 131 remained uncomplid. ➤ Upon verification of bank statement of parties, it was found that the investor companies had received funds and transferred back to back. ➤ From the financial statements, creditworthiness of parties could not be found satisfactory wrt huge amounts of funds made available to the assessee. ➤ Despite being many opportunities provided to assessee, no compliance to SCN issued. ➤ No explanation by the assessee as to why these parties which are related to the assessee agreed to invest in assessee which is unlisted and thus there is no scope to exit out of the investment. ➤ Person should have some sign of identification other than merely on paper. These signs could be place of work, staff members, actual transaction, recognition in eye of public, sign board etc. Actual identity and business does not get proved by these passive documents when infact no actual or passive business is beingcarried on. ➤ Assessee failed to produce person to verify claim, failed to prove nature and source of transaction. ➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt. 	<ul style="list-style-type: none"> ➤ No adverse inference drawn by AO in case of investor companies with reference to funds received by appellat company ➤ AO has not brought on record any adverse material to reject the explanations and evidences submitted by the appellat. ➤ Not the case of the AO that any person has given any statement or made allegations against the company. ➤ There is no cash deposits in the bank accounts of the parties from whom share capital/ premium has been received. ➤ Entire amount received through banking channels, depositors have confirmed of having deposited money in the company, no evidence that funds received emanated from coffers of the assessee. ➤ Assessee has allotted shares for the share application money received. ➤ With regard to bonus shares the provisions of section 68 are not applicable since the amount in question does not represent fresh credit in the books of account. ➤ Assessee established ICG, addition wrt share capital and share premium and bonus issue deleted. <p><u>CIT(A) has differentiated the following case laws:</u></p> <ol style="list-style-type: none"> A. CIT vs. Nova Promoters – page 31 B. Roshan Di Hatti (SC) -pg 32 C. CIT vs. Nipun Builders & Developers <p><u>CIT(A) has relied upon the following case laws:</u></p> <ul style="list-style-type: none"> • M/s. MOD Creations Pvt. Ltd. V ITO 354 ITR 282 (Del) • CIT Vs. Kamdhenu Steel & Alloys Ltd.
--	--	---	--	---

				<p>Case laws relied upon by the A.O</p> <ul style="list-style-type: none"> • Nipun Builders & Developers • Nova Promoters & Finlease • Kamal Motors V CIT 131 taxman 155 (Raj) • CIT V Oasis Hospitalities 333 ITR 119 (Delhi) 2011 • CIT V Ruby Traders & exporters Ltd. (2004) 263 ITR 300 (Cal.) • M/s Rajshree Synthetics (P) Ltd V CIT (2003) 131 Taxmann 391 (Raj) ➤ CIT V Sophia Finance Ltd 	<p>(Del) 206 taxmann 254 (Del)</p> <ul style="list-style-type: none"> • CIT Vs. Gangeshwari Metals Pvt. Ltd. (2013) 30 taxman.com 328 • CIT vs. Oasis Hospitalities 333 ITR 119 (2011) Del • ITO vs. Neelkanth Finbuild Ltd. • ITO vs. NC Cables Ltd. (Del ITAT) • ITO vs. Rakam Money Matters P. Ltd. (Del ItAT) • ACIT vs. Kisco Castings Pvt. Ltd. (Chd) • CIT vs. Fair Finvest Pvt. Ltd. (Del HC) • CIT Vs. Expo Globe India Ltd. (Del HC) ➤ CIT Vs. Lovely Exports (SC)
15.	Superstar Agency Pvt Ltd Revenue's Appeal	2012-13	<p>Section 68</p> <p>Share capital/ share premium</p> <p>Rs. 42.25 crores</p> <p>(SC= 3.85 cr Share premium = 38.40 cr)</p>	<ul style="list-style-type: none"> ➤ Out of 8 companies, notice U/s 133(6) could not be served on 6 companies due to no such company at the given address, 2 companies did not reply. (Page 4, table – AO's order) ➤ On an analysis of bank statements of investor companies, it was seen that investor companies have received funds and transferred back to back. ➤ Summons issued u/s 131 remained uncompiled. ➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt.(Page 8 – AO's order). ➤ Since the assessee was well aware of the fact of bogus credits in its books, it has chosen not to subject itself investigation/ enquiry conducted by the department.(Page 8 – AO's order) ➤ The assessee offered no explanation as to why these parties agreed to invest in an unlisted company when there is no scope for making 	<ul style="list-style-type: none"> ➤ CIT(A) has made analysis of the creditworthiness of the investors and observed that no adverse inference has been drawn by Ld. AO with reference to funds received by appellant company. (Page 29 – CIT(A)'s order) ➤ CIT(A) has observed that addition has been made by AO on ground that replies U/s 133(6) were incomplete, no compliance was made U/s 131 and the inspector's report that no such companies exist (Page 29 – CIT(A)'s order). AO did not bring any adverse material to reject the explanations and evidences submitted by appellant (Page 29 – CIT(A)'s order) ➤ Neither any person has given any statement nor made any allegation against these companies (Page 29 – CIT(A)'s order) ➤ Reasons given by AO are very generic and not backed by any concrete evidence (Page 29 –

				<p>an exit out of investment.(Page 6 – AO’s order)</p> <p>➤ Not explained why share application money was returned to parties and shares were not allotted.(Page 6 – AO’s order)</p> <p>➤ The intent of the assessee is to avoid furnishing details and then take plea that addition has been made without making inquiries from person’s who advanced money .(Page 6 – AO’s order).</p> <p>➤ A clear period of two months allowed to assessee to furnish details but it did not submit (Page 6 – AO’s order). The assessee has failed to produce the directors of the investor companies. (Page 8 – AO’s order)</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) • Kale Khan Mohammad Hanif V CIT [1963] 50 ITR 1 (SC) • CIT V Oasis Hospitalities 333 ITR 119 (Delhi) 2011 • Roshan Di Hatti [1977] 107 ITR (SC) 	<p>CIT(A)’s order)</p> <p>➤ No cash deposit in the bank account of investors (Page 29 – CIT(A)’s order)Transaction took place through normal banking channel (Page 29 – CIT(A)’s order)</p> <p>➤ Parties involved positively confirmed (Page 29 – CIT(A)’s order)</p> <p>➤ No iota of evidence to prove that money actually emanated from coffers of appellant company (Page 29 – CIT(A)’s order). Appellant allotted shares for amount received (Page 29 – CIT(A)’s order)</p> <p>➤ The appellant has established the ICG of the transactions. (Page 40 – CIT(A) order).</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creations Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel & Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)] • CIT V Gangeshwari Metals Pvt Ltd (2013) 30 taxmann.com 328 • ITO V NC Cable ITA No. 4122/Del/2009, ITAT Delhi Bench • ITO V Neelkanth Finbuild Ltd ITA No. 2821/Del/2009 • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fair Finvest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Oasis Hospitalities Pvt Ltd (333 ITR 119
--	--	--	--	--	--

					<p>Delhi)</p> <ul style="list-style-type: none"> • CIT V Lovely Exports [2008] 216 CTR 195 (SC) <p><u>Differentiated the following case laws:</u></p> <ul style="list-style-type: none"> • CIT V Nova Promoters & Finlease (P) Ltd [(2012) 342 ITR 169 (Delhi)] • Roshan Di Hatti • Nipun Builders & Developers
16.	Supreme Placement Pvt Ltd Revenue's Appeal	2012-13	<p><u>Section 68</u></p> <p>Share capital/ share premium</p> <p>Rs. 72.43 crores</p> <p>(includes bonus of 12.43 cr)</p>	<ul style="list-style-type: none"> ➤ In some cases the confirmation received in response to notice U/s 133(6) along with bank statement shows that assessee has received the amount and back to back transferred the amount to other parties (Page 3 – AO's order) ➤ As per the inspector's report no such party existed at the given address (Page 3, table-AO's order) ➤ Assessee offered no explanation as to why the companies agreed to invest in an unlisted company when there is no scope for making an exit out of investment (Page 7 – AO's order) ➤ It has not explained why share application money was returned and shares were not allotted (Page 7 – AO's order) ➤ The approach of assessee from shying away from filing necessary documents suggest that these are nothing but accommodation entries (Page 7 – AO's order) ➤ The entire intent is to avoid furnishing details and then take a plea that additions made without conducting inquiries from persons from 	<ul style="list-style-type: none"> ➤ Addition made by AO on ground that replies to notice U/s 133(6) are incomplete, no compliance to summons U/s 131 and the investor's report that companies did not exist at the address (Page 29 – AO's order). ➤ The AO did not bring any adverse material to reject the explanations and evidences submitted by the appellant (Page 29 – AO's order). ➤ Neither any person has given any statement nor made any allegation against these companies (Page 29 – CIT(A)'s order) ➤ Reasons given by AO are very generic and not backed by any concrete evidence (Page 29 – CIT(A)'s order). ➤ No cash deposit in the bank account of investors (Page 29 – CIT(A)'s order) ➤ Transaction took place through normal banking channel (Page 29 – CIT(A)'s order). Parties involved positively confirmed (Page 29 – CIT(A)'s order) ➤ No iota of evidence to prove that money actually emanated from coffers of

				<p>whom amount received (Page 7 – AO’s order)</p> <p>➤ A clear period of two months allowed to assessee but still it did not furnish the details (Page 7 – AO’s order). Assessee failed to produce the persons to verify the claim (Page 9 – AO’s order)</p> <p>➤ The assessee failed to discharge its onus. In such a case the source and nature of transaction need to be proved beyond doubt.(Page 9 – AO’s order). Since the assessee was well aware of the fact of bogus credits in its books, it has chosen not to subject itself investigation/ enquiry conducted by the department.(Page 9 – AO’s order)</p> <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • CIT V Nipun Builders &Developers [2013] 350 ITR 407 (Del) • Kale Khan Mohammad Hanif V CIT [1963] 50 ITR 1 (SC) • CIT V Oasis Hospitalities 333 ITR 119 (Delhi) 2011 • Roshan Di Hatti [1977] 107 ITR (SC) 	<p>appellant company (Page 29 – CIT(A)’s order).Appellant allotted shares for amount received (Page 29 – CIT(A)’s order)</p> <p>➤ The appellant has established the ICG of the transactions. (Page 40 – CIT(A) order)</p> <p>➤ Source satisfactorily explained. The ratio of judgments is squarely applicable to the case of assessee (Page 39 – CIT(A) order)</p> <p>➤ The appellant has established the ICG of the transactions.(Page 39 – CIT(A) order).</p> <p>➤ In case of bonus issue provisions of section 68 are not applicable since the amount in question does not represent a fresh credit (Page 29 – CIT(A)’s order). The amount of issue of bonus shares does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by section 68 of the Act.(Page 40 – CIT(A) order)</p> <p><u>Case laws relied upon by the CIT(A)</u></p> <ul style="list-style-type: none"> • MOD Creation Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel &Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)] • CIT V Gangeshwari Metals Pvt Ltd (2013) 30 taxmann.com 328 • ITO V NC Cable ITA No. 4122/Del/2009, ITAT Delhi Bench • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011
--	--	--	--	--	---

					<ul style="list-style-type: none"> • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fair Fivest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Expo Globe India Ltd [2014] 51 taxmann.com 208 (Delhi) • ITO V Neelkanth Finbuild Ltd ITA No. 2821/Del/2009 • CIT V Lovely Exports [2008] 216 CTR 195 (SC) <p><u>Differentiated the following case laws:</u></p> <ul style="list-style-type: none"> • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • Roshan Di Hatti [1977] 107 ITR (SC) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del)
17.	Sur Buildcon Pvt Ltd Revenue's Appeal	2012-13	<p>Section 68 Share capital and share premium Rs. 98.494 crores (includes 17,09,40,000/- on account of bonus issue)</p>	<ul style="list-style-type: none"> ➤ Assessee failed to prove ICG of transactions with the investor companies.(Page 8 – AO's order) ➤ Notices sent U/s 133(6) returned undelivered with remarks "none existed". ➤ Basis the inspectors report, all the five investors, no company was found at the address, no directors were found, person staying there denied saying that this address does not belongs to the investor in question. (Table, page 4/5 – AO's order) ➤ Investor companies received funds back to back arrangement (Page 4- AO's order) ➤ Summons issued U/s 131 remain un-complied (Page 4- AO's order). ➤ Assessee has willfully desisted from furnishing any details/ particulars/ documents/ to prove genuineness of the amount received from parties (Page 5- AO's order). ➤ Assessee offered no explanation about as to why these investors agreed to invest when there is no scope for making an exit out 	<ul style="list-style-type: none"> ➤ That the appellant has completely discharged its onus cast upon it U/s 68 with necessary supporting documents.(Page 27 – CIT(A)'s order). ➤ The appellant has proved the ICG of the transactions. No reason to suggest that the transactions are not genuine.(Page 27 – CIT(A)'s order). ➤ The investor companies are assessed to tax and orders have been passed U/s 143(3) of the Act.(Page 28 – Table – CIT(A)'s order) ➤ The AO did not bring any adverse material on record to reject the explanations submitted by the appellant. ➤ Rather it's not the case of AO that any person has given any statement or made any allegation against these companies. (Page 32 – CIT(A)'s order). ➤ The reasons given by AO are generic in nature and no backed by any concrete evidence.(Page 32 – CIT(A)'s order) ➤ Various parties involved

				<p>of investment. (Page 6- AO's order).</p> <ul style="list-style-type: none"> ➤ It has not been explained why share application money was returned to these parties and shares not allotted.(Page 6- AO's order) ➤ AO did not find merit in the contention of the assessee that the decision of share premium is the discretion of the board of directors of the company. ➤ That the investor did not provide the complete bank statement enabling the AO to verify source of source. ➤ That the compliance made by the investor companies is not found satisfactory. <p><u>Case laws relied upon by the A.O</u></p> <ul style="list-style-type: none"> • Nova Promoters &Finlease (P) Ltd, Delhi high court • Nipun Builders & Developers Pvt Ltd, ITA No. 120/2012 • Kale Khan Mohammad Hanif V CIT [1963] 50 ITR 1 (SC) • Roshan Di Hatti V CIT [1977] 107 ITR (SC) • CIT V Oasis Hospitalities Pvt Ltd 333 ITR 119 (Delhi) (2011) 	<p>has positively confirmed/ affirmed the fact of having deposited their money into appellant company (Page 33 – CIT(A)'s order).</p> <ul style="list-style-type: none"> ➤ The entire amount has been received through normal banking channels which transaction has not been disputed, repudiated or challenged in any manner (Page 32 – CIT(A)'s order). ➤ No evidence to prove that funds received generated from appellant company. Any conclusion can be sustained only if backed by concrete evidence (Page 33 – CIT(a)'s order) ➤ Provisions of section 68 are not applicable on bonus shares, as the no amount is received in case of bonus shares (Page 33 – CIT(a)'s order) ➤ Appellant company has allotted shares for the share capital and share application money received by it (Page 33 – CIT(A)'s order). ➤ There was no cash deposit into the bank accounts of the companies from whom share capital/ share application money received.(Page 32 – CIT(A)'s order). <p><u>Differentiated the following case laws:</u></p> <ul style="list-style-type: none"> • Nova Promoters &Finlease (P) Ltd (342 ITR 169 (Del)) • Roshan Di Hatti [1977] 107 ITR (SC) • CIT V Nipun Builders & Developers [2013] 350 ITR 407 (Del) <p><u>Relied upon the following case laws:</u></p> <ul style="list-style-type: none"> • MOD Creation Pvt Ltd V ITO [(2013) 354 ITR 282 (Delhi)] • CIT V Kamdhenu Steel &Alloys Ltd & Others [(2012) 206 taxman 254 (Delhi)]
--	--	--	--	--	---

					<ul style="list-style-type: none"> • CIT V Gangeswari Metals Pvt Ltd (2013) 30 taxmann.com 328 • ITO V NC Cable ITA No. 4122/Del/2009, ITAT Delhi Bench • CIT V Oasis Hospitalities P. Ltd [(2011) 333 ITR 119 (Delhi)] • ITO V Rakam Money Matters P Ltd 2821/Del/2011 • ACIT V Kisco castings Pvt Ltd 34 taxmann.com 37 • CIT V Fair Fivest Ltd [2014] 44 taxmann.com 356 (Delhi) • CIT V Expo Globe India Ltd [2014] 51 taxmann.com 208 (Delhi) • ITO V Neelkanth Finbuild Ltd ITA No. 2821/Del/2009 • CIT V Lovely Exports [2008] 216 CTR 195 (SC)
18.	Globus Real Infra Pvt Ltd (Formerly Sur Buildcon Pvt Ltd) Assessee's Appeal	2013-14	<p>Section 68 Share application Money - Rs. 5.6 crores</p> <p>Unsecured loans - Rs. 2.95 crores</p>	<ul style="list-style-type: none"> ➤ On perusal of reply filed by the assessee it was noted that parties who have given amount don't have much creditworthiness to advance such huge share capital (Page- 2, Para – 2 – AO's Order) ➤ It is duty of the assessee primarily to establish creditworthiness of persons who have given credit and genuineness of transaction, merely filing PAN, ITR, BS does not absolve assessee from its responsibility of discharging onus (Page- 5, Para – III – AO's Order). ➤ Investors/ lenders have hardly any business to generate income to extend such huge amount (Page – 11, Para (i) – AO's Order). Regarding the source of source assessee's story that amount has travelled from one company to another and none of the company has its own source, rather acting as a conduit and in process original source of money does not get explained, is neither tenable under law of probability nor acceptable 	<p><u>CIT(A) decided the appeal ex-parte</u></p> <ul style="list-style-type: none"> ➤ Notice for hearing dated April 11, 2017 served via speed post dated March 27, 2013. No compliance made by appellant, appeal decided on basis of facts on record. (Page – 3, Para 4 — CIT(A)'s Order) ➤ The appellant was asked to establish source of source of share capital and loans due to movement of funds between different companies and also due to insertion of proviso in section 68 effective for year under consideration (Page – 4, Para – 7 – CIT(A)'s Order) ➤ Share applicant companies and lender companies have same address in Delhi except KBN Infra which has Mumbai address (Page – 4, Para – 7 – CIT(A)'s Order) ➤ KBN Infra, NRA Iron & steel and Vistrat Real Estate have common director namely Shailendra Singh Bhadoria. (Page – 4, Para – 7 – CIT(A)'s Order)

				<p><u>under judicial canons</u> (Page – 13 – Ao’s order).</p> <p>➤ Introduction of amount in books of accounts do not qualify test of human probability as it failed to explain the source of investment and its purpose of making the same (Page – 13 – AO’s order)</p> <p>➤ There is a chain of companies from which the fund flows from one company to another without establishing the actual source of investment. It is a clear case of tax avoidance under garb of tax planning (Page – 16/17 – AO’s order)</p> <p>➤ Despite bringing it to knowledge of assessee that summons have not been complied with and it is duty of assessee to explain source of source to authenticate claim and purpose of making advances, assessee failed to discharge its onus to establish source of source (Page – 13 – Ao’s order). Summons issued U/s 131 remained un-complied (Page 13 – AO’s Order)</p> <p>➤ Investors have common practice like paper companies who raise loan from companies who in turn have no income generating capacity or established source (Page – 11, Para (i) – AO’s Order)The assessee failed to prove the source of source.</p> <p>➤ The assessee failed to discharge its onus cast upon it U/s 68 to prove genuineness of transactions and creditworthiness of person who has given credit to the assessee.</p> <p>➤ The amount introduced by the assessee under the garb of share capital and unsecured loan is the undisclosed income of the assessee within the meaning of section 68 (page 16 of the</p>	<p>➤ No reason why appellant could not produce principal officers/directors of companies when entire money came from same group and appellant also belonged to same group (Page – 4, Para – 7 – CIT(A)’s Order).</p> <p>➤ The pattern of money movement raises suspicion of accommodation entries (Page – 4, Para – 7 – CIT(A)’s Order)</p> <p>➤ The Ld. CIT(A) also applied <u>the amendment made to section 68 for the sum credited as unsecured loan also</u>(Page – 4, Para – 7 – CIT(A)’s Order).</p> <p><u>Case laws relied upon by the CIT(A):</u></p> <ul style="list-style-type: none"> • Nakoda Fashion Pvt Ltd, ITA No. 1716/AHD/2012, ITAT Ahmedabad Bench [Relying Upon N. Tarika Properties Investment (2014) 51 taxmann.com 387 (SC), Empire Biotech P Ltd 361 ITR 258 (Del)] • Nova Promoters and Finlease Pvt Ltd 342 ITR 169 (Del. HC)
--	--	--	--	--	--

				<p>A.O's order)</p> <p>Case laws relied upon by the A.O:</p> <ul style="list-style-type: none"> • Kale Khan Mohd. Hanif V CIT (SC) 50 ITR 1, • CIT V N. R. portfolio Pvt Ltd 206 (2014) ITA No. 204/2002 • CITR V Nipun Builders and Developers (2013) 350 ITR 407 (Del.) • Shankar Ghosh V ITO [1985] 23 TTJ (Cal.) 20, • Roshan Di Hatti V CIT [1977] 107 ITR (SC) • CIT V DurghaParsad More (1971) 82 ITR 540 (SC) • CIT V Durga Prasad More (1971) 82 ITR 540 (SC) • SumatiDayal V CIT (1995) 214 ITR 801 (SC) • A Rajendran & Others V ACIT (2006) 204 CTR (Mad) 9 • Hacienda Farms (P) Ltd V CIT (2011) 239 CTR (Del) 212 • Major Metals Ltd V UOI and Ors. (2012) 251 CTR (Bom) 385 • Pradeep Kumar Loyalka V ITO (1997) 59 TTJ (Pat)(TM) 655 • ACIT V Sampat Raj Ranka (2001) 73 TTJ (Jd) 642 • Mc Dowell Ltd. V CTO (1985) 154 ITR 148 (SC) • CIT V Youth Construction Pvt Ltd 44 taxmann 364 • Wood Polymer Ltd. Bengal Hotels Limited, 40 Company Cases 597 • Campbell V Inland Revenue Commissioners (1), Stamp J. • CIT V Precision Finance Pvt Ltd (1994) 208 ITR 405 (Cal) • Bharati Pvt Ltd W.B. V CIT WB (1978) 111 ITR 991 	
19	Track Casting India Pvt Ltd. Revenue's Appeal	2012-13	<p>Section 68 Share Capital & Share premium Rs. 31 crores</p> <p>Section 69C Rs.</p>	<p>➤ Little compliance or no compliance made to notices issued U/s 142(1) (Page1, Para 4- AOs' Order. Details filed letter dated July 10, 2014 and July 25, 2014 and August 26, 2014 and Dec 15, 2014 (Page – 2, Para – 4.4, 4.5 – AO's Order)</p> <p>➤ To avoid to prove the</p>	<p>➤ CIT(A) has made analysis of Reserves & Surplus position of all the investors. All have been found to have adequate investment apart from appellent company and having decent reserves (Page 19-20, Para 5 to 5.2</p>

			<p>7.75 lakhs U/s 69C on account of alleged unexplained commission expenses</p>	<p>genuineness and the creditworthiness of investor companies, assessee intentionally avoiding furnishing details on time and producing directors of investor companies by seeking adjournments time and again and not attending hearings (Page – 7, Para 5.12 – AO’s order).</p> <ul style="list-style-type: none"> ➤ Assessee failed to bring difference in rate of shares issued to four companies (Page – 7, Para 6.2 – AO’s order) ➤ The assessee failed to justify reasons for major development between the night of 23rd and 24th which led to price increase from 10 to 200 per share (Page – 7, Para 6.2 – AO’s order). ➤ No prudent investor would invest in such a company without any income; except when both the parties are hand in glove (Page – 7, Para 6.3 – AO’s order) ➤ It is modus-operandi of entry operators to make few transactions at high and few at low price(Page – 8, Para 6.4.2 – AO’s order). ➤ Assessee has not brought anything on record to support that any dividend has been declared by it (Page – 9, Para 6.6 – AO’s order) ➤ Perusal of bank statement of investors reveal that they are receiving huge amounts from various other companies and transferring funds to other companies, not doing business activity ((Page – 9, Para 6.7 – AO’s order). ➤ One thing is common that whole of the sale proceeds are used for buying shares of other companies and at the end there is no income earned even after transaction of hundred of crores (Page 9, Para 6.7 – AO’s order). ➤ Bank statement show similar pattern, receipts of huge amount of money without 	<p>CIT(A)’s order)</p> <ul style="list-style-type: none"> ➤ The amendment made U/s 68 for proving the source of source is not the mandate of law for the year under appeal. The amendment to section 68 w.e.f., 01/04/2013 cannot be held or interpreted to be retrospective in nature (Page – 21, Para 7 – CIT(A)’s order). ➤ AO failed to disprove identity, creditworthiness and genuineness of transaction (Page – 22, Para 8 – CIT(A)’s order). ➤ AO has brought nothing on record to establish that the applicant routed its own money in the form of share application(Page – 22, Para 8 – CIT(A)’s order) ➤ The addition made separately on account of commission payment of Rs. 7.75 lakh is also deleted. (Page – 22, Para 8 – CIT(A)’s order)
--	--	--	--	--	--

				<p>interest, no proportionate expense booked, in turn providing huge amounts to various companies without interest (Page 9, Para 6.7 – AO's order)</p> <p>➤ The assessee failed to prove the genuineness of transactions and creditworthiness of the investor companies.(Page 10, Para 6.10 – AO's order).</p> <p>➤ Further accommodation entries have been taken on payment of certain amount of money, estimated to 25 paisa per Rs. 100. On accommodation entry of Rs. 31 crores, assessee paid Rs. 7.75 lakhs, since No details and source of this payment has been shown, held to be paid out of undisclosed sources (Page10, Para 7 – AO's order)</p>	
--	--	--	--	---	--

16. In sums and substance the reasons given in the appeals where the respective Id. CIT (As) have deleted the additions u/s.68 are as under:

- That the basic requirement to justify identity, creditworthiness and genuineness (ICG) of the transactions in the case of the Assessee ore prima facie established. Relevant documents were furnished by the Assessee The Assessee filed copies of confirmation, bonk statements, P&L A/c, Balance Sheet, Assessment Orders of the investors/lenders to establish source of funds in the hands of investor/lender companies.
- That the A.O has not brought any adverse material to reject the explanations and evidences submitted by the Assessee except alleging the non-compliance of notices

issued 131 and 133(6) in case of certain investors.

- That neither the Assessee nor the investor companies are ultimate beneficiaries but there is routing of funds from Bhushan Steel Ltd. and/or Bhushan energy Ltd. (specifically held so in 3 cases viz. Jawahar Credit & Holdings Pvt. Ltd. (A.Y. 2012-13), Jingle Bells Aluminium Pvt. Ltd. (A.Y. 2012-13) and Kasper Information Technology Pvt. Ltd. (A. Y. 2012-13)
- That nothing is mentioned in the assessment order regarding any statement of any person providing entry to the Assessee.
- That there is no denial at any stage of assessment proceedings by any of the subscribers of share capital of having deposited money in the Assessee Company.
- That replies to notices issued u/s 133(6) were received from several investor companies.
- That no material has been brought on record by the A.O to conclusively prove that the share capital originated from Assessee Company.
- The documents submitted conclusively establish that the money came from the investor's/depositor's account and nowhere connected with the Assessee Company.
- That there is no cash deposit in the bank accounts of the parties from whom share capital/ loan is received.
- That the entire amount was received through normal

banking channels.

- That the depositors have also confirmed of having deposited money in the company which confirmations also reveal source of funds, particulars of bank accounts through which payments have been received and income tax particulars.
- That the Assessee has allotted shares for share application monies received.
- That there is no mandate of law to look into the source of source for the A. Ys prior to A. Y. 2013-14.
- That the Assessee cannot be fastened with liability u/s 68 unless a causal connection between the cash deposit in the bank account of the investor (if any) and the Assessee is established.
- That where complete particulars of the share applications are furnished to the A.O and the A.O has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false, then no addition can be made in the hands of the company.
- That the Investor companies are having adequate reserves make investments.
- That the source of funds by the investor companies in the Assessee in its share capital stands explained
- That the investor companies are all assessed to tax in their respective jurisdictions.

- That the judgment of Stellar is applicable only where shares are issued in the names of non-existing persons, which is not the situation in the instant case.
- That without proof of having introduced untaxed money by promoters or dubious antecedents, adverse view cannot be taken.
- That the provisions of Section 68 are not applicable for bonus shares since the amount in question does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by Section 68.

17. Further Id. CIT (A) in three cases have confirmed the addition, which can be summarized in the following manner:

- That the Assessee failed to establish the identity and creditworthiness of the investors/lenders and the genuineness of the transactions.
- That few investors/lenders did not reply to notices u/s. 133(6) or attend summons u/s.131.
- That few share applicants and lender companies have same address and common directors.
- That there was no reason why the appellant could not produce principal officers/directors of companies when the entire money came from the same group and the appellant also belonged to the same group. The pattern of money movement raised suspicion of accommodation entries.

Arguments on behalf of the Assessee

18. Before us, ld. counsel for the assessee submitted that the Assessing Officer without bringing on record any cogent material and evidence whatsoever has alleged that all the assessee herein availed accommodation entries wherein they have deduced their own unaccounted/undisclosed funds into their books of account in the garb of share capital and or loans and advances. Whereas the assessee's case all throughout has been that these are mere routing/movement of accounted funds of Bhushan Energy Ltd. (BEL) in the form of share capital and or loan and advances through web of group companies into the assessee companies and subsequently reintroduction of such funds into regular accounts of BEL. The concept of accommodation entries would be applicable where entries represent unaccounted money of the person in whose books of account money has been credited in the form of share capital/loan/advance etc. and the investor/loan company has acted only as conduit for routing the money back to the books of account of that person. In the instant case there is no involvement of any undisclosed fund or any fictitious/books entries in the entire transactions. There is no information or inquiry or any material that the assessee's company availed any accommodation entry through any entry operator or anyone whereby it has been found that assessee have routed their own unaccounted/undisclosed fund in their books of account.

19. Apart from that, all the assessee's in the respective assessment proceedings have filed detailed documentary evidences effectively discharging the primary onus of discharging the requisite ingredient of Section 68, viz., identity and creditworthiness of the investor/lenders and the genuineness of the credits and therefore, the nature and source of the impugned credit stood fully explained on standalone basis in each of the cases of the respective assessees. The peculiar facts which is permeating in all these appeals which is different from many other cases is that one assessee company has served as investor/lender of funds into the subsequent assessee company in a chain that goes on and so forth. He submitted that in cases of most of these companies, assessment has been completed u/s.143(3) or u/s 147 by the Assessing Officer, which were also subject matter of appellate proceedings whereby most of the additions have been deleted or the appeals are pending either before Id. CIT(A) or Tribunal. Thus same additions have been made in the hands of the investor companies also leading to double addition. To demonstrate the same he has filed a detailed chart in each and every investor company. He submitted that all the assessee-company as well as the investors/lenders are part of group of companies belonging to the Bhushan Group and the family members of the directors. He pointed out that from the details filed in the paper books as well as before the authorities below, it can be seen that the same stream of funds permeating to the group companies in the form of share

capital/premium or loan and advances have been repeatedly treated as unaccounted/undisclosed fund of multiple companies assessed on individual basis which has resulted into multiple addition into same stream of funds in the hands of multiple assessee's including all the assessees herein. By way of an example, he has cited many such instances viz.,:-

- In the case of Track Casting (India) Pvt Ltd. (at SI. No. 19 of Annexure 1), an addition of Rs. 31 crores has been u/s 68 made on account of funds received from various parties in the form of share capital, where the A.O. has treated such share capital as representing the unaccounted funds of M/s. Track Casting (India) Pvt. Ltd. for A.Y. 2012-13,
- Further, in the case of Sukhna Steel Pvt. Ltd. (A.Y. 2012-13) (i.e., Assessee at SI. No. 13 in the said chart), out of total additions of Rs. 21.168 crores made u/s 68 in the said case, an addition of Rs. 19.60 crores has been made on account of funds received as share capital from Track Casting (India) Pvt. Ltd, treating the same as representing the unaccounted funds of Sukhna Steel Pvt. Ltd.
- Thus, the sum of Rs. 31 crores has first been treated as undisclosed funds belonging to M/s. Track Casting (India) Pvt. Ltd. Thereafter, Rs. 19.60 crores sourced out of the said funds of Rs. 31 crores, when paid by Track Casting (India) Pvt. Ltd. to M/s. Sukhna Steel Pvt. ltd. has once again been treated as representing the unaccounted funds belonging to M/s. Sukhna Steel Pvt, Ltd.

- Again, a sum of Rs. 10 crores out of the said funds of Rs. 31 crores, has been received by M/s. Track Casting (India) Pvt. Ltd. (at SI. No. 19) in the form of share capital from M/s. Jawahar Credit & Holdings Pvt Ltd. (at Si. No. 4). The said sum of Rs. 10 crores has been paid by Jawahar Credit Holding Pvt. Ltd. to M/s. Track Casting (India) Pvt. Ltd. out of the share capital of Rs. 73.50 crores received by the former company from various parties. The said share capital of Rs. 73.50 crores has also been added u/s 68 in the hands of Jawahar Credit & Holdings Pvt. Ltd. by treating the same as unaccounted funds belonging the M/s. Jawahar Credit & Holdings Pvt. Ltd. The chain continues in a similar fashion.
- Thus, the same funds routed via M/s. Jawahar Credit & Holdings Pvt. Ltd. to M/s. Track Casting (India) Pvt. Ltd. and subsequently to M/s. Sukhna Steel Pvt. Ltd, have been treated as belonging to and representing the undisclosed funds of all the three group entities at the same point in time.
- Again, Rs, 13.50 crores invested by M/s. Jawahar Credit & Holdings Pvt, Ltd. out of its share capital of Rs. 73.50 crores (w.r.t which additions u/s 68 have already been made in the hands of Jawahar Credit & Holdings Pvt. Ltd.) into M/s. Super Star Agency Pvt Ltd. (at SI. No. IS) has also been added u/s 68 in the hands of the latter company, once again treating the same as representing the undisclosed funds belonging to the latter.

Thus there is a complete lack of parity and understanding by the Revenue with respect to actual ownership of the impugned funds because same stream of funds have been added in the hands of multiple assessees.

20. In addition to the documentary evidences furnished before the lower authorities, Ld. Counsel has also filed a complete fund flow in the form of flow chart depicting the complete movement of the fund in case of each of the assessee company from where the funds have started /generated to the ultimate destination of the fund. The fund flow statement has been duly supported by the relevant bank statement which was filed before the authorities below to demonstrate every link of the flow chart. From the said fund flow statement, he pointed out that the funds representing the impugned credits in the form of share capital/share premium or loan and advances do not belong to any of the shares herein and the ultimate source of the impugned fund lies in the regular books of account of Bhushan Energy Ltd. and ultimately all these funds have been routed back to the Bhushan Energy Ltd. Though he admitted that these fund flow statement is in the nature of additional evidence for which petition for under Rule 29 of ITAT Rules 1963 have been filed separately. He harped upon the fact that in all these cases there is no involvement of unaccounted fund or undisclosed income of the assessee companies in the entire chain of transaction and no material has been brought on record by the Assessing Officer to prove that share capital and

loan and advances have been originated from the unaccounted money of the assessee companies or any other group companies who have subscribed to the shares or made investment. In fact, if at all there is circular transaction, then it amongst these very companies who are connected with the Bhushan group and the entire amount are accounted for in the books of Bhushan Energy Ltd. They are not the ultimate beneficiaries. This fact is clearly visible and demonstrable from the balance sheet of the assessee companies which clearly demonstrate that the entire share capital/share premium received by the assessee from its own group companies have been invested/advanced to other group companies. On these facts it cannot be held that the credit appears in the books of account are unaccounted or undisclosed income of the assessee.

21. Ld. Counsel reiterated that fund flow statements (with accompanying bank statements) effectively and conclusively establish the following facts:

- i. That the Impugned credits in the form of share capital/share premium and/or loans & advances (as may be applicable) appearing in the books of account of the Assessee herein have arisen on account of the actual movement of funds originating from the regular books of account of BEL into a maze of group companies (Including the Assessee herein) via regular banking channels.

- ii. There is no fake or bogus entry in the entire chain which has been used as a camouflage by any of the group companies (including the Assessee herein) to put through their own unaccounted funds.
- iii. That there are no cash deposits in the entire chain and the credits are ultimately sourced out of the accounted funds of BEL;
- iv. That the Assessee herein are placed at different levels of the chain wherein one group company serves as an investor/lender in the next group company in the chain that goes so on and so forth,
- v. That the Assessee have merely acted as conduit mechanism for investing funds of BEL into other group companies and the said funds have ultimately gone back to BEL.
- vi. The same stream of accounted funds of BEL flowing through these Group Companies have been repeatedly treated as the unaccounted/undisclosed funds of multiple group companies (assessed on an individual basis) resulting in multiple additions of the same stream of accounted funds of BEL in the hands of several Assessee;
- vii. That there is no influx of any unaccounted funds/income belonging to the Assessee companies in the chain as incorrectly alleged by the A.Os.

Therefore, the nature and source of the impugned credits

stand fully explained in the cases of all the Assessee-Companies herein ruling out the applicability of the rigors of section 68.

22. Ld. Counsel submitted that, it is pertinent to note here that the factum of routing of accounted funds of BSL (through its subsidiary company, BEL) via the Assessee herein has been categorically recognized by the Ld, CIT(A) in the cases of Jawahar Credit & Holding Pvt. Ltd. (A.Y. 2012-13), Jingle Bells Aluminium Pvt. Ltd. (A.Y. 2012-13) and Kasper Information Technology Pvt. Ltd, {A.Y. 2012-13}. The Ld. CIT(A) (being the same officer who has disposed of the appeals in all the three cases) has deleted the addition made by the respective A.O(s) u/s 68 with the following common findings:

- That the basic requirement to justify the identity, creditworthiness and genuineness of the impugned transactions has been prima facie established by the Assessee.
- That neither the Assessee nor the investors are the ultimate beneficiary of the transactions but there is routing of funds from Bhushan Steel Ltd. (through its subsidiary company, BEL). The funds received are given to other companies as soon as they are received.
- That accordingly, the additions made by the A.O are outside the ambit of section u/s 68 as the Assessee has merely provided facility to route the impugned transactions.

23. Ld. Counsel further pointed out that several investor/lender company in the respective chain are also assesseees to the appeals before this Tribunal and the fund flow statement in each case is verifiable from the bank statement already on record of the Department. Further, similar additions made u/s.68 in the case of several investor/lender companies who have invested in the case of present assesseees are also pending for disposal at the first appellate stage. Thus in such a situation and facts it cannot be held that these are non existing entities and it is clear cut case of double whammy.

24. Even otherwise also if the common antecedent and origination and the ultimate destination of the impugned funds arising from the same entity, i.e., BEL which has been routed to all through group companies is kept aside, then on standalone basis each and every assessee had successfully discharge the primary onus of establishing the identity, creditworthiness and genuineness of the transaction. In support, the assessee before the authorities below has submitted all the documents explaining the nature and source of the share capital/share premium appearing in the books of account which has remain uncontroverted by the Assessing Officer. The same have been placed in the paper book also. The assesseees have furnished following documents before the Assessing Officer and CIT(A):-

- (i) Names, addresses and PAN details of the parties,
- (ii) Confirmation of parties

- (iii) Bank Statements
- (iv) Income Tax Returns of the parties for the impugned A.Y.
- (v) Assessment orders of the parties.
- (vi) Audited Accounts of the parties of the year under consideration.

25. Thereafter, he relied upon catena of judgment and submitted that here in all these cases the requisite ingredient of Section 68 in cases of all the assesseees stand discharged which are as under:

A. The identities of the investors/lenders are established from multiple facts and evidences on record viz.

- i. The investors/subscribers are companies duly incorporated under the provisions of the Companies Act, 1956 having separate legal entities and the status of "Artificial Legal Persons". The statutory records available with the Registrar of Companies clearly point to the companies being in existence.
- ii. The identity and existence of the companies are also substantiated by the following documents filed before the lower authorities.
 - (a) Confirmations received from the parties.
 - (b) Details of PAN - which conclusively prove that the said shareholder companies are all existing income-tax assesseees.

(c) Copies of ITR Acknowledgment of the parties for the relevant assessment years.

(d) Assessment Orders of the parties for the relevant assessment years.

B. As far as the genuineness of the transactions is concerned, the Assessee filed the bank statements of the investors/lender companies which prove conclusively that the Assessee had received the impugned funds from the said investors/lenders and it came from the coffers of the said parties. The impugned sums were received through authorized banking channels which prove the genuineness of the transactions. The investors/lenders have also duly confirmed the fact of their having deposited money in the Assessee Company in the form of share capital and corroborated their confirmations with copies of Income-tax Returns, bank statements etc.

C. Further, the creditworthiness of the investors/lenders is clearly established from the fact that share capital/premium/loans etc. was received by the Assessee company by way of account payee cheques through normal banking channels and also from the copies of the bank statements of the investor/lender companies showing adequate availability of funds for the impugned investments. The balance sheets of the investors/lenders also show significant net worth fair enough to make the investments. The confirmations of the investors/lenders are also on record. Thus, where the funds have flown

through normal banking channels and have been duly disclosed in the regular books of account of both the parties and the transactions have been confirmed by the respective parties and not repudiated in any manner, the creditworthiness of the parties is proved beyond doubt

26. In all these cases, Assessing Officer has not conducted any such enquiries or has brought anything on record to even remotely suggest that the monies received by the Assesseees in the form of the impugned credits recorded in their books of account represent the undisclosed or unaccounted funds/ income of the Assesseees. Apart from alleging that notices issued by the Ld. A.O to few investors/lenders remained unserved or non-complied with and that the Assesseees failed to produce directors of the investors/lenders companies and that some of the investor companies did not have their own profit making apparatus which cannot be sole reasons to sustain additions u/s 68. The Ld. A.Os have not brought anything on record to disprove/refute the genuineness of the evidences furnished by the Assesseees herein. The Ld. A.Os have failed to prove that the impugned credits despite appearing in the names of other entities still represents income from suppressed/undisclosed sources of the Assesseees herein before nailing the Assesseees and fastening the Assesseees with impugned liabilities u/s.68. The fund flow statements showing the ultimate source of funds (being the unaccounted funds of BEL) with respect to the transactions impugned in the case of each of the Assesseees herein filed in

PB-20 further corroborate/strengthen the Assessee's averment that the impugned funds do not represent income from undisclosed source of any of the Assessee herein.

27. In most of the cases, the Assessing Officer has sought to justify the addition relying on the fact that notices u/s.133(6) sent to some of the parties have returned unserved and assessee has failed to produce the directors of the parties. In this regard Ld. Counsel submitted that in most of the cases the parties have directly responded to the Assessing Officer and furnish all the requisite information in response to notices u/s.133(6). Even otherwise also, there is no legal obligation on the assessee to produce director or other representative etc. before the Assessing Officer and this failure by itself could not justify addition where the assessee has produced extensive materials and evidences and also pointing out that regular assessment u/s.143(3)/147 have been made in the case of those funds. In support, he relied upon the following judgments:

- i. Pr.CIT vs. Rakam Money Matter (P) Ltd. (2018) 94 CCH 333 (Del HC).
- ii. The Hon'ble Bombay High Court in the case of CIT vs. M/s. Orchid Industries Pvt. Ltd. in ITA No. 1433 of 2014
- iii. CIT vs. Jalan Hard Coke Ltd. reported in (95 taxmann.com 330)
- iv. CIT vs. Diving Leasing & Finance Ltd. (2007) 158 TAXMAN 440 (Del)
- v. Crystal Networks (P) Ltd. vs. CIT, 353 ITR 171
- vi. ITO, Ward-12(4), Kolkata Vs. M/s. Saktideep Suppliers Pvt., ITA No.2444/kKol/2016 (ITAT Kolkata)

28. Thus, mere non production of directors and in some cases non service of notices u/s.133(6) cannot be adversely viewed, because in most of the cases all the lenders who have invested in the assessee company, assessments have been made in their hands and similar addition u/s.68 have been made individually in the hands of those investor/lender company whose cases are also pending for disposal either before this Tribunal or the first appellate authority. The details of such companies by way of an example were given as under:

Name of Assessee	Names of Investors/ Lenders	Quantum of addition made by the A.O u/s 68 w.r.t funds received from the investors/lenders	Year in which addition u/s 68 was made in the hands of Investors/ Lenders	Section under which assessment was completed in the case of Investors/ Lenders	Quantum of addition in the hands of Investors/ Lenders	Nature of Addition in the case of Investors/ Lenders	Whether addition was confirmed/ deleted by C.I.T(A) in the case of Investors/ Lenders	Pendency of appeal in the case of Investors/ Lenders
Angel Cement Pvt.Ltd.		1. <u>A.Y. 2012-13:-</u>						
		<u>A) Share Capital fully Paid Up</u>						
	Sintex Consumer Electronics Pvt.Ltd.	Rs. 1,00,00,000	A.Y.2012-13	143(3)	1)Rs. 78,22,80,000	Share Capital	deleted	ITAT (Assessee herein at Sl. No. 9 of the captioned matters in the index supra) C.I.T(A)
			A.Y.2012-13	147	1)Rs. 3,90,00,000 2) Rs. 3,90,000	Advance Received Commission Expense (3.9 Cr @ 1%)	NA	
Venus Recruiter Pvt.Ltd.	Rs. 30,00,00,000	A.Y.2012-13	147	1) Rs. 10,00,00,000 2) Rs. 30,00,000	Unexplained Credit Commission Expense(10Cr @3%)	NA	C.I.T(A)	
Supreme Placement Services Pvt.Ltd.	Rs. 15,00,00,000	A.Y.2012-13	143(3)	Rs. 72,43,00,000	Share Capital	deleted	ITAT (Assessee herein at Sl. No. 16)	

	Janitor Infrastructure Pvt.Ltd.	Rs. 15,00,00,000	A.Y.2012-13	147	Rs. 36,00,00,000	Share Capital converted partly to fully	NA	C.I.T(A)
	Sintex Consumer Electronics Pvt.Ltd.	<u>B) Share Capital Partly Paid Up:-</u> Rs. 2,00,00,000	A.Y.2012-13 A.Y.2012-13	143(3) 147	RS. 78,22,80,000 1)Rs. 3,90,00,000 2) Rs. 3,90,000	Share Capital Advance Received Commission Expense (3.9 Cr @ 1%)	deleted NA	ITAT (Assessee herein at Sl. No. 9) C.I.T(A)
Delight Resorts Pvt.Ltd.		<u>A.Y. 2012-13:-</u> <u>Advance Received</u>						
	Reinforce Recruiter Pvt.Ltd.	Rs. 5,50,00,000	A.Y.2012-13	147	Rs. 4,50,00,000	Current Liabilities - Unexplained credit u/s 68	NA	C.I.T(A)
	Marvelous Cement Pvt Ltd	Rs. (5,70,00,000)	A.Y.2012-13	147	Rs. 2,58,86,811	Commission Income	NA	C.I.T(A)
Jingle Bells Aluminium Pvt.Ltd.		<u>A.Y. 2012-13:-</u> <u>Share Capital:-</u>						
	Rose Capital Services Pvt.Ltd.	Rs 12,00,00,000	A.Y. 2012-13	147	Rs. 72,00,00,000	Share Capital	NA	C.I.T(A)
	CLASSIC TRANSPORTATION PRIVATE LIMITED	Rs. 12,00,00,000	A.Y. 2012-13	147	Rs. 1,04,00,000	Commission Income(Rs 52 Cr @2%)	NA	C.I.T(A)
	PITTIE STRIPS PRIVATE LIMITED	Rs. 12,00,00,000	A.Y. 2012-13	147	Rs. 20,00,00,000	Unexplained Money U/s 69A	NA	C.I.T(A)
	BSN Capital Services Pvt.Ltd.	Rs. 12,00,00,000	A.Y. 2012-13	147	Rs. 72,50,00,000	Share Capital	NA	C.I.T(A)
Kasper Information Technology Pvt.Ltd.		1. <u>A.Y. 2012-13:-</u> <u>A) Share Capital fully Paid Up:-</u>						
	Quadrel Infrastructure Pvt.Ltd.	Rs. 1,00,00,000	A.Y. 2012-13	147	Rs. 73,70,07,363	Share Capital & Unexplained Credit	NA	C.I.T(A)
	Boost Minerals & Mining Pvt.Ltd.	Rs. 20,00,00,000	A.Y. 2012-13	147	RS. 4,04,000	Commission Income(debit & credit Rs8.08 Cr @ 0.5%)	NA	C.I.T(A)
	Houston Buildwell Pvt.Ltd.	Rs. 20,00,00,000	A.Y. 2012-13	147	RS. 92,00,000	Commission Income (Share Capital Rs 46 Cr @ 2%)	NA	C.I.T(A)

	Quadrel Infrastructure Pvt.Ltd.	<u>B) Share Capital Partly Paid Up:-</u> Rs. 2,00,00,000	A.Y. 2012-13	147	Rs. 73,70,07,363	Share Capital & Unexplained Credit	NA	C.I.T(A)
Kasper Information Technology Pvt.Ltd.		<u>2. A.Y. 2013-14:-</u>						
	Landsky Real Estate Pvt.Ltd.	<u>A) Share Capital converted into Partly Paid Up to Fully paid up</u> Rs. 8,00,00,000	A.Y. 2013-14	143(3)	Rs. 18,60,00,000	Share Capital	confirmed	ITAT (Assessee herein at Sl. No. 8)
Sintex Consumer Electronics Pvt.Ltd.		<u>1. A.Y. 2012-13:-</u>						
		<u>A) Share Capital:-</u>						
	Jingle Bells Aluminium Pvt.Ltd.	Rs. 4,55,70,000 (bonus)	A.Y.2012-13	143(3)	Rs. 62,00,00,000	Share Capital	Fresh Addition on account of alleged commission income	ITAT (Assessee herein at Sl. No. 5)
	Angel Cement Pvt.Ltd.	Rs. 4,37,10,000 (bonus)	A.Y.2012-13	143(3)	Rs. 120,70,00,000	Share Capital	Deleted	ITAT (Assessee herein at Sl. No. 1)
	Frozen Iron & Steel Pvt.Ltd.	Rs. 9,00,00,000	A.Y.2012-13	147	Rs. 1,00,00,000	Alleged Accommodations Entries	NA	C.I.T(A)
	Reinforce Recruiter Pvt.Ltd.	Rs. 9,00,00,000	A.Y.2012-13	147	Rs. 4,50,00,000	Current Liabilities - Unexplained credit u/s 68	NA	C.I.T(A)
STARLIGHT CONSUMER ELECTRONIC PRIVATE LIMITED		<u>1. A.Y. 2012-13:-</u>						
		<u>A) Share Capital Fully paid up</u>						
	GLOBUS REALINFRA PVT LTD	Rs. 15,00,00,000	A.Y. 2012-13	143(3)	Rs. 98,49,40,000	Share capital	Deleted	ITAT (Assessee herein at Sl. No. 17)
	TREMENDOUS MINING & MINERALS PRIVATE LIMITED	Rs. 15,00,00,000	A.Y. 2012-13	147	Rs. 25,00,00,000	Share Capital	NA	C.I.T(A)
	SUPER STAR AGENCY PRIVATE LIMITED	<u>B) Share Capital Partly Paid Up</u> Rs. 75,00,000	A.Y. 2012-13	143(3)	Rs. 42,25,00,000	Share Capital	Deleted	ITAT (Assessee herein at Sl. No. 15)

Stylish Constructi on Pvt.Ltd.		1. <u>A.Y. 2012-13:-</u>						
		<u>B) Other Current Liabilites</u>						
	Marvelous Cement Pvt.Ltd.	Rs 5,70,00,000	A.Y.2012-13	147	Rs. 2,58,86,811	Commission Income	NA	C.I.T(A)
	Matchless Infrastruct ure Pvt.Ltd.	Rs. 5,00,000	A.Y.2012-13	147	Rs. 4,63,00,000	Other current liabilities	NA	C.I.T(A)
Sukhna Real Estate Pvt.Ltd..		<u>A.Y. 2012-13:-</u>						
		<u>A) Share Capital:-</u>						
	Delight Resorts Pvt.Ltd.	Rs.8,68,80,000 (Bonus)	A.Y.2012-13	143(3)	1. Rs. 10,00,00,000 2. RS. 66,56,47,519 3. RS. 5,22,890	Share Capital Advance Received Unverifiable Expenses	Deleted	ITAT (Assessee herein at Sl. No. 2)
	Sunlight Tour & Travel Pvt.Ltd.	Rs. 2,89,60,000 (Bonus)	A.Y.2012-13	143(3)	Rs. 52,01,68,000	Share Capital		ITAT (Assessee herein at Sl. No. 14)
	Navayuga Consultanc y Pvt.Ltd	Rs. 36,20,000 (Bonus)	A.Y.2012-13	147	Rs. 15,00,00,000	Share Capital	NA	C.I.T(A)
Angel Cement Pvt.Ltd.	Rs. 30,00,00,000	A.Y.2012-13	143(3)	Rs. 52,01,68,000	Share Capital		ITAT (Assessee herein at Sl. No. 1)	
Sukhna Steel Pvt Ltd		<u>A.Y. 2012-13:-</u>						
		<u>A) Share Capital</u>						
	TRACK CASTING (INDIA) PRIVATE LIMITED	Rs. 19,60,00,000	A.Y.2012-13	143(3)	1) Rs. 31,00,00,000 2) Rs.7,75,000	Share capital Commission	deleted deleted	ITAT (Assessee herein at Sl. No. 19) ITAT
	TREMEND OUS MINING & MINERALS PRIVATE LIMITED	Rs. 40,00,000	A.Y. 2012-13	147	Rs. 25,00,00,000	Share Capital	NA	C.I.T(A)
	JAWAHAR CREDIT & HOLDINGS PRIVATE LIMITED	Rs.1,58,000 (BONUS)	A.Y. 2012-13	143(3)	Rs. 73,50,00,000	Share Capital	Fresh Addition on account of alleged commission income	ITAT (Assessee herein at Sl. No. 4)
Sunlight Tour & Travel Pvt.Ltd.		<u>A.Y. 2012-13:-</u>						
		<u>A) Share Capital:-</u>						

	Sukhna Real Estate Pvt.Ltd.	Rs. 5,46,84,000 (bonus)	A.Y.2012-13	143(3)	Rs. 80,63,40,000	Share Capital	Deleted	ITAT (Assessee herein at Sl. No. 12)
	Navayuga Consultancy Pvt.Ltd	Rs. 5,46,84,000 (bonus)	A.Y.2012-13	147	Rs. 15,00,00,000	Share Capital	NA	C.I.T(A)
	Delight Resorts Pvt.Ltd.	Rs. 1,08,00,000 (bonus)	A.Y.2012-13	143(3)	1. Rs. 10,00,00,000 2. RS. 66,56,47,519 3. RS. 5,22,890	Share Capital Advance Received Unverifiable Expenses	Deleted	ITAT (Assessee herein at Sl. No. 2)
	Janitor Infrastructure Pvt.Ltd.	Rs. 20,00,00,000	A.Y.2012-13	147	Rs. 36,00,00,000	Share Capital converted partly to fully	NA	C.I.T(A)
SUPER STAR AGENCY PRIVATE LIMITED		<u>A.Y. 2012-13:-</u> <u>A) Share Capital Fully paid up:</u>						
	BNR INFOTECH PRIVATE LIMITED	Rs. 5,00,00,000	A.Y. 2012-13	153C r.w.s 153A	Rs. 1,00,00,000	Sale of share	NA	C.I.T(A)
	JAWAHAR CREDIT & HOLDINGS PRIVATE LIMITED	Rs. 13,50,00,000	A.Y. 2012-13	143(3)	Rs. 73,50,00,000	Share Capital	Addition u/s 68 deleted - Fresh Addition on account of alleged commission income	ITAT (Assessee herein at Sl. No. 4)
	SAVROLI FINVEST LIMITED	Rs. 6,50,00,000	A.Y. 2012-13	147	Rs. 80,00,00,000	Share Capital	NA	C.I.T(A)
		<u>B) Share Capital Partly Paid Up</u>						
	STARLIGHT CONSUMER ELECTRONIC PRIVATE LIMITED	(b) Rs. 75,00,000	A.Y. 2012-13	143(3)	1) Rs. 32,25,00,000 2) Rs. 30,18,00,000	Share Capital Current Liabilites	Deleted Deleted	ITAT (Assessee herein at Sl. No. 10) ITAT
Supreme Placement Services Pvt.Ltd.		<u>2. A.Y. 2012-13:-</u> <u>A) Share Capital fully Paid Up:-</u>						
	Stylish Construction Pvt.Ltd.	Rs. 4,82,19,600 (bonus)	A.Y. 2012-13	143(3)	1. Rs. 30,00,00,000 2. Rs. 31,60,00,000	Share Capital: Other Current Liabilites	deleted	ITAT (Assessee herein at Sl. No. 11)

Globus Realinfra Pvt Ltd (Formerly Known As Sur Buildcon Pvt Ltd)		<u>2. A.Y. 2012-13:-</u>						
		<u>A) Share Capital fully Paid Up:-</u>						
	TREMENDOUS MINING & MINERALS PRIVATE LIMITED	Rs. 3,40,40,000 (bonus)	A.Y. 2012-13	147	Rs. 25,00,00,000	Share Capital	NA	C.I.T(A)
	JAWAHAR CREDIT & HOLDINGS PRIVATE LIMITED	Rs. 25,00,00,000	A.Y. 2012-13	143(3)	Rs. 73,50,00,000	Share Capital	Addition u/s 68 deleted - Fresh Addition on account of alleged commission income	ITAT (Assessee herein at Sl. No. 4)
	BNR INFOTECH PRIVATE LIMITED	Rs. 15,00,00,000	A.Y. 2012-13	153C r.w.s 153A	Rs. 1,00,00,000	Sale of share	NA	C.I.T(A)
	SUKHNA STEEL PRIVATE LIMITED	Rs. 2,00,00,000	A.Y. 2012-13	143(3)	Rs. 26,16,80,000	Share Capital	deleted	ITAT (Assessee herein at Sl. No. 13)
	<u>B) Share Capital Partly Paid Up:-</u>							
TREMENDOUS MINING & MINERALS PRIVATE LIMITED	Rs. 35,00,000	A.Y. 2012-13	147	Rs. 25,00,00,000	Share Capital	NA	C.I.T(A)	
TRACK CASTING INDIA PRIVATE LIMITED		<u>1. A.Y. 2012-13:-</u>						
		<u>A) Share Capital:</u>						
JAWAHAR CREDIT & HOLDINGS PRIVATE LIMITED	Rs. 10,00,00,000	A.Y. 2012-13	143(3)	Rs. 73,50,00,000	Share Capital	Addition u/s 68 deleted - Fresh Addition on account of alleged commission income	ITAT (Assessee herein at Sl. No. 4)	

29. Under these facts, the identity and existence as well as source of the credit and the creditworthiness stand fully discharged in cases of all the assessee-companies. The

Department cannot blow hot and cold for making similar additions in the hands of the investor/lender company u/s.68 on the same amount and then again treating it to be bogus credit entry or unaccounted money of the assessee company.

30. Apart from that, he submitted that the assessee-companies have furnished the bank statements of the investor/lender companies which prove beyond doubt that the investors/lenders had adequate funds for making the impugned investments/deposits in the assessee-companies. Further, the Assessee(s) have also filed the audited accounts of the investor/lender companies which clearly depict that such investors/lenders had sufficient net worth (i.e. share capital plus reserves & surplus) and/or borrowings to make the impugned investments/deposits in the Assessee(s) herein. As held by the Hon'ble Bombay High Court in the case of PCIT vs. Ami Industries (supra), cited supra, that it is not necessary that the investments/loan should be made by the investors/lenders out of their taxable income only. The same may be made out of borrowed funds. Therefore, the objections raised by the Ld. A.O.s that in the instant case that the bank statements of the investor/lender companies revealed that they had received huge amounts from other companies which were subsequently transferred to the Assessee(s) herein is of no aid to the Department, On the contrary, the same only goes to show the availability of adequate funds (whether out of borrowed funds or funds received in the form of share capital by the investors/lenders from other entities) in the

bank accounts of the investors/lenders to make the impugned investments/loans to the Assessee(s) herein. Since the Assessee(s) herein filed cogent documentary evidences duly discharging their onus of establishing the necessary ingredients of section 68 which remained unrefuted/uncontroverted by the A.Q(s), and hence no liability u/s 68 could be legally fastened upon the Assessee(s) unless the A.O(s) brought on record tangible material/evidence to prove that the amounts, which had been received by the investors/lenders from their sub-investors/sub-lenders were actually received by such sub-investors/sub-lenders from the Assessee(s) herein and that the same represented unaccounted funds of the Assessee(s) herein from unexplained sources.

31. In so far as the cases of the assessee's pertaining to Assessment Year 2013-14, in order to prove the burden of identity and creditworthiness of the creditors and the genuineness of the transaction with reference to transaction between assessee and creditors, the same cannot be extended to include source of such creditor for the purpose of Section 68. After referring to the various judgments, the judicial principles summed up by him are as under:

- (i) In order to establish the receipt of cash credit as required under section 68, the assesses must satisfy three important conditions, namely, (a) identity of the creditor/investor, (b) genuineness of the transaction,

and (c) financial capability of the person giving the cash credit to the assessee, i.e., the creditworthiness of the creditor/investor.

- (ii) The burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor/investor.
- (iii) The creditor's/investor's creditworthiness has to be judged, vis-a-vis, the transactions, which have taken place between the assessee and the creditor/investor, and it is not the business of the assessee to find out the source of money of his creditor/investor or of the genuineness of the transaction, which took place between the creditor/investor and sub-creditor and/or creditworthiness of the sub-creditors.
- (iv) It is not the burden of the assessee to prove that the money advanced/invested by the creditor/investor is properly taxed.
- (v) Once the assessee establishes that the assessee has received the impugned amount from the creditor/investor by way of cheques, the assessee must be taken to have proved that the creditors/investors had the creditworthiness to advance the loans/share capital. Thereafter, the burden shifts to the A.O. to prove the contrary.

- (vi) On failure on the part of the creditors/investors to show that their sub-creditors and creditworthiness to advance the said amounts to the assessee, these amounts as a corollary, cannot under the law, be treated as the assessee's income from the undisclosed sources, when there is neither direct nor circumstantial evidence on record that the said loan amounts/share capital actually belongs to, or are owned by, the assessee.
- (vii) In order to fasten liability on the assessee, the A.O is required to show that the amounts, which have come to the hands of the creditors/investors from the hands of the sub-creditors, are actually received by the sub-creditors from the assessee.

32. Applying the above judicial principles to the cases at hand, the Assessee herein filed detailed documentary evidences in the form of duly signed confirmation of investors/lenders (parties), details of PAN, copies of ITR, duly establishing the identity of the parties and genuineness of the transactions. The Assessee also filed bank statements of the parties duly establishing the creditworthiness of the parties to invest in the share capital of or advance loans to the Assessee Companies. Thus, the Assessee effectively discharged the burden cast upon them u/s 68 of proving identity of the investors, the genuineness of the transactions and the creditworthiness of the parties with respect to the transactions that took place between the Assessee and the

investors. For the cases pertaining to the period prior to A.Y. 2013-14, it was not the Assessee's business to find out or prove the source of funds of the investors/lenders. Since the Assesses filed the bank statements of the parties conclusively proving that the impugned sums were received through normal banking channels from the bank accounts of the parties, the burden of proving the genuineness of the transactions between the Assessee and the parties and the creditworthiness of the parties to invest in the share capital of the Assessee Companies stood discharged. Once the Assessee established the identity of the parties, the genuineness of the transactions and the creditworthiness of the parties to invest in the share capital of or advance loans to the Assessee Companies, the burden shifted to the Revenue to prove the contrary. The Ld. A.O has failed to discharge the secondary onus of demolishing/disproving the genuineness of the documentary evidences filed by the Assessee. As held In the cases cited above, before fastening any liability upon the Assessee u/s 68, the A.Os were required to show by bringing on record tangible material that the amounts received as share capital/loans from the investors/lenders actually emanated from the coffers of the Assessee or represented the undisclosed income of the Assessee.

33. Though the *proviso* to Section 68 inserted by Finance Act, 2012 w.e.f. 01.04.2013 casting the additional onus on the assessee of proving the source of the source raising the

share subscription cannot be held to be retrospective which has been held by Hon'ble Bombay High Court in the case of **CIT vs. M/s. Gagandeep Infrastructure Pvt. Ltd. (2017) 80 taxmann.com 272 (Bombay)** wherein it was observed and held as under:

"...(e) We find that the proviso to Section 68 of the Act has been introduced by the finance Act 2012 with effect from 1st April, 2013. Thus, it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the

genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely exports (Pj Ltd.,(supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then It is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

(f) In the above circumstances and particularly in view of the Concurrent finding of fact arrived at by the Cl. T(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law.”

34. Apart from that, assessee has successfully established the source of the source even for the cases pertaining to Assessment Year 2013-14 which is evident from the following documentary evidences.

Name of the Assessee	A.Y & Quantum of additions u/s 68	Names of the Investor/lender companies	Documents furnished before the lower authorities with respect to the investors/lenders	PB Reference (ITAT)
Delight Resorts Pvt. Ltd.	A.Y. 2014-15: <u>Advance Received- Rs. 37.70 crores:</u> (i) Rs. 3.70 crores (ii) Rs. 34 crores	(i) Bhisham Energy Ltd. (ii) Janitor Infrastructure Pvt. Ltd.	(i) Confirmation/ ITR/ Bank statement/ Audited Accounts (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts/ Asst. Order	PB-3B Pgs. 1-14 Pgs. 15-30
Kasper Information Technology Pvt. Ltd.	A.Y. 2013-14 <u>Share Capital – Rs. 16 crores</u> (i) Rs. 8 crores (ii) Rs. 8 crores	(i) Landsky Real Estate Pvt. Ltd. (ii) Quadrel Infrastructure Pvt. Ltd.	(i) Confirmation/ ITR/ Bank statement/ Audited Accounts/ Asst. Order 143(3) (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts/ Asst. Order 143(3)	PB-7B Pgs. 1-24 Pgs. 25-39
Landsky Real Estates Pvt. Ltd.	A.Y. 2013-14 <u>A. Share Capital – 16 crores</u> (i) Rs. 8 crores (ii) Rs. 8 crores <u>B. Current Liabilities – Other payables</u> (i) Rs. 1.30 crores (ii) Rs. 1.30 crores	(i) Winfields Iron & Steel Pvt. Ltd. (ii) Quadrel Infrastructure Pvt. Ltd. (i) Cantabile Minerals & Minings Pvt. Ltd. (ii) Angel Cement Pvt. Ltd.	(i) Confirmation/ ITR/ Bank statement/ Audited Accounts/ Asst. Order 143(3) (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts/ Asst. Order 143(3) (i) Confirmation/ ITR/ Bank statement/ Audited Accounts (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts	PB-8B Pgs. 1-15 Pgs. 16-29 Pgs. 30-43 Pgs. 44-58
Globus Real Infra Pvt. Ltd. (earlier known as Sur Buildcon Pvt. Ltd.)	A.Y. 2013-14 <u>A. Share Capital – 5.60 crores:</u> (i) Rs. 1.20 crores (ii) Rs. 1.40 crores (iii) Rs. 80 lacs (iv) Rs. 1 crore (v) Rs. 1.20 crores <u>B. Unsecured Loan – Rs. 2.955 crore</u> (i) Rs. 1.165 crores	(i) KBN Infrastructure Pvt. Ltd. (ii) Tremendous Mining & Minerals Pvt. Ltd. (iii) NRA Iron & Steel Pvt. Ltd. (iv) Vistrat Real Estate Pvt. Ltd. (v) UNA Power Pvt. Ltd. (i) Vistrat Real Estate Pvt. Ltd.	(i) Confirmation/ ITR/ Bank statement/ Audited Accounts/Asst. Order (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts (iii) Confirmation/ ITR/ Bank statement/ Audited Accounts (iv) Confirmation/ ITR/ Bank statement/ Audited Accounts (v) Confirmation/ ITR/ Bank statement/ Audited Accounts	PB-18B Pgs. 1-21 Pgs. 22-42 Pgs. 43-62 Pgs. 63-84 Pgs. 85-102 Pgs. 63, 67-

	(ii) Rs. 80 lacs (iii) Rs. 99 lacs	(ii) Adamine Construction Pvt. Ltd. (iii) Super Star Agency Pvt. Ltd.	Accounts/ Asst Order (i) Confirmation/ ITR/ Bank statement/ Audited Accounts (ii) Confirmation/ ITR/ Bank statement/ Audited Accounts (iii) Confirmation/ ITR/ Bank statement/ Audited Accounts	79, 80-84, 103-105 Pgs. 106-124 Pgs. 125-143
--	---------------------------------------	--	--	--

35. Thus, he submitted that in all these cases no addition u/s.68 can be made on the following grounds:-

(i) The Assessee herein have furnished detailed documentary evidences duly discharging their onus of establishing the identity and creditworthiness of the investors and the genuineness of the transactions.

(ii) The Department has failed to bring on record any adverse material to reject/disprove the explanations and evidences submitted by the Assessee except harping upon the non-service of notices issued u/s 133(6) in few cases which as judicially opined is not sufficient reason in itself to invoke section 68.

(iii) The addresses of most of the investors/lenders had undergone a change resulting in the non-service of notice. The A.O has failed to inquire into the said fact.

(iv) The subscribers to the share capital or lenders (as the case may be) are duly incorporated bodies and are assessed to tax. They do exist and the details of their

names, PAN and ITR acknowledgment, bank statements and assessment orders have been duly filed with the Ld. A.O.

(v) Several investor/lender companies are also Assessee herein which once again proves their identity and existence.

(vi) The investments made by the investors/lenders in the Assessee companies have been duly confirmed by the investors/lenders and their confirmations have been placed on record.

(vii) The subscribers to the share capitals did subscribe to the share capital of the Assessee-companies and shares were duly allotted to them in most of the cases.

(viii) There is no denial at any stage of the assessment proceedings by any of the investors/lenders of having deposited money in the Assessee-Companies.

(ix) The impugned amounts have been received through undisputed banking channels.

(x) There is no cash deposit in the bank account of the parties from whom the impugned amounts by way of share capital/ share premium/loans have been received.

(xi) The documents submitted by the Assessee(s) establish that the money came from the investor's/lender's account and is nowhere connected with the Assessee companies.

(xii) There is no proof or evidence to suggest that the impugned sums actually emanated from the coffers of the Assessee companies or represented the undisclosed incomes of the Assessee companies.

(xiii) The A.Os have not brought on record or confronted the Assesseees with any such money trail or calculation or derivation to show that the impugned share capital/ loans & advances (as the case may be) received by the Assesseees represented the unaccounted money of the Assesseees routed into their business in the form of share capital/loans & advances.

(xiv) The assessments of several investor/lender companies stand completed u/s 143(3) of the Act wherein the source of funds with the investor/lender companies and the investments made in the Assessee company(ies) have been accepted by the Department. Kindly see the details of assessments of the investor companies tabulated in Annexure 1 to this submission. The assessment orders of the investor companies were filed before the revenue authorities and form a part of the departmental records. Thus, in light of the judgment of the coordinate bench of the Hon'ble ITAT, Delhi in the case of Vidya Prakashan Mandir Pvt. Ltd. vs. PCIT (supra), it cannot be held that the nature and source of credit from the investor/subscribing companies are not proved.

(xv) In the cases of other investor/lender companies (kindly refer to the summary of the assessment details of

the investors/lenders in Annexure 1) wherein additions have been made in their hands u/s 68 in assessments framed u/s 143(3)/147 in their respective cases on account of share capital/loans received by such companies treating the same as belonging to and representing the undisclosed income of such companies, the same funds (or part thereof) when received by the Assessee herein as share capital/loans from such companies cannot be once again added in the hands of the Assessee companies u/s 68 by treating the same as belonging to and representing the undisclosed/unaccounted funds of the Assessee companies at the same point in time (as has happened in the instant case). Thus, there is no clarity in the stand of the Department w.r.t. the alleged ownership of the impugned funds.

(xvi) The reasons given by the A.Os in making the impugned additions are generic in nature and not backed by any concrete evidence.

36. On the issue of share premium, he submitted that it has been added by the Assessing Officer u/s.68 of the Hon'ble Delhi High Court in the case of **Pr. CIT vs. A.R. Leasing Pvt. Ltd. in ITA No. 361/2017 Dated: 03.07.2017** wherein it was held that if the A.O. disregards the documents furnished by the assessee to discharge onus u/s. 68 and comes to the conclusion that transaction of receiving money as share capital was not a genuine one primarily because the premium charged by the Assessee was much higher than the prevalent

market trend, the action of the A.O was not tenable unless the A.O had brought on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee. Since the provisions of sec 56(2)(viib) of the Act is introduced w.e.f from 01.04.2013 cannot be applied retrospectively. Reliance was placed on decision of Hon'ble Bombay High Court in the case of CIT Vs Green Infra Limited ITA No. 1162 of 2014 Dt: 16.01.2017 and CIT vs. M/s. Gagandeep Infrastructure Pvt. Ltd. (PB 95-98) MANU/MH/1274/2017 : (2017) 394 ITR 680 (Bom). Similarly, in the case of **CIT vs. Anshika Consultants Pvt. Ltd. (2015) 93 CCH 16 (Del HC)**, the Hon'ble Jurisdictional High Court opined that the fact that the assessee company charged higher premium or not, should not have been subject matter of the enquiry—Instead, issue must involve amount invested by share applicants were from legitimate sources or not. Reference is further craved to the judgment of the Hon'ble Madhya Pradesh High Court in the case of Pr. CIT (1), **Indore v. Chain House International (P) Ltd. [2018] 98 taxmann.com 47/ [2019] 408 ITR 561 (MP)** wherein the Hon'ble High Court ruled that once the genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on the ground that shares were issued at excess premium.

37. Regarding Revenue's ground challenging the deletion of the addition made by the Assessing Officer to the extent of

increase in share capital arising on account of issue of bonus shares. He submitted that it is involved in the following cases:-

Sl. No.	Name of the Assessee & nature of addition made by the Ld. A.O	A.Y	Total Addition u/s 68 (share capital/share premium plus bonus shares)	Addition u/s 68 on account of issue of bonus shares	Confirmation (C) or Deletion (D) by the C.I.T (A) of the addition u/s 68 on account of bonus issue	Ground No. of the Department's Appeal challenging the deletion of addition u/s 68 on account of bonus issue	PB - page reference (Balance Sheet showing bonus issue)
1.	Sukhna Real Estates Pvt. Ltd. Share Capital (including bonus shares of Rs. 20,63,40,000) – section 68	2012-13	80,63,40,000	20,63,40,000	D	Revenue's Appeal Ground No. 2	<i>PB-12A, page 11</i>
2.	Sukhna Steel Pvt. Ltd. Share capital (including bonus shares of 16.80 lacs)– section 68	2012-13	26,16,80,000	16,80,00,000	D	Revenue's Appeal Ground No. 1	<i>PB-13A, page 12</i>
3.	Globus Realinfra Pvt. Ltd. (Sur Buildcon) Share Capital (including bonus shares of Rs. 17,09,40,000/-) - sec 68	2012-13	98,49,40,000	17,09,40,000	D	Revenue's Appeal Ground No. 1	<i>PB-17A, page 12</i>
4.	Sintex Consumer Electronics Pvt. Ltd. Share Capital (including bonus shares of 18.228 crores) – section 68	2012-13	78,22,80,000	18,22,80,000	D	The deletion of addition u/s 68 to the extent of bonus issue has not been contested by the Department.	<i>PB-9A, page 10</i>
5.	Sunlight Tours & Travel Pvt. Ltd.: Share Capital (including bonus shares of 12,01,68,000) – section 68	2012-13	52,01,68,000	12,01,68,000	D	The deletion of addition u/s 68 to the extent of bonus issue has not been contested by the Department.	<i>PB-14A, page 11</i>
6.	Supreme Placement Services Pvt. Ltd. Share capital (including bonus shares of Rs. 12.43 crores) – section 68	2012-13	72,43,00,000	12,43,00,000	D	The deletion of addition u/s 68 to the extent of bonus issue has not been contested by the Department.	<i>PB-16A, page 10</i>

38. In all these cases, the Id. CIT(A) has held that Section 68 is not applicable on increase in share capital on account of issue of bonus shares. The amount representing bonus share does not represent group of any sum in the books of account of the assessee it merely denotes a transfer entry representing the capitalization on reserve and surplus and not any fresh credit in the books of the assessee and therefore it is not hit of Section 68. Regarding grounds challenged the fresh addition made by the Id. CIT(A) on account of alleged commission income @ 2% for providing facility to route transaction resulting of introduction of new source of income. He submitted that this issue is raised in assessee's appeal in the following cases:-

- (i) Jawahar Credit & Holding Pvt. Ltd. (A.Y. 2012-13) – ITA No. 5398/DEL/2019 - Assessee's Appeal.
- (ii) Jingle Bells Aluminium Pvt. Ltd. (2012-13) – ITA No. 5397/DEL/2019 – Assessee's Appeal.
- (iii) Kasper Information Technology (P) Ltd. (A.Y. 2012-13) – ITA No. 357/Del/2019.

39. To challenge this, assessee has raised identical grounds in all these cases which reads as under:

1. *That on the facts and in the circumstances of the case, the Ld. C.I.T.(A)-05, New Delhi while correctly deleting the addition of Rs. 73,50,00,000/- made by the Ld. A.O. u/s 68, erred in making fresh addition of Rs. 1,47,00,000/- to the*

income of the Appellant Company on account of alleged charges received by the Appellant Company @ 2% for providing facility to route the impugned transaction of Rs. 73,50,00,000/- purely on the basis of surmises and conjectures although the same is not backed by any substantive or tangible evidence on record.

2. *That the Ld. C.I.T.(A)-05, New Delhi acted beyond jurisdiction in enhancing income of the Appellant u/s 251(1)(a) of the Income-tax Act, 1961 (the 'Act') by introducing and assessing new source of income to the extent of Rs. 1,47,00,000/- beyond the record (i.e. the return of income and assessment order) and outside the subject matter of assessment appealed against.*

3. *That the Ld. C.I.T(A)-05, New Delhi erred in making fresh addition of Rs. 1,47,00,000/- and thus enhancing the income of the Appellant to the said extent without issuing a prior show cause notice as mandated u/s. 251(2) of the Act for providing a reasonable opportunity to the Appellant of showing cause against such enhancement, thus resulting in gross violation of principles of natural justice.*

40. Ld Counsel submitted that, it is pertinent to note here that as against the common allegation made by the Ld. A.O(s) in the 19 cases herein that the Assessee-companies have availed accommodation entries in the garb of share capital and/or loans & advances, the Ld. C.I.T (A)(being the same officer who has disposed of the appeals in all the three cases) in the aforesaid three cases has opined that the Assesseees have not availed any accommodation entries but have merely

provided facility to route the funds from Bhushan Steel Ltd. in lieu for an estimated commission income of 2%. Thus, the Ld. C.I.T(A) has implied a role reversal of the Assessee herein – whereas the A.Os have alleged that the Assessee herein are the recipients of accommodation entries, the Ld. C.I.T(A) has treated them as entry providers/ jamakharchi companies’, providing facility to route transactions in lieu of commission income. The orders of the Ld. C.I.T(A) in the said three cases to the extent the same assess fresh sources of income (being the alleged commission income @ 2% for providing facility to route funds) have been challenged by the Assessee above named in their respective appeals filed before this Hon’ble ITAT.

41. The relevant observations of the Ld. C.I.T (A) in these three cases are reproduced hereunder for the sake of ready reference:

Name of the Assessee	A.Y	Findings of the Ld. C.I.T (A)
Jawahar Credit & Holding (P) Ltd.	2012-13	<p><i>“7.8 As stated earlier, there is no worth/reserves of the appellant company nor any business carried out, the investor companies and other persons are also not carrying out any visible business activity, therefore, this is nothing but routing of its funds by the Bhushan Steel Ltd. and its related parties where neither the investors and other persons nor the appellant company are ultimate beneficiary. The funds received were given to the other companies, as soon as it is received and the assets in the balance sheet is shown in the form of investment in shares for the share application money and premium thereon received. The appellant has also not given any cogent reasoning for the fund flow shown by the A.O in his report.</i></p> <p><i>7.9 Therefore, looking to the facts and circumstances of this case where basic requirement to justify the identity, creditworthiness and genuineness of transaction has been prima facie established but looking to the fact and analysis as narrated above, these transactions are found to be routing finances of M/s. Bhushan Steel Ltd. and other persons, through appellant company and it is just paper company where appellant is not the ultimate beneficiary because it has further passed on those funds to various companies as</i></p>

			<p>shown in the flow chart.</p> <p>7.10 In view of above, it is to be stated that as per the practice and also seen in various cases, the said person (in this case appellant) charges the amount to provide such entries which is generally 2% of the total transactions. Therefore, considering that the appellant has been providing the facility to route these financial transactions, the 2% of the total amount is treated as undisclosed income of the appellant, not shown in its return of income. This comes to Rs. 1,47,00,000/-.</p> <p>7.11 Since the details have been duly provided with respect to the referred companies and the additions are out of the ambit of provisions of section 68 of the Act due to the reason that these investor companies are held to be just a paper company or conduit in the case of other investors for providing entries and routing the finances, therefore, the addition to the extent of Rs. 1,47,00,000/- is sustained for charges received in providing such entries, not disclosed by the appellant. For the balance amount, the appellant gets a relief.”</p>
Jingle Aluminium Ltd.	Bells Pvt.	2012-13	<p>“7.9 As stated earlier, there is no worth/reserve of the appellant company nor any business carried out, the investor companies are also not carrying out any visible business activity, therefore, this is nothing but routing of its funds by the Bhushan Steel Ltd. where neither the seven investor companies nor the appellant company are ultimate beneficiary. The funds received were given to other companies, as soon as it is received and the assets in the balance sheet is shown in the form of investment in shares for the share application money and premium thereon received. The appellant has also not given any cogent reasoning for the fund flow shown by the A.O in his report.</p> <p>7.10 Therefore, looking to the facts and circumstances of this case where basic requirement to justify the identity, creditworthiness and genuineness of the transaction has been prima facie established but looking to the fact and analysis as narrated above, these transactions are found to be for routing finances of M/s. Bhushan Steel Ltd., through these companies and therefore these companies are just paper companies where appellant is not the ultimate beneficiary because it has further passed on those funds to five companies as shown in the flow chart.</p> <p>7.11 In view of above, it is to be stated that as per the practice and also seen in various cases, the said person (in this case appellant) charges the amount to provide such entries which is generally 2% of the total transactions. Therefore, considering that the appellant has been providing the facility to route these financial transactions, the 2% of the total amount is treated as undisclosed income of the appellant, not shown in its return of income. This comes to Rs. 1,24,00,000/-.</p> <p>7.12 Since the details have been duly provided with respect to the referred companies and the additions are out of the ambit of provisions of section 68 of the Act due to the reason that these investor companies are held to be just a paper company or conduit in the case of other investors for providing entries and routing the finances, therefore, the addition to the extent of Rs. 1,24,00,000/- is sustained for charges received in providing such entries, not disclosed by the appellant. For the balance amount, the appellant</p>

		gets a relief.”
Kasper Information Technology (P) Ltd.	2012-13	<p>“7.8 As stated earlier, there is no worth/reserve of the appellant company nor any business carried out, the investor companies are also not carrying out any visible business activity, therefore, this is nothing but routing of its funds by the Bhushan Steel Ltd. where neither the seven investor companies nor the appellant company are ultimate beneficiary. The funds received were given to other companies, as soon as it is received and the assets in the balance sheet is shown in the form of investment in shares for the share application money and premium thereon received, which is evident from the chart reproduced earlier. The appellant has also not given any cogent reasoning for the fund flow.</p> <p>7.9 Therefore, looking to the facts and circumstances of this case where basic requirement to justify the identity, creditworthiness and genuineness of the transaction has been prima facie established but looking to the fact and analysis as narrated above, these transactions are found to be for routing finances of M/s. Bhushan Steel Ltd., through these companies and therefore these companies are just paper companies where appellant is not the ultimate beneficiary because it has further passed on those funds to five companies as shown in the chart above.</p> <p>7.10 In view of above, it is to be stated that as per the market practice and also seen in various cases, the said person (in this case appellant) charges the amount to provide such entries which is generally 2% of the total transactions. Therefore, considering that the appellant has been providing the facility to route these financial transactions, the 2% of the total amount is treated as undisclosed income of the appellant, not shown in its return of income. This comes to Rs. 92,00,000/-.</p> <p>7.11 Since the details have been duly provided with respect to the referred companies and the additions are out of the ambit of provisions of section 68 of the Act due to the reason that these investor companies are held to be just a paper company or conduit in the case of other investors for providing entries and routing the finances, therefore, the addition to the extent of Rs. 92,00,000/- is sustained for charges received in providing such entries, not disclosed by the appellant. For the balance amount, the appellant gets a relief.”</p>

42. Therefore, the Ld. C.I.T (A) in the above three cases has categorically admitted that the respective Assessees have prima facie established the necessary ingredients of section 68, viz., identity, creditworthiness and the genuineness of the impugned transactions and therefore the additions made by the A.Os are beyond the purview of section 68 of the Act. While observing as above and deleting the impugned

additions made by the respective A.Os u/s 68 of the Act, the Ld. C.I.T (A) has proceeded to introduce and assess a new source of income being the alleged undisclosed commission income of 2% allegedly earned by the respective Assesseees for providing a fluid mechanism for the transfer of funds from one company to another. The alleged commission incomes as estimated by the Ld. C.I.T (A) in the aforesaid cases do not constitute the subject matter of assessments i.e. the same have neither been offered by the Assesseees in their respective returns of income nor is there any whisper regarding the taxability of the alleged source of income in the assessment orders passed by the Ld. A.Os. Thus, the addition made by the Ld. C.I.T (A) by introducing new source of income in the form of alleged undisclosed commission income is beyond the power and authority of the Ld. C.I.T (A) as it neither arose from the assessment order nor was it raised at anytime during the assessment or appellate proceedings. Further, no show-cause notice was issued to the Assesseees before fastening such fresh liability on the Assessee companies thus resulting in gross violation of principles of natural justice.

43. He further submitted that the ld. CIT(A) has no power to enhance the investment by assessee's new source of income out of subject matter of assessment appealed against and he cannot make addition in respect of new source of income neither disclosed by the assessee in his return nor considered by the Assessing Officer. In support, he relied upon the following judgments:-

- (i) CIT Vs. Shapoorji Pallonji, (1962) 44 ITR 891 (SC)**
- (ii) CIT Vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC)**
- (iii) CIT Vs. Union Tyres (1999) 240 ITR 556 (Del)**
- (iv) CIT Vs. National Company Ltd. (1993) 199 ITR 445 (Cal)**
- (v) CIT Vs. Associated Garment Makers (1992) 197 ITR 350 (Raj)**
- (vi) Sterling Vs. ITO (1975) 99 ITR 236 (Kar)**
- (vii) Hari Mohan Sharma v. ACIT, Circle 63(1), New Delhi [2019] 110 taxmann.com 119 (Delhi-Trib).**

44. Without prejudice, he submitted that even otherwise also, since all the Assessee herein are essentially group companies under common management and/or control, the question of charging any commission income for providing facility to route the funds of another group company does not arise. The impugned additions have been made by the Ld. C.I.T(A) solely on the basis of surmises, conjectures, suspicion and on the basis of what he deems to be a prevalent practice in the market and not on the strength of any tangible material or evidence on record. Thus, in light of the settled and trite position of Law, i.e., suspicion however strong can't take the place of proof, as has been laid down in the judgments of the Hon'ble Apex Court in Lalchand Bhagat Ambica Ram vs. CIT reported in (1959) 37 ITR 288 (SC), Umacharan Shaw reported in 37 ITR 271 and Omar Salay Mohamed Sait

reported in 37 ITR 151, he urged that the impugned additions on account of alleged commission income are unsustainable in the eyes of law and as such may kindly be deleted.

45. Lastly regarding Revenue's appeal challenging the restriction of addition of Rs.23,32,813/- made by the Assessing Officer u/s.14A read with Rule 8D to Rs.5 lac in the case of Stylish Construction Pvt. Ltd. for Assessment Year 2012-13 for which the following grounds of appeal has been raised by the Revenue:-

“5. On the facts and in the circumstances of the case and in law, the Ld. C.I.T(A) erred in restricting the addition to Rs. 5 lac from Rs. 23,32,813/- made by the A.O u/s 14A of the I.T. Act, 1961 read with Rule 8D of the I.T. Rules, 1961 in spite of the fact the decision on this issue is pending in Hon'ble Supreme Court in the case of Maxopp Investment Ltd. and in view of the facts that the financial expenses and administrative expenses debited in the P&L A/c are also relatable to the investments in shares purchased.”

46. The facts in brief are that, M/s. Stylish Construction Pvt. Ltd. (hereinafter referred to as the 'Assessee' under para 5 and its sub-paras) filed its original return of income for A.Y. 2012-13 after making a **suo-moto disallowance of Rs. 2,23,660/- u/s 14A** of the Act on account of expenses attributable to exempt income. The aforesaid figure of Rs. 2,23,660/- was computed by the Assessee by aggregating the total indirect expenses debited in its Profit & Loss Account as under:-

Legal & Professional Charges	Rs. 4,790/-
E.D.P Charges	Rs. 1,00,000/-
Rates & Taxes [Rs. 5,36,706/- less Rs. 5,28,702/-(being deferred revenue expenses added back in the computation of income)]	Rs. 8,004/-
Bank Charges	Rs. 2,744/-
Director's Sitting Fees	Rs. 10,000/-
Rent	Rs. 78,000/-
Audit Fees	Rs. 16,854/-
Printing & Stationery	Rs. 300/-
Local Conveyance	Rs. 2,135/-
Staff Welfare	Rs. 833/-
TOTAL	Rs. 2,23,660/-

The Assessee is engaged in the business of supply of manpower which forms the pre-dominant part of its business activity. As would be evident from the Profit & Loss Account of the Assessee, the receipts from service charges on account of supply of manpower amounts to **Rs. 3,63,28,155/-** as against which the receipts from dividend (exempt u/s 10) amounts only to **Rs. 9,94,717/-** for A.Y. 2012-13. It was stated that, almost all the expenses incurred are directly relatable to the activity of providing manpower services and no part of the expenses is relatable, either directly or indirectly, to the earning of dividend income which as clearly evident from the financial statements of the Assessee-company constitutes a miniscule part of the total activity of the Assessee-company. However, to be on a safe side, the Assessee-company made a **suo-moto disallowance of the total indirect expenses debited in its Profit & Loss Account for the impugned A.Y. 2012-13**. It was stated that apart from the indirect expenses enlisted above, all the remaining expenses debited in the P&L A/c are directly

related to the business of supply of manpower and have no nexus whatsoever, either directly or indirectly to the earning of dividend income by the Assessee-company.

47. In the course of the assessment proceedings, the Assessee was required by the Ld. A.O to file details of the expenditure incurred for earning the exempt dividend income and also to explain as to why no disallowance was warranted u/s 14A of the Act. In response thereto, the Assessee submitted that it had made a suo-moto disallowance of Rs. 2,23,660/- u/s 14A of the Act in its return of income in connection with the dividend income of Rs. 9,94,717/- earned by it during A.Y. 2012-13. The Ld. A.O, however, in the assessment framed u/s 143(3) of the Act made an additional disallowance of Rs. 23,32,813/- u/s 14A of the Act r.w. rule 8D(2)(iii) of the Income-tax Rules, 1962 over and above Rs. 2,23,660/- already disallowed by the Assessee Company in its return of income. The said disallowance was computed by the A.O. by purportedly applying the method prescribed under Rule 8D in the manner so follows: -

Sl. No.	Particulars		Amount
1.	The amount of expenditure directly relating to income which does not form part of total income	A	Nil
2.	Expenditure on interest	B	Nil
3.	The average of value of investment income from which does not or shall not form part of the total income [(Rs. 81,70,49,580 + Rs. 20,55,39,582)/2]	C	Rs. 51,12,94,581/-
4.	The average of total assets appearing in the balance sheet of the Assessee [(Rs. 63,09,64,127 + Rs. 21,74,10,672)/2]	D	Rs. 42,41,87,400/-
5.	B X C/D		Nil
6.	½% of the average of the value of investment,	E	Rs. 25,56,473/-

	income from which does not or shall not form part of the total income.		
	Total		Rs. 25,56,473/-

48. On a perusal of the computation under Rule 8D given by the A.O, legal inference is that there are three limbs contained under Rule 8D, namely:-

- (i) expenditure directly related to the earning of exempt income;
- (ii) interest expenditure not directly attributable to any particular activity; and
- (iii) amount equal to one-half per cent of the average value of investments, income from which does not form part of total income;

It was stated that no expenses were found by the A.O to have been incurred by the Assessee with respect to expenses referred to under the first two limbs. As regards the third limb dealing with proportionate disallowance w.r.t. other indirect expenses not directly attributable to any particular income or receipt, the Ld. A.O has made a further disallowance of Rs. 23,32,813/- (i.e Rs. 25,56,473/- less Rs. 2,23,660/- disallowed *suo moto* by the Assessee) u/s. 14A by purportedly applying the formula prescribed under Rule 8D(2)(iii) of the Act overlooking the fact that the Assessee had already made a *suo moto* disallowance of the entire indirect expenses (not directly connected with the activity of supply of manpower) in its computation of income. Further, defying any logic, the Ld. A.O presumed that the Assessee had incurred total expenses of Rs. 25,56,473/- to earn exempt dividend income of Rs.

9,94,717/- . While holding as above, the Ld. A.O however, failed to record any satisfaction to the effect that having regard to the accounts of the Assessee, he was not satisfied with the correctness of the claim of the Assessee in respect of expenditure incurred in relation to exempt income.

49. On appeal before the first appellate authority, the Ld. C.I.T(A) restricted the additions made by the Ld. A.O to Rs. 5 lacs holding that the amount of disallowance u/s 14A cannot in any case exceed the exempt income, i.e., the dividend income of Rs. 9,94,717/- in the instant case. Therefore, for the sake of substantive justice, the Ld. C.I.T(A) found it reasonable and justified to restrict the disallowance u/s 14A r.w. Rule 8D to Rs. 5 lacs. The balance addition of Rs. 18,32,813/- was thus deleted by the Ld. C.I.T(A). The order of the Ld. C.I.T(A) to the aforesaid extent has been agitated in appeal by the Department before the Hon'ble ITAT.

50. Thus, Ld. Counsel submitted that without any satisfaction recorded by the Assessing Officer that the claim made by the assessee is not correct, he could not have proceeded to invoke the provisions of Rule 8D.

51. Regarding Revenue's appeal challenging alleged admission of additional evidence by the C.I.T(A) without giving opportunity to the A.O in violation of Rule 46A of the Income-Tax Rules, 1962 in the cases of Angel Cement Pvt. Ltd. (A.Y. 2012-13), Delight Resorts Pvt. Ltd. (A.Y. 2012-13) and Stylish

Construction Pvt. Ltd. (A.Y. 2012-13), which has been urged by the Department in the following cases:

Name of the Assessee	A.Y. & ITA No.	Ground of Appeal urged
Angel Cement Pvt. Ltd.	2012-13, ITA No. 4691/Del/2016	<u>Ground No. 2:</u> That the Ld. C.I.T(A) erred in admitting additional evidence under Rule 46A without giving opportunity to the A.O.
Delight Resorts Pvt. Ltd.	2012-13, ITA No. 5974/Del/2017	<u>Ground No. 3</u> That the Ld. C.I.T(A) erred in accepting the evidences filed during the appellate proceedings without obtaining comments of the A.O in remand proceedings, thereby violating Rule 46A of the IT Rules, 1962
Stylish Construction Pvt. Ltd.	2012-13, ITA No. 5744/Del/2016	<u>Ground No 4</u> That the Ld. C.I.T(A) erred in accepting additional evidence under Rule 46A without giving any opportunity to the A.O in respect of evidences of shareholders assessment proceedings & supporting documents.

52. In regard to the above, it has been submitted before us that no additional evidences were submitted by the aforesaid Assessee(s) in course of the appellate proceedings before the Ld. C.I.T (A). The impugned evidences referred to by the Ld. A.O(s) as additional evidences in the Departmental Appeals in the aforesaid cases are the Assessment Orders passed by the Income-tax Department in the cases of the investors/lenders. Since these orders were passed by the Income-tax Department, they constitute part of the Records of the Income-tax Department and cannot be construed as additional evidences. Therefore, the contention of the

Department that additional evidences were filed by the aforesaid Assessee(s) in course of the appellate proceedings before the Ld. C.I.T(A)(s) is devoid of any merit and as such, the Departmental appeal in this respect deserves to be dismissed.

Arguments on behalf of the Revenue:

53. On the other hand, ld. CIT-DR after referring to the various observation of the Assessing Officer submitted that, in sums and substance, the onus was completely upon the assessee to prove the identity and creditworthiness of the investors/creditors and the genuineness of the transaction. Though the assessee has done all the paper work but in several cases there were same addresses of the investors and in some case notices remained uncomplied with and assessee has failed to produce the directors of the investor companies. One of the most important ingredients to discharge the onus was to prove the creditworthiness of the investor company, which here in this case Assessing Officer has amply demonstrated that investor companies had hardly carried out any business operation and in their income tax returns, the income shown was negligible and none of these had that kind of book value so as to justify such a higher share premium. These companies were nothing but dummy and paper companies and conduit to give accommodation entry. The perusal of the bank statement revealed that they are receiving funds from various other companies and transferring the fund

to other companies and they were acting like a conduit which normal happens in accommodation entries.

54. In so far as the contention of the ld. counsel that there has been rotation of funds from Bhushan Energy Ltd. to other group companies in the form of loan and advances given to the various companies who in turn have subscribed shares and paid share premium and the same money again has been routed back to Bhushan Energy Ltd., can only be proved from fund flow statement which was not there before the Assessing Officer. The additional evidences which have been filed in the form of cash flow fund and the correlation with their respective bank statements etc., should be remanded back to the Assessing Officer for proper verification and examination in order to establish the credibility of this theory of fund flowing from one group to other and the source of these fund is coming from Bhushan Energy Ltd. which has been claimed to be already accounted for. Thus, she submitted that in all fitness matter should be remanded back to the file of the Assessing Officer.

DECISION

55. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as extensive materials referred to before us at the time of hearing. We had already discussed in the foregoing paragraphs the issues involved in all the appeals filed by the Department as well as by the assessee, and we have found

that in all the appeals the similar facts are permeating and issues involved are interlinked and inextricably interconnected. The major issue pertains to addition u/s.68 in the form of share capital/share premium and loan and advances; and in assessee's appeal, addition have been made on account of alleged undisclosed commission income which has been added by the Id. CIT(A) exercising his power of enhancement u/s.251(1)(a). The grounds in all the appeals have already been summarized above in the foregoing tables and since same material facts and issue are permeating through; therefore, we are giving our consolidated decision which would apply mutatis mutandis in all the appeals where similar issues are involved.

56. The common grounds taken by the Assessing Officer almost in all the appeals for making the addition u/s.68 in the hands of various assessee's which may be broadly culled out from the assessment orders can be summarized in the following manner:

- That the Assessee introduced its unaccounted/undisclosed funds in its books of account in the form of share capital and/or loan & advances.
- That the onus is on the Assesses to prove the identity and creditworthiness of the investors/creditors and the genuineness of the transactions.
- That in several cases, the summons addressed to investors remained uncomplied with. The notices issued u/s. 133(6) remained uncomplied with or unserved with remarks 'does

not exist', 'left', 'address not found'.

- That the Assessee failed to produce directors of investor companies.
- That the amounts were received through private placements. Since the contributors were personally known to the Assessee, the Assessee must be aware of the whereabouts. The corporate veil needs to be lifted.
- That the Assessee failed to submit documents related to credits in the books.
- That simply furnishing PAN or Assessment particulars/address was not enough.
- That there was insufficient balance in bank accounts; that cheques issued to Assessee were cleared by way of receipt of transfer entry from another associate concern.
- That the creditworthiness of investors was not established due to the reason that all the investor companies have nominal/meager income. That most of the Investor companies have no profit-making apparatus, no business activity.
- That insofar as the advances and loans were concerned, no interest was paid, the purpose of advance was missing, huge fund transactions implied dummy transactions.
- That the anus u/s. 68 cannot be said to be discharged merely because the transaction is done through banking channels or account payee instruments.
- That in case of certain Assessees, speed post was booked from Delhi but the registered office of the investors was in

Punjab & Chandigarh. It shows that the assessee itself filed replies to notices sent u/s 133(6).

- That the registered offices of investor companies in some cases are located in different cities but are having their bank accounts operated from Delhi just to facilitate the Assessee.
- That the subscriber companies did not have creditworthiness as money seldom rests for o day in their accounts, finds its destination immediately;
- That Assessee Company, in most cases, has no business profit, negative CPS, major miscellaneous income nothing to do with business objectives of Assessee Company, no brand value, no past performance history, no future prospect-so as to attract such high premium.
- Thai the Assessee offered no explanation as to why the companies agreed to invest in unlisted company where there was no scope for making an exit out of investments.
- That the investor and Assessee Company are nothing but a creation of paper companies.
- That the person should have some sign of identification other than merely on paper These signs could be place of work, staff members, actual transaction, recognition in eye of public, sign board, etc. Actual identity and business does not get proved by these passive documents when in fact no actual or passive business is being carried on.
- That the Assessee has not brought anything on record to support that any dividend has been declared by it,
- That a perusal of the bank statements of the investor

companies reveal that they are receiving huge amounts from various other companies and transferring funds to other companies.

57. In so far as the finding of the Id. CIT (A) while deleting the addition u/s.68 are also by and large and similar which can be broadly be summarized as under:

- That the basic requirement to justify identity, creditworthiness and genuineness of the transactions in the case of the Assessee are prima facie established. Relevant documents were furnished by the Assessee. The Assessee filed copies of confirmation, bank statements, P&L A/c, Balance Sheet, Assessment Orders of the investors/lenders to establish source of funds in the hands of investor/lender companies.
- That the A.O has not brought any adverse material to reject the explanations and evidences submitted by the Assessee except alleging the non-compliance of notices issued 131 and 133(6) in case of certain investors.
- That neither the Assessee nor the investor companies are ultimate beneficiaries but there is routing of funds from Bhushan Steel Ltd. and/or Bhushan Energy Ltd. [specifically held so in 3 cases viz. Jawahar Credit & Holdings Pvt. Ltd. (A.Y. 2012-13), Jingle Bells Aluminium Pvt. Ltd. (A.Y. 2012-13) and Kasper Information Technology Pvt. Ltd. (A.Y. 2012-13)]
- That nothing is mentioned in the assessment order regarding any statement of any person providing entry to the Assessee.
- That there is no denial at any stage of assessment proceedings by any of the subscribers of share capital of having deposited money in the Assessee company.

- That replies to notices issued u/s 133(6) were received from several investor companies.
- That no material has been brought on record by the A.O to conclusively prove that the share capital originated from Assessee Company.
- The documents submitted conclusively establish that the money came from the investor's/depositor's account and nowhere connected with the Assessee Company.
- That there is no cash deposit in the bank accounts of the parties from whom share capital/ loan is received.
- That the entire amount was received through normal banking channels.
- That the depositors have also confirmed of having deposited money in the company which confirmations also reveal source of funds, particulars of bank accounts through which payments have been received and income tax particulars.
- That the Assessee has allotted shares for share application monies received.
- That there is no mandate of law to look into the source of source for the A.Ys prior to A.Y. 2013-14.
- That the Assessee cannot be fastened with liability u/s 68 unless a causal connection between the cash deposit in the bank account of the investor (if any) and the Assessee is established.
- That where complete particulars of the share applications are furnished to the A.O and the A.O has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false, then no addition can be made in the hands of the company.

- That the Investor companies are having adequate reserves to make investments.
- That the source of funds by the investor companies in the Assessee in its share capital stands explained.
- That the investor companies are all assessed to tax in their respective jurisdictions.
- That the judgment of Stellar is applicable only where shares are issued in the names of non-existing persons, which is not the situation in the instant case.
- That without proof of having introduced untaxed money by promoters or dubious antecedents, adverse view cannot be taken.
- That the provisions of section 68 are not applicable for bonus shares since the amount in question does not represent any fresh credit but only a transfer entry representing capitalization of reserves and surplus and is not hit by section 68.
- That the Assessee failed to establish the identity & creditworthiness of the investors/lenders and the genuineness of the transactions.
- That few investors/lenders did not reply to notices u/s 133(6) or attend summons u/s 131.
- That few share applicants and lender companies have same address and common directors.
- That there was no reason why the appellant could not produce principal officers/directors of companies when the entire money came from the same group and the appellant also belonged to the same group. The pattern of money movement raised suspicion of accommodation entries, page 4, para 7 of C.I.T(A)'s order in the case of Globus Realinfra Pvt. Ltd. (A.Y. 2013-14).

58. Since the additions have been made by invoking the deeming provision of Section 68, the same for sake of ready reference is reproduced as under:

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

Subsequently, the treatment of share capital amount under section 68 of the Act was amended by Finance Act, 2012, **w.e.f. 1-4-2013** to insert the following:

*“Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of **share application money, share capital, share premium or any such amount** by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless*

a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company referred to in clause (23FB) of section 10.”

59. Now *proviso* to Section 68 cast an additional onus on the assessee company for proving the source of the source of share capital/share premium which has been effective from 01.04.2013 and memorandum explaining the Finance Bill, 2012 while introducing the proviso was with an object to curb out the pernicious practice of conversion of unaccounted money through masquerade of investments in the share capital of a company especially in the cases of closely held companies. In fact, the very purpose of introduction of Section 68 in the Income-tax Act, 1961 was to bring to tax bogus credits recorded in the regular books of account maintained by the assessee for any previous year in order to camouflage black money as white money (mostly introduced into the regular books of account in the form of capital receipts such as share capital, loans, advances etc. or in the form of bogus income chargeable to tax at a lower rates) without having to pay taxes thereon or paying taxes at a lower rate. Section 68, thus has no applicability where there is no involvement of any unaccounted or undisclosed funds of the assessee which have been introduced into the books of the assessee by way of cash credit. It does not apply to cash credits which appear merely on account of rotation or movement of accounted or disclosed funds between group entities as has happened in the instant case. For section 68 to apply, the receipts should essentially be of income nature. As per trite law, section 68 cannot be made applicable to capital receipts.

60. Thus, what is to be examined is whether, the onus to prove the identity and creditworthiness of the creditors and genuineness of the transaction stands established or not, *firstly*, with regard to the documentary evidences filed to substantiate the explanation; and *secondly*, whether Assessing Officer has brought anything on record to rebut the explanation and evidences filed by the assessee or here is any prior information that all the transaction is colourable.

61. The Id. CIT-DR relying upon the order of the Assessing Officer had contended that the assessee herein has availed accommodation entries wherein they have introduced the unaccounted/undisclosed fund into their books of account in the garb of share capital and or loan and advances. However, there is not an iota of material by way of any inquiry or information from Investigation Wing that, *firstly*, above named assessee companies have been found to be beneficiary of accommodation entry in any search or survey in the case of entry operator; and *secondly*, any inquiry has been made in the case of the assessee companies wherein it has been found that these companies have taken any accommodation entry by rotating their unaccounted money or income. Though there is a rotation/movement of money from one company to another through web of group companies of Bhushan Energy Ltd. and the entities owned by common shareholder, which is a subsidiary flagship Company, Bhushan Steel Ltd. now merged with Tata Steels Ltd. The fund have flown from Bhushan Energy Ltd. through maze of group companies

whereby the funds which has been accounted in the books of Bhushan Energy Ltd. have been routed through group companies and finally have been rerouted back into the books of the Bhushan Energy Ltd. The entire chain and link involves actual movement of accounted fund of BEL in the form of share capital and or loan advances into the assessee-company herein and subsequent reintroduction of such funds into regular account of BEL to augment its capital base.

61. However, independent of that, we will first examine as to whether at the threshold, the assessees were able to discharge their primary onus cast upon them for discharging their burden of proving the nature and source of credit, i.e., identity and creditworthiness of the lender/subscriber companies and genuineness of the transaction. As discussed above the primary documents by the lender/subscriber companies have been filed which included confirmation, their bank statement, their income return, balance sheet and profit and loss account, most importantly, assessment orders passed in Lender/ Subscriber Companies for the same assessment years, that is, A.Y. 2012-13 & 2013-14 passed u/s.143(3)/147 and catena of other details. All these details have neither been controverted nor have been rebutted by the Assessing Officer. By and large identities cannot be disputed. What has been disputed is the creditworthiness and this is because, they do not have much revenue from operations and were showing marginal income. However, nowhere the Assessing Officer has disputed the funds available in their

balances sheets, duly accounted for and the source from such funds have come. All the Subscribers/ Lenders are corporate entities having separate legal identity who are regularly assessed to tax and complying with all statutory requirements. One very important fact here in this case are that in all the cases Subscribers/ Lenders Companies for the relevant assessment year scrutiny assessments have been done u/s 143(3) or the cases have been reopened u/s.147 and thereafter assessments have been completed wherein in some cases exactly on the same amount additions have been made. Thus, in many instances there are double additions on the same amount. Ergo in view of these facts and evidences, the identity of the investors' stands established.

62. In so far as genuineness of the transaction is concerned, the funds have been received through banking channels and bank statement of all the investors/lenders company have been filed which prove conclusively that the assessee companies had received the funds from the said investors, who in turn have received money from the same group companies; and they have not only corroborated this fact in their confirmation along with copies of income tax return but also from their audited balance sheets filed alongwith their Income Tax Returns.

63. Again, in so far as the creditworthiness is concerned, these companies have made investments through banking channels duly reflected in the bank statement and have also filed balance sheets and detailed explanation thereafter showing their availability of funds for making the investments. The case of the Department before us has been that these companies had very meager income

however the Revenue from the operations did not justify such an investment. First of all, what is required to be seen is whether the lender/investor companies had sufficient funds available with them in the books/ balance sheets and it is not necessary that loan or advances or shares are subscribed, should be out of taxable income only. Either it could be from borrowed funds or from the investments standing in their balance sheet. If the Assessing Officer doubted the source of the fund of the investor companies, then Assessing Officer was required to at least conduct *prima facie* inquiry from these investors to rebut the assessee's explanation about the source of the funds in the hands of the investor companies. **Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms (P) Ltd., ITA No. 71, 72, 84/2015, vide judgment and order dated 12.08.2015**, wherein one of the ground raised by the revenue was that creditworthiness is not proved, because lender companies had shown low income in their Income Tax Return. The Court found that the entire details of share applicants were made available to the Assessing Officer, including PAN, confirmations, bank statements, their balance sheets and profit & loss accounts and certificates of incorporation, etc. Assessing Officer had not undertaken any inquiry or investigation of the veracity of above documents. Hence Tribunal has rightly held that without doubting the document, the Assessing Officer cannot make the addition only on presumption that low return of income is sufficient to doubt the creditworthiness of the share holders. The Assessee by producing the above documents has discharged its initial onus of showing the genuineness and creditworthiness of the share holders. Same ratio will apply here also. Further, even for the sake of repetition, one very peculiar fact as incorporated above is that, in most of the

cases of the investor company's assessments have been made u/s.143(3) or u/s 147, wherein either their source of fund have been accepted or certain additions have been made based on scrutiny examination. It is not a case where there is any cogent finding in those cases that it is unaccounted money of the assessee companies which has been routed through them or it is their unaccounted money which has been invested in the assessee company. In absence of any such finding or material, no adverse inference can be drawn in the case of the assessee companies. Thus, the identity and the creditworthiness of the investor/subscriber company stands fully established and so also the genuineness of the transaction.

64. Now coming to the arguments raised on behalf of the Revenue that in some of the case notices u/s 133(6) has not been served or responded and directors of the lender companies were not produced. First of all, it was only in few cases that notices were not responded to and in majority of cases they were duly responded. But be that as may be, where notices have not been served or not responded to, then also in the present cases their identity cannot be disputed, because in all the cases assessments have been done under scrutiny proceedings u/ss. 143(3) or 147; and in most of the cases appeals are also pending. Hence this factor, itself will not vitiate the case of the assessees. Similarly, even if directors were not produced, then there is no legal obligation on the assessee to produced the directors as held in many cases as relied upon by the Ld. Counsel in foregoing para 27. Apart from that, once assessments have been made on substantive basis in each and every case, then mere non production of directors loses its significance when all the statutory

records and sources of funds have been duly explained, on which no adverse material has been brought to rebut the same by the Assessing Officer. Thus, in our opinion this factor on the facts of the present case is not so detrimental.

65. One key contention and fact which has been harped upon by the Id. counsel and also discussed by us at several places herein in the foregoing paragraphs is that, all the funds have been routed through Bhushan Energy Ltd. by way of advances and loans given to the maze of its group companies who have invested or given loan within the same group companies which again has been reinvested in the Bhushan Energy Ltd. Ld. counsel before us has demonstrated by filing fund flow statement in the case of all the companies along with their bank statement and balance sheets. In so far as bank statement and balance sheets are concerned they have already been filed before the Assessing Officer and Id. CIT (A) and this specific plea was also raised before the Ld. CIT (A)s, except for the fact that now before us, he has tried to demonstrate the flow of money from Bhushan Energy Ltd. to the group companies and that all these funds have come from the accounted funds duly recorded in the books of the Bhushan Energy Ltd. and the books of the lender companies. Since the fund flow chart to explain the source of the funds and rotation of funds amongst the group companies is one of the vital factors which impinge upon the case of the assessee companies, therefore, these are made part of this order and are **annexure to this order running into 38 pages, which contains the addition made by the Assessing Officer from the figures given in the balance sheet; and flow of funds from one company to other.** All the entries are verifiable from the bank statements placed before us.

66. In support of the fund flow statements, balance sheets and the bank statement of all these companies have been filed separately before us and has been demonstrated with one to one correlation of the entries therein. The theory of fund flow statement was also raised before the Id. CIT (A) for which remand report was also called for which has been dealt and incorporated in the appellate order by the Id. CIT (A) also especially in the case of M/s. Jawahar Credit and Holding Pvt. Ltd. vs. ITO, Ward-13(3), New Delhi for Assessment Year 2012-13 in ITA No.5398/Del/2019. Thus, it is not a new plea which has been raised by the assessee counsel before us for the first time, albeit now it has been presented in detail manner in case of each and every assessee company which is evident from the **annexures** hereto of this order. Therefore, these fund flow statements duly supported by bank statement of other lender companies which are already part of record, even if it is reckoned as additional evidence, but they do not require Revenue-examination by the Assessing Officer which has been pleaded by the Id. CIT DR before us.

67. Thus, it is quite evident that in various chains of links and the flow of the funds, nowhere there are any unaccounted funds of any of the lender companies or if any of the assessee companies which can be said to have been introduced either by the assessee company or by the lender company. The **source of the source** has been proved at all levels, right from origin of the funds to the final destination stands substantiated and neither there is unaccounted money nor there is any outside entry operator to route the unaccounted funds for making such investments. Although looking to the peculiarity of the facts and circumstances of the case where these companies can be reckoned as conduit entities

for rotation of money, but nowhere can it be said that any of the entities have routed their own unaccounted money. This is the precise reason that in most of the cases Id. CIT Appeals have deleted the addition; and in 3 cases, he has held that they must have received some commission for such rotation of funds, albeit such observation may not have legal and factual legs to stand.

68. Thus, in view of our discussion and finding of fact, we do not find any reason or justification for sustaining such an addition of share capital or share premium under the deeming provision of Section 68. We are in tandem with the arguments raised by the Id. counsel and the explanation given by him in view of supporting documents as dealt and incorporated above and are accepted. In the result additions as made by the Assessing Officer on this score are directed to be deleted.

69. Now coming to the issue of fresh addition made by the Id. CIT (A) by making enhancement on account of alleged commission income in three cases. Though as discussed above, the Id. CIT (A) has deleted the addition made u/s.68 on the ground that no unaccounted funds have come in the bank account of the assessee companies, nevertheless, has held that assessee company might not have not availed any accommodation entry but has merely provided facility to route the fund of Bhushan Steel Ltd. in view of some of alleged commission @ 2%. This finding is purely based on guesswork and surmises. In nutshell, Id. CIT (A) has treated the accommodation entry, i.e., *jamakharchi* providing facility to route transaction in view of some commission income. The relevant findings of the Id. CIT (A) in all the three cases have already been incorporated above. First of all, it is neither the case of the Assessing Officer nor has been discussed in any of the assessment

orders. What Id. CIT (A) is trying to do is, introducing a new source of income and that to be based on some hypothetical presumption. No show cause notice has been issued to the assessee. Id. CIT (A) before fastening such presumptive addition in the hands of the assessee company. This is in gross violation of the provisions of the Act but also the principles of natural justice. The Act provides that before enhancing any income Id. CIT (A) is required to give opportunity to the assessee. These additions have neither been disclosed in the return of income nor have been considered by the Assessing Officer in the assessment order and therefore, making such addition of new source of income is beyond the scope of enhancement by the Id. CIT (A). Hon'ble Jurisdictional High in the case of **CIT vs. Union Tyres, (1999) 240 ITR 556 (Del)** has observed and held as under:

“The first appellate authority is invested with very wide powers under s. 251(1)(a) and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessee makes a grievance and ranges over the whole assessment to correct the A.O not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the A.O and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz. that it is not open to the AAC to introduce in the assessment a new source of income and the assessment has to be confined to those items of income which were the subject-matter of original assessment. Applying the above well settled principles of law to the facts of the instant case, the Tribunal was justified in holding that in calling for a remand report on the four points the AAC had exceeded his jurisdiction. While computing the total business income of the

assessee, the A.O had estimated the sales at an enhanced figure and had applied a higher rate of gross profit. Thus, the only matter dealt with by the A.O in the assessment order was the estimation of profits and gain of the business of the assessee. None of the four points raised in remand report had any bearing on the question of estimation of either the sales or the gross profit rate. It is evident that the AAC had his doubts about the capacity of the assessee to raise finances for the purchase of goods and show a huge turnover in the very first year of his business. In other words, the enquiry ordered by the AAC was to satisfy himself about the source of investment by the assessee. It is axiomatic that failure to prove the sources of investment will result in addition in the hands of the assessee under a different provision of law and will not have much relevance in the estimation of sales and gross profit rate adopted by the A.O. Any addition on account of unexplained investment would constitute a new source of income which was not the subject-matter of assessment before the A.O and, therefore, it was not open to the first appellate authority to direct the A.O to conduct enquiry on the said four points”.—CIT vs. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC) : TC 7R.576 and CIT vs. Rai Bahadur Hardutroy Motilal Chamaria (1967) 66 ITR 443 (SC) : TC 7R.590 applied. [paras 11 & 12]”

70. From the various judgments relied upon by the ld. counsel on this point, the proposition which can be culled out are as under:

(i) That the C.I.T.(A) has no jurisdiction to travel beyond the subject matter of the assessment or beyond the record, i.e. the return of income and the assessment order; and his power of enhancement relates only to that income which has been subjected to the process of assessment.

(ii) That the process of assessment includes not only taxing an income but also holding that a particular income is not taxable.

(iii) That, therefore, the C.I.T.(A) can tax the income which the A.O had, expressly or by clear implication, considered and held to be not taxable – irrespective of the question whether the income falls under a head with regard to which an appeal has or has not been preferred. However, the C.I.T.(A) cannot tax an item of income, the taxability of which had not been considered at all by the A.O.

71. Thus, such an addition made by the ld. CIT (A) is definitely beyond the scope of jurisdiction conferred upon the ld. CIT(A) on u/s.251 by introducing new source of income and that without giving any reasonable cause against enhancement.

72. Even otherwise also, since all the assessees are essentially group companies and the common management under one control, the question of any hypothetical charge of any commission income for providing facility to route the funds of any group company does not arise. The entire addition is based on surmises and presumption, because, the ld. CIT (A)'s reasoning is based practice prevalent in the market sans any tangible material or inquiry or evidence on record. Thus, the addition made on basis of estimation of 2% of commission income in the case of these three assessees, i.e., Jawahar Credit and Holdings Pvt. Ltd., Jingle Bells Alluminium Pvt. Ltd. and Kasper Information Technology Pvt. Ltd. is directed to be deleted.

73. Coming to the Revenue's Appeal, challenging the restriction of addition of Rs.23,32,813/- in the case of M/s. Stylish Construction Pvt. Ltd. for Assessment Year 2012-13 by invoking

the provision of Section 14A read with Rule 8D to Rs.5 lacs. As stated above, the assessee company had made *suo-moto* disallowance of Rs.2,23,660/- which can be said to be expenses attributable for earning of exempt income. This was computed by the assessee by aggregating the total direct expenses debited in its profit and loss account as per the figures given in the earlier part of the order. The dividend income received by the assessee is only Rs.9,94,717/- and therefore such an attribution for providing man power services, etc. can be said to be reasonable basis. The Assessing Officer without recording any subjective satisfaction having regard to the accounts of the assessee or the nature of expenses debited has mechanically applied Rule 8D which is not the mandate of the law in view of Section 14A(2). Thus, there was no reason for making any addition over and above the *suo moto* disallowance made by the assessee. However, the Id. CIT (A) has found it reasonable to restrict the disallowance u/s.14A to Rs.5 lacs, which in our opinion is fully justified and therefore, we hold that the balance addition of Rs.18,32,813/- has rightly been deleted by the Id. CIT(A).

74. In the case of Angel Cement Pvt. Ltd for Assessment Year 2012-13; in the case of Delight Resorts Pvt. Ltd. for Assessment Year 2012-13; and Stylish Construction Pvt. Ltd. for Assessment Year 2012-13, the Department has challenged the alleged admission of additional evidence by the Id. CIT (A) without giving opportunity to the Assessing Officer in violation of Rule 46A. First of all, it has been clarified that no additional evidences were submitted except for assessment orders passed by the Income Tax Department which is part of the income tax records cannot be construed as additional evidences and therefore such ground is

devoid of any merits and same is dismissed.

75. In the result, the appeals of the Revenue are dismissed and the appeals of the assessee are allowed.

76. **This order contains Annexure running into 38 pages which is part of the order as discussed above in para 65.**

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 18th March, 2021.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED: 18th March, 2021

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER