

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.4764/Del./2017
Assessment Year 2012-2013

Income Tax Officer, Ward-4(2), Room No.380, C.R. Building, New Delhi.	vs.	M/s. Balaji Infra Solutions P. Ltd., Plot No.3142/A, G.F. Kashmiri Block, Street No.6, Jain Nagar, Tiranthakar Nagar, Village – Karala, New Delhi – 110 081. PAN AAECB2618J
(Appellant)		(Respondent)

For Revenue :	Shri Ashok Gautam, Sr. DR
For Assessee :	Mrs. Rano Jain, Advocate & Ms. Mansi Jain, C.A.

Date of Hearing :	24.03.2021
Date of Pronouncement :	13.04.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-2, New Delhi, Dated 23.03.2017, for the A.Y. 2012-2013, challenging the deletion of addition of Rs.2,12,50,000/- under section 68 of the I.T. Act, 1961.

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

3. Briefly the facts of the case are that the assessee company filed its return of income declaring Income at Rs.4,900/-. During the year under consideration, assessee company has derived business income from Service Charges. The assessee-company engaged during the year in raising capital by way of share capital and premium on share capital. Its authorized share capital for the year under consideration is Rs.50 lakhs and the amount received through Share Capital of Rs.42,12,500/- and Share Premium of Rs.2,10,37,500/-. The assessee has filed details of share capital/premium received from 06 parties, out of which, 04 are Individuals, out of which, two are Directors and 02 corporate entities. The details of the same are noted in Para-3.1 of the assessment order. The assessee-company has filed the confirmation, balance-sheet, profit and loss account and bank statement of the 06 Investors. The A.O. issued notices under section 133(6) of the I.T. Act, 1961 to

all the Investors and asked them to file copy of their ledger account, copy of their return of income and computation copy of their balance-sheet, profit and loss account for the assessment year under appeal and earlier years, how there was a contact with the assessee company ? whether the Directors are related to you ? bank statements, basis for making contributions in assessee company, copy of share application form, value of the shares at par or at premium, present status value of the share, correspondence with the assessee company, minutes books of Board of Directors, whether all the shares are kept with assessee company or transferred subsequently.

3.1. The A.O. noted that replies from 04 individual Investors have been received and A.O. accepted that they are inducing genuine money into the share capital of the assessee company. The A.O. as regards 02 remaining corporate companies M/s Avanti Vyapaar Pvt. Ltd and M/s Golden Vyapaar Pvt. Ltd., noted that the notices issued to them under section 133(6) of the Act are returned unserved. Summons were also issued to the Directors of the

assessee company for personal deposition. The assessee also filed reply and details of both the above 02 Investor companies which is supported by confirmation statement, mode of payment, source of funds, bank statements, copy of income tax return, copy of PAN card, Board Resolution and Memorandum and Articles of Association. Summons were also issued to the Directors of both the Investor companies. In response to the same, Mr. Anand Kumar Aggarwal , Director of M/s Avanti Vyapaar Pvt. Ltd has come for personal deposition and his statement on oath was recorded and placed on records. Meanwhile this Investors have also filed reply to the notice issued under section 133(6) of the I.T. Act, 1961 and details were also filed regarding both the 02 Investor companies which are their bank statements etc., The 02 Directors of assessee-company Mr. Ashok Kumar Bansal and Mr. Amit Kumar Gupta also attended the proceedings before A.O. and their statements were recorded on oath. The A.O. examined the replies filed by both the Investor companies in response to notice under section 133(6) of the I.T. Act and found that both have shown

meager income in their return of income. The bank statements reflected that there is a receipt of funds from some source which were received from different companies. The amount have been received by them through banking channel, but, it did not reflect any actual genuine business activity. The A.O. examined the documentary evidences on record and by referring to certain decisions came to the finding that assessee failed to prove creditworthiness of the creditors/Investors and their genuineness of the transaction in the matter. The A.O. accordingly made addition of Rs.2,12,50,000/- under section 68 of the I.T. Act, 1961.

3.2. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee reiterated the facts stated before A.O. The assessee as regards identity of the Investor Companies stated that their PAN Card, copy of ITR and RBI Registration Certificate of their status as NBFC have been filed which proves their identity. As regards the creditworthiness of both the Investor Companies, audited accounts of 04 years have

been filed before Assessing Officer along with their assessment orders under sections 143(3)/143(1) and their bank statements. Therefore, creditworthiness of the Investors are established. Genuineness of the transaction is proved by filing copy of Form No.2 along with challan and Annexure filed with the Registrar of Companies ["ROC"] for allotment of shares, confirmation of both the Investors along with bank statements, Board Resolution of both the Companies along with their Memorandum and Articles of Association and bank statements showing payments made to the assessee company and bank statements of the assessee to show amounts have been received through banking channel. The assessee also explained the source of funds with the Investor Companies and in case of M/s. Golden Vyapaar Pvt. Ltd., the funds available with this Investor was on account of amount received by sale of shares of some other companies and in case of M/s. Avanti Vyapaar Pvt. Ltd., the amount have been raised against repayment of the loans. The details of the same are mentioned at Page-8 of the appellate order. It was, therefore,

submitted that both the Investors have explained their source with them and also confirmed the transaction with assessee under section 133(6) of the I.T. Act, 1961. The assessee relied upon several decisions in support of the contention that identity of the Investors are established, their creditworthiness have been proved and genuineness of the transaction is not in doubt. Therefore, the A.O. should not have doubt the explanation of assessee. The Ld. CIT(A) considering the material on record in the light of explanation of assessee, deleted the entire addition. The findings of the Ld. CIT(A) in Paras-3.1 to 4 of the impugned order are reproduced as under :

“FINDINGS :-

- 3.1. Grounds nos. 1 (a) to 1 (d) of the appeal are raised against the addition of Rs. 2.12.50,000/- made by the Assessing Officer on account of share application money / share premium received from 2 corporate entities. M/s. Avanti Vyapaar Private Limited*

and M/s. Golden Vyapaar Private Limited, as unexplained cash credits u/s 68 of the Act.

- 3.2. *I have carefully considered the assessment order, written submissions with paper book. case laws relied upon and oral arguments of the AR of the appellant. From the assessment order and details filed by the appellant during assessment proceedings, it is observed that the appellant had received share application money / premium from 6 parties, out of which 2 are corporate entities. The AR contended that the appellant had furnished the details of share application money / premium received from shareholders during the year under consideration which includes the amount of Rs.2,12,50,000/- received from 2 corporate entities, namely, M/s. Avanti Vyapaar Private Limited and M/s. Golden Vyapaar Private Limited, against which the appellant had also issued*

shares to them during the same financial year i.e. on 31.03.2012 and furnished copy of Form 2 for issue of such shares. The AR further contended that the appellant had furnished sufficient documents/evidences to prove the identities and creditworthiness of the share applicants and genuineness of the transactions of share application money / share capital / premium u/s 68 of the I.T. Act, and thereby discharged its primary onus. The AR further contended that the appellant furnished the details of source of source for receipt of share application money from the alleged two entities, during the course of assessment proceedings.

3.3. *From the assessment order, it is observed that the AO also issued notices u/s 133(6) to the share holders to file confirmations, balance sheets, copies of bank accounts and other details. The notices issued to the*

aforementioned 2 corporate entities were returned back un-served, though subsequently replies were received by the A.O. from these two companies, as mentioned at page-5 of the assessment order. Later on, the AO issued summons u/s 131 of the I.T. Act to the directors of the appellant company and also to the directors of the 2 corporate shareholder companies. Subsequently, vide show cause dated 16/03/2015, the AO confronted the appellant and asked to produce directors of the shareholder companies as summons u/s 131 of the I.T. Act could not be served on them.

3.4. *The AR contended that subsequently the alleged share applicant companies furnished their replies in response to notices issued to them u/s 133(6) and Mr. Anand Kumar Aggarwal, director of M/s. Avanti Vyapaar Pvt. Ltd. appeared before the A.O. for*

personal deposition and his statement was recorded on oath. The AO has mentioned about the receipt of such replies and personal deposition of directors of the appellant company and of M/s. Avanti Vyapaar Private Limited on pages 4 and 5 of the assessment order.

- 3.5. *It is further noted that on 23/03/2015 both the directors of the appellant company, Mr. Ashok Kumar Bansal and Mr. Amit Kumar Gupta had attended the office of AO and their statements were recorded on oath. From the submissions and paper book, it is noticed that the appellant has replied to show cause notices and furnished the documents / evidences which were also filed earlier to prove the identities and creditworthiness of the share applicants and genuineness of the share application money / share capital / premium such as RBI Registration certificates*

of both the share applicant companies, their assessment order / intimation u/s 143(3) / 143(1) of the I.T. Act, copy of audited balance sheets, relevant portions of bank statements, details of source of source for payment of share application money, copies of their Board Resolutions for investing in the appellant company, copies of their Memoranda and Articles of Association.

3.6. *The Assessing Officer, after examining the details furnished by the appellant, analyzing provisions of section 68 of the I.T. Act and by relying on various judgments, had rejected the contention of the appellant for the following reasons :-*

“3.3. In the absence of complete compliance of all the facts of the case discussed in the foregoing paragraphs, The reply of the assessee has been

considered but not found acceptable in the light of the developments in the case as already discussed above which clearly show that the assessee has not been able to discharge onus of proving genuineness of transactions u/s 68. In view of the above facts, the reply of the assessee could not be considered as it is obvious that the genuineness of company could not be discharged even after providing numerous opportunities and furnishing of inquiry report. The assessee company failed to discharge the onus

4.3. *The present case of the assessee company presents the same set of circumstances. Despite being accorded sufficient opportunities to present its case, the assessee company (did not present the concerned investors*

which has resulted into restricting the scope of enquiries which could have been undertaken at this end. By not discharging its onus as cast upon it by section 68, the assessee company has hampered the assessment proceedings. Perhaps the assessee company was aware of the fact that if any investigations are to be carried out, then real facts would emerge and the genuineness of the transactions would be revealed. Further the financials of the assessee company also not justified the huge share premium received.

4.4. *Further it is concluded that since it is known fact that various companies and group of companies are involved in financial manipulation and providing accommodation entries. In the present case also circumstances*

indicate that the assessee was not having any adequate financial creditability as per the return filed by the assessee. The assessee has also not discharged the onus of establishing the identity, genuineness and creditworthiness of the parties and also appears to be involved in financial manipulations."

- 3.7. *The AR of the appellant contented that the AO had already made deeper scrutiny in the case of the appellant and without bringing any evidence on record in support of his contention, alleged that documents / details filed by the appellant were not sufficient & concluded that investor companies were entry operators, which is not sustainable. Moreover, the allegation made by the Assessing Officer that the appellant company did not present the concerned investors is*

factually incorrect as the investor companies duly filed replies in response to notices issued u/s 133(6) and in response to summons u/s 131. the director of M/s. Avanti Vyapaar Private Limited attended the office of the AO.

- 3.8. *The appellant also submitted that the AO has mentioned in the assessment order that the appellant failed to discharge its onus after being provided inquiry report; however no such report was provided to the appellant during the course of assessment proceedings. In fact, it has been averred that the AO has mentioned about any inquiry report for the first time in the assessment order, which is gross violation of the principle of natural justice. It has been mentioned by the A.O. in the impugned order that his inspector visited the premises of the appellant company and found it locked. To this the appellant has*

replied that the premises belonged to one of the directors of the appellant company and it was locked on the day the inspector visited it, because that day happened to be the weekly holiday of the appellant company. As already stated above, this finding of the inspector was not confronted to the appellant during assessment proceedings and therefore it could not have replied to the same before the A.O.

3.9. *The AR further contended that the appellant has justified the reason of share capital issued at high premium and the AO failed to point out any defect in the details & documents filed by the appellant & investor companies to prove identities and creditworthiness of the shareholders and genuineness of transactions with them except by generalizing the modus operandi of*

accommodation entries, which is not sustainable.

3.10. *It is settled law that the onus of proving a claim of genuineness of share application money / share capital / premium is initially on the assessee and once an assessee has discharged its primary onus, the burden shifts on the Revenue. In the present case, the appellant had duly discharged its onus by furnishing necessary evidence to establish the identities and creditworthiness of the shareholders and genuineness of the transactions of receipt of share premium / share application money and issue of shares to the two corporate shareholders.*

3.11. *The Assessing Officer has himself mentioned in the assessment order that in response to notices issued u/s 133(6). the share applicants have furnished replies along with*

documentary evidences and in response to summon u/s 131, director of one of the share applicant companies as well as of the appellant company appeared for personal deposition and their statements were recorded, which is part of assessment record. The AO has not brought anything on record to dispute the facts/details furnished by the appellant despite conducting independent enquiries in terms of section 133(6) / 131 of the I.T. Act.

- 3.12. *The appellant had produced before the A.O. the Permanent Account Numbers (PANs), certificates of incorporation of the two corporate share applicants, their RBI registration certificates and copies of their bank statements. All these, coupled with the fact that they replied to notices issued by the A.O., establish their identities. Creditworthiness of the parties are proved*

from the fact that they were I.T. assesseees, had sufficient balances in their bank accounts to be able to advance the share application money to the appellant company and their balance sheets also reflect ample share capital and reserves. Since the share application money was given by these companies to the appellant through banking channels and there was no deposit of cash in their bank accounts prior to issue of share application money to the appellant, the genuineness of the transactions also gets proved. Once these three ingredients of section 68 were established by the appellant company, the onus shifted on the Assessing Officer to find any deficiency in the documents produced by the appellant/share applicants. Thus the Assessing Officer has not been able to do. He has vaguely commented on the alleged rotation of funds in

the bank accounts of the share applicant companies, the absence of any profit motive in the investments made by the share subscriber companies, etc. However, the A.O. appears to have overlooked the fact that the “rotation of funds” in the bank accounts of the share applicant companies was part of their business activity and that it is not necessary that right from the first year of investment in shares of a company, a shareholder must start getting dividend. The judgments on which the Assessing Officer has placed reliance in the impugned order are not applicable to the facts of the appellant's case. For instance, in the case of CIT vs. N.R. Portfolio Pvt. Ltd. [2014] 42 taxmann.com 339 (Delhi), the Assessing Officer had received information from the Investigation Wing that the assessee concerned was the beneficiary of

accommodation entries in the garb of share application money. No such information has been received by the Assessing Officer in the appellant's case. In fact, the judgments that would apply in the case of the appellant are those of the Jurisdictional High Court in the cases of CIT vs. Gangeshwari Metal Pvt. Ltd. (Del) (361 ITR 10) (2013) & GIT v.v. Oasis Hospitalities Pvt. Ltd. [2011] 198 Taxman 247 (Delhi) dated 31^s January. 2011. Further, the Hon'ble Jurisdictional High Court has held in the case of CIT vs. Value Capital Services (P) Ltd. 307 ITR 334 (Delhi) that additional burden was on the department to show that even if the applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee to enable it to be treated as the undisclosed income of the

assessee, which has not been done in the present case.

3.13. *In my considered view, on the above facts of the appellant's case and documents / evidences placed on record, case laws relied upon by the appellant and undisputed fact that the share applicants duly complied with the notices / summons u/s 133(6) / 131 of the I.T. Act by filing their replies and directors of the share applicant company also came for personal deposition, so by furnishing documents / evidences to prove the identities and creditworthiness of the share applicants and genuineness of transactions of share capital / premium issued during the year, the onus on the appellant stands discharged u/s 68 of the I.T. Act.*

3.14. *Accordingly, this appeal of the appellant deserves to be allowed and the addition of*

Rs.2,12.50,000/- made by the Assessing Officer on account of unexplained cash credit u/s 68 of the I.T Act is deleted. Therefore, grounds of appeal nos. 1 (a) to 1 (d) are hereby allowed.

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

4. The Ld. D.R. relied upon the Order of the A.O. The Ld. D.R. submitted that both the Investor Companies have shown meager income in their return of income and as such have no creditworthiness. The Ld. D.R. relied upon Judgment of the Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., [2019] 103 taxmann.com 48 [SC] and Judgment of Hon'ble Delhi High Court in the case of PCIT vs., NDR Promoters Pvt. Ltd., [2019] 410 ITR 379 [Del.].

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that both the Investor

Companies are NBFC and registered with Reserve Bank of India. The assessee filed all the documentary evidences before A.O. which are confirmation of Investors, their assessment orders under sections 143(3) and 143(1), copy of their audited balance-sheet for several years, bank statements, copy of Board Resolution, copy of Memorandum and Articles of Association along with details submitted to the ROC. She has referred to confirmation of both the Investors in which they have confirmed transaction with the assessee company making investment in assessee company in share capital/premium through banking channel and source with them is also explained in the confirmation. The bank statements shows both the Investors have sufficient funds with them in their bank accounts to make investment in assessee company. The balance-sheet in the case of M/s. Avanti Vyapaar Pvt. Ltd., shows in the assessment year under appeal it has share capital of Rs.65,94,080/-, reserve and surplus of Rs.15,45,66,180/-. In the case of M/s. Golden Vyapaar Pvt. Ltd., it has share capital of Rs.9,12,02,000/- reserve and

surplus of Rs.1,13,503/-. Learned Counsel for the Assessee, therefore, submitted that both the Investor Companies have sufficient funds available with them which proves their creditworthiness. The identity of Investor Companies are not disputed by the A.O. She has referred to Pb-182 which is statement of M/s. Golden Vyapaar Pvt. Ltd., through its Director Shri Vinod Mittal in which he has confirmed that the Investor is registered with Reserve Bank of India as NBFC Company and has Registration Certificate in force. He has explained the source of making investment in assessee company in his statement. The details of the fund is also explained. The reasons for making investment in assessee company is also explained in his statement. Learned Counsel for the Assessee also referred to written statement filed before the Ld. CIT(A) in which assessee has clearly explained that shares were issued at premium due to the reason that assessee company has purchased land during financial year under consideration and Delhi Government issued a Notification in the Master Plan which was about to be implemented. Under that Master Plan

Government proposed to develop dwelling houses in low density area near Village-Simphola. Therefore, looking at the good future, returns of investment and business proposals, shareholders of the assessee company agreed to pay premium on the shares. The balance-sheet of the assessee for the assessment year under appeal is also referred which shows that in assessment year under appeal assessee company has made investment in property of Rs.2,40,85,100/-. Learned Counsel for the Assessee, therefore, submitted that assessee explained each and every issue before the A.O. which have not been doubted by the A.O. Therefore, on mere suspicion A.O. made the addition against the assessee which have been rightly deleted by the Ld. CIT(A). Learned Counsel for the Assessee, submitted that merely because premium rate was charged on the share is no ground to make the addition against the assessee particularly when documentary evidences filed by the assessee have not been rebutted by the A.O. In support of the contention, the Learned Counsel for the Assessee relied upon the following decisions :

1. PCIT vs., A.R. Leasing Pvt. Ltd., 2017 (7) TMI 368 – Delhi High Court.
2. CIT (Central) vs., Anshika Consultants Pvt. Ltd., & Others 2015 (4) TMI 842 – Delhi High Court.
3. INS Finance & Investment P. Ltd., vs., ITO, Ward-12(3), New Delhi 2021 (1) TMI 123 – Delhi ITAT.

5.1. Learned Counsel for the Assessee further submitted that merely because low income is shown in the return of income is no ground to discard the explanation of assessee because the ultimate source of the Investors have to be considered in the light of material on record. In support of her contention, she has relied upon the following decisions :

1. CIT-9 [Erstwhile CIT-VI] vs., Vrindavan Farms (P) Ltd., 2015 (11) TMI 279 – Delhi High Court.
2. M/s. M.L. Singhi & Associates (P) Ltd., vs., DCIT, Central Circle-17, New Delhi 2021 (3) TMI 52 – ITAT-Delhi.
3. ACIT, Central Circle-13, New Delhi vs., M/s. Supreme Placement Services (P) Ltd., New Delhi 2021 (3) TMI 720 – ITAT, Delhi.
4. M/s. Garima Polymers Pvt. Ltd., vs., ACIT, Central Circle-16, New Delhi 2021 (2) TMI 71 – ITAT, Delhi.

5.2. Learned Counsel for the Assessee, therefore, submitted that initial onus upon assessee to prove identity of the Creditors/Investors, their creditworthiness and genuineness of the transaction have been discharged by assessee and A.O. has not brought any evidence on record against the assessee. Therefore, the Ld. CIT(A) rightly deleted the addition.

6. We have considered the rival submissions and perused the material on record. In the case of assessee in assessment year under appeal assessee has received share capita/premium from 06 parties, out of which, A.O. has accepted the explanation of assessee as regards 04 Investors on the basis of reply under section 133(6). In the case of remaining 02 Investors i.e., M/s Avanti Vyapaar Pvt. Ltd and M/s Golden Vyapaar Pvt. Ltd., the A.O. has issued notices under section 133(6) of the I.T. Act, 1961 to both the Investors, in response to which, both the Investors have filed reply before A.O. confirming transaction with the assessee company. Therefore, on same basis A.O. should not have made similar addition. The assessee filed

confirmation of both the Investors, their balance-sheet, bank statements, their assessment orders, copy of Income Tax return, ROC Certification, PAN Card, Board Resolution etc., The documentary evidences filed on record have not been doubted by the A.O. The A.O. on going through the replies filed by both the Investor Companies directly before him found that both the Investor Companies have shown meager income in their return of income for the assessment year under appeal. This is the sole reason which prompted the A.O. to doubt the creditworthiness of the Investors and their genuineness of the transaction in the matter. The A.O. did not doubt the identity of both the Investor Companies. The A.O. also did not doubt their identity because both the Investor Companies are assessed to tax and are registered with RBI as NBFC Company and also registered with the ROC. Therefore, both the companies being legal entities, there were no question of doubting identity of both the Investor Companies. The assessee as regards their creditworthiness filed their balance-sheet for 04 years including assessment year under appeal, their bank

statements and assessment order/intimations under section 143(3)/143(1) of the I.T. Act, 1961. The bank statements of both the Investors show that they have sufficient funds with them to make investment in assessee company. No cash was found to have been deposited in their bank accounts before making the investments. They have explained source with them to make investment in assessee company. It was also explained in statement recorded on oath of one of the Director of the Investor Company by the A.O. Thus the creditworthiness of both the creditors are established by assessee which is further strengthened by the share capital and reserve and surplus available with both the Investor Companies as is referred to in the submission of Learned Counsel for the Assessee. Therefore, both the Investor Companies have sufficient funds to make investment in assessee company. The Ld. D.R. relied upon Judgment of Hon'ble Supreme Court in the case of PCIT (Central)-1 vs., NRA Iron & Steel (P.) Ltd., [2019] 103 taxmann.com 48 (SC). We may note here again that the bank statements and balance-sheet of both the

Investor Companies shows their creditworthiness as having sufficient funds with them to make investment in assessee company. Such details filed by assessee and the Investors have not been doubted by the A.O. Thus the source of the funds invested in assessee company have been explained through documentary evidences. The Hon'ble Bombay High Court in the case of PCIT vs., M/s. Ami Industries (India) Pvt. Ltd., [2020] 116 taxmann.com 34 recently distinguished the Judgment of Hon'ble Supreme Court in the case of PCIT (Central)-1 vs., NRA Iron & Steel (P.) Ltd., (supra) on facts by making the following observations and findings in Paras-21 to 24 as under :

“21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far creditworthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make

payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

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

23. *Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.*

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

6.1. The A.O. on going through the bank statements of both the Investors found that there is receipt of funds from

some source. Thus, even the A.O. did not doubt the creditworthiness of both the Investors in the assessment order. Thus the A.O. did not doubt their source at all. The A.O. did not make any enquiry from the income tax record of both the Investor Companies. It is well settled Law that A.O. cannot ask the assessee to prove source of the source. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs., Dwarakadhish Investment P. Ltd., [2011] 330 ITR 298 [Del.] [HC}, Judgment of Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.), Judgment of Hon'ble Allahabad High Court in the case of Zafar Ahmad & Co. 30 taxmann.com 269 [All.] [HC]. It may also be noted here that when the statement of one of the Director of the Investor Company was recorded, he has explained not only the source of making investment in assessee company, but, also explained the reason why it has made an investment in assessee company at premium. The assessee has also explained before the authorities below the reasons for allotting the shares at premium because the assessee has purchased an immovable property in

assessment year under appeal and Delhi Government has issued a Notification in the Master Plan which was about to be implemented through which the Government proposes to develop dwelling houses in low density area which would benefit the assessee and the Investors. All these explanation of assessee and Investors have not been doubted by the A.O. The Ld. CIT(A) in his findings have also categorically found that the enquiry report have not been confronted to assessee, therefore, it cannot be read in evidence against the assessee. No material is produced before us to contradict the finding of fact recorded by the Ld. CIT(A). Considering the above evidence and material on record, it is clear that A.O. did not make any enquiry on the documentary evidences filed by assessee and did not doubt the documentary evidences filed by assessee, therefore, initial onus upon the assessee to prove creditworthiness and genuineness of the transaction have been discharged by the assessee. In support of the above findings, we rely upon the following decisions.

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

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

“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company.”

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

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

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

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any

investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.

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

“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon'ble Apex Court in the case of Lovely Exports Pvt. Ltd. (supra) and Judgment of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon'ble High Court in view of the above findings noted that the assessee had provided several

documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

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

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

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

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

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

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

of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied.”

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

“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assesses yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of

transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made

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

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

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

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

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

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

“Held, dismissing the appeal, that the order of the Commissioner (Appeals) revealed that there was a factual finding that no incriminating evidence related to share capital issued was found during the course of search as was manifest from the Order of the Assessing Officer. Consequently, it was held that the Assessing Officer was not justified in invoking section 68 of the Income-tax Act, 1961, for the purposes of making additions on

account of share capital. There was nothing to show that the factual determination was perverse.”

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

“Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those

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

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

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

6.16. The Ld. D.R. heavily relied upon the Judgment of Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., (supra). In this case, the Investors were being non-existing and have not having capacity to invest funds and that detailed enquiry conducted by the A.O. support his findings that Investors were non-existing and share capital was bogus. However, in the case of the present assessee, A.O. did not doubt the identity of the Investors. The A.O. did not doubt the source of the Investor companies, The A.O. did not doubt the funds available with them in their bank account and sufficient capital available to them as per balance-sheet. The A.O. did not make any enquiry on the documentary evidences filed by assessee and that recently the Hon'ble Bombay High Court in the case of PCIT vs., M/s. Ami Industries (India) Pvt. Ltd., (supra), distinguished the Judgment of Hon'ble Supreme Court in the case of PCIT (Central)-1 vs., NRA Iron & Steel (P.) Ltd., (supra). Therefore, it would not support the case of the Revenue.

6.17. The A.O. merely doubted the capacity of the Investors because they have reported low income in their return of income. This cannot be the sole basis to doubt the explanation of assessee. It may be a suspicion of the A.O. without bringing any evidence on record. Rather the documentary evidences produced on record clearly supports the explanation of assessee. Therefore, there were no basis for the A.O. to hold that assessee failed to prove creditworthiness of the Investors. In the similar circumstances, the ITAT, Delhi G-Bench, Delhi in the case of ACIT, Central Circle-13, New Delhi vs., M/s. Supreme Placement Services (P) Ltd., New Delhi (supra) has dismissed the Departmental appeal. Considering the totality of the facts and circumstances of the case, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the addition. We, therefore, confirm the Order of the Ld. CIT(A) and dismiss the appeal of the Department.

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

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 13th April, 2021

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.