

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 629/Mum/2019

(A.Y: 2010-11)

M/s. Shiva Shakti Enclaves Pvt Ltd., 203/204 Raigad Darshan, Opp Indian oil colony, JP Road, Andheri West, Mumbai – 400053.	Vs.	DCIT Central Range 7(3) R.No. 655, 6 th Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.
PAN/GIR No. : AAGCS5014B		
Appellant	..	Respondent

Appellant by :	Shri Vimal Punmiya, AR
Respondent by :	Shri Vijay Kumar Menon, DR

Date of Hearing	15.04.2021
Date of Pronouncement	04.06.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) -49 Mumbai, passed u/s. 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the reopening the case u/s 148 which is bad in law.

- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the assessment order passed u/s. 143(3) of the Income Act 1961 by the Ld.l Assessing Officer is against the principal of natural justice, hence bad-in-law.*
- 3. On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirmed the passing assessment order without providing opportunity to rebut the material relied by Ld Assessing Officer during the reassessment proceedings examination which is against the principal of natural justice and hence the said order is liable to be quashed.*
- 4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition in respect of the Share Capital and Share Premium of Rs. 92,00,000/- as unexplained cash credit u/s. 68 of the Income Tax Act, 1961 without corroborative evidences.*
- 5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not permitting of business loss of Rs. 2,53, 121/-*
- 6. On the facts and circumstances of case and in law, Ld. CIT(A) erred in confirming initiation of penalty proceeding u/s.274 r.w.s 271 (1) (c) of Income Tax Act 1961.*
- 7. On the facts and circumstances of the case and law the Ld. CIT (A) erred in set - a siding for fresh calculations of interest under section 234A, 234B and 234C of the Income Tax Act, 1961.*
- 8. The Assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

2. The Brief facts of the case are that the assessee company is engaged in the business as builder and developers. The assessee has filed the return of income electronically on 14.09.2010 with a total income of Rs. 2,53,121/- on 14.09.2010, and the return of income was processed u/s 143(1) of the Act. Subsequently, the A.O

found certain information was not disclosed by the assessee and therefore the income has escaped the assessment. The A.O. after recording the reasons for reopening has issued notice u/s 148 of the Act. In response to the notice, the assessee has filed a letter dated 21.03.2017 to treat the return of income filed on 14.09.2010 as due compliance and requested for reasons recorded for reopening of assessment. The assessee has also filed a return of income on 11.09.2017 with a total income of Rs.2,53,121/-.Subsequently, the A.O. has issued notice u/s 143(2) and 142(1) of the Act. In compliance, the Ld. AR of the assessee appeared from time to time and furnished the details and reply to the queries and also submitted the documentary evidences in respect of the information. There was a search and seizure operations conducted in the Loutus/Kamadhenu/Green valley Group cases. and During the financial year 2009-10 the assessee company has received a sum of Rs.92,00,000/-as share capital including share premium. One Shri Rajesh Agarwal, an associate of the group found to have received sum of Rs. 30 Crore in 4 corporate entities including assessee company in the F.Y 2008-09 to 2011-12 and the statement was recorded u/s 131 of the Act. The A.O on perusal of the balance sheet of the company found that

the assessee has issued 92,000 equity shares of Rs. 10/- each paid up at a premium of Rs. 90 per share. The A.O has observed that the assessee company derives interest and rental income. The A.O. required the assessee to submit the details in respect of share application, allotment and premium collected. The A.O found that the investors who have made an application for allotment of shares are related to one of the group concern. Whereas the A.O has relied on the statement of Mr. Rajesh Agarwal who is associate of Lotus Group and has received the share application money from various Kolkata based companies. The A.O on perusal of the facts, is of the opinion that the assessee is associated with Mr. Rajesh Agarwal in availing accommodation entries in the guise of share application money. The assessee has received the share application money along with premium from the existing share holders referred at page 3 Para 3.1.5 of the order as under:

“3.1.5 On perusal of the details filed during the assessment proceedings it is seen that the following entities had been allotted share during the year;

<i>Sr.No</i>	<i>Name and Address</i>	<i>No of share allotted</i>	<i>Money received as share</i>	<i>Money received as share premium</i>	<i>Total money received</i>
<i>1</i>	<i>M/s Anmol commerce Pvt Ltd., Kolkata</i>	<i>26000</i>	<i>260000</i>	<i>2340000</i>	<i>2600000</i>
<i>2</i>	<i>M/s</i>	<i>25000</i>	<i>250000</i>	<i>2250000</i>	<i>2500000</i>

	<i>Priyamada Finvest Pvt Ltd, Kolkata</i>				
3	<i>M/s Motacab Finance Pvt Ltd, Kolkata</i>	<i>28500</i>	<i>285000</i>	<i>2565000</i>	<i>2850000</i>
4	<i>M/s Deepa Holdings Pvt Ltd., Kolkata</i>	<i>4500</i>	<i>45000</i>	<i>405000</i>	<i>450000</i>
5	<i>M/s Rexnox Trexim Pvt Ltd, Kolkata</i>	<i>8000</i>	<i>80000</i>	<i>720000</i>	<i>800000</i>
	<i>Total</i>	<i>92000</i>	<i>920000</i>	<i>8280000</i>	<i>92,00,000</i>

3. The A.O to verify the claim of genuineness issued notice u/s 133(6) of the Act to these 5 entities and the A.O. has dealt on the facts, details, information and affidavit of the Mr Rajesh Agarwal and observed that the assessee has not established the identity, creditworthiness and genuineness of the transactions. The A.O found that no information was received from the parties in respect of notice issued u/s 133(6) of the Act. The A.O. is of opinion that the assessee company has failed to prove the identity, creditworthiness and genuineness of the share holders/investors in spite evidences/ financial statements of the investors are filed. Finally the A.O. concluded that the assessee company has filed the details/evidences but could not satisfied the test of identity, creditworthiness and genuineness of the transactions and relied on the judicial decisions and

treated the amount credited in the books of account as income of the assessee under the provisions of Sec. 68 of the Act and assessed the total income of Rs94,53,120/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 22.12.2017.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A) and first challenged the reassessment proceedings. The CIT(A) dealt on the facts and obtained information on the report of search and seizure and the reasons recorded on the investments. The CIT(A) found that the assessment is valid and dismiss the grounds of appeal on the validity of re assessment. On the second disputed issue, the assessee has filed the elaborate submissions referred in the appellate order. The assessee has submitted the documents/evidences in respect of investors to substantiate that the shareholders has satisfied identity, creditworthiness and genuineness of the transactions and complied with the requirement of Sec. 68 of the Act. The Ld.AR contentions are that the investors have sufficient/surplus funds to invest in the assessee company. The CIT(A) noted the information and considered the documents submitted by the assessee in respect of 5 shareholders. The CIT(A) has gone through the activities of the investor companies and formed an opinion that the investor companies could not make the

investment in the assessee company. Finally CIT(A) having dealt on the catena of judicial decisions has observed that the assessee company cannot substantiate its claim and confirmed the addition u/s 68 of the Act and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order, the assessee has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in not considering the various aspects of investments and the assessee has filed the financial details in respect of these companies which cannot be overlooked. The Ld.AR referred to the paper book and demonstrated the submissions made before the CIT(A). The Ld.AR mentioned that the assessee has submitted the details/evidences in respect of the five shareholder companies to satisfy the identity, creditworthiness and genuineness of the transaction and substantiated with share application form, copy of bank statement, copy of share certificate, copy of Board resolution, copy of audit report and audited Balance sheet and enclosures, copy of certificate of incorporation, and Active status of company from MCA web site. The Ld. AR relied on the catena of Honble High Court and Honble Tribunal decisions. The Ld.AR emphasized that on similar and identical facts, the Hon'ble Tribunal has confirmed

the genuineness, identity and creditworthiness of the investors for the same assessment year. Further the Ld.AR substantiated his arguments with paper book, judicial decisions and orders of the Hon'ble Tribunal and prayed for allowing the appeal .Contra, Ld.DR relied on the CIT(A) order.

6.We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.AR is with respect to addition u/s. 68 of the Act on the amount received on the share application from five investors for allotment of shares during the financial year. We find that the assessee has submitted the substantial details before the assessing officer and appellate authority. The Ld.AR submitted that these 5 investor companies have made investment in the assessee company considering the future prospects. We find that no statement has been recorded in respect of these companies in the assesment proceedings. The A.O without going into the detail aspects has made addition and further we found that that the A.O has dealt elaborately on the statement of Shri Rajesh Agarwal who was connected to these shareholder companies and further Shri Rajesh Agarwal has retracted his statement and it was also brought to the knowledge of the A.O. The A.O has made addition based on surmises and

conjunctions without proper verification and enquiry. During hearing proceedings, it was brought to the knowledge of the bench by the Ld.AR that these companies financial stability were already test checked and dealt by the Hon'ble Tribunal in the case of M/s. Bini Builders pvt Ltd Vs DCIT in ITA Nos. 631 & 632/M/2019 for the A.Y 2009-10 2010-11 dt 12-03-2020 and similarly in the case of M/s. Moongipa Development and Infrastructure Ltd. Vs DCIT in ITANo. 625 & 626/M/2019 for the A.Y 2009-10&2010-11. The Hon'ble Tribunal has dealt on the identical issues covered in favour of the assessee. We find that 4 investor companies financial statements were dealt and the findings are that the investors companies have a positive net worth and only a small percentage of investments were deployed which cannot be disputed. We considered it appropriate to refer the Hon'ble Tribunal observations at page 11 as under:

“The investor companies have positive net worth and only invested 1.6% and 1.2% of their net worth. The assessee submitted Form of application of shares, Photocopy of the cheque receipt towards the share application, photo copy of the bank deposit slip reflecting the deposit of the above cheque, extract of Bank Statement of all subscribers duly highlighting the entries of share money and premium money given by them to the appelland company along with copy of board resolution, resolving the decision of investment into appelland company. To prove the

genuineness of the transaction the assessee produced the confirmation, bank statement, financial of the lender. Nothing came into noticed that the transaction were found bogus. Retracted statement of Shri Rajesh Agarwal was not liable to be relied upon the unless corroborated by the sufficient evidence on record. Moreover no opportunity of being heard was given to the assessee. However, in support of this contention, the Ld. Representative of the assessee has placed reliance upon the following law.:-

- 1. CIT Vs. Loverly Exports Pvt. Ltd. (2008) 216 CTR 195 (SC)*
- 2. PCIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann.com 173 (SC)*
- 3. PCIT Vs. Bharat Securities P. Ltd. (2020) 13 taxmann.com 32 (SC)*
- 4. PCIT Vs. Rohtak Chain Co. P. Ltd. (2019) 110 taxmann.com 59 (SC)*
- 5. PCIT Vs. Ami Industries Pvt. Ltd. 1231 of 2017*
- 6. CIT Vs. Gagandeep Infrastructure Pvt. Ltd. ITA. No.1613 of 2014 (Bom)*
- 7. CIT Vs. Orchid Industries Pvt. Ltd., I. T. Appeal No. 1433 of 2014*
- 8. Jasamrit Constructions Pvt. Ltd. Vs. ITO, ITA. No. 1091/M/2016 ITAT Mum dated 8 Feb, 2018*
- 9. Pr. CIT Vs. M/s. ApeakInfotech, Nagpur ITA. No. 26/2017 (Bom. HC) dated 8 June, 2017*
- 10. Umbrella Projects Pvt. Ltd. Vs. ITO 18(1) ITA. No. 5955/Del/2014 dated 23 Feb, 2018.*

Taking into account all the facts and circumstances mentioned above and also relying upon the decision of the Hon'ble ITAT in the sister concern case M/s. Binni Builder Pvt. Ltd. (supra) in which the issue has been decided on the basis of similar facts

and circumstances, we set aside the finding of the CIT(A) on this and decided this issue in favour of the assessee against the revenue”

7. Similarly the Hon'ble Tribunal in the case of M/s. Bini Builders P. Ltd Vs DCIT in ITA No.630/Mum/2019 dated 05.05.2021 has dealt on the common facts, being identical and similar relating to these five investor companies at page 7 Para 6 and 7 of the order which is read as under:

“6. Upon careful consideration, as rightly pointed out by Ld. AR, the issue is squarely covered in assessee's favor by the earlier decision of coordinate bench of this Tribunal in assessee's own case for AYs 2011-12 & 2012-13, ITA Nos. 631 & 632/Mum/2019 common order dated 12/03/2020. The relevant findings of the bench were as under: -

7. We have carefully heard the arguments advanced by respective representatives and perused relevant material on record including documents placed in the paper-book. We have also deliberated on various judicial pronouncements as cited before us. We have already appreciated the settled legal position regarding addition u/s 68 as enumerated by us in the opening paragraphs. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

8.1 Upon careful consideration, the facts that emerges are that the assessee has issued 20.70 Lacs shares to as many as 11 corporate entities during the year as tabulated in para 5.3 above. As evident from documents on record, these shares were issued at face value of Rs.10/- per share. The Share Capital of the assessee increased by Rs.207 Lacs during the year under consideration. In the light of settled legal position as enumerated by us in the opening paragraphs, it is quite evident that the primary onus was on assessee to prove the fulfilment of three ingredients of Sec. 68 viz. (i) identity of the investor; (ii) creditworthiness of the investors; & (iii) genuineness of the transactions.

8.2 To demonstrate fulfillment of these ingredients, the assessee had during the course of assessment proceedings as well as appellate proceedings, furnished following broad documentary evidences with respect to all the 11 entities: - (i) Share Application Form (ii) Copy of Cheque (iii) Copy of Cheque Deposit Slip (iv) Copy of investor's Bank Statement (v) Copy of Share Certificate Counterfoil (vi) Copy of Audit Report along with financial statements of the investor entity (vii) Copy of ITR acknowledgement of the investor entity (viii) Copy of Certificate of incorporation of investor entity (ix) Memorandum & Articles of Association of investor entity (x) Company Master Data showing status as active (xi) Copy of Board Resolution The assessee's own bank statement was also placed on record which would show that all the transactions have taken through banking channels. Upon careful consideration of these documents, we find that so far as the identity of the investor entities are concerned, the same stand proved by certificate of incorporation which is held to be conclusive proof of registration of a corporate entity. The creditworthiness of the entities would stand satisfied by the financial statements of the investor entities, which are also placed on record. The genuineness of the transactions would stand proved by the fact that the transactions were duly supported by share application form, share certificates, copy of board resolution and by the fact that ultimately the shares were allotted to all these entities. The assessee has tabulated the net worth of all these entities in the following manner: -

No.	Name of investor	Amount of share capital invested	Share capital of investor entity	Reserves of Investor entities	Net worth of investor entities
1	Limelight Dealcom P Ltd	15,00,000	16,85,000	3,01,30,806	3,18,15,806
2	Classic Commotrade P Ltd	5,00,000	6,51,800	2,70,49,045	2,77,00,815
3	Divya Prakash Suppliers Pvt Ltd	25,00,000	1,00,02,450	33,68,50,695	34,68,53,145
4	Goldy Dealcom P Ltd	25,00,000	7,21,000	3,04,44,166	3,11,65,166

5	Nextgen Tradecom P Ltd	20,00,000	57,65,000	10,76,35,000	11,34,00,000
6	Rexnox Trexim P Ltd	18,00,000	1,15,57,100	15,93,97,977	17,09,55,077
7	Rajlaxmi Dealcom P Ltd	18,00,000	60,10,000	11,22,95,755	11,83,05,755
8	Vanilla Tie up Pvt Ltd	15,00,000	13,50,000	6,12,92,989	6,26,42,898
9	Kamakhy Goods P Ltd	24,00,000	7,72,000	3,29,46,126	3,37,18,126
1 0	Camellia Commercial P Ltd	10,00,000	8,32,280	3,58,97,644	3,67,29,924
1 1	Anmol Comercep Ltd	32,00,000	1,81,03,500	28,24,38,553	30,05,42,053
	Total	207,00,000	5,74,50,130	1,21,63,78,635	1,27,38,28,765

The perusal of net worth chart would reveal that all the investor entities had sufficient net worth to make stated investment in the assessee company. Upon perusal of all these documentary evidences, it could safely be concluded that the assessee had successfully discharged the onus casted upon him u/s 68 and the onus was on revenue to rebut assessee's evidences.

8.3 Proceeding further, we find that the sole basis of making impugned addition is the statement of one of the directors as recorded during the course of survey proceedings u/s 133A. However, this statement has been retracted within a span of 7 days. It is settled law that statements recorded during the course of survey proceedings would not have much evidentiary value unless the same are backed by credible evidences. This position has been settled by Hon'ble Supreme Court in the case of CIT V/s S.Khader Khan & Sons (25 Taxmann.com 413). The CBDT instructions No. F.No.286/98/2013-IT (Inv. II) dated 18/12/2014 also discourages confessional statements without any credible evidences. No incriminating material is shown to have been found during the course of survey proceedings.

8.4 We also find that learned CIT(A) has gone by irrelevant considerations to confirm the impugned additions. The object clause of the investor entities

would have no relevance vis-à-vis proposed additions in the hands of the assessee u/s 68. It is trite law that no additions could be made merely on the basis of suspicion, conjectures or surmises.

8.5 The Ld. DR has relied upon the case of Hon'ble Supreme Court in *Sumati Dayal Vs CIT (80 Taxman 89) & Durga Prasad More (82 ITR 540 26/08/1971)*. No doubt that the revenue authorities were not required to put blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the documents produced before them. However, we find that no such inquiries have been made by the authorities except for the allegations that the share capital was bogus in nature. Nothing was brought on record that to substantiate the fact that the assessee's unaccounted money was routed in the books in the garb of share capital.

8.6 The entirety of facts and circumstances as enumerated hereinabove do not convince us to concur with the stand of Ld. CIT(A). The impugned additions, in our considered opinion, could not be sustained under law in the light of binding judicial pronouncements as enumerated by us in the opening paragraphs. Therefore, we delete the same. Consequently, the set-off of losses, as allowable under law, would be available to the assessee. Ground Nos. 4 stand allowed. Ground No.5 stand allowed for statistical purposes. Ground Nos. 6 to 8, being consequential in nature, would not require any specific adjudication on our part.

8.7 So far as the legal grounds are concerned, we find that the original return was processed u/s 143(1) and the only requirement in law to trigger assessment was that Ld. AO certain reasons to believe that certain income escaped assessment in the hands of the assessee. We find that Ld. AO was clinched with tangible information from investigation wing which suggested possible escapement of income in the hands of the assessee. In our opinion, nothing more was required at this stage since Ld. AO had sufficient reasons to form such a belief. Therefore, we do not find much substance in assessee's legal grounds. Ground Nos. 1 to 3 stand dismissed.

8.8 The appeal stands partly allowed in terms of our above order. This decision has subsequently been followed by another coordinate bench of the Tribunal in the case of assessee's sister concern namely M/s Moongipa

Development & Inf. Ltd. for AYs 2009-10 & 2010-11, ITA Nos.625 & 626/Mum/2019 common order dated 04/12/2020 on identical facts and circumstances.

7. We find that facts in this year are quite identical to the facts of earlier years. In fact, Ld. AR has demonstrated that 13 entities out of the 16 entities are common entities as dealt with by the Tribunal in the captioned appeals as is evident from the following tabulation: -

<i>No.</i>	<i>Name of Investor Entity</i>	<i>BBPL* 2011-12 & 2012-13</i>	<i>MDIL** 2009-10</i>	<i>MDIL** 2010-11</i>
<i>1</i>	<i>Anmol Commerce P Ltd</i>	<i>Yes</i>	<i>Yes</i>	
<i>2</i>	<i>Rexnox Trexim P Ltd</i>	<i>Yes</i>	<i>Yes</i>	
<i>3</i>	<i>SSA Motor Finance P Ltd</i>		<i>Yes</i>	
<i>4</i>	<i>Priyamvada Finvest P Ltd</i>		<i>Yes</i>	
<i>5</i>	<i>Motocab Finance P Ltd</i>		<i>Yes</i>	
<i>6</i>	<i>Camellia Commercial Pvt Ltd</i>	<i>Yes</i>		
<i>7</i>	<i>Cherry Tieup P Ltd</i>			<i>Yes</i>
<i>8</i>	<i>Deepa Holding P Ltd</i>		<i>Yes</i>	<i>Yes</i>
<i>9</i>	<i>Hill View Hire Purchase Pvt Ltd</i>		<i>Yes</i>	
<i>10</i>	<i>Mandyati Dealcom P Ltd</i>		<i>Yes</i>	
<i>11</i>	<i>Nextgen Tradecom Pvt Ltd</i>		<i>Yes</i>	
<i>12</i>	<i>Vanilla Tie up Pvt Ltd</i>	<i>Yes</i>		
<i>13</i>	<i>Kamakhya Goods P Ltd</i>	<i>Yes</i>	<i>Yes</i>	

**BBPL - Assessee (M/s Bini Builders Pvt Ltd)*

***MDIL - Sister concer of assessee (M/s Moongipa Dev. & Inf. Ltd)*

Regarding remaining 3 entities i.e. (i) M/s Gorsia Marine Equipment Pvt. Ltd.; (ii) M/s Sitaram Investment Pvt. Ltd.; (iii) M/s Marudhar Suppliers Pvt. Ltd., we find that the assessee had furnished similar sufficient documentary evidences as follows: -

- (i) Share Application Form*
- (ii) Copy of Cheque*
- (iii) Copy of Cheque Deposit Slip*
- (iv) Copy of investor's Bank Statement*
- (v) Copy of Share Certificate Counterfoil*
- (vi) Copy of source of funds certificate*
- (vii) Copy of Audit Report along with financial statements of the investor entity*
- (viii) Copy of ITR acknowledgement of the investor entity*
- (ix) Copy of PAN Card*
- (x) Copy of Certificate of incorporation of investor entity*
- (xi) Memorandum & Articles of Association of investor entity*
- (xi) Company Master Data showing status as active*
- (xii) Copy of Board Resolution*
- (xiv) Copy of RBI certificate of registration*

Upon perusal of these documents, it could be said that the primary onus as casted on the assessee in terms of the requirement of Section 68, was duly fulfilled and the onus was on revenue to controvert the evidences furnished by the assessee. However, we find that nothing has been brought on record by the revenue to substantiate the fact that the assessee's unaccounted money was routed in the books in the garb of share capital. It is trite law that no addition could be made merely on the basis of allegation, suspicion, conjectures or surmises. Upon perusal of assessee's written submissions as placed on record, another pertinent fact to be noted is that all the 16 investor entities has sufficient net worth (shares capital + reserves & surplus) to make investment in the assessee and the percentage of investment made by them in the assessee company is merely in the range of 0.47% to 5.45% of their respective net worth.

8. We find these five investor companies invested in the share capital at share premium in the assessee company referred at Sr. No. 1,2,4,5 and 8 of the chart referred at page 15 above, where the Honble Tribunal has considered the financial aspects and observed that these companies can make investments and the investments percentage range from .47% to 5.45%. Further, we find that all the five investor companies contributed the share capital and premium were subject matter of adjudication by the Hon'ble Tribunal and was treated as genuine in the above cases. We find that these five investor companies are part of the decisions of the Hon'ble Tribunal for the same assessment year. We Considering the overall facts, circumstances, submissions and Hon'ble Tribunal decisions, are of the substantive opinion that the assessee could able to substantiate its case and satisfy three ingredients being identity, creditworthiness and genuineness of the transactions. The Hon'ble Tribunal has dealt elaborately on the net worth of these companies and percentage of the investments are comparatively lower than total net worth of the investor companies. Accordingly, we respectfully follow the judicial precedence and set aside the order of the CIT(A) and direct the assessing officer to delete the addition and allow this ground of appeal in favour of the assessee.

Whereas, the ground of appeal no 1,2,3 and 5 are not pressed and accordingly are dismissed. The ground of appeal no 6 on penalty levied U/sec 271(1)(c) of the Act is prematurely raised and is dismissed. The ground of appeal on Levy of Interest U/Sec234A,234B & 234C of the Act is consequential in nature and requires no adjudication.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 04.06.2021

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 04.06.2021

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai