IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No. 48/NAG/2016
(ASSESSMENT YEAR 2010-11)

ACIT CENTRAL CIR – 2(1), 3RD FLOOR, ROOM NO. 312, AAYAKAR BHAWAN, TELANGKHEDI ROAD, NAGPUR – 440 001.	Vs	M/S. LOKSHAHI PUBLICATION PVT. LTD. 3RD FLOOR, 148 UNIVERSITY LIBRARY ROAD, THAPAR ENCLAVE-II, RAMDASPETH, NAGPUR – 440 012 PAN: AABCL6673L
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

Appellant by	:	Shri A.R. Ninawe (DR)
Respondent by	:	Shri K.P. Dewani (AR)

Date of Hearing	:	19.06.2017
Date of Pronouncement	:	29.06.2017

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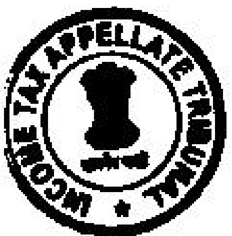
ORDER

PER P.K. BANSAL, V.P.:

This appeal has been filed by the Revenue against the order of the CIT(A) dated 28.01.2016 by taking the following effective grounds of appeal:



"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition made on protective basis of Rs. 1,00,00,000/- being share application money and share premium?

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,00,00,000/- without appreciating the facts and evidences brought on the record by the

AO to prove that share application money and share premium was not genuine?

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting, the addition of Rs. 1,00,00,000/- ignoring the evidence found in incriminating diaries according to which cash was transferred to Mumbai through hawala operations which was received back as share capita and premium?"

INCOME TAX APPELLATE TRIBUNAL

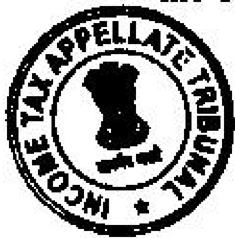
2. The only issue involved in this appeal relates to the addition on account of share application money and share premium. The brief facts of the case are that there has been search and seizure action u/s. 132 of the Income Tax Act in the office of Bhangdiya Group on 19/07/2011. During the course of the search, several incriminating documents were found and seize. From the seized material, it was noted by the Assessing Officer that item number 66 of Annexure – B and item 3 Annexure – B-1 belong to the assessee's company. Accordingly the notice u/s. 153C of the Income Tax Act dated 06/05/2013 was issued and served on the assessee. In response to the notice, the assessee objected the validity of the notice and requested to drop the proceedings u/s. 153C to which the Assessing Officer did not agree. The assessee therefore, submitted that the return filed u/s. 139(1) be treated as the return filed u/s. 153C. The assessing Officer on the basis of the seized material noticed that the assessee Bhangdiya has transferred the cash and brought it back to the group company.

3. The Assessing Officer noted following companies invested in the share capital of Assesse Company which in his view were shell companies:

2010-11	GTIL	Rs. 40,00,000/-
-do-	Alka Diamond Industries Ltd.	Rs. 60,00,000/-

On this basis, the Assessing Officer observed that cash balance generated by inflating sub-contractor expenses were routed through investor companies to be infused in group companies as share application money as per the seized diaries of Annexure - B-1 to B-65.

4. The Assessing Officer, observed that Shri Mitesh G. Bhangdiya are directly involved in the capacity of Directors or shareholders of Bhangdiya Groups of Companies. According to the Assessing Officer, over 30 crores have been laundered through bank account of shell companies. The Assessing Officer ultimately concluded that the Bhangdiya Group has transferred its unaccounted fund to Mumbai through Hawala by mediator who has subsequently brought through cash / transfer funds / RTGS of various amount in various bank account operated and controlled through various persons. The amount has been transferred one bank account to another after 3 - 4 layers of bank transaction on the same day and the amount appears as share application and share premium into Bhangdiya's Group of Companies after being laundered through several clearings. The Bhangdiya Group has laundered in the case of the assessee their unaccounted money as share application money including share premium of Rs. **1 Crores** through shell companies and the sources of the said investment was from the cash balance available with the Bhangdiya's Group as reflected on the receipts side of the diaries item number 1 to 65 of Annexure B. The Assessing Officer therefore, added **Rs. 1 Crores** on protective basis in the hands of the assessee companies treating the same is bogus. When the matter went before the CIT(A), the CIT(A) deleted the said addition by observing as under:



"**9.0** *I have carefully considered the submissions of the AR of the appellant, the order of the AO and the material on record.*

9.1 *During the relevant financial year under consideration, the appellant company has received share capital to the tune of* **Rs. 1.00 crores**

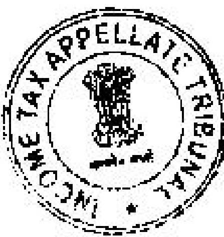
*from **2 corporate** share holders. The AR has contended that the ld. AO has made the detailed enquiry in respect to share application money received from various companies who have contributed towards share capital of appellate company. The appellant in the course of assessment proceedings has submitted confirmations from investor corporate share holders in respect of the share capital subscribed by them. The appellant contends that the investment made by such corporate share holders was duly reflected in the regular books of account and the amounts of investment have been received through banking channel. The AR has placed on record the details of Assessing Officers of the investor corporate entities which are assessed at Mumbai. The AR has also filed the financial statements of the corporate share holders including the PAN and ROC details. Thus the AR contends that the identity of the share holders is fully established. As regards to the seized material found in the case of Shri Mitesh Bhangdiya, the AR has contended that the same does not relate to the appellate company, therefore, no adverse inference can be drawn.*

9.2 *The AR of the appellant has relied on the decision of Hon'ble Apex Court in the case of Lovely Exports Pvt. Ltd. reported in 216 CTR 195 (SC).*

9.3 *The corporate share holders are assessed to Income-tax and have submitted their income-tax returns with the Income-tax Department. Therefore, according to the AR, the ratio laid down by the Hon'ble Apex Court in the case of Lovely Exports Pvt. Ltd. is applicable to the facts of the case of the appellant. The AR further submitted that the appellant by furnishing the PAN and ROC details has discharged the onus cast on it. The onus therefore is shifted on the revenue to prove the transactions otherwise as not bona-fide. As regards to the issue of invoking the provisions of section 68 of the Act by the AO, the appellant has relied on the following decisions:*

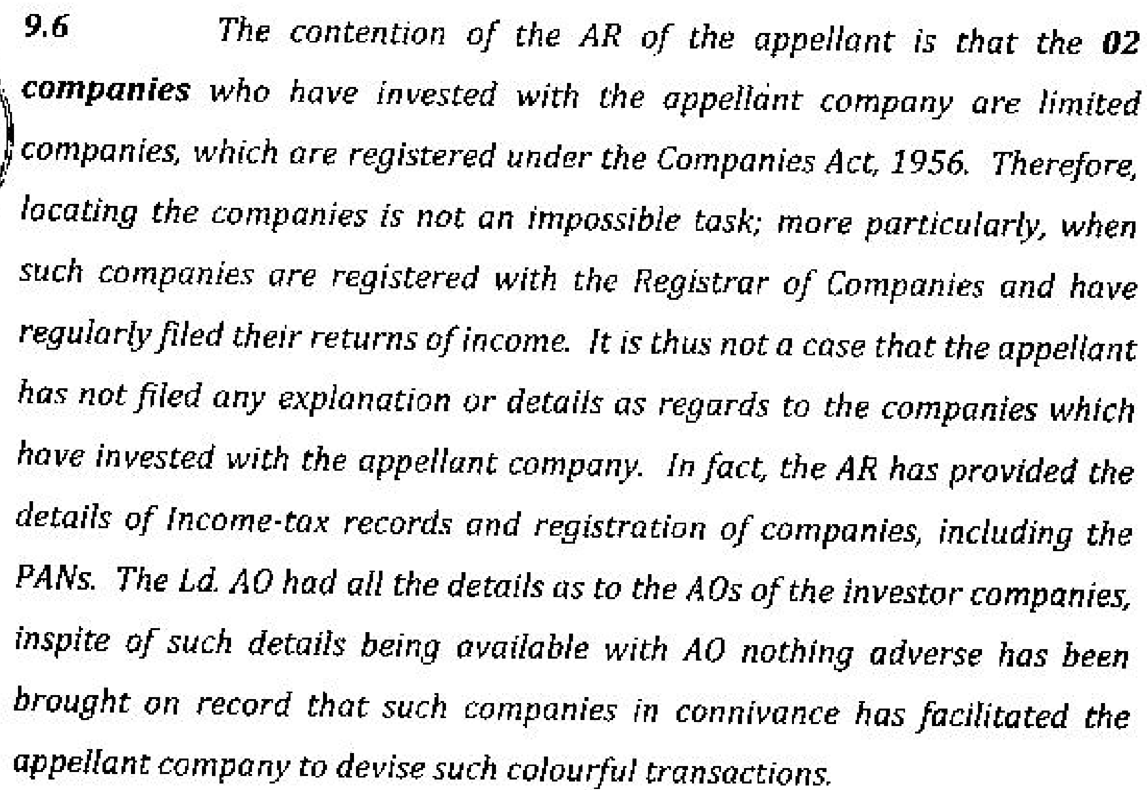
i)	*Appeal (L) No. 2182 of 2009 (High Court of Bombay)*	:	*CIT vs M/s. Creative World Telefilms Ltd.*
ii)	*307 ITR 334*	:	*CIT vs. Value Capital Services (P) Ltd.*
iii)	*Hon'ble Bombay High Court judgment vide order dated 13.02.2012 in the case of CIT vs Goa Songe & Power Ltd.*		

9.4 *The AR of the appellant has contended that the ld. AO has not brought any evidence on record to show that for contribution of share capital, money has flown form Coffers of appellant company. The AR further contended that assessment u/s. 143(3) r.w.s. 153C of the Act has been completed wherein the income of the appellant company has been computed by the ld. AO as per the books of account in respect of its business activities and no defect whatsoever has been found in the books of account of the appellant which has been accepted. It is a fact emanated from the records that the books of account of the appellant have not been rejected by the AO. Thus the contention raised by the AR that in the absence of any evidence to the effect that money has flown from coffers of assessee, the addition u/s. 68 cannot be made, carries substantial force. The AR of the appellant in this regard has relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd. reported in 307 ITR 334 (Del.). Thus the AR pleads that appellant has proved the identity, credit worthiness and genuineness of the transaction.*



9.5 *It is a fact as emanated from records that the AR of the appellant during the course of assessment proceedings has filed the details of share application money, including the share application forms, confirmations from the respective companies with their complete names and addresses and PANs, Board Resolutions, bank statements and Income-tax returns. It is thus not disputed that the* ***02 companies*** *which have made*

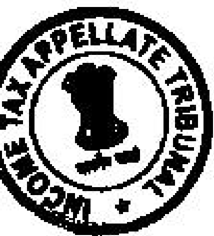
investments with the appellant company in the form of share capital are assessed to tax and have filed their returns of income for the relevant year. It is also undisputed that the share application money in question has been received through the account payee cheques by the appellant company. Thus, so far as the investor companies are concerned, the transactions of investment have been effected by account payee cheques through the banking channels. The AO, however, after conducting certain inquiries in respect of investor companies, has inferred and arrived at the conclusion that the share application money invested in the appellant company is nothing but appellant company's own unaccounted money introduced under the guise of investment by the 08 companies, which are allegedly used as route to bring back such unaccounted money.



9.6 *The contention of the AR of the appellant is that the* ***02 companies*** *who have invested with the appellant company are limited companies, which are registered under the Companies Act, 1956. Therefore, locating the companies is not an impossible task; more particularly, when such companies are registered with the Registrar of Companies and have regularly filed their returns of income. It is thus not a case that the appellant has not filed any explanation or details as regards to the companies which have invested with the appellant company. In fact, the AR has provided the details of Income-tax records and registration of companies, including the PANs. The Ld. AO had all the details as to the AOs of the investor companies, inspite of such details being available with AO nothing adverse has been brought on record that such companies in connivance has facilitated the appellant company to devise such colourful transactions.*

9.7 *It is seen from the records that the ld. AO has drawn the inference that the share application money and the share premium introduced with the appellant company by the investor companies is bogus*

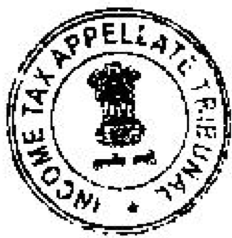
without bringing any adverse material on record. The Ld. AO thus without examination of the investments made by these ***02 companies*** *had arrived at the conclusion that the entire share capital of* ***Rs. 1.00 crores*** *by the* ***02 companies*** *is under the garb of bringing back the unaccounted money of the appellant company. It, however, is a fact as emanated from the records that the Ld. AO has refrained from giving any finding in respect of these* ***02 investor*** *companies and formed the general belief based on the seized material relating to the cash withdrawals from sub-contractors bank accounts. Therefore, the ratio laid down in the case of Hon'ble Apex Court in* ***Orissa Corporation Pvt. Ltd. vs. CIT 159 ITR 78 (SC)*** *is applicable to the facts of the appellant company in as much as that in the case of the appellant company the Ld. AO, apart from issuing notice u/s. 133(6), did not pursue the matter further.*



9.8 The AO has observed that before investing the funds with the appellant company, all the ***02 investor*** *companies have received the money in cash through several layers, which according to the AO, is the cash available with the appellant utilised for the purpose of introduction of bogus capital with the appellant company through such investor companies. The AR of the appellant has objected to such observation contending that the AO has not brought out a single instance which could show that the appellant company has deposited the cash in the bank accounts of investor companies with a motive to bring back are same in the form of share capital. The AO has drawn the inference that cash balance generated by sub-contractor expenses were routed through investor companies to be infused in the group companies as share application money. The AO has further mentioned in* ***para no. 7*** *that the Bhangdiya group has transferred its unaccounted fund to Mumbai through Hawala mediators which amount is alleged to have been invested with the appellant company through the 05 investors. However, no*

such evidence of cash transfer in the name of investor companies is brought on record.

9.9 It is a fact that the AO has caused the inquiries u/s 133(6) of the Act in respect of investor companies. However, whatever material has been gathered pursuant to such inquiries has not been confronted with the appellant infact perusal of assessment order does not indicate that any adverse material has been obtained from which anything adverse can be held as regard to contribution of share capital. Thus the argument of the appellant that once the appellant has furnished the names and addresses and PANs of investors, including their Income-tax records the appellant is not concerned as regards to deposits in the account of third parties and the onus of the appellant stands duly discharged carries much substance on the facts in issue. Therefore, the reliance placed by the AR on the decision of the ***Hon'ble Apex Court*** *in the case of* ***CIT Vs. Lovely Exports Pvt. Ltd. (2008), 216 CTR 195*** *is applicable to the facts of the present appellant, wherein the Apex Court has held as under:*



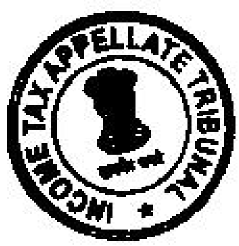
> ***"Can the amount of share money be regarded as undisclosed income under s. 68 of I.T. Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."***

9.10 The AR of the appellant has vehemently argued that the so called clinching evidence gathered pursuant to the inquiries conducted by the department has not been discussed in the assessment order. The AR

further agitated that the Ld. AO has not supplied any material as evidence in the course of hearings to show that the assessee has deposited its own money in the various assessment order. The AR further contends that no incriminating material has been found during the investigation by the DDIT (Inv) and the AO which can show that appellant has used its own money for introduction of share capital in the name of third company investors under the garb to convert the black money into white.

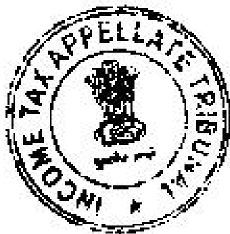
9.11 *In support of his contentions, the AR of the appellant has relied on the following judicial decisions:*

> ***"1) The Supreme Court in the case of CIT Vs. Gujarat Heavy Chemicals Ltd. (256 ITR 795) has affirmed the decision of Gujrat High Court and has held that, "CIT(A) and the Tribunal having found no justification for the addition of the amount of investment made in the shares of the assessee-company by another company as 25 per cent shares of the assessee were held by one group and all the companies, Indian as well as foreign, which had advanced money to the assessee towards subscription of shares had links with the said group matter involves question of appreciation of evidence; application under s. 256(2) rightly rejected. We have read the order of the High Court and heard learned counsel for the appellant. We are satisfied that upon the facts, no interference with the order of the High Court is called for. The civil appeals are dismissed."***



> ***2) Further in the case of CIT Vs. Lovely Exports (P) Ltd. (216 CTR 195), The Supreme Court of India has made it an established law that "if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company".***

3) In the case of CIT Vs. Orissa Corporation Pvt. Ltd. (159 ITR 78), The Supreme Court of India has held that, "The assessee 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 assessees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, 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 credit-worthy or were such who could advance the allowed loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises. It cannot, therefore, be said that any question of law arose in these cases. The High Court was, therefore, right in refusing to refer the questions sought for."

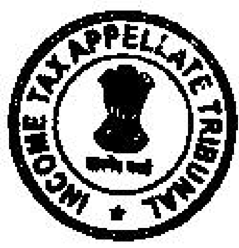


4) The Supreme Court in the case of CIT Vs. Stellar Investment Ltd. (251 ITR 263) has held that "the decision of the tribunal was won on the facts so that no interference was called for." It was further held that "Could it be assumed that the decision endorses the view that unexplained Share Capital could never be treated as the income of the company and that section 68 which places the responsibility on the assessee to prove the nature and sources of credit has no application in respect of paid-up share capital and share application money."

5) The Calcutta High Court in case of Hindustan Tea Co. Ltd Vs. CIT (263 ITR 289) has held that "the assessee has disclosed all the particulars available with it along with the names & addresses of each subscriber. In such a case, the assessee could not have been expected to establish the genuineness of amount and the amount could not be treated the income of the company without any material to suggest any link between the subscribed amount and the company. The AO is not justified in treating this as assessee's income especially where particulars were given in the application and since the amounts were received by cheque."

6) The Delhi High Court in the case of CIT Vs. Iliac Investment Pvt. Ltd. (287 ITR 135), after review of decision in CIT Vs. Antarctica Investment Pvt. Ltd (262 ITR 493) and Cit Vs. Sophia Finance Ltd. (205 ITR 98), held that "where the assessee is capable of identifying the subscriber and also place evidence of their creditworthiness by their bank statements and also submitted the confirmations, nothing more could be expected of the company. It follows that such amount of share capital to be assessable as that of the company, there should be something more to justify such addition. In this regard, the amount received as share capital stands on a different footing to some extent, than any other borrowing".

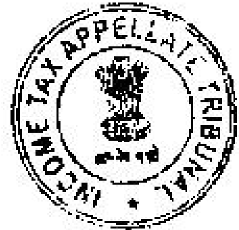
7) ITAT Chennai Bench in the case of Midas Golden Distilleries (P) Ltd. Vs. CIT (25 DT 337) has held that "assessee company bought on record complete identity of Shareholders by providing their addresses and confirmation to the effect that they have contributed to the share capital of the assessee. Moneys were received through banking channels. All the applicants are regularly assessed to tax and assessment particulars relating to each of them were made available to the assessing authority. Mere subjective opinion of the AO that the source of money with the shareholders or their creditworthiness is not established is not sufficient to treat the share capital as deemed income u/s 68. Even if the applicant companies are to be treated as bogus share holders, Revenue is free to re-open their individual assessments and bring to tax such unexplained money in their respective hands. Addition in the assessee's hand is liable to be deleted."



8) Further, the Nagpur Bench of ITAT in the case of ACIT Cir-2 Vs. Kasana Foods Pvt. Ltd. (61 & 62 / Nag/ 2007) vide a joint order dated 24th July 2009 has held that, "The facts of the case of the assessee is identical to the facts in case of Orissa Corporation (P) Ltd. (Supra). Tin this case the assessee has furnished all the particulars of share applicant including its Pan. The AO apart from issuing notice u/s. 133(6) did not pursue the matter further. Therefore, the notice issued to the share applicant returned unserved cannot be the criteria to treat the share application as unexplained cash credit in the hands of the assessee."

The copies of all the above judgments are enclosed herewith as 'Annexure - 10'"

__10.0__ In the light of the above facts, it is evident that the appellant has placed sufficient legal evidence on record to demonstrate the identify, creditworthiness and genuineness of contribution of share capital. Thus there remains no scope for making addition for the same. The claim of the appellant for contribution of capital is acceptable, therefore, the protective addition made by the AO is directed to be ***deleted***.*"*



5. At the outset, the assessee referred to the application made by him under Rule 27 of the ITAT Rules, 1963 challenging the validity of the notices issued u/s. 153C of the Act as there was no incriminating material belonging to the assessee found in the course of search. It was stated that he assessments in the case of the assessee were framed u/s. 153C read with section 143(3) of the Act. The assessee before the CIT(A) raised ground No. 1 and 2 and challenged the validity of the notices issued u/s. 153C of the Act. The CIT(A) has dismissed the ground challenging the validity of the notices issued u/s. 153C and decided the appeal of the assessee on merit due to which protective addition made in the hands of the assessee stand deleted. Under these facts, the assessee did not file any appeal or the Cross Objections taking the ground as regards to the validity of the notice u/s. 153C of the Act. It was contended that there is no incriminating material found and seized for the assessment year belonging to the assessee in the course of the search at the premises of Shri M.G. Bhangdiya. It was submitted that in the case of the assessee no satisfaction of the Assessing Officer of the person searched is recorded before issue of notice u/s. 153C. In absence of non recording of the satisfaction by the Assessing Officer of the person searched, the consequent assessment framed is bad in law and the notice issued u/s. 153C is bad in law. Reliance was placed in this regard on the decision of ITAT Nagpur Bench in the case of Mansi Commodities Ltd. In I.T.A. Nos. 146 to 148/Nag/2014 in which the Tribunal vide order dated 19/12/2016 held that satisfaction for issuance of notice u/s. 153C is to be recorded by the Assessing Officer of the

person searched and in the absence thereof the notice issued u/s. 153C is bad in law and consequent assessment framed is bad in law.

6. Learned D.R., on the other hand, vehemently relied on the order of the CIT(A) and contended that the assessee has taken ground No. 1 and 2 about the validity of the issuance of notice u/s. 153C before the CIT (A) but the CIT(A) dismiss same. Even no submissions were made for which our attention was drawn towards page no. 25 para 12 of the order of CIT(A). Even otherwise on merit the assessee contended that the diary seized during the course of search contains the name of the assessee from whom the cash has been received noted in the diary. Therefore, it cannot be said that incriminating material belonging to the assessee was not found.

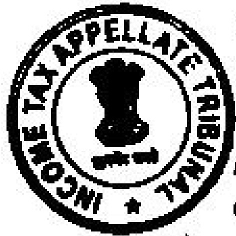
7. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. Coming to the adjudication and admission of ground taken by the assessee about the validity of the notice issued u/s. 153C and consequently cancellation of the assessment framed thereupon, we have gone through Rule 27 of the ITAT Rules. We noted that the said Rule read as under:

7.1 On the basis of this Rule, it is apparent that even if the assessee has not filed the appeal against the order of CIT(A), he may support the conclusion of the CIT(A) by taking any ground which has been decided against him. From the facts before us, it is apparent that the assessee has taken the ground regarding the validity of the notice issued u/s 153C before the CIT(A) and also validity of consequent assessment framed thereupon. We noted that CIT(A) under para 12 of its order dismissed the said ground of the assessee during the appellate proceedings. Whatever may be the reason, the fact remains that the ground taken by the assessee about the validity of the notice u/s 153C and also the validity of the consequent assessment framed thereupon stands dismissed by the

CIT(A). Therefore, in our opinion, the assessee complied with the condition as stipulated under Rule 27 of the ITAT Rules and the assessee can always raise this ground in view of Rule 27 before the Tribunal. The Tribunal has the power to adjudicate the ground taken under Rule 27. We accordingly admit the said ground.

7.2 Now coming to the submissions made by both the parties on merit on this ground. We have gone through the provisions of section 153C and noted that this section prior to the amendment made by the Finance Act, 2015 with effect from 01/06/2015 states as under:

> *"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing, or books of account or documents, seized or requisitioned, belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person."*



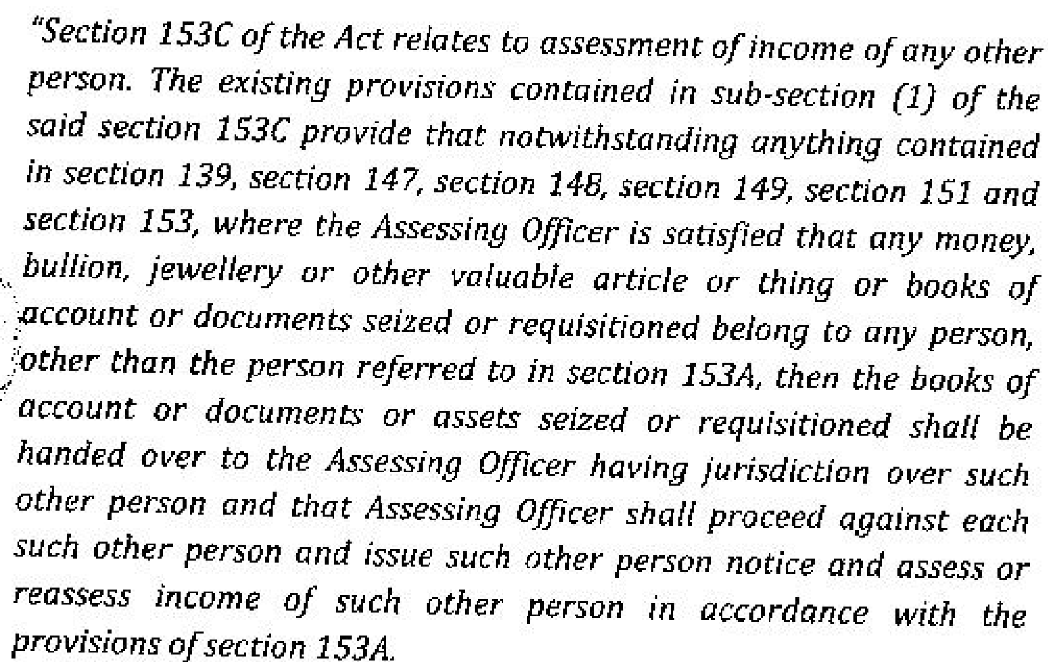
This section has subsequently been amended by Finance Act, 2015 with effect from 01/06/2015. The amended section reads as under:

> *"153C Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that –*
>
> *(a) Any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

(b) *Any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handled over to the Assessing Officer having jurisdiction over such other person."

The Finance Bill, 2005 in its memorandum explaining the purpose for which this amendment was made reads as under:



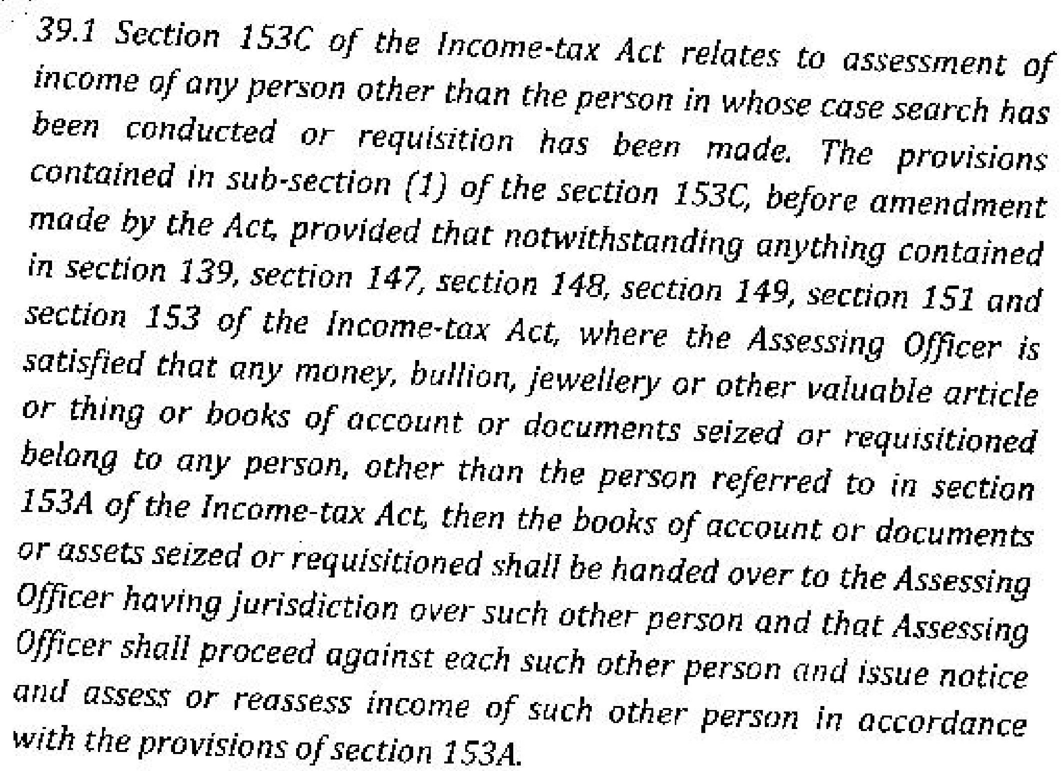
"Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Disputes have arisen, as to the interpretation of the words "belongs to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, it is proposed to amend the aforesaid section to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or

documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

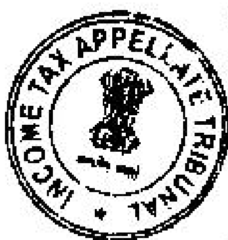
Subsequently, the CBDT has brought out Circular No. 19 of 2015 dated 27/11/2015 by which explainatory note to the provision of Finance Act, 2015 were discussed. The explainatory note in the circular relating to the amended provision of section 153C read as under:

"39. Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned.



39.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been conducted or requisition has been made. The provisions contained in sub-section (1) of the section 153C, before amendment made by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the Income-tax Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

39.2 Disputes have arisen as to the interpretation of the words "belong to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, section 153C has been amended so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A of the Income-tax Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of section 153A.



39.3 Applicability: This amendment has taken effect from the 1st day of June, 2015."

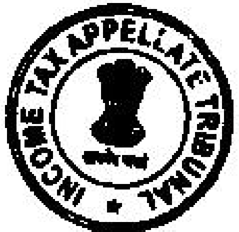
7.3 In view of this, it is apparent that the amended section 153C are not retrospective and are applicable with effect from 01/06/2015 and not prior to that. In the case of the assessee, search as well as notice u/s 153C has been issued prior to 01/06/2015. Since in the case of the assessee action u/s 153C has been taken by issuing the notice dated 16/07/2013 in consequence of the search carried out on 19/07/2011 therefore, the amended provision of section 153C will not apply. As per the provision of section 153C, as was in existence during the impugned period, the condition precedent for issuing notice u/s 153C and assessing or reassessing the income of 'such other person' is that the money, bullion, jewellery or other valuable article or thing, books of account or document seized or requisitioned which belong to such person where documents in question recovered during search proceedings did not belong to the assessee,

though there was a reference to the assessee therein, issue of notice to the assessee u/s 153C, in our opinion, cannot be held to be valid. Hon'ble Delhi High Court in the case of Pepsi Foods Pvt. Ltd. vs. ACIT 52 Taxman.com 220 (Del), we noted has also categorically held that before a notice u/s 153C can be issued, the Assessing Officer is required to arrive at a conclusive satisfaction that the document belongs a person other than the searched person. Unless until it is established that the documents seized did belong to the searched person, the provision of section 153C did not get attracted. This is not disputed that the notice in the case of the assessee u/s 153C has been issued in consequence of search & seizure action taken u/s 132 in the Bhangdiya Group from whom premises diaries marked B-1 to B-65 were found and seized. These diaries belong to the Bhangdiya Group not to the assessee. Even though the name of the assessee is mentioned in the diary that does not mean that the diary belong to the assessee. It may be said that the diary contains the information regarding the assessee. In our opinion, even the amended provision supports the case of the assessee. The Legislation has amended section 153C with effect from 01/06/2015 and widened the scope u/s 153C by substituting in place of word 'belongs or belong' to word 'pertain or pertain to or any information contained therein'. Now under the amended provision, even if the material seized does not belong to the assessee but it contains the information relating to the assessee, the proceedings initiated u/s 153C will be valid. But this amended provision, as is apparent, is applicable from 01/06/2015. Learned D.R. before us even though vehemently relied on the order of the Assessing Officer but could not adduce any cogent material or evidence which may prove that the diaries found and seized during the course of search in Bhangdiya Group belong to the assessee. Since during the course of search in Bhangdiya Group no material relating to addition made belonging to the assessee was found therefore, the notice issued u/s 153C, in our opinion, cannot be regarded to be valid one. Same view has been taken by Hon'ble Bombay High Court in the case of Bharti Vidyapeeth in ITA No. 923 of 2012 vide its order dated 11/09/2014. This fact also finds support as the

Revenue has made the addition in the hands of the assessee in each of the assessment year only on protective basis which proves that the Revenue was also not satisfied with the incriminating material in fact belong to the assessee. On this basis we set aside the order of CIT(A) and hold that the notice issued u/s 153C is not valid and in consequence thereupon, the assessment made is annulled. Thus, the ground taken by the assessee under Rule 27 is allowed.

8. Coming to the appeal of the Revenue regarding the deletion of the addition of **Rs. 1,00,00,000/-** which were added by the AO on protective basis being the share application money and share premium. We have heard the rival submissions and carefully considered the same along with the orders of the tax authorities below. The Ld. DR before us relied on the order of the AO while Ld. AR relied on the order of the CIT(A) and reiterated the submissions made before the CIT(A). He also relied on the following cases:

i) *(2008) 216 CTR 0195 (SC)*
CIT vs. Lovely Exports (P) Ltd.



ii) *(2008) 307 ITR 0334 (Delhi)*
CIT vs. Value Capital Services (P) Ltd.

iii) *Hon'ble Bombay High Court order in ITA (L) No. 2182 of 2009 in the case of M/s. Creative World Telefilms Ltd. (Earlier known as Link International Services Pvt. Ltd.) vide order dated 12/10/2009.*

iv) *Hon'ble Bombay High Court in Tax Appeal No. 16 of 2012 in the case of Goa Sponge and Power Ltd. vide order dated 13/02/2012.*

v) *Hon'ble High Court of Bombay in ITA No. 1613 of 2014 in the case of M/s. Gagandeep Infrastructure Pvt. Ltd. vide order dated 20/03/2017.*

vi) *(2014) 368 ITR 0001 (Bom.)*
Vodafone India Services Pvt. Ltd. vs. ACIT

vii) *Hon'ble Haryana High Court in ITA No. 386 of 2010 (O & M) in the case of M/s. K.C. Pipes Pvt. Ltd. vide order dated 02/08/2016.*

viii) *Hon'ble Bombay High Court in Writ Petition No. 3027 of 2015 in the case of Khubchandani Healthparks Pvt. Ltd. vide order dated 10/02/2016.*

The copies of these case laws were filed before us which we have gone through. We noted the said addition has been made by the AO on protective basis treating the following companies / individual to be the shell company investor in the assessee company in respect of amount of the share application money as enumerated here under:

2010-11	GTIL	Rs. 40,00,000/-
-do-	Alka Diamond Industries Ltd.	Rs. 60,00,000/-

9. The AO was of the view that Bhangdiya Group has transferred its unaccounted cash at Mumbai through Hawala by the Mediator, who has thereafter introduced through cash / transfer funds / RTGS of various amount in various banks account operated and controlled through various persons. The assessee company in his view, has also to the extent the share application money was in receipt of sums out of the said funds. The AO therefore, added the said amount of **Rs. 1,00,00,000/-** in the hands of the assessee on protective basis holding the share application money including the share premium to be bogus. The CIT(A) deleted the said addition. The Ld. DR before us even though vehemently relied on the order of the AO but could not adduce before us any cogent material or evidence which may prove that the share application money including the share premium received by the assessee is bogus. This is a settled

law in view of the decision of Hon'ble Supreme Court in the case of Daulatram Rawatmal 87 ITR 349(SC) that onus is on the person who alleges that apparent is not real. The CIT(A) in this case noted that the assessee had submitted complete details, the copy of which were also filed before us, being confirmation from shareholders, financial statement, bank statement copy of Permanent Account Number and details of Income-Tax Return to substantiate the contribution of share capital. It is not denied that the amount was received through proper banking channel and all the corporate shareholders and are assessed to tax. These evidences prove that the assessee, in our opinion, has discharged the onus which lies on him u/s. 68 of the Income-tax Act, Section 68 as was in inexistence during the impugned assessment year lays down as under:

> *"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers not 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."*

10. From the reading of the said section, it is apparent that for making addition u/s. 68 the following conditions must be satisfied.

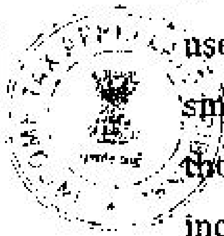
(a) Sum must be found credited in the books of the assessee maintained for the previous year.

(b) The assessee offers no explanation about the nature and source of such credit or the explanation offered by the assessee is not in the opinion of the AO satisfactory.

11. If both the conditions are satisfied the AO is empowered to charge sum so credited found in the books of the assessee to Income-tax and treat the same as the income of the assessee of that previous year. In this case, we noted the AO found aforesaid sum of **Rs. 1,00,00,000/-** credited in the books of the assessee. The assessee has submitted the explanation, explaining the nature and

source of such credit. The AO did not accept the explanation of the assessee merely on the basis of the assumption that the cash found recorded in the diary seized during the course of search in Bhangdiya Group has been utilized by the said Group for getting the share application money and premium from the various persons in the assessee company. The AO while rejecting the explanation of the assessee did not bring any evidence on record except relying on the seized diary that the money was sent by the assessee to the mediator at Mumbai for obtaining the share application money through Hawala. No particular evidence or the material what to talk of the corroborative evidence was brought on the record while rejecting the explanation of the assessee by the AO that the money brought in by the company as share application money comes out of the money sent by the Bhangdiya Group to Mumbai. It is not denied that there had been search in the case of Bhangdiya Group on dated 19.07.2011 and during the course of the search, diaries being item number 1 to 63 Annexure – B-1 were found which according to the AO contain the details of the receipt and the payment. The money so received represents the cash received by the Bhangdiya Group from the Group Companies by making the withdrawal from their bank account as well as cash received from sub-contractors by making withdrawal by the sub-contractors from their bank account. It is not denied that Bhangdiya Groups Company as well as the sub-contractor from whose bank account the cash has been withdrawn and recorded in the diary found and seized comes out of their bank account which were duly disclosed to the Income-tax Department. These bank accounts were not undisclosed bank account. All these Group Companies as well as sub-contractors were assessed to Income-tax. Therefore, the source of the money shown as received in the diaries were out of the receipts of the parties which have duly been disclosed by them while filing their Income-tax Return and has been assessed to tax while making their respective assessment by the AO. Section 68 did not, in our opinion, empower the AO to reject each and every explanation given by the assessee. Whether the explanation is satisfactory or not depends on facts of each case. If the assessee

has submitted all the evidences proving the identity, creditworthiness and genuineness of the transactions, the explanation given by the assessee cannot be regarded to be not satisfactory. The identity of each of the party who has contributed the share application money is proved beyond doubt as all of them are assessed to tax having the Permanent Account Number. The assessee has filed details of their Income-tax Return. Not only this, we noted the assessee has submitted the details being confirmation from shareholders, their financial statements, bank statements to substantiate that they have contributed to the share capital. The share capitals have been received by the assessee company through banking channels. There had been search and seizure in the case of the Bhangdiya Group but no clinching evidence showing linkage of the parties who has contributed towards the share capital was found or brought on record except to draw an inference from the diary that the money sent to Mumbai has been used for bringing back into the company by way of share capital. In our view, since the receipt found recorded in the diary comes out of the trading receipt of those concerns Bhangdiya Group and cannot be regarded to be the undisclosed income of the assessee, therefore, the money utilized out of that amount can also not be regarded to be utilized of unaccounted money of the assessee. No businessman will convert its tax paid money into unaccounted money and then convert into accounted money. The assessee company has received the contribution into the share capital proves the genuineness of transaction. The AO in the course of the assessment proceedings verified the transaction of the contribution of the share capital by issue of the notice u/s. 133(6). No adverse evidence obtained in such enquiry was brought on record. Even Ld. DR has also not produced any evidence in this regard which may prove that the share capital contribution received by the assessee company was not genuine. Since the assessee, in our opinion, has discharged his onus of proving identity, creditworthiness and genuineness of the transaction, the explanation given by the assessee cannot be regarded to be non satisfactory.



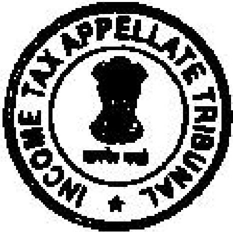
12. In our opinion, the AO just in the absence of any evidence being found was the view that the money has flown from the coffer of the assessee. We have gone through the decision in the case of CIT vs. Value Capital Services P. Ltd. 307 ITR 334 (Del). We noted in this case the Hon'ble Delhi High Court has categorically held that the additional burden was on the department to show even if the shareholders did not have the means to make the investment. 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. It is not denied that the company who has invested in the share capital are limited companies duly registered under the Companies Act therefore, these companies could have been very well located. They are registered with the Registrar of Companies and have regularly filed their returns of Income. It is not a case the assessee has not filed any explanation or details as regards to the companies which have contributed into the share capital of the assessee. The assessee has filed all the details which, in our opinion, a man of ordinary prudence would have filed. We did not find any adverse inference being brought on record by the AO which may prove that these companies in connivance has facilitated the assessee companies to devise colourful transactions. We find force in the submission of the Ld. AR that since all the companies who have contributed towards the share capital of the assessee are regular assessee have the Permanent Account Number. If the AO has not pursued the matter apart from issuing the notice u/s. 133(6), in view of the decision of Hon'ble Supreme Court in the case of Odissa Corporation Pvt. Ltd. Vs CIT, 159 ITR 78 (SC), no addition can be made in the hands of the assessee.

13. The CIT(A) in our opinion has passed a detailed and explicit order after considering the submission of the assessee which has been reiterated before us as well as the order of the AO and given the finding of the facts. The CIT(A) has also dealt with the various case laws which, in our opinion, support the case of the assessee.

14. This is not a fit case which warrants our interference. We accordingly confirm the order of the CIT(A) and dismiss the ground taken by the Revenue.

15. In the result the appeal file by the Revenue stand dismissed.

Order pronounced in the open court on 29.06.2017



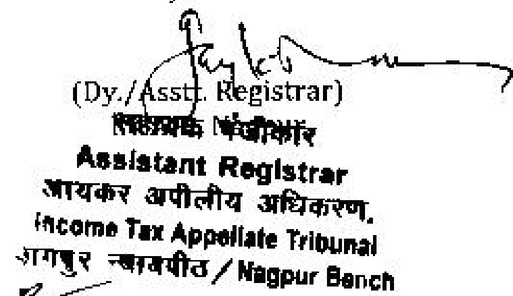
Sd/-	Sd/-
(AMARJIT SINGH)	**(P.K. BANSAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Nagpur
Date: 29th June, 2017

R. Dhoke, P.S.
Copy to:-

1) The Appellant;
2) The Respondent;
3) The CIT(A);
4) The CIT, Nagpur City Concerned;
5) The DR, ITAT, Nagpur;
6) Guard File

By Order



(Dy./Asstt. Registrar)