

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER  
AND**

**Ms. MADHUMITA ROY, JUDICIAL MEMBER**

**Virtual hearing**

**ITA No.384/Ind/2018**

**Assessment Year:2012-13**

DCIT-5(1) Indore	<u>बनाम/</u> Vs.	M/s. Sanverwala Jewellers Pvt. Ltd. 12, Chhota Sarafa Indore
(Appellant)		(Revenue )
P.A. No.AAOCS7650K		

Appellant by	Shri Rajeeb Jain, Sr. DR
Respondent by	S/Shri S.N. Agrawal & Bhavesh Agrawal, ARs
<b>Date of Hearing:</b>	<b>22.06.2021</b>
<b>Date of Pronouncement:</b>	<b>22.09.2021</b>

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2012-13 is directed against the orders of Ld. Commissioner of Income Tax(Appeals)-II (in short 'Ld. CIT], Indore

dated 15.01.2018 which are arising out of the order passed u/s 143(3) of the Income Tax Act 1961 ( in short the 'Act') dated 30.03.2015 framed by ACIT-5(1) Indore.

2. Ground nos.1 to 3 relates to deletion of addition of Rs.3,17,39,640/- u/s 68 of the I.T. Act as made by the Assessing Officer to the total income of the assessee company in respect of increase in the share capital.

3. Brief facts as culled out from the records are that the assessee filed e-return of income declaring total income at Rs.42,50,050/- on 29.9.2012. While going through the audited tax report and annexures thereof, the Assessing Officer noted that the assessee had received share capital and share premium money of Rs.3,35,39,640/- during the year under consideration. Accordingly, the Assessing Officer asked the assessee to furnish the relevant information. In response, the assessee furnished the list of share applicants and the Assessing Officer issued summons u/s 131 to the share applicants. The Assessing Officer noted that some of them appeared in office on various dates and statement on oath was recorded. The Assessing Officer noted that some share applicants

denied to have been allotted or have purchased the shares of the assessee company. Ultimately, the Assessing Officer made the addition of Rs.3,17,39,640/- u/s 68 of the I.T. Act to the total income of the assessee company in respect of increase in the share capital.

4. Being aggrieved, the assessee challenged the action of the Assessing Officer before the ld. CIT(A). The ld. CIT(A) summarized the breakup of the share capital and having gone through the facts, submissions and judicial pronouncements thereof deleted the addition. The relevant discussion made by ld. CIT(A) is reproduced hereunder:

“The assessee company had issued share capital of Rs 30,39,640/- to Shri Surendra Soni in lieu of transfer of his running business to the assessee company. The assessee company in consideration of business assets issued shares and therefore the Assessing Officer was not justified in adding the same to the total income of the appellant. The business assets as transferred from Shri Surendra Soni was duly considered by the assessing officer as genuine. In such a situation, there was no reason for AO to disbelieve the share capital as issued to him. I hereby direct the assessing officer to delete the addition of Rs 30,39,640/- as made to the total income of the appellant.

4.1.2.1] The appellant company also received share capital of Rs 2,87,00,000/- from the thirty-one share applicants, most of the share

applicants personally appeared before the assessing officer and their statement was also recorded on oath. In the statement as recorded before the assessing officer, all the share applicant duly accepted that they have invested amount in the share capital of the appellant company and also explained the source of investment made in the share capital. In the shareholder- wise chart as prepared by the appellant, it has discussed entire documents as filed by them and also giving reference of the statement as recorded, the said chart so prepared is reproduced as under:-

S.No	Name of the Share applicant	PA No	Amount [Rs]
1	Shri Anar Singh Parihar	N.A.	Rs 950000/-
1.1	Copy of share application form duly signed and filled.		
1.2	Copy of his bank account duly highlighting the amount of share application Money.		
1.3	Driving Licence		
1.4	Copy of his statement as recorded U/s 131 of the Income Tax Act		
2	Shri Ankit Verma	AHLPV9818R	Rs 8,00,000
2.1	Copy of share application form duly signed and filled		
2.2	Copy of PAN Card		
2.3	Copy of his income tax return as filed for the Asst Year 2012-13		
2.4	Copy of his bank account duly highlighting the amount of share application money		
2.5	Copy of his statement as recorded U/s 131 of the Income Tax Act		
3	Shri Anoop Singh Rajput	N.A.	Rs 950000/-
3.1	Copy of share application form duly signed and filled.		
3.2	Copy of his bank account with Bank of India duly highlighting the amount of share application Money		
3.3	Aadhar Card		
3.4	Copy of his statement as recorded during the course of search		

4	Shri Ashish Kumar Soni	DDKPS8760M	Rs 14,00,000
4.1	Copy of share application form duly signed and filled.		
4.2	Copy of PAN Card		
4.3	Copy of Income Tax return as filed for the Asst Year 2012-13		
4.4	Copy of his statement as recorded U/s 131 of the Income Tax Act.		
5	Shri Harish Singh Mandloi	N.A.	Rs 10,00,000
5.1	Copy of share application form duly signed and filled.		
5.2	Copy of Voter Card		
5.3	Copy of his Bank passbook with Indore Premier Co-operative Bank Limited duly highlighted the amount of share application money.		
5.4	Copy of his statement as recorded U/s 131 in assessment proceeding		
5.5	Copy of his driving license		
6	SHRI HUKUM SINGH	N.A.	10,00,000
6.1	Share application money form duly signed		
6.2	Copy of PAN Card		
6.3	Copy of his bank account		
6.4	Copy of his statement as recorded during the course of assessment proceeding		
6.5	Copy of Voter Id Card		
7	Smt Kamla Bai Verma	AOKPV5411J	Rs 900000/-
7.1	Copy of share application form duly signed and filled.		
7.2	PAN Card		
7.3	Copy of his income tax return as filed for the Asst Year 2012-13.		
7.4	Copy of her bank account duly highlighting the amount of share application money.		
7.5	Shri Ankit Verma in his statement duly accepted investment made by Smt Kamla Bai Verma in the share application money		
8	Smt Kaushalya Bai	N.A.	Rs 500000/-
8.1	Copy of share application form duly signed and filled.		
8.2	Aadhar Card		

8.3	Copy of bank account with Bank of Baroda		
8.4	Statement of her husband Shri Babulal was recorded on oath wherein he has categorically accepted about the investment made in the share application money of the assessee company		
8.5	Copy of Driving licence of her husband Shri Babulal		
9	Smt Kusum Verma	AOLPV1256L	Rs 800000/-
9.1	Copy of share application form duly signed and filled.		
9.2	PAN Card		
9.3	Copy of his income tax return as filed for the Asst Year 2012-13.		
9.4	Copy of her bank account duly highlighting the amount of share application money.		
10	Shri Mesar Singh Mourya	N.A.	Rs 1150000
10.1	Copy of share application form duly signed and filled.		
10.2	Voter Id		
10.3	Copy of his bank account duly highlighting the entry related to Investment in the share application money.		
10.4	Nihal singh in his statement has accepted about the investment made by Shri Mesar Singh Mourya		
11	Shri Mohan Mandloi	BGBPM4765J	Rs 950000/-
11.1	Copy of share application form duly signed and filled.		
11.2	PAN Card		
11.3	Copy of his bank account duly highlighting the entry related to the Investment in the share application money.		
11.4	Copy of his statement as recorded U/s 131 of the Act		
11.5	Copy of driving licence		
12	Smt Nidhi Verma	ANPPV4738E	Rs 600000/-
12.1	Copy of share application form duly signed and filled.		
12.2	PAN Card		
12.3	Copy of acknowledgement of Income Tax return as filed.		
12.4	Copy of his bank account duly highlighting the entry related to the investment in the share application money		

12.5	Copy of affidavit as filed during the course of assessment		
13	Shri Nihal Singh	N.A.	Rs 1950000
13.1	Copy of share application form duly signed and filled.		
13.2	Voter Id		
13.3	Copy of his bank account duly highlighting the entry related to the Investment in the share application money.		
13.4	Copy of his statement as recorded U/s 131 of the Act		
14	Shri Ramesh Semre	DUEPS1511R	Rs 300000/-
14.1	Copy of share application form duly signed and filled		
14.2	PAN Card		
15	Shri Ramesh Chand Chouhan, Nawada	ANNPC4310R	Rs 1000000
15.1	Copy of share application form duly signed and filled.		
15.2	Voter Id		
15.3	Copy of his bank account duly highlighting the entry related to the Investment in the share application money.		
15.4	Copy of PAN Card		
15.5	Copy of his statement as recorded U/s 131 of the Act		
16	Shri Shankar lal Baganna	N.A.	Rs 500000/-
16.1	Copy of share application form duly signed and filled.		
16.2	Voter Id		
16.3	Copy of his bank account duly highlighting the entry related to the Investment in the share application money.		
16.4	Copy of his statement recorded u/s 131 in assessment proceeding		
17	Shri Shubham Verma	AOKPV5410K	Rs 400000/-
17.1	Copy of share application form duly signed and filled		
17.2	PAN Card .		
17.3	Copy of acknowledgement of Income Tax return as filed.		
17.4	Copy of his bank account duly highlighting the amount of share application money.		

17.5	The cheque prior to investment received from Shri Amit Soni.		
18	Shri Shyam Singh Mourya	N.A.	Rs 1950000/
18.1	Copy of share application form duly signed and filled.		
18.2	Voter Id		
18.3	Copy of his bank account duly highlighting the entry related to the Investment in the share application money.		
18.4	Nihal singh in his statement has accepted about the investment made by Shri Shyam Singh Mourya		
19	Shri Sodan Singh	N.A.	Rs 1000000
19.1	Copy of share application form duly signed and filled.		
19.2	Voter Id		
19.3	Copy of his bank account duly highlighting the entry related to the. Investment in the share application money.		
19.4	Copy of his statement as recorded on oath U/s 131 of the Act		
19.5	Copy of his driving licence		
20	Smt Sona Verma	AOLPV1274N	Rs 1100000
20.1	Copy of share application form duly signed and filled.		
20.2	PAN Card		
20.3	Copy of her Income tax return as filed for the Asst Year 2012-13.		
20.4	Copy of her bank account duly highlighting the amount of share application money.		
20.5	Copy of her affidavit filed as discussed in para 2.16 of the assessment order		
21	Smt Suman Verma	AOKPV5412M	Rs 800000/-
21.1	Copy of share application form duly signed and filled.		
21.2	PAN Card		
21.3	Copy of her Income tax return as filed for the Asst Year 2012-13.		
21.4	Copy of her bank account duly highlighting the amount of share application money.		
21.5	Prior to the issuance of the cheques amount were received from the bank account of Shri Amit Soni		

22	Shri Ved Prakash Verma	ADFPV5995H	Rs 1100000
22.1	Copy of share application form duly signed and filled.		
22.2	PAN Card		
22.3	Copy of his Income tax return as filed for the Asst Year 2012-13.		
22.4	Copy of his bank account duly highlighting the amount of share application money.		
22.5	Prior to the issuance of the cheque amount was received from Shri Amit Soni		
23	Smt Vidhi Verma	AMYPV5139K	Rs 800000/-
23.1	Copy of share application form duly signed and filled.		
23.2	PAN Card		
23.3	Copy of her Income tax return as filed for the Asst Year 2012-13.		
23.4	Copy of her bank account duly highlighting the amount of share application money.		
23.5	Copy of affidavit was filed and also discussed in Para 2.16		
24	Shri Sanjay Sharma	CKPPS0242H	Rs 2050000
24.1	Copy of share application form duly signed and filled.		
24.2	PAN Card		
24.3	Copy of his bank account		
24.4	Copy of his statement as recorded U/s 131 of the Act		
25	Shri Vijay Semre	AYPPS8021E	Rs 200000/-
25.1	Copy of share application form duly signed and filled.		
25.2	Copy of his Income tax return as filed for the Asst Year 2012-13.		
25.3	Copy of his statement as recorded U/s 131 of the Act		
26	Shri Manoj Patel	CBWPM2597R	Rs 1400000
26.1	Copy of share application form duly signed and filled.		
26.2	Voter ID		
26.3	PAN Card		
26.4	Copy of his bank account duly highlighting the amount of share		

	application Money.		
26.5	Copy of his statement as recorded U/s 131 of the Act during the assessment proceeding		
27	Shri Mukesh Morya	N.A.	Rs 950000/-
27.1	Copy of share application form duly signed and filled.		
27.2	Voter ID		
27.3	Copy of his bank account duly highlighting the amount of share application money.		
27.4	Copy of his statement recorded U/s 131 of the Act		
28	Shri Gautam Verma	ALLPV7829C	Rs 200000/-
28.1	Copy of share application money form		
28.2	Copy of statement of Shri Gautam Verma as recorded u/s 131 of the Act		
28.3	Copy of PAN Card		
29	Smt Khusbho Soni	DEVPS7529N	9,00,000
29.1	Her husband Shri Ashish Soni in his statement has also confirmed the investment made by her		
30	Smt Chandra Semre	DUEPS1510Q	Rs 3,00,000
30.1	Copy of share application form duly signed and filled.		
30.2	Copy of PAN Card		
30.3	Copy of his income tax return as filed for the Asst Year 2012-13		
31	Shri Rajesh Soni	BOGPS9852H	8,00,000
31.1	Copy of share application form duly signed and filled.		
31.2	Copy of PAN Card		
31.3	Copy of his income tax return as filed for the Asst Year 2012-13		

4.1.2.2] The assessing officer in Para 2.9 of the assessment order categorically accepted that most of the share applicants had appeared before him and their statements were also recorded. Para 2.9 of the order is reproduced as under:-

“ 2.9 In response to which Shri Amit Soni produced most of share applicants on various dates. Statement on Oath was also recorded of those persons. In the process of recording statement, It is learnt that the most of share applicants are farmers residing at outskirts of Indore City. They confirmed to have invested money in the form of share with the assessee company. They have also stated that source of such investment is income from Agricultural activity, but they have not submitted copy of PI and PII to establish the proof of Agricultural activity done by them and quantum of agriculture income which has been invested in the assessee company.”

The assessing officer referred to the bank accounts of Smt Kamla Bai Verma, Smt Suman Verma, Shri Shubham Verma and Shri Ved Prakash Verma and also observed that affidavit were filed in case of Ms Sona Verma, Ms Nidhi Verma ,Ms Vidhi Verma ,Gautam Verma , Ankit Verma and Vijay Semre. On perusal of the documents as filed by the appellant company and observation of the assessing officer, it is clear that most of the share applicants personally appeared before the assessing officer and their statement were also recorded wherein they have clearly accepted about the investment made in the share capital of the appellant company. The appeal relates to the Asst Year 2012-13 i.e. prior to the insertion of the explanation to section 68 of the Act. In cases of share application / share capital prior to the insertion of the explanation the appellant company needs to prove identity of the share applicant only. However, in the present case in hand the appellant has not only proved the identity of the share applicants but also proved the creditworthiness of the share applicant and genuineness of the transactions. Hon’ble Jurisdictional High Court in the case of People General Hospital Limited [ Appeal No ITA No 89/ 2011] has held that the assessee has to prove only identity of the investor which in the case in hand is proved beyond

doubt. As regard the observation of the assessing officer in respect of few of the share applicants, the appellant company vide its submission in Paras 1.13.1 to 1.13.6 has dealt the same in great details, and the same is again reproduced for sake of clarity:-

“ 1.13.1] The assessing officer in the assessment order on inner Page No 8 and 9 has discussed about the share application money of Rs 20,50,000/- as received from share applicant Shri Sanjay Sharma. The assessing officer observed that the amount as invested by Shri Sanjay Sharma was not reflected in his bank account as filed during the course of assessment proceeding. In this respect, we would like to clarify as under:-

[a] Share application form duly signed by Shri Sanjay Sharma was filed

[b]the amount of share application money was received through an account payee cheques.

[c] Copy of his PAN Card is also filed. He is regularly assessed to tax vide PA No, the same is as under:-

CKPPS0242H

[d]Copy of his bank account with Allahabad Bank, cash credit account No 2177088462

Since, the cheque was issued by Shri Sanjay Sharma from his saving account for this reason, the same was not reflected in his cash credit loan account. The amount of cheque as issued to the assessee company duly found reflected in the saving bank account of that share applicant and he has also accepted in his statement about the investment in share application/share capital of the assessee company. Thus, the amount of share application requires to be accepted as genuine.

1.13.2] The assessing officer in Para 2.12 and in 2.13 on inner Page No 10 of the assessment order has observed that Smt. Kamla Bai had deposited cash of Rs 3,00,000/- in her bank account and transferred the same to the bank account of Shri Amit Soni ex- director of the assessee company and then received an amount of Rs 8,00,000/- by way of transfer from the reference No 1011- 2723 and then invested the same in the shares of the assessee company. The assessing officer has doubt about the reference No 1011-2723 and also the amount as invested by the share applicant. In this respect, we would like to clarify as under:-

[a] Share application form duly signed by the applicant has been filed.

[b] Copy of PAN card has also been filed

[c] Copy of her income tax return has also been filed wherein total income was declared by her of Rs 451930/- and paid legitimate amount of Tax of Rs 21340/-.

[d] Copy of her bank account with Bank of India A/c No 880010110006560

[e] the cash as deposited by her in her bank account prior to issuance of the cheque to Shri Amit Soni is out of her income and saving.

[f] the amount as invested by her in the share application money of the assessee company was received by her from Shri Amit Soni and in turn Shri Amit sonit received amount from Shri Surendra Soni, AU Commodities P Limited and M/s Sanverwala Jewellers P Limited. Hence, source of amount as received by Smt Kamla Bai and Shri Amit soni duly explained.

[g] Copy of bank account of Shri Amit Soni, Ex- director of the assessee company is enclosed for your kind reference.

The source of cheque as received by Smt Kamla Bai was duly explained as received from Shri Amit Soni and source of amount received by Shri Amit soni was also explained. Hence, there was no justification for having any doubt about the source of amount as found credited in the bank account of the share applicant and therefore the amount of share application money as received from Smt Kamla Bai stand explained.

1.13.3] The assessing officer further observed in Para 2.14 on inner Page No 11 of the assessment order that an amount of Rs 800000/- was credited through transfer in the bank account of Suman Verma vide reference No 1011-2723. The assessing officer has serious doubt about the transfer of amount through reference No 1011-2723. In this respect we would like to clarify as under:-

[a] Share application form duly signed by the applicant has been filed.

[b] Copy of PAN card has also been filed

[c] Copy of her income tax return has also been filed wherein total income was declared by her of Rs 397580/- and paid legitimate amount of Tax of Rs 21970/-.

[d] Copy of her bank account with Bank of India A/c No 880010110006562

[e] the amount as invested by her in the share application money of the assessee company was out of the amount as received by her from Shri Amit Soni.

[f] That on perusal of the bank account of Shri Amit soni it is evident that he has received amount from Shri Surendra Soni, AU Commodities P Limited and M/s Sanverwala Jewellers P Limited prior to issuance of the cheques to Smt Suman Verma. Hence, source of amount as received by Smt Suman verma and in the bank account of Shri Amit soni are duly explained.

[g] Copy of bank account of Shri Amit Soni, Ex- director of the assessee company is enclosed for your kind reference.

The source of cheque as received by Smt Suman Verma was duly explained as received from Shri Amit Soni and source of amount received by Shri Amit soni was also explained. Hence, there was no justification for having any doubt about the source of amount as found credited in the bank account of the share applicant and therefore the amount of share application money as received from Smt Suman Verma stand explained.

1.13.4] The assessing officer further observed in Para 2.15 on inner Page No 11 of the assessment order that an amount of Rs 800000/- and Rs 400000/- was found credited through transfer in the bank account of Shri Ved Prakash Verma and Shri Shubham Verma respectively vide reference No 1011-2723. The assessing officer has serious doubt about the transfer of amount through reference No 1011-2723. In this respect we would like to clarify as under:-

[a] Share application form duly signed by the applicant has been filed.

[b] Copy of PAN card has also been filed

[c] Copy of her income tax return has also been filed by Shri Ved Prakash Verma and Shri Shubham Verma declaring total income at

Rs 379608/- and Rs 378953/- respectively and paid legitimate amount of Tax due on their income.

[d] Copy of bank account of Shri Vzed Prakash Verma with Bank of India A/c No 880010110006561 and copy of bank account of Shri Shubham Verma with Bank of India A/c No 880010110006564 has also been filed during the course of assessment and enclosed with this submission.

[e] the amount as found credited vide referene No 1011-2723 is the bank account of Shri Amit Soni ex- director of the assessee company and therefore the source of amount as invested by them are duly explained.

[f] That on perusal of the bank account of Shri Amit soni it is evident that he has received amount from Shri Surendra Soni, AU Commodities P Limited and M/s Sanverwala Jewellers P Limited prior to issuance of the cheques to Shri Ved Prakash Verma and Shri Shubham Verma. Hence, source of amount as received by Shri Ved Prakash Verma and Shri Shubham Verma from the bank account of Shri Amit soni are duly explained.

[g] Copy of bank account of Shri Amit Soni, Ex- director of the assessee company is enclosed for your kind reference.

The source of cheque as received by Shri Ved Prkash Verma and Shri Shubham Verma are duly explained as received from Shri Amit Soni and source of amount received by Shri Amit soni was also explained. Hence, there was no justification for having any doubt about the source of amount as found credited in the bank account of the share applicant and therefore the amount of share application money as received from Shri Ved Prakash Verma and Shri Shubham Verma.

1.13.5] The assessing officer in Para 2.16 of the assessment order on inner Page No 12 has referred the affidavit as filed by Shri Amit Soni in respect of share application money as received from Sona Verma, Nidhi Verma and Vidhi Verma. In this respect we would like to clarify as under:-

[a]detail of share application money as received by the assessee from the above share applicant is as under:-

S.No	Name of share applicant	Amount [Rs]	Income	Remarks
1	Sona Verma	1100000	333770	Rs 800000/- invested out of transfer from Amit Soni bank account and balance out of her saving
2	Nidhi Verma	600000	380430	Rs 500000/- invested out of transfer from Amit Soni bank account and balance out of her saving
3	Vidhi Verma	800000	376430	Rs 500000/- invested out of transfer from Amit Soni bank account and balance out of her saving

[b] Share application form duly signed by the applicant has been filed.

[c] Copy of PAN card has also been filed

[d] Copy of their income tax return

[e] Copy of their bank account with Bank of India.

[f] the major amount was received prior to the issuance of the cheques from Shri Amit Soni

[g] That on perusal of the bank account of Shri Amit soni it is evident that he has received amount from Shri Surendra Soni, AU

Commodities P Limited and M/s Sanverwala Jewellers P Limited prior to issuance of the cheques to Sona Verma, Nidhi Verma and Vidhi Verma. Hence, source of amount as received from the bank account of Shri Amit soni are duly explained.

[h] Copy of bank account of Shri Amit Soni, Ex- director of the assessee company is enclosed for your kind reference.

The source of amount transfer in the bank account of Sona Verma, Nidhi Verma and Vidhi Verma are duly explained as received from Shri Amit Soni and source of amount received by Shri Amit soni was also explained. Hence, there was no justification for having any doubt about the source of amount as found credited in the bank account of the share applicant and therefore the amount of share application money as received from Sona Verma, Nidhi Verma and Vidhi Verma.

1.13.6] The assessing officer in Para 2.18 of the assessment order on inner Page No 12 has discussed about the share applicant Shri Gautam Verma, Shri Ankit Verma and Shri Vijay Semre. The assessing officer himself accepted that they have accepted about the investment made by them. The assessing officer has doubted the capacity of these share holders. In this respect we would like to clarify as under:-

[a]detail of share application money as received by the assessee from the above share applicant is as under:-

S.No	Name of share applicant	Amount [Rs]	Income	Remarks
1	Gautam Verma	200000		Out of income and saving
2	Ankit Verma	800000	380710	Rs 500000/- invested out of transfer from Amit

				Soni bank account and balance out of his saving
3	Vijay Semre	200000	268890	Out of his income and saving

[b] Share application form duly signed by the applicant has been filed.

[c] Copy of PAN card has also been filed

[d] Copy of their income tax return

[e] Copy of their bank account with Bank of India.

[f] the major amount was received prior to the issuance of the cheques from Shri Amit Soni

[g] That on perusal of the bank account of Shri Amit soni it is evident that he has received amount from Shri Surendra Soni, AU Commodities P Limited and M/s Sanverwala Jewellers P Limited prior to issuance of the cheques to Ankit Verma. Hence, source of amount as received from the bank account of Shri Amit soni are duly explained.

[h] Copy of bank account of Shri Amit Soni, Ex- director of the assessee company is enclosed for your kind reference.

The source of amount transfer in the bank account of Ankit Verma is duly explained as received from Shri Amit Soni and source of amount received by Shri Amit soni was also explained. Hence, there was no justification for having any doubt about the source of amount as found credited in the bank account of the share applicant and therefore the amount of share application money as received from Ankit Verma and as regard Gautam Verma and Vijay Semre is concerned. They have explained the source of amount invested by

them in the share application money out of their income and saving. Hence, the amount as received by the assessee be treated as explained.”

4.1.2] The documents and explanation as filed / provided by the appellant company was forwarded to the assessing officer but in the remand report nothing adverse was submitted by the assessing officer. From the documents and explanation as filed/ provided by the appellant, Identity and source of share application was duly explained by it in respect of all the thirty one share applicants. Copy of statement as recorded, affidavit, share application forms, bank statement etc. were filed which was also accepted by the assessing officer but he simply rejected the same and addition was made which was not considered proper. The appellant properly discharged the onus lying on it. Identity of the share applicants were proved beyond doubt as they had personally appeared before the assessing officer and accepted the amount as invested in share capital. In case of affidavit, the assessing officer has not contravert the same, where the source of share application was duly explained and income tax return as filed was also provided. I am therefore of the view that the appellant company has properly discharged onus in respect of share application money of Rs 2,87,00,000/- as received from the above thirty one share applicant. The decision as relied by the appellant are also squarely applicable in the case of the appellant. The decision of the Hon'ble Apex Court in lovely exports (P) Ltd.(Supra), Hon'ble Jurisdictional High court in the case of People General Hospital limited (Supra) and Hon'ble Jurisdictional bench of ITAT in the case of Rajshree Finsec P. Ltd. (Supra) directly support the case of the appellant company. I therefore direct the assessing officer to delete the addition of Rs 2,87,00,000/- as made in respect of above thirty

one share applicants. The appellant get relief accordingly in so far as these thirty one share applicants are concerned.

4.1.3] The appellant company had received share capital of Rs 18,00,000/- from ten persons. The assessing officer in Para 2.4 to 2.8 of the assessment order has discussed that statement of Shri Navin Raghuvanshi , Shri Ankur Soni and Shri Rupesh Dave recorded on oath and they have denied making any investment in the share application money/share capital of the assessee company by them or by their other family members, list of such persons is as under:-

S. No	Name of the Share holders	Amount [Rs]
1	Ankur Soni	2,00,000
2	Navin Raghuvanshi	1,00,000
3	Gajendra Singh Raghuvanshi	1,00,000
4	Smt Sheetal Raghu Vanshi	2,00,000
5	Roopesh Dave	1,00,000
6	Shri B S Dave	2,00,000
7	Smt Shakuntala Dave	1,50,000
8	Smt Sonal Dave	2,00,000
9	Smt Premlata Dave	3,00,000
10	Kavita Joshi	2,50,000
		18,00,000

The appellant has explained that due to some dispute with these persons they have given negative statement even when amount was invested by them in the share capital of the appellant company. It was also argued by the appellant that entire amount of share capital from the above persons were received prior to the commencement of the business by the appellant company and therefore there was no justification for making addition to the total income of the appellant. The appellant during the course of hearing referred the decision of the Hon'ble Delhi High Court in the case of M/s Five Vision Promoters P Limited [ Appeal No ITA 234/ 2015 dt 27-11-2015]

especially Para 36 of the decision. Considering the overall facts of the case and submission made by the appellant company though the amount of share application money/ share capital was received by the appellant company prior to the commencement of the business but share applicants personally appeared and accepted that neither they nor their relatives listed above in the table have invested in the share application money of the appellant company. Hence, there is no merit in the contention of the appellant submission. I therefore confirm the addition to the tune of Rs. 18,00,000/-.

4.1.4] The appellant in this ground of appeal gets relief to the tune of Rs.3,17,39,640/- and addition of Rs18,00,000/- is hereby confirmed.

This ground of appeal is partly allowed.”

5. Feeling dissatisfaction, the Revenue is in appeal before this Tribunal. Ld. Departmental Representative(DR) vehemently argued supporting the order of the Assessing Officer.

6. Per contra Ld. counsel for the assessee heavily relied on the finding of ld. CIT(A). Reference was also made to the paper book and written submission/judicial pronouncements contending that ld. CIT(A) having appreciated the facts and material on record in the light of the relevant judicial pronouncements rightly deleted the addition. Learned Counsel for the assessee relied upon the following judicial pronouncements:

Hon'ble Supreme Court of India in the case of CIT Vs Lovely Exports (P.) Ltd. as reported in [2008] 216 CTR 195 (SC)

The Hon'ble Madhya Pradesh High Court in the case of CIT, Bhopal v. Peoples General Hospital Ltd. as reported in [2013] 356 ITR 65 (Madhya Pradesh)

The Hon'ble Madhya Pradesh High Court in the case of CIT v. Metachem Industries as reported in [2000] 245 ITR 160 (Madhya Pradesh)

The Hon'ble Bombay High Court in the case of Pr. CIT-1 v. Ami Industries (India)(P.) Ltd. as reported in [2020] 116 taxmann.com 34 (Bombay)

The Hon'ble Delhi High Court in the case of CIT v. Value Capital Services (P.) Ltd. as reported in [2008] 307 ITR 334 (Delhi);

The Hon'ble Madras High Court in the case of CIT, Central Circle, Salem v. Victory Spinning Mills Ltd. as reported in [2014] 50 taxmann.com 416 (Madras);

The Hon'ble Rajasthan High Court in the case of CIT v. First Point Finance Ltd. as reported in [2006] 286 ITR 477 (Rajasthan);

The Hon'ble Rajasthan High Court in the case of CIT v. Deen Dayal Choudhary as reported in [2017] 293 CTR 468 (Rajasthan).

7. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred by the ld. CIT(A) in the impugned order. We find that the assessee company issued 4,56,464 equity shares during the year under consideration. A summary showing increase the in the amount of share capital and securities premium of the assessee company during the year under consideration is as under:

S. No	Particulars	Amount as on 31 <sup>st</sup> March, 2012 [in Rs.]	Amount as on 31 <sup>st</sup> March, 2011 [in Rs.]	Amount of increase [in Rs.]
1	Share Capital	62,89,640	17,25,000	45,64,640
2	Securities Premium	2,89,75,000	NIL	2,89,75,000
	Total			3,35,39,640

Details of share applicants and share application money of Rs. 3,35,39,640/- as received by the assessee company during the year under consideration is as under:

S. No	Name of the share applicants	PAN	No. of shares	Amount [in Rs.]
1	Surendra Kumar Soni	APVPS6832A	3,03,964	30,39,640
2	Anar Singh Parihar	N.A.	4,750	9,50,000
3	Ankit Verma	AHLPV9818R	4,000	8,00,000

4	Anoop Singh Rajput	N.A.	4,750	9,50,000
5	Ashish Kumar Soni	DDKPS8760M	7,000	14,00,000
6	Harish Chandra Mandloi	N.A.	5,000	10,00,000
7	Hukum Singh	FPNPS3966C	5,000	10,00,000
8	Kamla Bai Verma	AOKPV5411J	4,500	9,00,000
9	Kaushalya Bai	N.A.	2,500	5,00,000
10	Kusum Verma	AOLPV1256L	4,000	8,00,000
11	Manoj Patel	CBWPM2597R	7,000	14,00,000
12	Mesar Singh Mourya	N.A.	5,750	11,50,000
13	Mohan Mandloi	BGBPM4765J	4,750	9,50,000
14	Nidhi Verma	ANPPV4738E	3,000	6,00,000
15	Nihal Singh Mourya	N.A.	9,750	19,50,000
16	Ramesh Chand Chouhan	ANNPC4310R	5,000	10,00,000
17	Shankar Lal Baganna	N.A.	2,500	5,00,000
18	Shubham Verma	AOKPV5410K	2,000	4,00,000
19	Shyam Singh Mourya	N.A.	9,750	19,50,000
20	Sodan Singh	N.A.	5,000	10,00,000
21	Sona Verma	AOLPV1274N	5,500	11,00,000
22	Suman Verma	AOKPV5412M	4,000	8,00,000
23	Ved Prakash Verma	ADFPV5995H	5,500	11,00,000
24	Vidhi Verma	AMYPV5139K	4,000	8,00,000
25	Sanjay Sharma	CKPPS0242H	10,250	20,50,000
26	Chandra Semre	DUEPS1510Q	1,500	3,00,000
27	Gautam Verma	ALLPV7829C	1,000	2,00,000

28	Ramesh Semre	DUEPS1511R	1,500	3,00,000
29	Vijay Semre	AYPPS8021E	1,000	2,00,000
30	Mukesh Mourya	N.A.	4,750	9,50,000
31	Rajesh Soni	BOGPS9852H	4,000	8,00,000
32	Khushboo Soni	DEVPS7925N	4,500	9,00,000
33	Ankur Soni	CSYPS3860A	1,000	2,00,000
34	Navin Raghuvanshi	AKNPR8248Q	500	1,00,000
35	Gajendra Singh Raghuvanshi	ACCPR1018F	500	1,00,000
36	Sheetal Raghuvanshi	AQHPR2594K	1,000	2,00,000
37	Roopesh Dave	AHKPD39834	500	1,00,000
38	Bhavani Shankar Dave	ADQPD7121E	1,000	2,00,000
39	Shakuntala Dave	BFZPD0037B	750	1,50,000
40	Sonal Dave	BAFPD4474D	1,000	2,00,000
41	Premlata Dave	N.A.	1,500	3,00,000
42	Kavita Joshi	ASIPJ0466R	1,250	2,50,000
	Total		4,56,464	3,35,39,640

From above, it is clear that the Assessing Officer made addition of entire amount of Rs. 3,35,39,640/- to the total income of the assessee co. on account of share application money received during the year under consideration. We find that the ld. CIT(A) deleted the addition of Rs. 3,17,39,640/- in respect of share applicants/share application money as shown on Sl. No.1 to 32

and sustained the remaining addition of Rs. 18,00,000/- in respect of share applicants/share application money as shown on Sl. No.33 to 42. Hence, the grievance of the Revenue relates to the amount of addition to the tune of Rs. 3,17,39,640/- which was deleted by the ld. CIT(A) as reproduced above. We find from the material available on record that the assessee company was incorporated on 23-09-2009. However, no business was carried on by the assessee company till 09-10-2011. It was only from 10-10-2011 that entire business carried on by Shri Surendra Kumar Soni in his proprietorship concern M/s Sanverwala, was succeeded by the assessee company w.e.f. 10-10-2011. The balance of capital of Shri Surendra Kumar Soni in his proprietorship concern, M/s Sanverwala as on 09-10-2011 was of Rs. 30,39,644/-. A Memorandum of Understanding was entered into between Shri Surendra Kumar Soni and the assessee company wherein it was agreed that the assessee company would issue shares at face value of Rs. 10/- each to the extent of capital of Shri Surendra Kumar Soni as on the date of transfer of the business. As a consequence thereto, total 3,03,964 equity shares of Rs. 10/- each were issued

by the assessee company to Shri Surendra Kumar Soni at par in lieu of balance of capital of Rs. 30,39,644/- outstanding as on the date of transfer. We find that there was no inflow of funds in respect of 3,03,964 equity shares issued by the assessee company to Shri Surendra Kumar Soni as these shares were issued in lieu of transfer of business. Further, the Assessing Officer himself did not give any adverse finding in respect of these 3,03,964 equity shares issued to Shri Surendra Kumar Soni. We also find that the scrutiny assessment in the case of Shri Surendra Kumar Soni for the Assessment Year 2012-13 was completed by the same Assessing Officer wherein also the Assessing Officer did not make any addition to the total income of Shri Surendra Kumar Soni on account of investment made in the share capital of the assessee company. Thus, we do not find any reason for making addition of Rs. 30,39,640/- to the total income of the assessee company in respect of shares issued to Shri Surendra Kumar Soni. Therefore, the findings of ld. CIT(A) on this point are confirmed.

8. The remaining share application money of Rs. 2,87,00,000/- was received from 31 individual share applicants as per list above. We find that the assessee co. filed ample documentary evidences so as to justify the identity and creditworthiness of the share applicants and genuineness of the transactions as entered into them. A list of documents which were filed by the assessee company before the Assessing Officer in respect of these share applicants is reproduced hereunder for ready reference:

<b>S. No</b>	<b>Description of documents</b>	<b>Page No. of Compilation</b>
<b>1</b>	<b>Shri Anar Singh Parihar – Rs. 9,50,000/-</b>	
1.1	Share application form duly signed	76 -77
1.2	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	78 -79
1.3	Driving license	80
1.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	81-83
<b>2</b>	<b>Shri Ankit Verma [PAN: AHLPV9818R] - Rs. 8,00,000/-</b>	
2.1	Share application form duly signed	84-85
2.2	PAN Card	86
2.3	Acknowledgment of income-tax return for the Assessment Year 2012-13	87
2.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	88-89
2.5	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	90-93

<b>3</b>	<b>Shri Anoop Singh Rajput – Rs. 9,50,000/-</b>	
3.1	Share application form duly signed	94-95
3.2	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	96-101
3.3	Aadhar Card	102
3.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	103-105
<b>4</b>	<b>Shri Ashish Kumar Soni [PAN: DDKPS8760M] – Rs. 14,00,000/-</b>	
4.1	Share application form duly signed	106-107
4.2	PAN Card	108
4.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	109-111
4.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	112-114
<b>5</b>	<b>Shri Harish Chandra Mandloi - Rs. 10,00,000/-</b>	
5.1	Share application form duly signed	115-116
5.2	Voter Card	117
5.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	118-126
5.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	127-128
5.5	Driving license	129
<b>6</b>	<b>Shri Hukum Singh [PAN: FPNPS3966C] – Rs. 10,00,000/-</b>	
6.1	Share application form duly signed	130-131
6.2	PAN Card	132
6.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	133-134
6.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	135-136
6.5	Aadhar Card	137
<b>7</b>	<b>Smt. Kamla Bai Verma [PAN: AOKPV5411J] – Rs.</b>	

	<b>9,00,000/-</b>	
7.1	Share application form duly signed	138-139
7.2	PAN Card	140
7.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	141-143
7.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	144-145
<b>8</b>	<b>Smt. Kaushalya Bai – Rs. 5,00,000/-</b>	
8.1	Share application form duly signed	146-147
8.2	Aadhar Card	148
8.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	149-151
8.4	Statement of her spouse, Shri Babulal as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	152-153
8.5	Driving license of her spouse, Shri Babulal	154
<b>9</b>	<b>Smt. Kusum Verma [PAN: AOLPV1256L] – Rs. 8,00,000/-</b>	
9.1	Share application form duly signed	155-156
9.2	PAN Card	157
9.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	158-160
9.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	161
<b>10</b>	<b>Shri Manoj Patel [PAN: CBWPM2597R] – Rs. 14,00,000/-</b>	
10.1	Share application form duly signed	162-163
10.2	Voter ID	164-165
10.3	PAN Card	166
10.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	167-168
10.5	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	169-170
<b>11</b>	<b>Shri Mesar Singh Mourya – Rs. 11,50,000/-</b>	

11.1	Share application form duly signed	171-172
11.2	Voter ID	173
11.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	174-177
<b>12</b>	<b>Shri Mohan Mandloi [PAN: BGBPM4765J] – Rs. 9,50,000/-</b>	
12.1	Share application form duly signed	178-179
12.2	PAN Card	180
12.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	181-197
12.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	198-199
12.5	Driving license	200
<b>13</b>	<b>Smt. Nidhi Verma [PAN: ANPPV4738E] – Rs. 6,00,000/-</b>	
13.1	Share application form duly signed	201-202
13.2	PAN Card	203
13.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	204-206
13.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	207-208
<b>14</b>	<b>Shri Nihal Singh Mourya – Rs. 19,50,000/-</b>	
14.1	Share application form duly signed	209-210
14.2	Voter ID	211
14.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	212-215
14.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	216-218
<b>15</b>	<b>Shri Ramesh Chand Chouhan, Nawada [PAN: ANNPC4310R] – Rs. 10,00,000/-</b>	
15.1	Share application form duly signed	219-220
15.2	Voter ID	221
15.3	Bank statement duly highlighting the amount invested in the	222-230

	share capital of the respondent assessee	
15.4	PAN Card	231
15.5	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	232-234
<b>16</b>	<b>Shri Shankar Lal Baganna – Rs. 5,00,000/-</b>	
16.1	Share application form duly signed	235-236
16.2	Voter ID	237
16.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	238-240
16.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	241-243
<b>17</b>	<b>Shri Shubham Verma [PAN: AOKPV5410K] – Rs. 4,00,000/-</b>	
17.1	Share application form duly signed	244-245
17.2	PAN Card	246
17.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	247-249
17.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	250-251
<b>18</b>	<b>Shri Shyam Singh Mourya – Rs. 19,50,000/-</b>	
18.1	Share application form duly signed	252-253
18.2	Voter ID	254-255
18.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	256-261
<b>19</b>	<b>Shri Sodan Singh – Rs. 10,00,000/-</b>	
19.1	Share application form duly signed	262-263
19.2	Voter ID	264
19.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	265-268
19.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	269-270
19.5	Driving license	271

<b>20</b>	<b>Smt. Sona Verma [PAN: AOLPV1274N] – Rs. 11,00,000/-</b>	
20.1	Share application form duly signed	272-273
20.2	PAN Card	274
20.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	275-276
20.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	277-278
<b>21</b>	<b>Smt. Suman Verma [PAN: AOKPV5412M] – Rs. 8,00,000/-</b>	
21.1	Share application form duly signed	279-280
21.2	PAN Card	281
21.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	282-284
21.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	285-286
<b>22</b>	<b>Shri Ved Prakash Verma [PAN: ADFPV5995H] – Rs. 11,00,000/-</b>	
22.1	Share application form duly signed	287-288
22.2	PAN Card	289
22.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	290-292
22.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	293-294
<b>23</b>	<b>Smt. Vidhi Verma [PAN: AMYPV5139K] – Rs. 8,00,000/-</b>	
23.1	Share application form duly signed	295-296
23.2	PAN Card	297
23.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	298-300
23.4	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	301-302
<b>24</b>	<b>Shri Sanjay Sharma [PAN: CKPPS0242H] – Rs. 20,50,000/-</b>	

24.1	Share application form duly signed	303-304
24.2	PAN Card	305
24.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	306-315
24.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	316-318
<b>25</b>	<b>Smt. Chandra Semre [PAN: DUEPS1510Q] – Rs. 3,00,000/-</b>	
25.1	Share application form duly signed	319-320
25.2	PAN Card	321
25.3	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	322-324
<b>26</b>	<b>Shri Gautam Verma [PAN: ALLPV7829C] – Rs. 2,00,000/-</b>	
26.1	Share application form duly signed	325-326
26.2	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	327-328
26.3	PAN Card	329
<b>27</b>	<b>Shri Ramesh Semre [PAN: DUEPS1511R] – Rs. 3,00,000/-</b>	
27.1	Share application form duly signed	330-331
27.2	PAN Card	332
<b>28</b>	<b>Shri Vijay Semre [PAN: AYPPS8021E] – Rs. 2,00,000/-</b>	
28.1	Share application form duly signed	333-334
28.2	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	335-337
28.3	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	338-340
28.4	PAN Card	341
<b>29</b>	<b>Shri Mukesh Mourya – Rs. 9,50,000/-</b>	
29.1	Share application form duly signed	342-343
29.2	Voter ID	344

29.3	Bank statement duly highlighting the amount invested in the share capital of the respondent assessee	345-347
29.4	Statement as recorded under section 131 of the Income Tax Act during the course of assessment proceedings	348-349
29.5	Driving License	350
<b>30</b>	<b>Rajesh Soni [PAN: BOGPS9852H] – Rs. 8,00,000/-</b>	
30.1	Acknowledgment of income-tax return along with computation of income for the Assessment Year 2012-13	452-454
30.2	PAN Card	455
<b>31</b>	<b>Khushboo Soni [PAN: DEVPS7925N] – Rs. 9,00,000/-</b>	
31.1	Statement of her spouse, Shri Ashish Kumar Soni as recorded under section 131 of the Income Tax Act during the course of assessment proceedings wherein he accepted about the investment made by Smt. Khushboo Soni	112-114
31.2	Acknowledgment of income-tax return for the Assessment Year 2012-13	456
31.3	PAN Card	457

9. In addition to the above, the assessee company also filed Return of Allotment of shares in Form No. 2 as available with the Registrar of Companies along with its annexures before the Assessing Officer which have been filed before us at Page No. 365-381 of the paper book. The provision of section 68 of the Income-Tax Act, 1961 which was in force for the previous year relevant to present Assessment Year 2012-13 is reproduced hereunder for ready reference:

*“Cash credits.*

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

10. The relevant extract of the proviso to section 68 of the Income-Tax Act, 1961 which was inserted by the Finance Act, 2012 w.e.f. 1-4-2013 reads as under:

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

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation*

*about the nature and source of such sum so credited; and  
(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.”*

From the above, we find that an assessee was only required to establish the identity of share applicants prior to the Assessment Year 2013-14. It was only after the insertion of proviso to section 68 of the Act w.e.f. Assessment Year 2013-14 that the assessee was required to furnish an explanation regarding nature and source of sum invested by the share applicant. Hon'ble Bombay High Court in its landmark judgment in the case of CIT-1 v. Gagandeep Infrastructure (P.) Ltd. as reported in [2017] 394 ITR 680 (Bombay) has categorically held that proviso to section 68 introduced by Finance Act 2012 with effect from 1-4-2013, would not have retrospective effect. We find that the Hon'ble Supreme Court of India in the case of CIT Vs Lovely Exports (P.) Ltd. as reported in [2008] 216 CTR 195 (SC) had categorically held as under:

*“2. Can the amount of share money be regarded as undisclosed income under section 68 of IT 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.”*

11. The Hon’ble Madhya Pradesh High Court in the case of CIT, Bhopal v. Peoples General Hospital Ltd. as reported in [2013] 356 ITR 65 (Madhya Pradesh) has categorically held that:

*“16. The aforesaid judgment has been followed by all the Courts and the judgments relied on by the appellants relates to the period prior to the judgment in Lovely Exports (P.) Ltd.'s case (supra). As the Apex Court has specifically held that if the identity of the person providing share application money is established then the burden was not on the assessee to prove the creditworthiness of the said person. However, the department can proceed against the said Company in accordance with law. The position of the present case is identical. It is not the case of any of the parties that M/s Alliance Industries Limited, Sharjah is a bogus company or a non-existent company and the amount which was subscribed by the said Company by way of share subscription was in fact the money of the respondent assessee. In the present case, the assessee had established the identity of investor who had provided the*

*share subscription and it was established that the transaction was genuine though as per contention of the respondent the creditworthiness of the creditor was also established. In the present case, in the light of the judgment of Lovely Exports (P.) Ltd.'s (supra) we have to see only in respect of the establishment of the identity of the investor. The Delhi High Court also in Divine Leasing & Finance Ltd.'s case (supra), considering the similar question held that the assessee Company having received subscriptions to the public/rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 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 company's own income from undisclosed sources. The similar view has been taken by the other High Courts.*

*17. As the Apex Court has considered the law in Lovely Exports (P.) Ltd.'s case (supra) and in view of law laid down by the Apex Court, we find that the substantial questions framed in these appeals do not arise for our consideration. Accordingly, all these appeals are dismissed with no order as to costs.”*

12. The Hon’ble Madhya Pradesh High Court in the case of CIT v. Metachem Industries as reported in [2000] 245 ITR 160 (Madhya Pradesh) has held that:

*“4. On appeal, the Commissioner (Appeals) examined the matter in detail and found that Shri S.K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open for the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.*

*5. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be income of the firm for the purposes of income-tax. It is open for the Assessing Officer to take appropriate action under section 69 of the Act against the person who has not been able to explain the investment. In*

*the present case, there is the concurrent finding of both the Commissioner (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.*

*6. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the revenue and in favour of the assessee.”*

13. The Hon'ble Bombay High Court in the case of Pr. CIT-1 v. Ami Industries (India)(P.) Ltd. as reported in [2020] 116 taxmann.com 34 (Bombay) vide order dated 29-01-2020 has categorically distinguished the decision of the Hon'ble Supreme Court of India in the case of NRA Iron & Steel (P.) Ltd. and has held that:

*“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 credit worthiness 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 credit-worthiness. 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.”*

14. We have also gone through the ratio laid down in the relevant following decisions: -

1. Hon'ble Delhi High Court in the case of CIT v. Value Capital Services (P.) Ltd. as reported in [2008] 307 ITR 334 (Delhi);
2. The Hon'ble Madras High Court in the case of CIT, Central Circle, Salem v. Victory Spinning Mills Ltd. as reported in [2014] 50 taxmann.com 416 (Madras);
3. The Hon'ble Rajasthan High Court in the case of CIT v. First Point Finance Ltd. as reported in [2006] 286 ITR 477 (Rajasthan);
4. Hon'ble Rajasthan High Court in the case of CIT v. Deen Dayal Choudhary as reported in [2017] 293 CTR 468 (Rajasthan).

15. In view of the above discussion and ratio laid down in the aforesaid judicial pronouncement, it is apparent that the assessee company in the facts of the present case duly established the identity and creditworthiness of the share applicants and genuineness of the transactions as entered into with them. The Assessing Officer was therefore not justified in doubting the amount of share application money received from these share

applicants merely for the reason that the share applicants could not furnish documentary evidences so as to substantiate the agricultural income earned by them as it would tantamount to seeking an explanation with regard to source of funds invested by the share applicants which was outside the domain and purview of the provision of section 68 of the Income-Tax Act, 1961 as applicable for the year under consideration prior to the insertion of proviso to section 68 of the Act. Further, the Assessing Officer himself observed in the assessment order that most of the share applicants appeared before him personally and accepted that they had made investment in the shares of the respondent assessee company but these share applicants could not furnish supporting documentary evidences so as to substantiate the agricultural income earned by them out of which they has made investment in the shares of the respondent assessee company. But, the Assessing Officer failed to appreciate the findings laid down in the judicial precedents (supra) and the fact that it is quite evident that the assessee company established the identity of the share applicants and genuineness of the transactions entered into with them beyond

any doubt. The assessee company cannot be put in a disadvantageous position merely because the share applicants could not satisfactorily substantiate the source of investment made by them in the shares of the assessee company. If the Assessing Officer had any doubt regarding the source of investment made by them these share applicants, the Assessing Officer was free to proceed against these share applicants but by no stretch of imagination can the share application money received from existing individuals duly accepted by them, be taxed as income of the assessee company unless the Assessing Officer establishes the fact that such money has emanated from the coffers of the respondent assessee company. Further, we find that the Assessing Officer noted that cash was deposited in the bank accounts of the share applicants and thereafter cheques were issued in favour of the assessee company. But, the Assessing Officer failed to consider the fact that it is uncontroverted fact that most of the share applicants who invested money in the shares of the respondent assessee company were farmers whose source of income was from agricultural activities and as a matter of general trade practice, the

amount of agricultural income is received by such farmers in cash. In the facts of the present case, the share applicants being farmers categorically accepted the fact that they made investment in the shares of the assessee company out of agricultural income earned by them. These share applicants deposited the amount of agricultural income earned by them in cash in their respective bank accounts and thereafter issued cheques in favour of the assessee company. The amount of investment made in the shares of the assessee company is duly owned by these share applicants. Hence, there was no basis to draw any adverse inference in the case of the assessee company merely for the reason that cash was deposited in the bank accounts of such share applicants prior to investing the amount in the shares of the assessee company unless any material evidencing such flow of cash from the assessee is brought on record by the Assessing Officer. Our view is supported by the ratio laid down in the following judicial pronouncements:

1. The Hon'ble Rajasthan High Court in the case of CIT, Ajmer v. H.S. Builders (P.) Ltd. as reported in [2012] 26 taxmann.com 86 (Raj.);

2. The ITAT Indore Bench in the case of Late Shri Sanjay Paliya vs. DCIT as reported in (2017) 50 CCH 0198 IndoreTrib; has categorically held that:
3. The Hon'ble Rajasthan High Court in the case of CIT, Ajmer v. Jai Kumar Bakliwal as reported in [2014] 366 ITR 217 (Rajasthan).

16. We find that the Assessing Officer also noted that the amount was transferred from the same reference number being 1011-2723 in the bank accounts of Smt. Kamla Bai, Smt. Suman Verma, Shri Shubham Verma and Shri Ved Prakash Verma, therefore, someone else was operating these bank accounts and name of these persons were only for namesake. The Assessing Officer further noted that Sona Verma, Nidhi Verma and Vidhi Verma had invested the amount in shares in cash also. However, we find from the material available on record that the members of the Verma Family are relatives of directors of the respondent assessee company. The ex-director of the assessee company, Shri Amit Soni in his statement recorded during the course of assessment proceedings categorically mentioned about his relationship with the members of the Verma Family and also the fact that shares were purchased by the members of the Verma Family. The statement of Shri Amit Soni, ex-

director of the respondent assessee company as recorded during the course of assessment proceedings has been filed on Page No. 382-385 of the paper book. Further, the said reference in the bank accounts of the members of Verma Family was actually the reference of the bank account of Shri Amit Soni. The copy of bank statement of Shri Amit Soni has been filed on Page No. 386-389 of the paper book. Therefore, it is evident that the assessee company has proved the source of source of funds in the case of members of Verma Family by filing the copy of bank statement of Shri Amit Soni also. Hence, there remains no doubt regarding the investment made by members of the Verma Family. Hence, the observation of the Assessing Officer that these bank accounts were operated by someone else and investment in shares was also made in cash is a baseless observation. We also find that the Assessing Officer recorded the statement of Shri Amit Soni, ex-director of the assessee company during the course of assessment proceedings which is also filed before this Tribunal at Page No. 382-385 of the paper book. In view of the ample documentary evidences as filed before the Revenue Authorities as listed hereinabove, it is clearly evident that the assessee company satisfactorily discharged the primary onus cast upon it under section 68

of the Income-Tax Act, 1961 by not only establishing the identity of the share applicants but also their creditworthiness and genuineness of the transactions entered into with them. We find that most of the share applicants personally appeared before the Assessing Officer and their statements were recorded on oath wherein, they categorically accepted the fact that they had invested money in the shares of the assessee company and the Assessing Officer in Para 2.9 of the assessment order has himself acknowledged the fact that most of the share applicants were produced before him and their statements were recorded on oath wherein they confirmed that they had invested money in the shares of the respondent assessee company out of income earned from agricultural activities. The relevant extract scanned from the assessment order is reproduced hereunder for ready reference:

2.9 In response to which Shri Amit Soni produced most of share applicants on various dates. Statement on oath was also recorded of those persons. In the process of recording statement, it is learnt that the most of share applicants are farmers residing at outskirts of Indore City. They confirmed to have invested money in the form of share with the assessee company. They have also stated that source of such investment is income from Agricultural activity, but they have not submitted copy of PI and PII (ऋण पुस्तिका) to establish the proof of agricultural activity done by them and quantum of agriculture income which has been invested in the assessee company.

From the above, it is clear that the Assessing Officer merely doubted the investment made by the share applicants for the reason that they did not submit any proof regarding agricultural activities done by them. It is therefore quite evident that the Assessing Officer himself accepted the identity of the share applicants and genuineness of the transactions as entered into with them. In view of these facts, we are of the view that the assessee company satisfactorily discharged the primary onus as cast upon it under section 68 of the Income-Tax Act, 1961 by establishing the identity and creditworthiness of the share applicants and genuineness of the transactions as entered into with them and therefore, addition made by the Assessing Officer on

account of share application money received from remaining share applicants was neither legal nor proper and was rightly deleted by the Ld CIT(A). The action of the Ld CIT(A) is therefore, confirmed. Accordingly, ground nos.1 to 3 with regard to deletion of addition of Rs.3,17,39,640/- are dismissed.

17. Now, the only ground left is ground no.4 with regard to disallowance of interest of Rs.9,73,742/- made by the Assessing Officer on the ground that the assessee has not charged interest on loan and advance but paid interest to others. Facts, in brief, are that the Assessing Officer noted that the assessee company did not charge any interest on the amount of loans and advances to the tune of Rs. 81,14,522/- whereas the company paid interest of Rs. 13,43,525/- and therefore, the Assessing Officer disallowed an amount of Rs. 9,73,742/- being 12% of Rs. 81,14,522/- and added it to the total income of the assessee company. Being aggrieved, the assessee challenged the action of the Assessing Officer before the Id. CIT(A) who deleted the addition observing as under:

“5] In ground No 2 of the appeal, the appellant has challenged the disallowance of interest of Rs 9,73,742/- as calculated by the assessing officer on the amount of advances as given to the four parties by

calculating the rate of interest at 12% on the same. The appellant claimed that out of total loan of Rs 81,14,522/- , loan of Rs 78,91,106/- was transferred from the proprietorship concern of Shri Surendra Soni. The appellant further clarified that against the loan of Rs 2,24,91,018/- in the Balance sheet of the appellant company , an amount of Rs 8,67,76,794/- was invested for the purpose of business. The appellant company was also having interest free funds to the tune of Rs. 4,99,09,986/- and therefore amount as shown as advance of Rs. 81,14,522/- was out of interest free funds of the appellant company. The appellant relied on the decision of the Hon'ble Apex Court in the case of M/s S.A Builders Vs CIT as reported in 288 ITR 1[SC], the decision of Hon'ble Bombay High Court in the case of CIT Vs Reliance Utilities & Power Ltd as reported in 313 ITR 340 and also placed reliance on the decision of the Hon'ble Apex Court in the case of Hero Cycles P Limited as reported in 379 ITR 0347. Considering the overall facts of the case and decisions as referred by the appellant, it is proved that the interest bearing funds in possession of the appellant company were higher than the amount as advanced by it. Further, most of the advances were carried forwards from the erstwhile firm where no interest bearing funds were used. I therefore direct the assessing officer to delete the addition of Rs 9,73,742/- made out of Interest paid. The appellant accordingly get relief of Rs 9,73,742/-. This ground of appeal is **allowed.**"

18. Being aggrieved, the Revenue has challenged the action of the ld. CIT(A) before this Tribunal. Before us, ld. CIT-DR relied upon the order of the Assessing Officer whereas the learned Counsel for the assessee relied on the impugned order.

19 We have considered the rival submissions of both the parties and gone through the material available on the file. We find that the Assessing Officer noted that the assessee claimed that out of total loan of Rs 81,14,522/-, loan of Rs 78,91,106/- was transferred from the proprietorship concern of Shri Surendra Soni and the assessee clarified that against the loan of Rs 2,24,91,018/- in the balance-sheet of the assessee, an amount of Rs 8,67,76,794/- was invested for the purpose of business. Id. CIT(A) noted that the assessee company was also having interest free funds to the tune of Rs. 4,99,09,986/- and therefore amount as shown as advance of Rs. 81,14,522/- was out of interest free funds of the assessee company. In view of finding of fact recorded by Id. CIT(A) in the light of the judicial pronouncements cited (supra), we are of the view that the Id. CIT(A) was justified in deleting the addition because the interest bearing funds in possession of the assessee company were higher than the amount as advanced by it and most of the advances were carried forwards from the erstwhile firm where no interest bearing funds were used. The ratio laid down in the decisions of the Hon'ble Apex Court in the case of M/s

S.A Builders Vs CIT as reported in 288 ITR 1[SC], Hon'ble Bombay High Court in the case of CIT Vs Reliance Utilities & Power Ltd as reported in 313 ITR 340 and also the Hon'ble Apex Court in the case of Hero Cycles P Limited as reported in 379 ITR 0347 further supports the case of the assessee. Thus, we do not find any reason to interfere with the findings of the ld. CIT(A) and confirm the deletion of addition of Rs.9,73,742/- made out of Interest paid. Accordingly, ground no.4 raised by the Revenue is also dismissed.

20. In the result, the departmental appeal is dismissed.

Order was pronounced as per Rule 34 of the I.T.A.T. Rules 1963 on 22 .9.2021.

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 22/8/2021

*!vyas!*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**