

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.5362/DEL/2016
Assessment Year 2010-11

DCIT, Circle-7(2), New Delhi	v.	M/s. Dia Realtors Pvt. Ltd., 506, Surya Kiran Building, 9, K.G. Marg, Connaught Place, New Delhi.
TAN/PAN: AACCD5882G (Appellant)		(Respondent)

Appellant by:	Shri Rakesh Joshi, CA and Shri Anuj Jain, CA		
Respondent by:	Ms. Nidhi Srivastava, CIT-D.R.		
Date of hearing:	04	08	2021
Date of pronouncement:	31	08	2021

ORDER

PER AMIT SHUKLA, J. M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 12.07.2016, passed by Ld. CIT(Appeals)-III, Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2010-11. In the grounds of appeal, the Revenue has raised following grounds.

“1. Ld. CIT(A) erred in law and on facts of the case in deleting the addition of Rs.48,00,00,000/- made by Assessing Officer u/s.68 of the Income Tax Act.

2. Ld. CIT(A) erred in law and on facts of the case in not allowing the Assessing Officer an opportunity to cross examine the directors of the companies produced before him.

3. *Ld. CIT(A) erred in law and on facts of the case in allowing relief to the appellant in respect of the entity i.e. M/s. Supersonic Construction (P) Ltd. whose director was not produced before him.”*

2. The facts in brief are that the assessee-company is engaged in the business of development, sale and leasing of immovable property. The return of income was filed u/s.139(1) on 28.09.2010 declaring income of Rs.73,28,873/- which were processed u/s.143(1). Thereafter, the assessee's case was selected for scrutiny by issuance of notice u/s. 143(2). Ld. Assessing Officer during the course of the assessment proceedings noted that the assessee-company has raised an equity share capital of Rs.1,17,50,000/- for 1175000 equity shares bearing face value of Rs.10/- each for which it has received premium of 45,82,50,000/- i.e., the premium of Rs.390/- per share. The share capital was received from following investors:

	Name of Investor	Amount Invested (Rs.)	Shares allotted
1.	M/s. Laser Financial and Project Consultants P. Ltd.	7,00,00,000	1,75,000
2.	M/s. Supersonic Construction P. Ltd.	10,00,00,000	2,50,000
3.	M/s. Opera Compu Soft P. Ltd.	10,00,00,000	2,50,000
4.	M/s. Cortex Softech P. Ltd.	20,00,00,000	5,00,000
	Total	47,00,00,000	

3. Ld. Assessing Officer required the assessee to furnish various details as incorporated by him in paragraph 3.2 in his order. The Assessing Officer also sent notices u/s. 133(6) to all the above named shareholders of the assessee company, calling upon following details.:

“a. *Copies of Income Tax Returns, Computation of Income, Balance Sheet and Capital Account with annexure and Schedules thereto for A.Y. 2010-11.*

b. *Extract of bank statement for A.Y. 2010-11 reflecting the relevant entries in relation to transactions with the above named assessee company.*

c. *Details' of all the Directors, including their Income Tax Returns, Computation of Income, Capital Accounts, Income & Expenditure Account and Balance Sheet with annexures and Schedules thereto for A.Y. 2010-11.*

d. *Any other information in connection with the transactions with the above named assessee company during the year.”*

4. After detailed discussion and based on his inquiry which shall be discussed in detail hereinafter in a succeeding paragraphs, Assessing Officer has treated the entire share capital and premium receipt of sums aggregating to Rs.40 crore u/s.68 of the IT Act.

5. Before the ld. CIT (A), the assessee has filed all the relevant evidences which were filed before the Assessing Officer and gave rebuttal of each and every observation and

finding of the Assessing Officer made in the assessment order. It was brought on record by the assessee that all the four companies have duly complied with to the statutory notices sent u/s 133(6) and filed the requisite details directly to the Assessing Officer, which goes to establish the identity and creditworthiness of the investors and genuineness of the transactions. The Directors of the companies who appeared before the DDIT, Investigation Wing, New Delhi were not examined nor Assessing Officer issued summons for appearance u/s 131(1)(d) for appearance as all were based outside station. Ld. CIT (A) then directed the assessee to produce the Directors of the 3 companies for verification and deposition and to file requisite details to establish the identities, creditworthiness and genuineness of the transaction. In response, all the Directors were duly produced during appellate proceedings, who were examined during the course of appellate proceedings. The relevant observation of the Ld. CIT (A) in this regard reads as under:

“The counsel vide order sheet entry dated 1st of February 2016 was directed by this office to produce the Directors of the companies for the verification and file requisite details to establish the identity, creditworthiness and genuineness of the transaction as held by Hon'ble Jurisdictional High Court in the case of CIT Vs. NR Portfolio Pvt. Ltd. Sh. Sunder Lal Jain director of M/s Laser Financial and Project Consultants Pvt. Ltd. attended the proceedings in this office and filed the various details. He categorically stated that the company has subscribed to the share capital of the company and the shares

were allotted to them at the premium. Sh. Sunder Lai Jain filed the copy of the assessment order of M/s Laser Financial and Project Consultants Pvt. Ltd. for the A.Y.2010-11. The Assessing Officer has passed the assessment order under section 143(3) of the Act. It is worth noting that the company files the return of income in the same Range wherein the Assessing Officer has assessed the income of the assessee. The Assessing officer has mentioned that the company is a non banking financial company engaged in the business of Finance and investment. The copy of the balance sheet filed shows that there is reserve and surplus of Rs.48,52,02,414 as on 31st of March 2010.

6. Sh. Deepak Mittal director in M/s Opera Compusoft Private Ltd. And M/s Supersonic Constructions Pvt. Ltd. attended the proceedings on 10.03.2016 and filed the requisite details and categorically confirmed that both the companies have made the subscription to the share capital of the company at the premium. It was further submitted that the share holding was further sold by them to M/s Greenview Distributors Pvt. Ltd. on 31.03.2010 at premium and both the companies have no relationship with M/s Greenview Distributions Pvt. Ltd. The evidences adduced during the appellate proceedings show that M/s Opera Compusoft Pvt. Ltd. was set up to deal in computer software with a horde of other objects including that of investment in purchase and sale of moveable/ immoveable properties /assets / rights / shares and debentures etc. The company is having share capital and reserve and surplus of Rs.43,36,74,657 as on

31.03.2010.

7. *M/s Supersonic Constructions Pvt. Ltd. is regularly assessed to the tax and engaged in the business of infrastructure development, real estate promoters and developers, project management etc. The company is having capital and reserve and surplus of Rs.47,26,68,876 as on 31.03.2010.*

8. *Sh. Bharat Gupta director of M/s Cortex Softech Private Ltd. attended the proceedings in this office on 18.03.2016 and filed the various details. He categorically stated that the company has subscribed to the share capital of the company and the shares were allotted to them at the premium. Sh. Bharat Gupta stated that the company is regularly assessed to tax and filed the copy of the assessment order for the A.Y.2010-11 made under section 143(3) of the Act. The assessment has been made by the Assessing Officer on 13.03.2013. It has been stated by the director that the company was set up to deal in computer software, sale and purchase of the moveable/immovable properties, assets and shares and debentures. The copy of the balance sheet filed by the assessee shows that the company is having share capital and reserves and surplus of Rs.48,17,20,318 as on 31.03.2010. It is further observed that the company has sold the investment on 31.03.2010 to M/s Greenview Distributors Pvt. Ltd., Delhi.*

9. *Having regard to the above, I find that the assessee had placed on the record confirmations, income tax returns, copies of the bank statements and share- application forms*

from each of the share-holders. It is noted from the documentary evidence adduced during the assessment as well as appellate proceedings that the companies who subscribed to the share capital are having their own profit making apparatus and regularly file the tax returns. The share capital has been subscribed from the reserve and surplus available with the companies. The scrutiny of the bank statements revealed that there are no cash deposits in the bank accounts. There are no fresh borrowings made by the companies for subscribing to the share capital of the assessee. The position of funds with the companies is as under:-

S.No	Name		F.Y. 2008-09	F.Y. 2009-10
1.	Opera Compusoft Pvt.Ltd.	Share capital Share Premium	17,440,000.00 416,160,000.00	17,440,000.00 416,160,000.00
2.	Supersonic Construction Pvt. Ltd.	Share capital Share Premium	451.192.919.00 472.642.919.00	451.218.876.00 472.668.876.00
3.	Laser Financial & Projects Consultants Pvt. Ltd.	Share capital Share Premium	17.072.500.00 484.327.500.00	17.072.500.00 484.327.500.00
4.	Cortex Softech Private Ltd.	Share capital Share Premium	19,475,000.00 457,545,318.00	24,175,000.00 468,191,857.00

In the case of the companies at serial no.3 & 4 the assessment orders for the Assessment Year 2010-11 have been made by the Assessing Officer u/s.143(3) of the Act.”

6. After referring to the various judgments, he has deleted the addition in the following manner:

“10. In the instant case, the appellant has filed the confirmations, bank statements, share application forms and other documentary evidences. The directors of the companies made the personal disposition in this office and categorically confirmed that the companies are doing the genuine business for the last many years and have their own profit making apparatus. The share capital has been subscribed from the reserves and surplus available with the companies and there are no fresh borrowings made during the year to subscribe to the share capital. The Hon'ble Jurisdictional High Court in CIT Vs. SVP Builders (India) Ltd. held that where investor companies of assesseees were regularly assessed to tax and they had confirmed that they had subscribed to share capital of the assesseees, in view of fact that Assessing Officer had not undertaken any particular investigation into affairs of said companies apart from issuance of notices under section 131 which were duly responded to, addition made under section 68 could not be sustained. The facts of the case state that the lenders have received the share capital and share premium in the preceding year to the year under consideration and accordingly addition under section 68 may be made in the cases of the lenders as held by Hon'ble Apex Court in the case of Lovely Exports Pvt. Ltd.

"2. Can the amount of share money be regarded as undisclosed income under section 68 of Income-tax 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 Assessing

Officer, 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...."

In view of the aforesaid facts on the record, it is held that the appellant has established the identity, creditworthiness and genuineness of the transactions. The Assessing Officer is directed to delete the addition made u/s. 68 of the Act and modify the order of assessment accordingly."

7. Before us, ld. DR after referring to various observations of the Assessing Officer submitted that, first of all, Assessing Officer has given detail analysis of the nature of inquiry conducted by him in the impugned order which goes to established that these companies did not have creditworthiness to give such a huge amount of share capital and premium to the assessee-company and their veracity was also doubtful. He thus strictly relied upon the order of the Assessing Officer.

8. Before us, ld. counsel for the assessee submitted that the assessee-company before the ld. Assessing Officer in order to establish the identity, creditworthiness of the investors and the genuineness of the transaction has filed following documents:

- *The appellant filed the following documents for establishing identity of the share applicants:*

- *Complete names and addresses of the new share holder companies, duly intimating wherever there was a change in address.*
 - *Respective investor company's Master details, as per records of the Registrar of companies, showing CIN and other latest particulars of the respective company.*
 - *Photocopy of PAN card/PAN letter of all the investor companies*
 - *Acknowledgement portion of the Income Tax returns of all the investor companies as e-filed by them for the A.Y. 2010-11 with the Income Tax Department.*
- *The appellant filed the following documents for establishing creditworthiness of the share applicants:*
- *Details of funds of the share applicants showing their respective net worth as on 31.03.2010 and 31.03.2009, along with their respective audited Financial Statements/final accounts as on 31.03.2010.*
 - *A copy of the bank account statement of each party for the relevant accounting period, showing relevant entries of debit and credit.*
- *In order to prove genuineness of the transactions, the following evidence was filed before Ld. AO:*
- *Copies of duly filled-in Share Application Forms, as had been submitted by all the four share holders.*
 - *A copy of bank statement of each party as also that of the appellant company for the relevant accounting period showing entries of debit and credit for the investment.*

- *A copy of Form-2, as filed by the appellant company with the ROC, showing allotment of shares to the share applicants concerned.*
- *Confirmation of investment from the respective shareholders.”*

9. Nowhere the Assessing Officer has commented upon these documentary evidences, nor has he discuss it in the entire assessment order, neither he has found any discrepancy / fault in the evidences filed by the assessee nor has rejected the same.

10. In so far as various allegations of the Assessing Officer and the assessee's explanation before the ld. CIT (A) and before us, is highlighted herein below:

➤ **Notice issued U/s 133(6) of the Income Tax Act, 1961 returned unserved in one case.**

The Ld AO issued notices u/s 133(6) of the I. T. Act, 1961 to all the four new share holders calling for copies of ITRs, final accounts, capital accounts, bank statements, personal as well as Income Tax related details of the directors etc to file reply by 12/12/2012. (pg no 5 para 3.4 & 3.5 of AO) The notice u/s. 133(6) issued to M/s. Laser Financial & Project Consultant Pvt. Ltd. was returned back with the remark “*not known*”. In this regard we submit that it is not the case that the said notice was not complied by these parties. The Ld AO on 3.5 has admitted the fact that the office received the reply in response to notice u/s. 133(6) in all the four shareholders.

Therefore, the above reason assigned by the Ld AO is without any basis and support. The AO has not commented anything on the above documents. It is worthwhile to note that he did not find fault with the evidence filed by the investor companies, as detailed above. Neither did he reject the same before taking an adverse view in the matter. Once the assessee company has filed the necessary documents to establish identity, creditworthiness of the share applicants as also the genuineness of the transactions and the investor companies has confirmed it in the independent enquiry done by the AO, then where is the question of addition unless AO conduct further verification of the documents.

➤ **Parties were not available at given address during the course of enquiry conducted u/s. 131(1)(d)**

Subsequently the Ld. AO issued commission u/s.131(1)(d) dated 28.01.2013 to the DDIT-111(1), New Delhi to make the enquiry of three shareholders, who are having their registered office in Delhi. The AO further surmises in the assessment order that the DDIT-III(1), Delhi has reported him that the parties concerned were not available at the given addresses of Delhi. Similarly, for one Mumbai-based shareholder, he stated that the said party, too, was not available at the given address.

In this regard we submit that AO has further noted in the assessment order that the DDIT-111(1), New Delhi informed him subsequently that all the relevant directors of the parties, whose enquiry had been marked to him u/s 131 (1)(d) of the Act had made themselves present before him and requested for accepting the details in response to his summons, which they had brought with them. The DDIT advised them to send the

detailed directly to the AO at Mumbai, since he had already sent his report to him. He also acknowledges the receipt of the said details in his office from the said three parties, as mentioned by him in para 3.13 at page 15 of the assessment order. Thus, the addition cannot be made on the basis that the reply of summons was not made by the parties.

➤ **Directors of the investee companies not produced before AO in Mumbai:**

Instead of considering the documentary evidence filed by the assessee company as well as by the investee companies, the Assessing Officer straightly and directly asked the assessee to produce the directors of the investor companies before him at Mumbai for personal examination in the fag end of March, 2013. Upon this, the appellant asked the directors concerned of the investor companies and requested them to make themselves present before the AO for personally examination on 22.03.2013 as per his directions. They told him that they had already personally contacted the DDIT(Inv.) at Delhi along with our reply, which was not accepted by him. They further told that even then, they were ready to attend the office of the AO at Mumbai provided he issues summons to them. Thereafter, the appellant attended the proceedings on 22.03.2013 and requested AO to issue summons in the name of the directors concerned enabling him to persuade them to attend before him at Mumbai. However, Ld. AO turned down the said request for the reasons best known to him and instead chose to take resort to the provisions of section 68 of the Act in respect of the amounts received from the new share holders.

We submit that AO only orally directed the appellant to produce the directors before him. Here it may be appreciated that since three of the investing companies existed at Delhi, most of the directors were naturally Delhi- based, whereas the place of assessment was at Mumbai. So, the AO was asking for producing the Delhi based persons at Mumbai, which was a bit difficult to be fulfilled command. Nonetheless, the appellant requested the directors to come along and appear before the AO at Mumbai. The directors asked him to get the proper summons issued in their name and then they would be accompanying the appellant to the office of the Ld. AO. So, the appellant made a humble request to the AO to issue the summons, which could have been got served even with the assistance of the appellant. However, the AO did not accede to the said request and proceeded to make the addition alleging non- compliance of his directions regarding production of directors, which will not sustain under the Act.

We further submit that the AO cannot hold the transactions unexplained simply because the fact that the directors could not be produced. Reliance is placed on the judgement of the Hon'ble Delhi High Court in the case of CIT vs. Divine Leasing & Finance Ltd. 299 ITR 268 (Del), where in it was held that

"The Tribunal was justified in deleting the addition. The AO proceeded to make the impugned addition on the ground that in some cases, some summons issued were returned un-served and in some cases, summons though served but there was no compliance. In this connection, it may be mentioned that in the case of CIT Vs. Orissa Corpn., 159 ITR 78, the Hon'ble Court has held that when the assessee borrows the loan and if an

assessee gives names and address of the creditors, who are assessed to tax and full particulars are furnished, then the assessee has discharged the duty. If the Revenue merely issues summons u/s 131 and does not pursue the matter further, the assessee does not become responsible for the same even if the creditors do not appear. Addition cannot be made u/s 68.”

We further placed our reliance on the following case laws where similar view was held by the court:

- *CIT v. Mis Victor Electrodes Ltd, 329 ITR 271 (Delhi) High Court of Delhi (2010)*
- *CIT v. Orbital Communications (P) Ltd (2010) 327 ITR 560, Delhi High Court*
- *CIT v. Orbital Communication (P) Ltd. (2010) 327 ITR 560. Delhi High Court*

Further in this case Ld CIT (A) asked assessee to produce Directors of the company before him. In response to the same Directors of all the four companies appeared before Ld CIT (A) which is noted on page 32 & 33 of the CIT (A) order. Ld CIT (A) noted that all the four investor companies' directors appeared before him and confirm the transaction and also filed desired documents. Ld CIT(A) also noted out of four companies, two of them were duly assessed U/s 143(3) of the Act. Therefore the said grievance of Ld AO is no longer exist.

Thus, the addition cannot be made on the basis that the directors were not produced before the AO.

- The AO's conclusion that either a few or all of the investor companies were related to each other and Selling of the shares

by three of the four _ shareholders a profit, which was "very nominal" as per the AO :

We submit that no adverse view can justifiably be taken on the basis of the relationship of the investor companies with each other and shares sold on inadequate profit. The same view was held by the Hon'ble Delhi High Court in a very recent judgment (2016) 65 taxmann.com 71 (Delhi) in the case of CIT-3 v Five Vision Promoters (P) Ltd. as under:

"Mere fact that some of investors in share capital of assessee-company had a common address was not a valid basis to doubt their identity -or genuineness, nor the fact that shares of the assessee were subsequently sold at a reduced price was germane to question of genuineness of investment in share capital of assessee.

➤ **Income returned by the investor companies to be "meager" as per the AO:**

The Ld. AO stated that income of the investing companies was "meager" has no relevance to the issue under consideration. Investments are not always made out of current income. The conclusive point, with regard to the investment is, whether the investing company had sufficient funds on the date of investments or not. Ld. AO has nowhere held that the investing companies had no funds in their bank accounts. Hon'ble Allahabad High Court has even deleted the addition u/s 68, which had been made on the ground that the assessee could not prove that share applicants had enough money on the date of purchase of its shares. The Hon'ble Court held in the case of CIT, Meerut v. Nav Bharat Duplex Ltd. (2013) 35 taxmann.com 289 (Allahabad) as under: "We have considered the arguments of

the counsel for the parties. CIT(A) found that five companies subscribing the equity shares amounting to Rs. 25,00,000/- were identified and they had submitted their bank statements, cash extracts and returns filing receipts. As such identity of the share applicant companies and purchase of share had been proved by the assessee. Supreme Court in the case of CIT v. Steller Investments Ltd. [2001] 251 /TR 263/115 Taxman 99 and Lovely Exports case (supra), has held that the identity of the Shareholder alone is required to be proved, in case of the capital contributed by the shareholders. In view of the authoritative pronouncement of the Supreme Court in the aforesaid cases, judgment of this Court in Ram Lai Agrawal case (supra) is no longer a good law. Accordingly, CIT(A) and the Tribunal has not committed any illegality in allowing the appeal of the assessee. We do not find any illegality in the judgment of the CIT(A) and the Tribunal”.

The Assessing Officer has not brought any adverse material on record to draw inference on the issue. His decision to hold the share capital credits as unexplained is entirely based on personal biases, prejudices, conjectures and surmises as against any solid ground.

11. In so far as the case law cited by the Assessing Officer, the same has been distinguished and explained in the following manner:

(i) Nipun Builders & Developers Private Ltd. 350 ITR 407 (Delhi High Court)

In the cited case, the facts were that the assessee summons had been issued to investors, which remained un-complied

with. In the case of the appellant, summons had been issued by the DDIT(Inv.), Delhi, whom the AO had given commission u/s 131(1)(d). The directors of the investor companies did not attend on the date given in the summons on account of non-receipt of summons. The level of their cooperative attitude can be gauged from the fact that on hearing of issuance of summons from Income Tax Department, all of them appeared on their own before the DDIT (Inv.), Delhi and presented their detailed replies. On advice of the DDIT(Inv.), they sent their replies direct to the AO at Mumbai. As against this, the assessee of the cited case was also non-cooperative in the sense that in reply to direction of the AO to produce the principal officers of the investing companies, the assessee replied that the AO's all made to the AO to issue summons u/s 131 to all the persons concerned who had promised to attend in compliance on receipt of the summons. This request, however, was not acceded to by the AO.

The court in the cited case further noted that "It was not open to the assessee, given the facts of this case, to direct the Assessing Officer to go to the website of the company law department/ROC and search for the addresses of the share-subscribers and then communicate with them for proof of the genuineness of the share- subscription. That is the onus of the assessee, not of the Assessing Officer." Apparently, the Hon'ble Court got annoyed with the extreme non-cooperative attitude of the assessee concerned. In the case of the appellant, the attendance in the hearing was duly maintained, the requisite details with evidence was duly filed before the AO and on directions of the AO, the directors of the investing companies

were duly contacted and requested to attend at Mumbai before the AO.

In the cited case, the Hon'ble Court further noted that "instead, the assessee took an adamant, attitude and failed to comply with the direction of the Assessing Officer. It also challenged the Assessing Officer's finding that the summons sent to the companies came back unserved with the remark 'no such company', which was also supported by the report of the inspector who made a visit to the addresses. The assessee thus took a very extreme stand which was not justified.

So, the finding in the cited case was clearly affected by the extremely negative attitude of the assessee concerned. Therefore, the ratio of the case of Nipun Builders (supra) cannot be applied on the appellant's case.

(ii) CIT v. P. Mohanakala [2007] 291 ITR 278(SC)

The Assessing Officer has also cited the case of CIT v. P. Mohanakala [2007] 291 ITR 278(SC). From the perusal of the portion of the judgment reproduced in the assessment order in para 18 of it, it is found that Hon'ble Apex Court has explained therein the pros and cons of addition u/s 68. These are general and routine comments and in no manner harm the position of the appellant's case. Similarly, the AO has reproduced another para (para No.25) from the above judgment at page 22 of the assessment order. The said para mentions the adverse findings of the authorities below about the entries of credit in the books of account of the assessee concerned which indicate that the transactions were not real one. It may kindly be noted that Ld. AO has not made any adverse comment on the books of account of the appellant. So, these general comments have no application

on the appellant's case.

(iii) *Vijay Kumar Talwar v-. CIT (2011)330 ITR 1*

This case discussed about the provisions of section 68 in a general and routine way. Hon'ble Court also makes reference to non-production of evidence on the part of the assessee concerned. There is also a mention of failure of the assessee concerned to produce the parties before the AO.

The above cited judgment does not help the AO as in the case of the appellant, all the 4 directors appeared before the DDIT(Inv.), Delhi whom the AO had issued a commission to verify the position. The AO himself acknowledged in the assessment order that the persons concerned i.e. directors of the investor company did appear before the said officer with their detailed replies and offered themselves for his personal examination. When the AO asked the assessee to produce the directors before him at Mumbai, the appellant immediately contacted and requested the directors to come along with him to attend before the AO. They promised to attend provided summons are issued to them. Since the earlier summons issued by DDIT(Inv.) were not received by them. The AO did not issue any summons. So, case of the appellant is entirely on different footing."

12. Lastly, he submitted that the appellant had fully discharged its onus by filing plethora of documents and established identity, creditworthiness of the creditors and genuineness of the transactions. The investing parties are available at the given addresses; they are regular Income-tax assesseees, they are duly registered corporate entities, they are regularly filing statutory returns with the ROC, they are

maintaining regular books of accounts and they make all the business dealings through regularly maintained bank accounts. Their accounts are statutorily audited by a qualified auditor. The documents filed by us before the Assessing Officer fully establish their identity. Their audited balance sheets fully establish their financial worth. So, their creditworthiness is beyond doubt. All the investing parties have confirmed having made the transactions with the appellant company in response to notices u/s. 133(6). In exchange to the share application money, shares have duly been allotted to each one of the investor. We have filed copies of share certificates issued to the investors. The information of such allotment was duly filed with the Ministry of Corporate Affairs in the statutory return meant for that purpose and it must be available on their site. So, genuineness of the transactions, too, is established. Directors of the investor companies also appeared before Ld CIT(A) and confirmed the transactions alongwith documentary evidences.

DECISION

13. We have heard the rival submissions and also perused the relevant material placed on record and also the relevant finding given in the impugned order. From the bare perusal of the entire assessment order, we find that nowhere Assessing Officer has discussed about evidences and documents filed by the assessee to substantiate the identity, creditworthiness of the share applicants and the genuineness of the transaction,

as has been reproduced in the foregoing paragraph 8. At least Assessing Officer should have *prima facie* referred to these documents and then based on any of his inquiry or adverse material should have dislodged the assessee's evidences or explanation that these documents do not substantiate the nature and source of the credit.

14. Now coming to the various allegations of the Assessing Officer, i.e., firstly, the notice u/s. 133(6) returned unserved in case of one party. Admittedly, out of notices sent to four investor companies, the Assessing Officer has only discussed about one company, i.e., M/s. Laser Financial and Project Consultant Pvt. Ltd., that it was returned back unserved. Thereafter, in paragraph 3.5 of the assessment order, he himself admitted that his office has received the reply in response to the notice u/s. 133(6) in respect of all the shareholders wherein the shareholders have filed all the requisite documents and details as required by him. Nowhere, he has said that these documents like, bank statements, copy of audited balance sheet, profit and loss account, income tax returns, details of their funds and their respective net worth as on 31.03.2010 and 31.03.2009 as disclosed in the respective audited financial statements, etc. does not have any substance or there is any discrepancy which can create any doubt. Once, not only the assessee-company has filed all the requisite document to establish identity, creditworthiness of the share applicants and the genuineness of the transaction, but also the same set of evidences have been

sent by the parties directly to the Assessing Officer in response to notice u/s.133(6). There can be no adverse inference which can be drawn against the assessee; in fact such an inquiry goes in favour of the assessee.

15. In the assessment order at one place it has been stated that parties were not available at the given address during the course of inquiry conducted u/s. 131(1)(d). This has already been countered and explained by the ld. counsel as reproduced above. From the facts on record, we find that there is a inherent fallacy in his observation, because Assessing Officer himself has noted in the assessment order that DDIT, New Delhi has informed the Assessing Officer that all the Directors of the companies whose inquiry was marked to him u/s. 131(1)(d) have made themselves present before him and had got all the requisite details as asked from them. However, the DDIT had advised them to send these details directly to the Assessing Officer as he has already sent the report to him. This has also been acknowledged by the Assessing Officer in paragraph 3.13 at page 15 of the assessment order.

16. In so far as the allegation that the directors were not produced, it has been already clarified by the ld. counsel that they have duly appeared before the DDIT, New Delhi, who did not examine them and was not accepted by him as he had already sent his report to the Assessing Officer in Mumbai. The assessee specifically requested the Assessing Officer to

directly summons the directors at his office as they were out stationed investors, which request was turned down. In any case this allegation of the Assessing Officer stands whittled down by the fact that the ld. CIT (A) had asked the assessee to produce directors and in response all the directors of four companies had duly appeared before him and confirmed the transaction and again filed the desired documents. This is evident from the observation and the finding of the ld. CIT (A) as incorporated above. Out of four companies, in fact, two of the companies were duly assessed u/s. 143(3) for the same assessment year and the source of the investment made in Assessee Company stood explained and also the transaction. Under these facts and circumstances, none of the allegations of the Assessing Officer has any legs to stand and there is no reason to tinker with the finding of the ld. CIT (A) and the material on record.

17. Lastly, before us, the ld. DR has strongly relied upon the decision of the Hon'ble Apex Court in the case of NRA Steels and Iron Ltd. and stated the ratio of the said decision is squarely applicable in this case. First of all, on the facts and material as discussed above that in all the inquiries, i.e., notices u/s.133(6) and the requirement of producing the directors have duly been complied with as the parties have responded to notices u/s.133(6) and directors were produced before the ld. CIT(A). In the case of NRA Steels and Iron Ltd., there was no response of notices issued U/s 133(6) of the Act neither any person appeared before AO and AO has enquired

about the investor companies and proved that the same are non-existing companies. Further, in this case all the three parties have duly replied notice issued U/s 133(6) and provided the desired details to the AO. AO has not acted upon the information provided by the assessee as well as by the investor companies. There is no further investigation by the AO. Therefore, the reliance of Apex Court decision is not correct.

18. Accordingly, on merits the addition made by the Assessing Officer u/s 68 is unsustainable and has rightly been deleted by the Ld. CIT (A). Thus, we do not find any substance on merits in the grounds raised by the Revenue and the same are dismissed.

19. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31st August, 2021.

Sd/-

[Dr. B.R.R. KUMAR]
ACCOUNTANT MEMBER

DATED: 31st August, 2021

PKK:

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER