IN THE INCOME TAX APPELLATE TRIBUNAL
"RAIPUR" BENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 256 to 259/RPR/2014

A/W.

CROSS OBJECTION Nos. 42 to 45/RPR/2015
(**निर्धारण वर्ष /** Assessment Years : 2006-07, 2009-10, 2010-11 & 2011-12)

The Deputy Commissioner of Income-tax (Central), Aayakar Bhawan, Central Revenue Building, Civil Lines, Raipur (C.G.)	**बनाम**/ Vs.	**Mahalaxmi Technocast Ltd.** Mahamaya Tower, 3rd & 4th Floor, In front of Anupam Nagar, Near Varun Honda, G. E. Road, Raipur (CG)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM8216B		
(**Appellant / Respondent**)	..	(**Respondent / Cross Objector**)

राजस्व की ओर से/Revenue by :	Shri R. K. Singh, CIT.DR
अपीलार्थी ओर से /Assessee by :	Shri Veekaas S Sharma, A.R.

सुनवाई की तारीख **/ Date of Hearing**	10/08/2021
घोषणा की तारीख **/Date of Pronouncement**	25/10/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals are directed at the instance of Revenue in respect of assessee captioned above arising from the common and combined order of the Commissioner of Income Tax (Appeals) ('CIT(A)') for all assessment years. The assessee also filed cross objections in all Revenue's appeals as tabulated hereunder:

ITA Nos.	Name of assessee	AY	Combined order of CIT(A) dated	Combined order of AO dated	AO's order under Section
256 to 259 /RPR/14 a/w. CO Nos. 42 to 45/RPR/2015	Mahalaxmi Technocast Ltd.	2006-07, 2009-10 to 2011-12	17.07.14	27.03.14	153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act')

2. The issues being common, interlinked and similar and arising from a common order of CIT(A), all the captioned Revenue's appeals in respect of the captioned assessee have been heard together and are being disposed of by this common order.

3. As per its grounds of appeal, the Revenue has broadly challenged the relief granted by the CIT(A) on; (1) additions of Rs.1,25,00,000/- (A.Y. 2006-07), Rs.3,75,00,000/- (A.Y. 2009-10), (3) Rs.5,45,00,000/- (A.Y.2010-11) & Rs.70,00,000/- (A.Y. 2011-12) carried out by the AO under the provisions of Section 68 of the Act in respect of receipt of share application/share capital.

4. As per its cross objections for the various assessment years in question spanning over A.Ys. 2006-07, 2009-10 to 2011-12, the assessee has assailed the order of CIT(A) on the point of jurisdiction and primarily raised a legal objection that the jurisdiction of the AO gets ousted under s.153A of the Act in so far as the addition unconnected to the incriminating material in respect of unabated and concluded assessments concerning A.Ys. 2006-07 to 2009-10 are concerned. Additionally, the assessee has also simultaneously supported the action of the CIT(A) in reversing the additions made by the AO while adjudicating on merits.

5. Briefly stated, the assessee is deriving income from rent, interest etc. A search was conducted on the residential/ business

premises of the assessee group, namely, Mahamaya Group on 21.06.2011 including the assessee herein. A sum of Rs.20,400/- was found in cash in main office at Tatibandh, Raipur. No seizure of cash found was made. Consequent upon search, notices under s.153A of the Act were issued on the assessee. Pursuant thereto, the assessee filed return of income under s.153A of the Act. The assessment was framed under s.143(3) r.w.s. 153A of the Act for A.Ys. 2006-07 to AY 2011-12 in question. A common & combined assessment order for all the assessment years from AY 2006-07 to AY 2011-12 in question was passed having regard to common issues involved in all these assessment years. In the course of the search assessment noted above, the AO *inter alia* observed that credits in respect of share application money to the tune of Rs.1,25,00,000(A.Y.2006-07); Rs.3,75,00,000/- (A.Y. 2009-10); (3)Rs.5,45,00,000/- (A.Y.2010-11) & Rs.70,00,000/- (A.Y. 2011-12) in the books does not satisfy the requirements of Section 68 of the Act towards satisfactory explanation. It was essentially observed that the assessee has failed to discharge onus towards genuineness and creditworthiness of the share applicants (subscribers).

6. Aggrieved, the assessee preferred appeal before the CIT(A) challenging the aforesaid additions in all these impugned ass. years.

7. In the first appeal, the assessee filed detailed submissions before the CIT(A) and the documentary evidences to substantiate its challenge on additions under s.68 of the Act on account of share application money. A legal objection was also simultaneously raised on validity of additions under S. 153A in respect of assessments remaining unabated and concluded prior to search. The CIT(A) took note of factual and legal submissions so made and found substance in the defense of the assessee towards additions under S. 68

involved on merits. However, the legal objections of the Assessee questioning scope & legality of additions under S. 153A was discarded.

8. The CIT(A) addressed the issue on additions made by the AO under s.68 of the Act in favour of the assessee on merits for which the relevant operative para reads as under:

> *5. I have carefully gone through the assessment order and submissions of the appellant. As regards allegation of the A.O. regarding non-maintenance of Statutory Records, the appellant was asked to furnish the copy of statements recorded during the course of proceedings u/s 132, it has been submitted by the appellant that the statement of none of the appellant company's representative was recorded and it has also been submitted by the appellant that none of the Officer of Search Team ever visited the Registered Office premises of the appellant company. With a view to ascertain the facts, during the course of appellate proceedings of other companies covered in the Mahamaya Group of cases and in appeal before the undersigned, namely (1) Mahamaya Steel Industries Limited, (2) Abhishek Steel Industries Limited, (3) Devi Iron & Power Private Limited and (4) Shree Shyam Sponge & Power Limited, were asked to furnish copy of statements of all the persons recorded by the Search Team during the proceedings u/s 132. The statements were furnished by the said companies. I have carefully gone through all the statements of all the persons recorded during the proceedings u/s 132 on 21/22.06.2011. I am in agreement with the submissions of the appellant company that no statement of appellant company's representative was recorded during the search proceedings. The statements of other persons belonging to the aforesaid companies also does not, in any way, lead to an inference that the Group companies or the appellant company do not maintain Statutory records / Registers. It is also seen that the appellant company had made specific request before the A.O. vide its letter submitted on 14.03.2014 and 18.03.2014 to dispel the doubts of the A.O. regarding non-maintenance of statutory records and registers. From the assessment order, it appears that the A.O. did not take any cognizance of the assertion made by the appellant regarding maintenance of Statutory Records and registers in accordance with the provisions of Companies Act and without verifying the verifiable facts regarding maintenance or otherwise of Statutory records and registers, the A.O simply seems to have found it convenient to remain silent and sit back after making the allegation without any proper basis. I do find considerable force in the submissions of the appellant that the A.O. merely made the allegation, however, the A.O. has not brought on record any basis for such allegation. It is not the case of the A.O. that the search team did visit the Registered Office premises of the appellant company and had asked a specific query to the appellant company's representative with regard to maintenance of statutory records and that the appellant company's representative failed to*

produce the Statutory Records or registers or expressed their inability to produce the same or had admitted that no such records are being maintained. I find that on one hand, the A.O made the allegation, however, without bringing on records its basis and on the other hand, the A.O. did not also adhere to the appellant company's specific request to verify the statutory records that are being maintained by the appellant company, such an action of the A.O. has made the assessment order vitiated by one sided conclusion by the A.O. Neither from the assessment order nor from the statements recorded during search proceedings, it is emerging that there was any attempt to locate such statutory records.

5.2 The appellant has submitted that the entire share application money of Rs. 990 lacs received from Escort Finvest Private Limited was refunded in the F.Y 20012-13 through account payee cheque, the appellant submitted the ledger of said company to substantiate its submission. I have verified the factum of refund from the ledger placed in Page No.15 of Volume 3 of the Paper book, I am convinced that the appellant did refund the said sum to Escort Fivnest Private Limited was refunded in the F.Y 2012-13. I find that in Commissioner of Income-tax, Rajkot-I v. Ayachi Chandrashekhar Narsangji. [2014] 42 taxmann.com 251 (Gujarat), it was held that "It is required to note that as such an amount of Rs. 1,00,00,000 vide cheque No. 102110 and an amount of Rs. 60 lakhs vide cheque No. 102111 was given to the assessee and out of the total loan of Rs. 1.60 crores, Rs. 15 lakhs vide cheque no. 196107 was repaid and therefore, an amount of Rs. 1,45,00,000 remained outstanding to be paid to IA. It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible, there was no reason to interfere with the impugned order passed by the Tribunal." I am convinced that there is no question of making any addition u/s 68 given the fact that the share application money received from Devi Iron and Power Private Limited stood refunded, hence, there was no obligation on the appellant to even establish the identity or creditworthiness of said company or genuineness of the transaction, therefore, the addition cannot be sustained in the light of this undisputed fact.

For academic purposes, the discharge or otherwise of the onus u/s 68 has been independently evaluated and examined. The appellant has submitted that Devi Iron and Power Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Escorts Finvest Private Limited for the assessment year 2006-07 and 2007-08.

5.3 It is seen that Escorts Finvest Private Limited was assessed u/s 143(3) and the ITO, Ward-1(4), Kolkata recorded a specific finding that the said company had share capital and share premium reserve of Rs.5,64,50,200/- and Rs.44,37,90,000/- as on 31.3.2006 and that the ITO, Ward-1(4), Kolkata had conducted enquiries with the various shareholders of Escorts Finvest Private Limited by issuing notices u/s 133(6) and verifying their responses. I find that ITO, Ward-1(4),

Kolkata was satisfied with the genuineness of addition to share capital and reserves of Escorts Finvest Private Limited inasmuch as no adverse inference was drawn by ITO, Ward-1(4), Kolkata with regard to said addition to share capital and reserves of Escorts Finvest Private Limited. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Escorts Finvest Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings.

5.4 It is also seen that the appellant was assessed in the past and case of assessment year 2006-07 and 2007-08 was under scrutiny assessment u/s 143(3) and in the said assessment proceedings, the addition to share application / share capital was duly accepted as genuine.

5.5 It is seen that the addition to share application and capital was duly accepted in the scrutiny assessment proceedings, the present action of the A.O is not culminating from any specific finding against the appellant that it was a beneficiary of any racket which has been unearthed as a result of search proceedings nor has the A.O brought on record any other evidence to indicate that the appellant did make undisclosed income and such evidence came on the surface as a result of search proceedings. The A.O has not rebutted the details of tangible net worth submitted by the appellant to demonstrate that the subscribers had sufficient means to invest in the share application/capital of the appellant company, I have perused the details of net worth of the subscribers with reference to the audited financial statements of the subscribers and found satisfactory. In this background, in my considered view, there is no scope and reason to take a contrary view than that taken by the then A.O without there being any documentary evidence against the appellant to demonstrate that the share application money was nothing but undisclosed income of the appellant.

5.6 Furthermore, I am in agreement with the submissions of the appellant that the same A.O has accepted the addition to Preference Share Capital in the case of Mahamaya Steel Industries Limited received from Escorts Finvest Private Limited and therefore, the identity and creditworthiness of Escorts Finvest Private Limited was undisputedly accepted and genuineness of addition was also duly accepted, hence, there cannot be any reason to take a contrary view in the case of appellant. The A.O cannot be permitted to take two

divergent views on same set of facts and on same set of evidences, when the same A.O undisputedly accepted the genuineness of addition to share capital of Mahamaya Steel Industries Limited, there was no reason for him to take a contrary view in the case of the appellant.

5.7 It is an undisputed fact that the names, addresses and assessment particulars of the investors, their active status as per the website of Ministry of Corporate Affairs and bank statement of the applicants had been furnished by the appellant before the AO. It is further observed that the share application/capital money has been received by way of account payee cheques from the investors most of whom are companies and is duly reflected in the bank account of the appellant. I have perused the bank statements of the investors, their audited financial statements and confirmation for making such investments, which clearly establishes the factum of making investments. These facts are clearly establishing the identity of the investors and the genuineness of the impugned transactions.

5.8 It is observed from the records and assessment order that for the purpose of making addition as unexplained cash credits, the AO has heavily relied upon the judicial pronouncements, however, the appellant has made elaborate submissions distinguishing the facts, I am convinced with the explanation of the appellant that the decisions relied upon by the A.O are not applicable in the facts of the present case as there is nothing on record which can indicate that the receipt of share application money was by way of accommodation entries only. It is also not the case of the A.O that the investors have accepted by way of statement that the sums paid to the appellant was in fact received from the appellant and investors merely routed the undisclosed income of the appellant through money laundering process in the form of share application money. On the contrary, the A.O himself has stated in the assessment order that the investors have sent confirmatory letters, I have gone through the confirmatory letters, it is seen that the letters were sent through registered/speed post which cannot be said to be unauthentic mode, secondly, the investors have confirmed having made the investment by way of affidavits which are duly notarized, the investors have also furnished the copies of share application forms, their audited financial statements, ITR, bank statement. In the backdrop of these facts and documentary evidences , in my considered opinion, the identity and creditworthiness of the subscribers has been established and cannot be doubted, it is not justified on the part of the A.O to simply reject the documentary evidences on record and take an adverse view and clothing the case of the appellant with the judicial pronouncements which have been rendered on absolutely different facts and circumstances.

5.9 The appellant has relied upon various judicial pronouncements and correlated the facts in those decisions with the facts in the case of the appellant. I am convinced that the decisions relied upon by the appellant are certainly applicable in the case of the appellant as the facts are not only similar but identical. The appellant has also relied upon the decision of the Hon'ble Supreme Court and jurisdictional High Court which cannot be ignored. The A.O has referred to the notices issued under section 133(6) which have been returned un-served in some of the cases. It is seen that in the subsequent paragraph, the

A.O himself has given the particulars of receipt of replies from the investors, therefore, in my considered view, no adverse inference can be drawn against the appellant for mere non service of notices initially, I have carefully perused the explanation submitted by the appellant in respect of cases where the notices remained unserved, the submissions of the appellant are found to be convincing. It is further observed that no further enquiry or investigation has been conducted by the AO to corroborate or support the conclusions drawn in the assessment order so as to assess the share capital money as the undisclosed income of the appellant company. In my considered opinion, apart from drawing presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the investment in the business has flown from appellant's own money which is an essential pre-requisite for making addition in such cases. I am convinced that the case of the appellant is squarely covered by the the decisions rendered by the Hon'ble Apex Court in the case of the CIT vs. Lovely Exports (P) Ltd. reported in 216 CTR 195 and the jurisdictional High Court viz. the Chhattisgarh High Court in the case of the ACIT vs. Venkateshwar Ispat (P) Ltd. reported in 319 ITR 393 for the reason that the facts in such cases are entirely same, particularly, when no differentiation could be effectively demonstrated and brought on to the record by the A.O. The submissions of the AO that the decision of the Hon'ble Supreme Court in the case of Lovely Exports (P) Limited was rendered in the light of different facts inasmuch as the said judgement was rendered by the Hon'ble Supreme Court in the context of public issue, is devoid of merit because the decision was rendered by the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. which is a Private Limited Company and which cannot bring public issue of shares. I find that the investments made by the share applicants were duly reflected in the audited financial statements of the corporate investors. It is a settled principle of law that reason for suspicion, however grave it may be, cannot be a basis for holding adversity against appellant.

5.10 The Assessing Officer has disregarded the documentary evidences adduced by the appellant such as confirmation from the share applicants, their PAN, certificate of incorporation of subscriber companies, records of the Registrars of Companies (ROC) generated from the website, affidavits filed in support of the fact of advancing share applications monies etc. The subscription for the shares were received through cheques. The Investor-companies were active as per the website of the Ministry of Corporate Affairs and they were duly registered with ROC. Those companies were also having their income tax PAN numbers and regularly filed returns of income. No material was brought on record by the Assessing Officer to show that the affidavits filed by the Directors of the investor- companies were not genuine. No enquiries were conducted about the contents of the affidavits. The A.O did not make any attempt to discredit the affidavits. The result is that the contents of the affidavits have not been disproved. It also shows that the parties (deponents) were present at the given addresses against whom action could have been taken. No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax

Department to show that the monies represented the appellant's undisclosed income.

5.11 The Hon'ble Supreme Court in CIT vs. Lovely Export, 216 ITR 198 SC and the Delhi High Court in Divine Leasing and Finance Limited, (2008) 299 ITR 268 have held that in the case of money received towards share capital only the identity of the share holders needs to be proved and once that is established and it is also shown that the money did in fact come from them, it is not for the assessee to prove as to how the share applicants came to be in possession of the money. In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the A.O. Which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.

5.12 The case of the appellant finds support from the decision in:

a) CIT vs. Kamdhenu Steel & Alloys Limited & Ors. (2012) 68 DTR (Del) 38;
b) Commissioner of Income-tax v. HLT Finance (P.) Ltd. [2011] 12 taxmann.com 247 (Delhi);
c) Commissioner of Income-tax-IV v. Dwarkadhish Investment (P.) Ltd. [2010] 194 TAXMAN 43 (DELHI);
d) Commissioner of Income-tax v. Winstral Petrochemicals (P.) Ltd. [2011] 10 taxmann.com 137 (Delhi);
e) Commissioner of Income-tax v. Arunananda Textiles (P.) Ltd. [2011] 15 taxmann.com 226 (Kar.);
f) Commissioner of Income-tax v. Creative World Telefilms Ltd. [2011] 15 taxmann.com 183 (Bom.);

5.13 The A.O has relied upon the decision in CIT v. Nova Promoters & Finlease (P) Ltd. [2012] 342 ITR 169/206 Taxman 207/18 taxmann.com 217 (Delhi). However, on going through the said decision in Nova Promoters & Finlease (P) Ltd. (supra) I find that the facts are clearly distinguishable. In fact, in Nova Promoters & Finlease (P) Ltd. (supra) itself the Hon'ble Delhi High Court has observed, in the context of Lovely Exports (P) Ltd. (supra), as under:-

> *"The ratio of a decision is to be understood and appreciated in the background of the facts of that case.* ***So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec.68 and the remedy open to the revenue is to go after the share***

applicants in accordance with law. *We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre- meditated plan - a smokescreen - conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio.* ***In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec.68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary."***

5.14 The case of the appellant also finds support from the following judicial pronouncements:-

(a) Commissioner of Income-tax-III v. Namastey Chemicals (P.) Ltd. [2013] 33 taxmann.com 271 (Gujarat);
(b) Commissioner of Income Tax v. Kuber Ploritech Ltd. [2010] 2 DTLONLINE 136 (DELHI);
(c) Commissioner of Income-tax v. Tania Investments (P.) Ltd. IT Appeal No. 15 OF 2009, Hi HHHigh Court of Mumbai;
(d) Bhav Shakti Steel Mines (P.) Ltd. v. Commissioner of Income-tax [2009] 179 TAXMAN 25 (DELHI);
(e) Commissioner of Income-tax v. Samir Bio-Tech (P.) Ltd. [2010] 325 ITR 294 (DELHI)
(f) Commissioner of Income-tax-I v. Micro Melt (P.) Ltd. [2009] 177 TAXMAN 35 (GUJ.)
(g) Commissioner of Income-tax-V v. Real Time Marketing (P.) Ltd. [2008] 173 TAXMAN 41 (DELHI)
(h) Assistant Commissioner of Income-tax v. Mansarovar Urban Co-Operative Bank Ltd. [2009] 124 TTJ 269(LUCKNOW);
(i) Commissioner of Income-tax –IV v. Empire Buildtech (P.) Ltd. [2014] 43 taxmann.com 269 (Delhi);
(j) Commissioner of Income-tax v. Mulberry Silk International Ltd. [2012] 19 taxmann.com 31 (Kar.);
(k) Commissioner of Income-tax-III v. Nilchem Capital Ltd. [2012] 18 taxmann.com 350 (Guj.);
(l) Commissioner of Income-tax v. Jay Dee Securities & Finance

Ltd. [2013] 32 taxmann.com 91 (Allahabad);

(m) Commissioner of Income-tax, Delhi-II v. Kinetic Capital Finance Ltd. [2011] 14 taxmann.com 150 (Delhi);

(n) Commissioner of Income-tax v. VLS Foods (P.) Ltd. [2011] 15 taxmann.com 225 (Delhi);

(o) Commissioner of Income-tax v. Ambuja Ginning Pressing and Oil Co. (P.) Ltd. [2011] 15 taxmann.com 273 (Guj.);

(p) Commissioner of Income-tax v. Rock Fort Metal & Minerals Ltd. [2011] 198 TAXMAN 497 (Delhi);

(q) Commissioner of Income-tax v. Siri Ram Syal Hydro Power (P.) Ltd.[2011] 196 TAXMAN 441(Delhi);

(r) Commissioner of Income-tax v. Orbital Communication (P.) Ltd. [2010] 327 ITR 560 (DELHI);

(s) Commissioner of Income-tax-I v. Himatsu Bimet Ltd. [2011] 12 taxmann.com 87 (Guj.);

5.15 I am convinced that the appellant has been able to establish the identity and creditworthiness of the subscribers as also the genuineness of the transactions. In my considered opinion, the ratio of the aforesaid judgements of the Hon'ble Supreme Court in Lovely Exports and that of jurisdictional High Court are certainly binding in nature on all the revenue authorities and courts etc. and further, the judgement of the jurisdictional High Court as well as that of the Hon'ble Supreme Court in Lovely Exports has been rendered on identical facts. Hence, it is impermissible to deviate from the ratio laid down therein and against the law of judicial precedents. I am convinced that the action of the A.O in making the addition in respect of even those sums which were refunded is illegal as the same is clearly beyond the purview of Section 68. In view of the above and respectfully following the ratio of the binding judgements, the addition of share application/capital money of Rs.11,15,00,000/- as unexplained cash credits under section 68 is uncalled for and hence, deleted.

The appellant gets relief of Rs. 11,15,00,000/- as tabulated below:

A.Y.	*Amount (Rs.)*
2006-07	*1,25,00,000.00*
2009-10	*3,75,00,000.00*
2010-11	*5,45,00,000.00*
2011-12	*70,00,000.00*

9. As noted earlier, while adjudicating the issue of additions under S. 68 involved in favour of the assessee on factual matrix, the legal objection of the Assessee on point of jurisdiction under S. 153A to assess the income without showing any nexus with any incriminating document found in search in respect of unabated assessments AY 2006-07 to 2009-10, was however seen with disfavour and decided against the assessee by the CIT(A).

10. The Revenue is aggrieved by the relief granted to the assessee on merits by the CIT(A).

11. The Assessee, on the other hand, has also filed cross objections challenging the very legitimacy of additions/ disallowances *dehors* any reference to incriminating documents in unabated assessments i.e. AY 2006-07 to AY 2009-10.

12. When the matter was called for hearing, the learned CIT-DR for the Revenue, at the outset, strongly relied upon the factual matrix discussed in assessment order for various assessment years in question. However, the view of the CIT(A) on the legal objection of the Assessee was defended vociferously. It was contended by the Revenue that discovery of any incriminating document is not a condition precedent to make additions or disallowance under s.153A of the Act. It was thus contended that the AO and the CIT(A) rightly observed that the issue of warrant of search and seizure under s.132 of the Act sufficiently empowers the AO to initiate the proceedings under s.153A of the Act and to make all consequent additions regardless of presence of incriminating documents or otherwise. It was submitted that the only condition for initiation of proceedings under s.153A of the Act is occurrence of a valid search under s.132 of the Act. It was reiterated that Section 153A of the Act does not provide that assessment/re-assessment should be based on 'incriminating material' alone and the AO is empowered to assess or re-assess the 'total income' of the six financial years covered under the search regardless of presence of incriminating material. On merits, it was argued that the assessee has failed to discharge the onus placed upon it to prove the creditworthiness and genuineness of the transaction of share application money and consequently, in the absence of satisfactory explanation towards

nature and source of receipts, the AO has rightly invoked Section 68 of the Act. The findings of the CIT(A) for reversal of additions were thus assailed on merits.

13. Per contra, the learned Counsel for the assessee, to begin with, adverted to the legal objection and pointed out that the A.Ys. 2006-07 to 2009-10 stood concluded and completed prior to initiation of search on 21.06.2011 and contended that in the light of the law expounded by the plethora of judicial precedents of different High Courts and followed by the co-ordinate benches, the issue is quite settled. It was contended that in the absence of any incriminating material found in the course of search *qua* the additions/disallowances made, the action of AO is devoid of legitimacy without showing its connection to the incriminating material found in the course of search. It was, however, fairly conceded that the assessments for A.Ys. 2010-11 & A.Y. 2011-12 in question were pending at the time of search in terms of 2nd proviso to S. 153A and hence, normal and regular assessments under s.153A r.w.s. 143(3) of the Act would be permissible as per the schematic interpretation of the law governing search assessments.

13.1 Turning to the facts, the learned counsel submitted that a search and seizure operation under s.132(1) of the Act was carried out on the residential and business premises of various companies and its Directors on 21.06.2011. However, significantly, no search action was carried out at the registered office of the assessee company where the share certificates, relevant statutory records are kept as required in law. No adverse information in relation to share applicants were found in the course of search. No queries were raised towards the statutory records being kept under Company Law. It was further asserted that no document relating to various

assessment years in question were either found or seized which can be branded to be incriminating in nature indicating presence of any undisclosed income by way of share application in question. The cash found in search was meager having regard to the scale of operations. The documents found and seized were of routine nature maintained in the ordinary course of business which naturally will be found in the business premises. The documents found relates to the entries already recorded in the books. Hence, the assessments for AYs 2006-07 to 2009-10 which stood concluded and remained unabated is barred by principles of finality and could not be disturbed by the AO in the absence of the incriminating material.

13.2 To buttress the legal position that presence of incriminating material discovered in the course of search as a *sine qua non* for additions/disallowances in respect of unabated assessment, the learned counsel relied upon the decision rendered in the case of *Kabul Chawla (2016) 380 ITR 573 (Del); Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC)* and a long series of decisions governing the field. In the light of judicial view, it was thus asserted that in the absence of any incriminating material found in the course of search, the action of the AO to make additions is a complete non-starter. The time limit for issuance of notice under s.143(2) of the Act is either expired at the time of search or the assessments were concluded under section 143(3), as the case may be, and hence could not be disturbed for making additions of regular & routine nature merely on account of search. The learned counsel reiterated that in the light of judicial precedents, the legal position is crystal clear that in unabated search assessments, no addition is permissible merely on the basis of re-appreciation of regular books, accounts and documents maintained by the assessee in ordinary course. The ld. Counsel thus submitted that impugned additions

made in the AY 2006-07 & 2009-10 is absolutely without any legal foundation and deserves to be quashed at the threshold without going in merits. Some of the other precedents in this regard as cited are noted hereunder:

(a) Rawal Das Jaswani Vs. Assistant Commissioner Of Income Tax, ITA No. 87/Blpr/2009, ITAT Raipur Bench;
(b) DCIT Vs. R. K. Transport & Constructions Pvt Ltd, ITA Nos. 236 to 242/RPR/2014, ITAT Raipur Bench;
(c) Minda Industries Ltd. Vs. Deputy Commissioner Of Income Tax, (2018) 53 CCH 0287 DelTrib;
(d) Asstt. Commissioner Of Income Tax 1(2), Raipur Vs. Maruti Clean Coal & Power Ltd., ITA.No:187/Raipur/2014& ITA.No:95/Raipur/2012, ITAT Raipur Bench;
(e) DCIT, Raipur Vs R. R. Energy Ltd, ITA Nos.225 to 231/RPR/2014, ITAT Raipur Bench;
(f) Best Infrastructure (India) Pvt. Ltd. &Ors. Vs. ACIT, (2016) 47 CCH 0159, ITAT Delhi Bench;
(g) Moon Beverages Ltd. &Anr vs. ACIT, (2018) 53 CCH 0120, ITAT Delhi Bench;
(h) CIT vs. Sinhgad Technical Education Society, (2017) 156 DTK 0161 SC;
(i) ACIT & Anr. vs. Madhuri Sunil Kotecha &Anr, (2016) 55 CCH 0187, ITAT Pune Bench;
(j) Trilok Chand Chaudhary Vs. ACIT, (2019) 56 CCH 0435, ITAT Delhi Bench;
(k) Commissioner of Income Tax Vs. Deepak Kumar Agrawal & Ors., (2017) 398ITR586(Bom);
(l) PCIT Cental-3 Vs. Anand Kumar Jain, TS-105-HC-2021(Del);
(m) Principal Commissioner of Income Tax Vs. Dipak Jashvantlal Panchal,(2017) 397 ITR 153 (Guj);
(n) Rajat Minerals (P) Ltd. vs. DCIT (2020) 114 taxmann.com 536 (Ranchi)

13.3 On merits, the learned Counsel submitted that it is a matter of record that assessee has filed several documentary evidences of subscribers before the AO to support the nature and source of share application money:

(a) PAN, Address, Name
(b) COI, MOA, AOA
(C) Audited Financial Statement
(d) Income Tax Return
(e) Bank Statement
(f) Share Application Form
(g) Payment received through banking channel
(h) Details of payment received

13.4 Moving further, the learned counsel adverted to page nos. 243-245 of the paper book and submitted that the assessee has made several pro-active requests before the AO during the assessment proceedings some of which are noted hereunder as referred;

> *"(a) To provide the assessee company with the copy of all the letters sent by the Ld. AO to the investors /share applicants regarding investment made in the shares of assessee company.*
>
> *(b) The assessee company may kindly be appraised with the cases i.e. the name of the company on whom letter sent by the Ld. AO remained un-served.*
>
> *(c) The assessee company may kindly be made known with the reason communicated by the Postal Department behind non-service of the letters sent by the Ld. AO.*
>
> *(d) The assessee company may also be confronted with the enquiry conducted by the Ld. AO regarding addition to share application /share capital. "*

13.5 It was next pointed out that assessment of the assessee was duly completed under s.143(3) of the Act for A.Y. 2006-07 & A.Y. 2007-08 prior to search and the issue of receipt of share application money in AY 2006-07 had already been examined by several rounds of questionnaires in the scrutiny assessment carried out under s.143(3) of the Act. It was after due verification of factual aspects, the nature and source of share application money was found satisfactory by the AO. Before us, the learned counsel mainly relied upon an extensive & objective analysis carried out by the CIT(A) which is claimed to be self speaking & self explanatory. It was also pointed out that nearly whole amount of share application was received from a group co. 'Escorts Finvest Pvt. Ltd.' which carries very high financial net-worth for last several years and is regularly assessed to tax. It was also pointed out that the share application money so recd. From Escorts was returned back in the subsequent financial years without any subscription. It was further contended that the addition made by the AO is unsustainable in the

light of the decision of jurisdictional High Court in the case of the ACIT vs. Venkateshwar Ispat (P) Ltd. reported in 319 ITR 393(Chhatisgarh). It was thus submitted that no interference therewith is called for on merits.

14. We have carefully considered the rival submissions and perused the materials placed on record and referred to in terms of Rule18(6) of the Income Tax (Appellate Tribunal), Rules 1963.

14.1 Before we deal with additions on merits, it will be desirable to adjudicate the pertinent legal objection of overwhelming nature raised on behalf of the assessee which goes to the root of the matter and affects the very foundation of additions in dispute. The legal question that arises as per cross objection is whether while making assessment under s.153A of the Act, the Revenue is entitled to interfere with an already concluded (and not abated) assessment passed either under s.143(1) of the Act or under s.143(3) of the Act and not pending at the time of search, in the absence of incriminating documents unearthed as a result of search? As a corollary, the scope and ambit of assessment proceedings in search cases under s.153A of the Act is put under scanner.

14.2 In the first appeal, the CIT(A) dismissed the legal ground of jurisdiction by observing as under:

> *"8. I have carefully gone through the assessment order and submissions of the appellant. Where a search has been initiated u/s 132 of the Act, the A.O. is entitled to issue notice for six assessment years immediately preceding the year in which search has been initiated. As such, the assessment for those six assessment years stands reopened. Once the assessment is reopened, the A.O. has full powers to assess the income which has escaped, whether found as a result of search or otherwise. Accordingly, the additions made by the A.O are within the powers assigned to him u/s 153A and for this reason, this ground of appeal is hereby* ***dismissed****."*

14.3 We have examined the legal objection on jurisdiction to make additions *dehors* reference to any incriminating material found in the course of search. The issue is no longer *res integra* and answered in favour of the assessee by large number of judicial precedents. As consistently echoed by the Hon'ble Courts of different jurisdiction, the scope of search assessments under s.153A of the Act in respect of concluded and unabated assessments is narrower in its sweep and restricts the right of the AO to examine the issue emanating from some incriminating material.

14.3.1 We shall first refer to the decision of Hon'ble Delhi High court in the case of *Pr.CIT vs. Meeta Gutgutia (2017) 395 ITR 526 (Del).* The Hon'ble Delhi High Court referred to the judgment in the case of *CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del); Pr.CIT vs. Saumya Constructions Pvt. Ltd. (2016) 387 ITR 529 (Guj); Principal Commissioner of Income Tax-1 vs. Devangi alias Rupa 2017-TIOL-319-HC-AHM-IT; CIT vs. IBC Knowledge Park Pvt. Ltd. (2016) 385 ITR 346 (Kar); Pr. CIT-2 vs. Salasar Stock Broking Ltd. 2016-TIOL-2099-HC-KOL-IT* and *CIT vs. Gurinder Singh Bawa (2016) 386 ITR 483 (Bom),* Reference is also made to another two decisions of Hon'ble Delhi Court in *Pr. CIT vs. Mahesh Kumar Gupta 2016-TIOL-2994-HC-Del* and the decision dated 7th February, 2017 in *ITA Nos. 61/2017 and 62/2017* in the *Pr. Commissioner of Income Tax-9 vs. Ram Avtar Verma* where the decision in *Kabul Chawla (supra)* was followed. The Hon'ble Delhi High Court made an exhaustive reference to the decisions noted above and held that invocation of Section 153A of the Act to reopen concluded assessments of earlier assessment years was not permissible in the absence of incriminating material found during search *qua* each such unabated assessment years. Eventually, the Hon'ble Delhi High court in *Meeta Gutgutia (supra)* held that

additions based on appreciation of facts *dehors* incriminating material are not sustainable in law. The SLP of the Revenue against the aforesaid decision of the Hon'ble Delhi High court was dismissed by the Hon'ble Supreme Court in *Pr.CIT vs. Meeta Gutgutia (2018) 96 taxmann.com 468 (SC).* .

14.3.2 Similar view that no additions could be made on the basis of material collected after search and in the absence of any incriminating evidence found or seized during search has been endorsed by the Hon'ble Gujarat High Court in *Pr.CIT vs. Sunrise Finlease (P.) Ltd. (2018) 89 taxmann.com 1 (Guj.).*

14.3.3 The Hon'ble Gujarat High Court in *Pr.CIT vs. Saumya Constructions Pvt. Ltd. (2016) 387 ITR 529 (Guj)* also declined to agree with the plea on behalf of the Revenue that the new procedure provided under s.153A of the Act is different from earlier procedure provided under s.158BC r.w.s. 158BB of the Act and consequently, the plea of the Revenue that there is no condition in Section 153A of the Act that additions should be made strictly on the basis of evidence found during the course of search was not approved. The Hon'ble Gujarat High Court analyzed the position of law and took note of several judicial precedents and concluded that completed assessments can be interfered with by the AO while making the assessment under s.153A of the Act only on the basis of some incriminating material unearthed during the course of search or requisition of documents etc. The Hon'ble Gujarat High Court noted that the trigger point for exercise of powers under s.153A of the Act is a valid search under s.132 of the Act or a requisition under s.132A of the Act. Once a search or requisition is made, the mandate is cast upon the AO to issue notice under s.153A of the Act and complete the assessment of 6 assessment years. The Hon'ble

Gujarat High Court took note of the fact that object of scheme legislated for assessment in search cases is to bring to tax the undisclosed income which is found in the course of or pursuant to search or requisition and therefore additions/disallowances must be linked with search/requisition. It was noted by the Hon'ble Court that additions made on the basis of some materials collected by the AO much subsequent to the search is not permissible.

14.3.4 Similar view has been expressed in catena of decisions *viz; Pr.CIT vs. Deepak J. Panchal (Guj) 397 ITR 153 (Guj); Chetnaben J. shah vs. ITO Tax Appeal No. 1437 of 2007* judgment dated *14.07.2016; CIT vs. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom.); Pr.CIT vs. Desai Construction Pvt. Ltd. 387 ITR 552 (Guj.); Gurinder Singh Baba 386 ITR 483 (Bom); & CIT vs. Deepak Kumar Agarwal (2017) 398 ITR 586 (Bom.).*

14.3.5 The Hon'ble Delhi High Court in *Pr.CIT vs. Subhash Khattar ITA No. 60/2017* judgment dated *25.07.2017* also held against the Revenue in similar circumstances where search did not result in discovery of any incriminating material *qua* the assessee. It was observed by the Hon'ble Delhi High Court that entire case against the assessee was based on what was found during the search of the premises of other parties and thus, it is apparent on the face of it that notice to assessee under s.153A of the Act was misconceived since the so-called incriminating material was not found during the search of assessee's premises.

14.3.6 On the conspectus of aforesaid judgments of different courts, the position of law is loud and clear that additions/disallowances under s.153A of the Act towards unabated

assessments are permissible only where incriminating materials are found in search showing unaccounted income.

14.4 In summation, in the light of the aforesaid overwhelming judicial precedents as laid down by the Hon'ble Bombay High Court, Delhi High Court & Gujarat High Court as also various benches of Tribunal, the correct legal position in respect of the assessments under s.153A of the Act may be summarized as follows: (i) the scope of assessment under s.153A of the Act is limited to the incriminating evidence found during the search in so far as unabated assessments are concerned; the issues unconnected to incriminating material are insulated from examination in the proceedings under S. 153A in respect of such concluded assessments & (ii) unless there is incriminating material *qua* each assessment years to which additions are sought to be made in respect of concluded assessments, the assessment under s.153A of the Act by making additions/disallowances would be vitiated in law.

14.5 As discussed in length, the issue has been dynamic and a matter of legal interpretation. We are governed by the schematic interpretation given to provisions of Section 153A of the Act by different Hon'ble Courts. In the light of judicial fiat reading down the scope and spectrum of assessment under s.153A of the Act in narrower compass, the position of law is explicitly clear. In the absence of any connection with the incriminating material unearthed in search proceedings of assessee, additions in respect of concluded assessment i.e. AYs. 2006-07 & 2009-10 in instant appeals, are not permissible in law. The burden of proof towards existence of undisclosed income discovered as a result of search is on the Revenue. No evidence has been referred to by AO or brought on record as claimed to be found at search of assessee to suggest

existence of undisclosed income as perceived by the AO. The Revenue has failed to rebut the factual assertions made on behalf of the assessee towards non-discovery of incriminating material at the time of drastic action of search on assessee and reference thereto in assessment order. There is nothing on record that information contained in seized documents as per list of inventory in panchnama, were not recorded or reflected in the books of accounts. Hence, the action of the AO towards making additions in respect of concluded assessments towards undisclosed income is contrary to the judicial dicta. In consonance, we are of the view that various additions/disallowances made by the AO are clearly beyond the scope of authority vested under s.153A of the Act without discharging the burden to show presence of any incriminating material or evidence deduced as a result of search in so far as completed assessments are concerned. Additions made in assessments framed under s.153A of the Act in respect of captioned assessee pertaining to AYs. 2006-07 & 2009-10 are thus required to be struck down on this score itself. However, the assessments/re-assessments pending on the date of search i.e. AY 2010-11 & AY 2011-12 in question which stood abated by operation of law will continue to be governed by ordinary powers of assessment under s.153A of the Act in accordance with law.

15. The legal ground of jurisdiction raised by the Assessee as per the cross objections, is thus allowed in respect of AY 2006-07 & 2009-10 in question. The additions made under S. 68 of the Act without showing incriminating documents are bad in law and thus requires to be struck down for AY 2006-07 & AY 2009-10.

16. Notwithstanding and without prejudice, for the sake of completeness, we shall now advert to the correctness of various

additions made in A.Ys. 2006-07, 2009-10, 2010-11 & 2011-12 on merits.

17. As noted earlier, the AO has invoked Section 68 of the Act and made additions on account of share application money received by the assessee for various assessment years in question as unexplained cash credit. The CIT(A), however, after taking extensive note of the observations made in the assessment order and oral & written submissions made on behalf of the assessee, found substantial merits in the plea of the assessee and reversed the additions so made.

17.1 The CIT(A) has succinctly analyzed the issue. The detailed findings of the CIT(A) dealing with the issue has been reproduced in the preceding paragraph 9 of this order.

17.2 On perusal of the order of the CIT(A), it is noticed that CIT(A) has recorded a finding on fact that additions on account of share application money has been made without any reference to the incriminating material detected in the course of search. The CIT(A) has recorded some noticeable observations on the issue of share application money as summarized hereunder:

> *"The A.O. did not pay any heed to the requests seeking supply of results of inquiry conducted if any for arriving at such conclusions. Furthermore, the Ld. ARs pointed out that assessments in the case of promoters/directors and family members were made in most of the cases but no such view even to support his own passing remarks was offered. Detailed explanations were submitted with respect to the loose papers seized and not even a single document out of it relate to or suggest that any undisclosed income of these persons has been routed back in the form of share application money.*
>
> *(Para 4.4 on page No.7)*
>
> *The present action of the A. O is not culminating from any specific finding against the appellant that it was a beneficiary of any racket which has been unearthed as a result of search proceedings nor has the A. O brought on record any other evidence to indicate that the*

appellant did make undisclosed income and such evidence came on the surface as a result of search proceedings.

In this background, in my considered view, there is no scope and reason to take a contrary view than that taken by the then A.O without there being any documentary evidence against the appellant to demonstrate that the share application money was nothing but undisclosed income of the appellant.

(Para 5.5 on page No.13)

In my considered opinion, apart from drawing presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the investment in the business has flown from appellant's own money.

(Para 5.9 on page No. 15)

No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax Department to show that the monies represented the appellant's undisclosed income. "

(Para 5.10 on page No. 16)

17.3. Apart from the factual position towards absence of any incriminating material as noted by the CIT(A) reproduced in preceding para, the CIT(A) has also analyzed and delineated the factual matrix in proper perspective while dealing on merits of additions. The CIT(A) found that primary onus placed upon the assessee under s.68 of the Act was satisfactorily discharged by the assessee. The CIT(A) has examined the factual matrix in relation to the subscriber namely Escorts (as extracted in para 8 of this order) and found that the subscribers were duly assessed and payments have come through banking channels. It was further found that the tangible net worth of the subscribers company is sufficiently enough to meet the criteria of creditworthiness as understood in ordinary parlance. The bank statements, audited financial statement and confirmations were analyzed. The source of investment was thus found to be explained satisfactorily in the facts of the case. It was further noted that the credit for share application money was

accepted in the regular assessment under s.143(3) of the Act in the hands of the Assessee concerning A.Y. 2006-07 prior to search after making due enquiries. Besides, the subscriber co. namely Escort Finvest Pvt. Ltd. providing share application money in AY 2009-10; 2010-11 & 2011-12 aggregating to Rs. 9.90 crore was found to be a group company. A pertinent observation was made that the same AO in the case of other group concern (Mahamaya Steel Industries Ltd.) accepted the creditworthiness of the investor company namely 'Escorts Finvest Pvt. Ltd.' for subscription in Pref. Share Capital. The CIT(A) essentially noted that a substantial part of application money has been received from Escorts (a group co.) which was subsequently refunded in FY 2012-13. The adverse inference drawn by the AO was found by the CIT(A) to be unsubstantiated and in the realm of suspicion, surmises and conjectures. On legal position, the CIT(A) has referred to large number of judicial pronouncements.

17.4 As pointed out, the share application money was refunded in A.Y. 2012-13 through banking channel. The Judicial precedents in *CIT vs. Karaj Singh 203 Taxman 218 (P&H); Smt. Panna Devi Chowdhary vs CIT (1994) 208 ITR 849 (Bom.) & CIT vs. Ayachi Chandrashekhar Narsangji 42 Taxmann.com 251 (Guj.)* have endorsed the view that where the amount stood repaid and accepted by the deptt., no addition under S. 68 is warranted.

18. It may also be pertinent to briefly deal with the arguments advanced on behalf of the Revenue in the light of decision of the Hon'ble Supreme Court in *PCIT vs. NRA Iron & Steel P. Ltd. 412 ITR 161 (SC)*. The facts in NRA case were gross and peculiar and hardly bears any resemblance with the tell-tale facts of the share applicant herein. In the present case, the fact of payment received for proposed share subscription is fully substantiated by bank

statement and other tax records of the subscribers and also the affidavit and confirmation letter of the subscriber. The veracity of transaction with EFPL and capacity of the subscriber was duly accepted in the search assessment of group company MSIL by the same AO. The book value of investee company itself stands at 43.50 per shares. The question of share premium does not arise in the instant case as the money was refunded without any allotment. The financial data clearly suggests that the investee carries a very sound financial status and capacity for such investments. Besides, whereas the shareholders in NRA did not express their willingness to appear before the AO, the subscriber in the instant case not only came forward and volunteered its willingness to appear before the AO through Director, an affidavit was also filed to assert the factum of share application. No field enquiries were made by the AO in the instant case, whereas the adverse findings were given by the AO in NRA Iron and Steel Pvt. Ltd. case based on certain enquiries. The bank statements of the subscriber were not placed before the in NRA nor were any response from the so-called investors available. The factual position is totally contrary in the present case. Thus, the judgment rendered in NRA Steel, rendered in own set of facts, would not apply as the facts are poles apart.

19. Noticeably, the bonafides of share subscriptions were accepted by the AO while passing the order under s.143(3) of the Act. As further pointed out on behalf of the assessee, the said proposed subscriber had also made investment in the preference share capital of group company namely Mahamaya Steel Industries Limited (MSIL) and the search assessment of MSIL was also completed simultaneously by the same AO wherein no adverse inference was drawn in respect of preference raised by the MSIL from the aforesaid applicant. As regards the creditworthiness, it was pointed

out that net worth of EFPL as on 31.03.2012 stands at Rs.51.77 Crores. Similar net worth in the vicinity of Rs.50 Crores or thereabout is enjoyed by the subscriber at least from F.Y. 2006-07 onwards. The proposed subscriber has also confirmed the act of proposed investments in the assessee company as noted earlier. The share applicant also offered for personal appearance before the AO and to give statement on oath before the AO which request however was not acted upon by AO. This apart, an affidavit was filed by the subscriber stating factum of investment. In short, it is asserted that the primary onus was discharged to explain the nature and source of the money received. Further, it is contended that no legal obligation is prescribed upon assessee in law to prove the 'source of source' of such receipts in view of the prospective insertion of proviso to s.68 of the Act from AY 2013-14 foisting such obligations. A reference has been made to the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Gagandeep Infrastructure Pvt. Ltd. 80 taxmann.com 272 (Bom.)* in this regard. Besides, without prejudice to every attempt made before the AO to prove the bonafides to the hilt being a group company, a reference was also made to the decision of *Lovely Exports Pvt. Ltd. 319 ITR 5 (SC)* wherein it was held that in the case of alleged bogus share holders, the department is free to proceed to reopen the individual assessments of the subscribers in accordance with law. Reliance was placed on multiple decisions including the binding precedent rendered by the Hon'ble Chhattisgarh High Court in *ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 b) & CIT vs. Abdul Aziz (2012) 251 CTR (Chhattisgarh) 58* as referred to order of CIT(A) in para 4.9 of his order. The Jurisdictional High Court, as stated, has answered the issue in favour of assessee in similar fact situation. The assessee further contended that no additions can be made merely on the basis of some oblique perception of culpability towards receipt of share

application money in the instant case. The money has been taken from a group co. of a very sound financial standing, which was also returned without subscription. In contrast, the AO has failed to bring any positive evidence against the assessee for assailing the bonafides of share application money received from a sister concern holding a very high net worth. A reference was also made to *PCIT vs. Himachal Fibers Ltd., reported in [2018] 98 taxmann.com 172 (Delhi)* to submit that where the identity of share applicant was fully revealed and the AO did not conduct any enquiry thereon, he was not justified in resting his conclusions on surmises. It is thus the case of assessee that the Revenue is neither justified on facts nor on the touchstone of law to embark upon the impugned additions under s.68 of the Act.

20. The CIT(A), in our view, has eloquently examined and weighed all relevant facts peculiar to the instant case by way of a very speaking order. Without reiterating the different facets analyzed by the CIT(A), We find complete force in his view. After a detailed and objective scrutiny of factual & legal position, the CIT(A) has set aside and reversed the additions carried out without showing any iota of incriminating material to support the allegation of accommodation entries in the abated as well as unabated search assessments. The share application money was found to be returned. The action of CIT(A) is in consonance with the binding precedent of Jurisdictional High Court. Hence, we see no reason to depart from the rationale of the decision of the CIT(A) on reversal of additions under s.68 of the Act pertaining to A.Y. 2006-07; 2009-10; 2010-11 & 2011-12 in question. We thus decline to interfere.

21. Consequently, Revenue appeal concerning additions under S. 68 in A.Y. 2006-07 & 2009-10 is dismissed both on the point of

jurisdiction as well as on merit whereas additions made in 2010-11 & 2011-12 are dismissed on merits. The cross objections of the assessee in respective appeals of revenue stands allowed.

22. Resultantly, all the captioned Revenue appeals are dismissed whereas all cross objections of the Assessee are allowed.

Order **pronounced on 25/10/2021** by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-	Sd/-
(PAWAN SINGH)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)