

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri Sanjay Garg, Judicial Member & Sri M.L. Meena, Accountant Member)**

**I.T.A. No. 410/Kol/2020  
Assessment Year: 2012-13**

**M/s. Soleman Traders Pvt. Ltd.....Appellant  
[PAN: AAQCS 3332 JJ]**

**Vs.**

**ITO, Ward-1(3), Kolkata.....Respondent**

**Appearances by:**

*Sh. S.K. Tulsiyan, A/R &  
Smt. Puja Somani, appeared on behalf of the Assessee.*

*Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.*

Date of concluding the hearing : August 4<sup>th</sup>, 2021  
Date of pronouncing the order : October 26<sup>th</sup>, 2021

**ORDER**

**Per Bench:**

The present appeal has been preferred by the assessee against the order dated 01.10.2019 of the Commissioner of Income Tax (Appeals)-17, Kolkata [hereinafter referred to as 'CIT(A)'].

2. It has been pointed out that this appeal is time barred by 74 days. A perusal of the note of the Registry and appeal Form No. 36 reveals that the impugned order passed by the Id. CIT(A) dated 01.10.2019 was communicated to the assessee on 12.02.2020. The appeal was to be filed within 60 days of the communication of the order of the Id. CIT(A). However, the present appeal has been filed with the Registry on 03.06.2020. It is pertinent to mention here that the Hon'ble Supreme Court in the case *suo motu* Writ Petition (Civil) No(s). 3/2020 has taken *sou motu* cognizance of the issue arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central /or State) and vide order dated 23.03.2020 has extended the period of limitation prescribed

under the general law or special laws whether compoundable or not with effect from 15<sup>th</sup> March, 2020 till further order/s. The order dated 23.03.2020 was extended from time to time. Hon'ble Supreme Court vide order dated 8<sup>th</sup> March, 2021 ordered that in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded and further granted 90 days limitation period from 15.03.2021. In view of the above orders of the Hon'ble Supreme Court, the appeal of the assessee is treated as filed within the limitation period.

3. In this appeal, the assessee has taken the following grounds of appeal:

*"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in passing the order without properly examining the facts of the case.*

*2. That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in sustaining the addition of Rs.5,91,00,000/-being the alleged cash credit without having satisfied the facts by not verifying properly the genuineness of the transactions.*

*3. That on the facts and circumstances of the case, the Ld. CIT(A) erred sustaining the addition of Rs.5,91,00,000/-relying only on the assessment order passed by the Ld. A.O.*

*4. That the appellant craves leave to urge such other ground or grounds of appeal before or at the time of hearing."*

4. As noted from the Assessment Order dated 28.03.2015, the brief facts of the case are that the assessee filed its return of income for the relevant assessment year (in short the 'AY') on 08.09.2012 declaring total income of ₹380/-. The case of the assessee was selected for scrutiny. Accordingly a notice u/s 143(2) of the Income Tax Act, 1961 (in short the 'Act') was issued on 12.08.2013 by the concerned Assessing Officer (in short the 'AO') i.e. ITO, Ward-4(4), Kolkata. In response to this said notice, the assessee filed audited financial statement of accounts on 05.03.2014. Thereafter, a notice u/s 142(1) of the Act was issued by the ITO, Ward-4(4), Kolkata, in response of which, the assessee filed requisite details and documents.

4.1. As noted from para 2.1 of the Assessment Order, to verify the identity and creditworthiness of the shareholders and also about the genuineness of the transaction, the ITO, Ward-4(4), Kolkata issued notices u/s 133(6) of the Act to share subscribers which were duly complied with. Thereafter, the ITO, Ward-4(4), Kolkata did not make further enquiries. The case was, thereafter, transferred to ITO, Ward-1(3), Kolkata on 05.12.2014. Thereafter, summons were issued by the ITO, Ward-1(3), Kolkata to both

the directors of the assessee on 09.02.2015 asking them to produce the directors of the subscribing companies on 20.02.2015 personally, for the purpose of verifying the identity and creditworthiness of the subscribers and genuineness of the transaction.

5. We have heard the rival contentions of the Id. Representatives of the parties. The Id. Counsel for the assessee has submitted that in this case, earlier necessary enquiries and verifications were done by the previous AO i.e. ITO, Ward-4(4), Kolkata and has issued notices to the assessee as well as to the share subscribers which, as noted in the Assessment Order, were duly complied with. Since the then AO was satisfied with the relevant evidences and explanations submitted by the assessee as well as the share subscribers, therefore, he did not proceed further with more enquiries. However, after transfer of the case to ITO, Ward-1(3), Kolkata, he started afresh investigation. He has further submitted that the observations made by the AO in para 1.4 of the order that the directors of the assessee did not appear personally before him was not correct. That, in fact, Md. Rejaul Haque, director of the assessee company appeared before the AO on 20.02.2015 with all the supporting documents were furnished. He further requested the AO to issue summons to the share subscribers u/s 131 of the Act as it was not possible for him to produce them all in person before the AO. However, the Id. AO did not mark his attendance and directed him to file the documents in the receiving section of his office. Accordingly, the director of the assessee company submitted the required documents including audited financial statements of the share subscribers with the office of the ITO, Ward-1(3), Kolkata. The receipt of the said document has been acknowledged by the AO in the Assessment Order itself. He has, however, submitted that the AO instead of examining the relevant documents, insisted for the personal presence of the directors of the subscribers which was not in the hands of the assessee. He has further invited our attention to para 2.5 of the Assessment Order to submit that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. That the AO, himself, has noted that there were adequate creditworthiness/finances available to the subscribers. Further, that all these subscribers were income tax assesseees and further that all the investor companies were duly incorporated with the Registrar of Companies. The Id. Counsel has submitted that the AO has tabulated the taxable income of these investor companies as reported in the income tax return filed by these companies. He therefore, has submitted that the

identity and creditworthiness of these companies was duly established even from the figures tabulated in para 2.5 of the Assessment Order itself. He has further submitted that the AO could not point out any defect or discrepancy in the evidences/documents submitted by the assessee to prove the identity and creditworthiness of the subscribers and genuineness of the transaction. He has further submitted that all the transactions were done through banking channel by the subscriber companies. That even the notices u/s 133(6) of the Act were issued by the earlier AO i.e. ITO, Ward-4(4), Kolkata to all the 21 shareholders asking them to produce the following:

- i. Number of shares applied for
- ii. Date of application
- iii. Amount paid on application with breakup of payment with date
- iv. Mode of payment
- v. Number of shares allotted
- vi. Documents evidencing allotment of shares to you
- vii. Copy of Bank statements highlighting the transaction
- viii. Indicate source of your investment.

That it has been duly noted by the AO itself that all the 21 share applicant companies duly complied with the notices and submitted the requisite documents including copy of PAN Card/ITR, acknowledgement evidencing their identity, relevant Bank Statements, audited accounts for the year and even source of investment was also provided. The Id. Counsel for the assessee in this respect has relied upon pages 1 to 425 of the paper book. He has further submitted that instead of pointing out any defect or discrepancy in the evidences and the details furnished by the assessee, the subsequent AO i.e. ITO, Ward-1(3), Kolkata had proceeded to take adverse inference only on the ground that the directors of the subscriber companies did not appear personally before the AO. He has further submitted that the subscriber companies were investment companies, therefore, the low business income was not a relevant factor to doubt about the genuineness of the transaction.

5.1. Apart from the above oral submissions, the Id. Counsel for the assessee has also filed written submissions, the relevant part of which is reproduced below”

"18. Here, it is humbly submitted during the course of assessment the preceding learned AO issued a notices u/s 143(2) and 142(1) of the Act and requisitioned the assessee to submit the complete details of the share capital raised during the year. In response to the notices issued of the Act, the assessee filed its return of income, audited accounts for the year, copy of the Bank Statement and complete details of share capital raised during the year, copy enclosed at page 426-451 of the paper book.

On a perusal of the details of share capital enclosed at page 450-451 of the paper book, it may kindly be noted that out of total share capital of Rs.5,91,00,000/- raised during the year, share capital of Rs.22,50,000/- was raised at Face Value of Rs.10/- per share without charging any premium.

19. On the basis of the details filed by the assessee, notice u/s 133(6) of the Act were issued by the preceding learned AO to all the 21 share allottee companies for providing information in the matter of investment made in the assessee company. In the said notice, the investor companies were also asked to produce the following:

- i. Number of shares applied for.
- ii. Date of application
- iii. Amount paid on application with breakup of payment with date
- iv. Mode of payment
- v. Number of shares allotted
- vi. Documents evidencing allotment of shares to you
- vii. Copy of Bank statements highlighting the transaction
- viii. Indicate source of your investment.

In response, all the 21 share applicant companies filed replies before the learned AO confirming the transactions with the assessee company and their source of investment in the share capital of the assessee. A copy of the PAN Card/ITR acknowledgment evidencing their identity, relevant Bank Statements evidencing the genuineness of the share transactions and Audited Accounts for the year evidencing their high networth/creditworthiness to invest in the share capital of the assessee was also enclosed with the said reply in response the notice issued u/s 133(6) of the Act. Source of Source of investment was also provided. Copy of the replies of the investor companies is enclosed at page 1-425 of the paper book.

20. Subsequently, the case of the assessee was transferred to ITO, Ward-1(3), Kolkata on 05-12-2014.

21. To verify the credit in the books of accounts of the assessee, the learned ITO, Ward-1(3), Kolkata issued summons u/s 131 of the Act dated 09-02-2015 to both the Directors of the assessee company and specifically asked the Directors to produce the Directors of the subscribing companies on 20-02-2015. In response, Shri Md.Rejaul Haque, Director of the company appeared before the learned AO on 20-02-2015 with all the supporting documents to substantiate the identity and creditworthiness of the parties and the genuineness of the transactions. He also asked the learned AO to exercise his plenary powers independently to issue summons u/s 131 of the Act to the share subscribing companies and that the assessee company cannot produce them. On such premise, the learned AO refused to take his attendance and directed him to file the documents in the receiving section of his office. Accordingly, the Director of the assessee company submitted the ITR acknowledgment, relevant Bank statements and copy of the audited accounts of all the 21 parties.

22. However, the learned ITO, Ward-1(3), Kolkata completely ignored the documents filed by the assessee and alleged that the Directors of the assessee company failed to appear on the date fixed for hearing to explain the credit in the books of the assessee.

23. Thereafter, as per the assessment order, summon were issued to all the share subscriber companies u/s 131 of the Act. With respect to the summon issued u/s 131 of Act on the share applicant companies, the learned ITO, Ward-1(3), Kolkata noted that some of the notices could not be served on the share applicant companies by the postal authorities and the notices which were served on some of the companies were not complied with since the Directors of these companies failed to appear personally. However, it was acknowledged in the assessment order that documents were submitted by post by the companies on whom summon were served. The relevant extract of the assessment order is reproduced below:

*"Where some of the notices could not be served by the postal authorities primarily for the reason as 'insufficient address', the other notices were not complied with. Instead of appearing and explaining the investment and creditworthiness of the subscribers, they chose to take the evasive approach of sending bundle of papers through post. Not a single summon was complied with."*

24. Here it may kindly be noted that in the assessment order the learned AO has alleged that notices to some of the share applicants were returned unserved by the postal authorities with the remark 'insufficient address'. However, the learned AO has not mentioned the name of those companies to whom summon were unserved.

25. Now, it is pertinent to note that notice u/s 133(6) of the Act was issued to all the 21 share subscribers dated 12/20-06-2014 by the preceding learned AO and the same was duly replied to by all the share subscribers. This suggests that the correct address of all the companies was available in the file of the learned AO. Summon u/s 131 of the Act was issued by the succeeding learned AO on 25-02-2015 and 02-03-2015 i.e within 8-9 months of the issue of notice u/s 133(6) of the Act. Notices u/s 133(6) were duly served on all the 21 companies and the same is also acknowledged in the assessment order but summon u/s 131 of the Act issued just 8-9 months after the issue of notice u/s 133(6) of the Act were returned unserved by the postal authorities for some companies. More so, the assessee came to know about the issuance and non-service of summon to some of the share applicant companies only on perusal of the assessment order. Had the assessee been informed about such non-service of summon, it would have arranged for the new addresses of those parties, if any. Moreover, no further enquiries were conducted by the Ld. A.O to find out if at all there had been any changes in the addresses of the parties in cases where the notices were purportedly received back unserved. No Inspectors were deputed to conduct any field enquiries to verify the existence of the parties at the given address.

Here, it may also be noted that in the assessment order, at page 1, para 1.1, it has been alleged by the succeeding learned AO that notice u/s 142(1) of the Act was issued to the assessee company on 13-01-2015 but the same was returned unserved by the postal authorities whereas notices u/s 143(2) and 142(1) of the Act by the preceding learned AO were duly served on the assessee.

Thus, this creates a serious doubt whether such notice u/s 142(1) of the Act and summon u/s 131 of the Act were actually issued to the assessee and all the share applicant companies respectively.

26. Having said that, it is further submitted that on going through the financials of the share applicant companies and the return of income filed by them, the succeeding learned AO opined that the networth of the shareholders is highly questionable since the taxable income of these companies is low and non-commensurate with the figure of Reserves and Surplus in their books.

Now, your kind attention is invited to page 3, para 2.5 of the assessment order. The leaned AO in this para has tabulated a chart. The chart is reproduced below for immediate reference.

SI No	Name Of The Shareholder	Date Of Incorporation	Securities Premium A/C	Profit And Loss A/C	Non-Current Investments	Taxable Income
1.	Dhananjay Vanijya (P) Ltd	01-02-2011	4,30,22,000	704	4,36,00,000	405
2.	Uphar Vanijya (P) Ltd	17-09-2010	15,84,79,000	701	15,96,00,000	366
3.	Jatashiv Merchants (P) Ltd	10-01-2012	6,65,57,500	333	6,74,00,000	481
4.	Tiger Mercantile (P) Ltd	28-09-2007	7,12,95,750	19,47,707	6,43,00,000	270
5.	Ontime Vintrade (P) Ltd	14-02-2011	20,72,76,250	327	20,96,00,000	329
6.	Rr Commosale (P) Ltd	16-11-2010	8,89,36,250	758	8,88,00,000	363
7.	Kamna Housing (P) Ltd	24-08-2011	15,13,63,750	231	15,50,00,000	353
8.	Rs Dealcom (P) Ltd	16-11-2010	9,37,13,750	546	9,86,00,000	478
9.	Tiger Vanijya (P) Ltd	28-09-2007	7,32,22,500	6,288	2,45,75,000	342
10.	Ss Vintrade (P) Ltd	16-11-2010	11,51,42,500	454	12,14,00,000	446
11.	Signature Manufacturing (P) Ltd	20-08-2009	4,23,36,000	656	4,16,00,000	339
12.	Nandita Mercantile (P) Ltd	07-03-2011	2,80,17,000	470	2,83,00,000	395
13.	Subhvani Projects (P) Ltd	31-01-2012	3,32,22,000	230	3,39,00,000	332
14.	Mutual Merchants (P) Ltd	14-02-2011	18,25,88,750	361	1,84,30,000	360
15.	Altort Merchants (P) Ltd	17-09-2010	27,01,21,000	638	26,80,00,000	450
16.	Sidhu Suppliers (P) Ltd	05-02-2009	2,20,35,000	2,920	2,25,00,000	367
17.	Amritvani Housing (P) Ltd	01-10-2011	3,04,77,600	251	3,06,00,000	362

18.	Tiger Merchants (P) Ltd	28-09-2007	7,60,48,000	2,943	7,78,00,000	554
19.	Satlink India (P) Ltd	17-02-2006	1,96,95,000	(6,334)	2,01,50,000	316
20.	Panchsree Trademart (P) Ltd	Not available	1,72,57,500	281	1,00,00,000	408
21.	Avtaar Projects (P) Ltd	27-02-2012	7,00,13,750	216	7,09,00,000	315

On a perusal of the same, it may kindly be noted that the learned AO has doubted the creditworthiness of the investor companies as these companies have reported low taxable income in their income tax return. In the said chart, the learned AO has himself admitted that all the investor companies are duly incorporated with the Registrar of Companies and in the last column he has tabulated the taxable income of these investor companies as reported in the Income Tax Return filed by these companies. This in itself shows that all the investor companies are duly incorporated bodies and are regular income tax assesses who have duly filed their return of income for the relevant year. Thus, the identity of these companies should not have been questioned by the learned AO.

Admittedly, the learned AO has himself shown in his chart the amount of share premium and non-current investment in the books of these investor companies. On a perusal of the same, it is evident that the reserves and surplus of these companies is commensurate with the investment made by these investor companies. Hence, the creditworthiness of the investor companies to invest in the share capital of the assessee also should not have been questioned by the learned AO.

The learned AO in the present case has proceeded on the wrong premise that these investor companies have reported low taxable income and hence their creditworthiness is not established. In this regard, it is reiterated that the entire share application money was received through normal banking channels out of own funds of the investor companies. Now, Your Honours kind attention is invited to the judgment of the Hon'ble Bombay High Court in the case of *Ami Industries (India) Pvt Ltd (ITA 1231 of 2017)* wherein the Hon'ble High Court has observed that 'It was not necessary that share application money should be invested out of taxable income only'. The relevant extract of the judgment is quoted below:

[Head Note]

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment year 2010-11 - Assessing Officer noted that assessee had disclosed funds from three Kolkata based companies as share application money - But, since where abouts of above companies were doubtful and their identity could not be authenticated, Assessing Officer treated aforesaid funds as money from unexplained sources and added same to income of assessee as unexplained cash credit under section 68 - However, it was found that assessee-company had furnished PAN, copies of income tax returns of creditors as well as copy of bank accounts of three creditors in which share application money was deposited in order to prove genuineness of transactions - Further, insofar as creditworthiness of creditors were concerned, Tribunal recorded that bank accounts of creditors showed that creditors had funds to make payments for share application money and in this regard, resolutions were also passed by Board of Directors of three creditors - Thus, first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of creditors, genuineness of transactions and creditworthiness of creditors which finding of fact stood affirmed by Tribunal - Revenue had not been able to show any perversity in aforesaid findings of fact by authorities below "

Held,

*"In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under Section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that nonresponding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and creditworthiness of the creditors were available, without any infirmity in such evidence and the explanation required under Section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted."*

*Thus, it is not the taxable income but the source of investment which needs to be proved u/s 68 of the Act.*

*Admittedly, the investor companies have invested in Non-Current Investment in shares. The income will arise to these companies either by way of Dividend or Capital Gains on disposal of such investments. Thus, income from these sources should not lead to questionability of creditworthiness of the investor companies.*

*Therefore, low taxable income of the investor companies cannot militate against the assessee for the nature of the business of the investor companies which warrant such return. More so, there is no allegation of the learned AO that cash was deposited in the Bank A/c of the investor companies before making investment in the share capital of the assessee. The learned AO thus have found nothing against the assessee to warrant any addition u/s 68 of the Act. It is reiterated that the assessee has successfully discharged the onus of proving the identity, creditworthiness of the parties and the genuineness of the transactions. The impugned addition was made by the learned AO either because of his lack of exposure in such companies or deliberately with a prejudiced mind and preset notion.*

*Now, coming to the creditworthiness of these parties, your Honours' attention is drawn to the audited accounts of all the 21 shareholders (Page 1-425) which was filed before the learned AO and on perusal of the same it may kindly be noted that the networth of these companies was commensurate with the investment made in the assessee company. The same is tabulated in the chart below:*

Sr No.	Name of the Company	Reserves and Surplus	Investment in the Assessee Co.	Page No.
1.	Altort Merchants (P) Ltd	27,30,00,638	71,00,000	01-30
2.	Uphar Vanijya (P) Ltd	16,08,00,703	72,00,000	31-53
3.	Tiger Vanijya (P) Ltd	7,52,06,288	87,00,000	54-79
4.	Rs Dealcom (P) Ltd	10,00,00,546	10,00,000	80-99
5.	Mutual Merchants (P) Ltd	18,50,00,361	55,00,000	100 - 119
6.	Rr Commosale (P) Ltd	9,02,00,758	27,00,000	120- 142
7.	Kamna Housing (P) Ltd	15,34,00,231	27,00,000	143 - 162

8.	Signature Manufacturing (P) Ltd	4,33,00,856	5,00,000	163 - 182
9.	Ss Vintrade (P) Ltd	12,17,00,454	10,00,000	183 - 201
10.	Ontime Vintrade (P) Ltd	21,00,00,327	45,00,000	202 - 222
11.	Nandita Mercantile (P) Ltd	2,84,00,470	30,00,000	223 - 241
12.	Satlink India (P) Ltd	2,02,83,666	11,00,000	242 - 259
13.	Sidhu Suppliers (P) Ltd	2,27,02,920	5,00,000	260 - 277
14.	Dhananjay Vanijya (P) Ltd	4,40,00,704	15,00,000	278 - 295
15.	Avtaar Projects (P) Ltd	7,10,00,216	2,00,000	296 - 312
16.	Jatashiv Merchants (P) Ltd	6,75,00,333	10,00,000	313-332
17.	Tiger Mercantile (P) Ltd	7,43,47,707	10,00,000	333 - 349
18.	Subhvani Projects (P) Ltd	3,40,00,230	10,00,000	350-367
19.	Amritvani Housing (P) Ltd	3,07,00,251	25,00,000	368 - 385
20.	Panchsree Trademart (P) Ltd	1,90,00,281	18,00,000	386 - 406
21.	Tiger Merchants (P) Ltd	7,77,02,943	5,50,000	407 - 425
TOTAL SHARE CAPITAL			5,68,50,000	

So, from a perusal of the above chart, it is clear that all the share subscriber companies have sufficient Capital/networth to invest in the share Capital of the assessee company. Moreover, the share subscribers have also filed before the AO the source from which they subscribed to shares of assessee (though not required as per law in force for AY 2012-13).

Now, in view of the documents filed by the share applicant companies before AO, the assessee now discuss the documents filed by each share subscribers totaling 21 (twenty-one) in detail below:

#### 1. ALTROT MERCHANT (P) LTD

With respect to this share applicant, please note that the documents are placed at page 1-30 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAICA9847L. On a perusal of its Audited Accounts (Page 17-29), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.27,30,00,638/-, refer page 21 of the paper book and the investment made in the assessee-company including share premium is Rs.71,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of

Rs.5,00,000/- was received on 19-10-2011, Rs. 10,00,000 on 18-11-2011, Rs. 16,00,000/- on 24-01-2012, Rs. 15,00,000 on 31-01-2012, Rs.9,00,000 on 15-02-2012 and Rs. 16,00,000/- on 23-02-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

2. UPHAR VANIJYA (P) LTD

With respect to this share applicant, please note that the documents are placed at page 31-53 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AACBU2424J. On a perusal of its Audited Accounts (Page 43-52), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs. 16,08,00,703/-, refer page 46 of the paper book and the investment made in the assessee-company including share premium is Rs.72,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.20,00,000/- was received on 18-10-2011, Rs. 10,00,000 on 21-11-2011, Rs. 10,00,000/- on 09-12-2011, Rs.7,00,000 on 10-12-2011 and Rs.25,00,000 on 17-12-2011. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

3. TIGER VANIJYA (P) LTD

With respect to this share applicant, please note that the documents are placed at page 54-79 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AACCT7578D. On a perusal of its Audited Accounts (Page 66-78), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.7,52,06,288/-, refer page 70 of the paper book and the investment made in the assessee-company including share premium is Rs.87,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs. 15,00,000/- was received on 22-10-2011, Rs. 15,00,000 on 05-11-2011, Rs.20,00,000/- on 22-12-2011, Rs.12,00,000 on 28-03-2012 and Rs.25,00,000 on 29-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued us 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

4. RS DEALCOM (P) LTD

*With respect to this share applicant, please note that the documents are placed at page 80-99 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAFCR0161H. On a perusal of its Audited Accounts (Page 86-98), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs. 10,00,00,546/-, refer page 90 of the paper book and the investment made in the assessee-company including share premium is Rs. 10,00,000/-. Entire Share Application money of Rs. 10,00,000/- was received by the assessee through normal banking channels on 28-10-2011. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.*

5. **MUTUAL MERCHANTS (P) LTD**

*With respect to this share applicant, please note that the documents are placed at page 100-119 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAHCM0709N. On a perusal of its Audited Accounts (Page 108-118), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.18,50,00,361/-, refer page 111 of the paper book and the investment made in the assessee-company including share premium is Rs.55,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.30,00,000/- was received on 09-11-2011, and Rs.25,00,000 on 28-12-2011. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.*

6. **RR COMMOSALE (P) LTD**

*With respect to this share applicant, please note that the documents are placed at page 120-142 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAFCR0226D. On a perusal of its Audited Accounts (Page 129-141), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.9,02,00,758/-, refer page 133 of the paper book and the investment made in the assessee-company including share premium is Rs 27.00.000 - Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.2,00,000/- was received on 14-11-2011, Rs. 10,00,000 on 19-11-2011 and Rs. 15,00,000 was received on 03-02-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in*

its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

7. Kanina Housing Pvt Ltd.

With respect to this share applicant, please note that the documents are placed at page 143-162 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAECK4606K. On a perusal of its Audited Accounts (Page 151-161), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs. 15,34,00,231/-, refer page 154 of the paper book and the investment made in the assessee-company including share premium is Rs.27,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs. 12,00,000/- was received on 28-11-2011 and Rs.15,00,000 on 24-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

8. Signature Manufacturing (P) Ltd

With respect to this share applicant, please note that the documents are placed at page 163-182 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AANCS3324D. On a perusal of its Audited Accounts (Page 170-181), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.4,33,00,856/-, refer page 174 of the paper book and the investment made in the assessee-company including share premium is Rs.5,00,000/-. Entire Share Application money of Rs.5,00,000/- was received by the assessee through normal banking channels on 13-01-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

9. SS Vintrade Pvt Ltd

With respect to this share applicant, please note that the documents are placed at page 183-201 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAOC9923R. On a perusal of its Audited Accounts (Page 190-200), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs. 12,17,00,454/-, refer page 194 of the paper book and the investment made in the assessee-company including share premium is Rs. 10,00,000/-. Entire Share Application money of Rs. 10,00,000 was received by the assessee through normal banking channels on 16-01-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank

*Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.*

10. *Ontime Vintrade Pvt Ltd*

*With respect to this share applicant, please note that the documents are placed at page 200-222 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AABC04391A. On a perusal of its Audited Accounts (Page 211-221), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.21,00,00,327 /-, refer page 214 of the paper book and the investment made in the assessee-company including share premium is Rs.45,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.25,00,000/- was received on 27-01-2012, Rs. 10,00,000 on 15-03-2012 and Rs 10,00,000/- on 15.03.2021. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.*

11. *Nandita Merchantile Pvt. Ltd.*

*With respect to this share applicant, please note that the documents are placed at page 223-241 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AADCN6123F. On a perusal of its Audited Accounts (Page 231-240), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.2,84,00,470 /-, refer page 234 of the paper book and the investment made in the assessee-company including share premium is Rs.30,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.25,00,000/- was received on 06-02-2012 and Rs.5,00,000 on 24-02-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the part evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.*

12. *Satlink India (P) Ltd*

*With respect to this share applicant, please note that the documents are placed at page 242-259 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAKCS2668H. On a perusal of its Audited Accounts (Page 248-258), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.2,02,83,666/-, refer page 251 of the paper book and the investment made in the assessee-company including share premium is Rs.1 1,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.1 1,00,000/- was received on 14-02-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice*

issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

13. Sindhu Suppliers (P) Ltd.

With respect to this share applicant, please note that the documents are placed at page 260-277 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAMCS7715F. On a perusal of its Audited Accounts (Page 268-277), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.2,27,02,920/- refer page 271 of the paper book and the investment made in the assessee-company including share premium is Rs.5,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs.5,00,000/- was received on 02-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

14. Dhananjay Vanijya (P) Ltd.

With respect to this share applicant, please note that the documents are placed at page 278-295 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AADCD7430K. On a perusal of its Audited Accounts (Page 284-294), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.4,40,00,704/- refer page 287 of the paper book and the investment made in the assessee-company including share premium is Rs.15,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs. 15,00,000/- was received on 05-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

15. Avtaar Projects (P) Ltd.

With respect to this share applicant, please note that the documents are placed at page 296-312 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAKCA3997R. On a perusal of its Audited Accounts (Page 301-310), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.7,10,00,216/- refer page 304 of the paper book and the investment made in the assessee-company including share premium is Rs.20,00,000/-. Entire Share Application money was received by the assessee through normal banking channels on 19-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements and audited accounts in response to the notice

issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

16. *Jatashiv Merchants (P) Ltd.*

With respect to this share applicant, please note that the documents are placed at page 313-332 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AACCG7462J. On a perusal of its Audited Accounts (Page 316-328), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.6,75,00,333/- refer page 320 of the paper book and the investment made in the assessee-company including share premium is Rs. 10,00,000/-. Entire Share Application money of Rs. 10,00,000/- was received by the assessee through normal banking channels on 19-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

17. *Tiger Mercantile Pvt Ltd*

With respect to this share applicant, please note that the documents are placed at page 333-349 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AACCT7577N. On a perusal of its Audited Accounts (Page 338-348), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.7,43,47,707/- refer page 341 of the paper book and the investment made in the assessee-company including share premium is Rs. 10,00,000/-. Entire Share Application money of Rs. 10,00,000/- was received by the assessee through normal banking channels on 23-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

18. *Subhvani Projects Pvt Ltd*

With respect to this share applicant, please note that the documents are placed at page 350-367 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AARCS1202Q. On a perusal of its Audited Accounts (Page 358-366), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.3,40,00,230/- refer page 360 of the paper book and the investment made in the assessee-company including share premium is Rs. 10,00,000/-. Entire Share Application money of Rs. 10,00,000/- was received by the assessee through normal banking channels on 28-03-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and

audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

19. Amritvani Housing Pvt Ltd

With respect to this share applicant, please note that the documents are placed at page 368-385 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAKCA3685N. On a perusal of its Audited Accounts (Page 374-384), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.3,07,00,251/- refer page 377 of the paper book and the investment made in the assessee-company including share premium is Rs.25,00,000/-. Entire Share Application money of Rs.25,00,000/- was received by the assessee through normal banking channels on 03-04-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

20. Panchshree Trademart Pvt Ltd

With respect to this share applicant, please note that the documents are placed at page 386-406 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AAGCP4994F. On a perusal of its Audited Accounts (Page 393-405), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs. 1,90,00,281/-, refer page 397 of the paper book and the investment made in the assessee-company including share premium is Rs. 18,00,000/-. Entire Share Application money was received by the assessee through normal banking channels. Share Application Money of Rs. 16,00,000/- was received on 05-04-2012 and Rs.2,00,000 on 09-04-2012. This share applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

21. Tiger Merchants Pvt Ltd

With respect to this share applicant, please note that the documents are placed at page 407-425 of the paper Book. This share applicant is a Private Limited Company and its Permanent Account No. is AACCT7579C. On a perusal of its Audited Accounts (Page 414-425), it may kindly be noted that the Networth (Share Capital plus Reserves and Surplus) of the company as on 31.03.2012 is Rs.7,77,02,943/- refer page 417 of the paper book and the investment made in the assessee-company including share premium is Rs.5,50,000/-. Entire Share Application money was received by the assessee through normal banking channels on 05-04-2012. This share

applicant company has filed Pan Card, ITR acknowledgment, Allotment Advice issued by the assessee company, relevant Bank Statements, source of source of funds and audited accounts in response to the notice issued u/s 133(6) of the Act. This share applicant has regularly filed its Income Tax Return. The audited accounts of this share applicant clearly show that it had sufficient funds to invest in the assessee-company. The investment made in the assessee company is duly shown in its audited accounts under the head 'Investments'. The Bank Statement of the party evidences that the entire inflow and outflow of funds was effected through normal banking channels and there is no cash deposit in its Bank A/c. The share applicant had confirmed the transaction with the assessee company in response to the notice issued u/s 133(6) of the Act.

27. However, as evident from the assessment order, the succeeding learned AO completely ignored the submissions filed by the assessee and the replies filed by the share applicant companies for reasons best known to him and solely on the alleged ground of non-compliance of the summon issued u/s 131 of the Act by the assessee and the share applicant companies, the succeeding learned AO held that the assessee is not able to explain the credit in its books and added the sum of Rs.5,91,00,000/- to the total income of the assessee as unexplained cash credit u/s 68 of the Act.

28. It is reiterated that in the present case, as evident from the assessment order, audited accounts, copy of the return of income and relevant Bank statement was filed by the assessee company in response to the notice issued u/s 142(1) of the Act and summon issued u/s 131 of the Act. Further, all the share applicant companies have duly filed their replies along with documentary evidences such as ITR Acknowledgment, Audited Accounts, Bank Statements, source of funds in response to the notice issued u/s 133(6) of the Act substantiating their identity, creditworthiness and the genuineness of the transactions. Although, the Directors of the shareholder companies did not appear personally before the learned AO, yet the requisite documents were filed and the same was also acknowledged in the assessment order. Furthermore, it is reiterated that in response to summon dated 09-02-2015, the Director of the assessee company duly appeared before the learned AO on 20-02-2015, however he was refused attendance. As such, it is an unfounded assumption on the part of the learned AO that there was non-compliance of summon by the assessee and the share applicant companies.

29. Here, it is humbly submitted that if only the ITR acknowledgment/PAN of the investor companies would have been perused by the succeeding learned AO, he would have noted that all the share subscribers were regular income tax assesseees and as such their identity was duly established. Further, if the learned AO would have examined the audited accounts of these parties, he would have noted that all the share subscriber companies were having sufficient capital/networth to invest in the share capital of the assessee. The amount of share capital and the amount of share premium received during the year was duly shown under the head "Shareholders Fund" in the Balance Sheet of the assessee. Further, on perusal of audited accounts of the share subscriber companies for the relevant year, it is evident that the amount invested in the appellant company was duly shown under head 'Investments'. Further, if the bank statements and the source of source of funds submitted by the share applicant companies would have been examined by the learned AO, he would have noted the source of the funds of the share applicant companies is well explained and that the entire inflow and outflow of funds were effected through normal banking channels. Hence, the creditworthiness of these parties and the genuineness of the transactions also could not be doubted.

30. On the backdrop of the above facts, undoubtedly the assessee has successfully discharged the onus which lay upon it by producing all the evidences for proving the creditworthiness of the investors. It has given full particulars of the transactions and it has also provided material which would enable the Assessing Officer to track the investors.

31. Further, as evident from the assessment order, the learned AO has not recorded his satisfaction which would even remotely suggest that the share application money received by the assessee was unexplained money of the assessee. He has not prepared any money trail/fund flow in his order which would even remotely suggest that the assessee's own money had been routed in the form of share capital. More so, it is not the allegation of the Revenue that cash

was deposited in the Bank A/c of the share applicant companies before investing in the share capital of the assessee company. The AO had not brought any material or evidence which would indicate that the share applicants were (a) benamidars or (b) fictitious persons or (c) that any part of the share capital represented the company's own income from undisclosed sources. Furthermore, it has been repeatedly held by the Hon'ble High Courts and Hon'ble ITATs that non-compliance of summons issued by the Assessing Officer under section 131 by the alleged share applicant companies will not be sufficient to draw and adverse inference against the assessee.

32. At this juncture, it would be first befitting for us to discuss and analyse section 68 of the Act which reads as follows:

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

*The following provisos shall be inserted in section 68 by the Finance Act, 2012, w.e.f. 1.4.2013:*

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

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited ; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory :*

*Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23 FB) of section 10. "*

*A bare reading of Section 68 of the Income-tax Act, 1961, suggests that for a sum so credited to be charged to income-tax as the income of the assessee of that previous year by the A.O. the following have to be present:*

*(i) there has to be credit of amounts in the books maintained by the assessee;*

*(ii) such credit has to be a sum of money during the previous year ; and either*

*(a) the assessee offers no explanation about the nature and source of such credits found in the books or*

*(b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory.*

*It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

*Thus, it is clear from above that in order to establish the receipt of the sum as unexplained cash credit, as required under Section 68 of the Income-tax Act, 1961, the assessee must satisfy three conditions, viz., (i) identity of the creditor, (ii) genuineness of the transaction, and*

*(iii) creditworthiness of the creditor.*

*Now, it is further submitted that the phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be*

charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 103 Taxman 382/237 ITR 570. Here, it may kindly be noted that against the said decision of Hon'ble Gujarat High Court the special leave petition filed by the Revenue has also been dismissed by the Hon'ble Apex Court.

It is also submitted proviso to section 68 inserted by Finance Act, 2012 w.e.f 01.04.2013, casting an additional onus on the assessee-company of proving the source of the source of raising the share subscription, is not retrospective or clarificatory in nature but prospective in nature and hence would be effective only from A.Y. 2013-14 onwards. In the present case, the assessment year involved is 2012-13.

Reliance in this connection is placed on the decision of Hon'ble High Court of Bombay in the case of CIT-1 v. M/s Gagandeep Infrastructure Pvt. Ltd. (2017) 80 taxmann.com 272 (Bombay) wherein it has been held that the amendment in section 68 is prospective and not retrospective. Relevant extract has been set out for ready reference:

"...(e) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus, it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd.,(supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

(f) In the above circumstances and particularly in view of the concurrent finding of fact arrived at by the C.I. T(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law. "

For this proposition, reliance is also placed on the judgment of the Hon'ble ITAT, Kolkata in ITA No 838/KOL/2019 in the case of Amritrashi Infra Pvt Ltd vs PCIT dated 12/08/2020 and ITA No. 241 I/KOL/2017 in the case of Kanchan Plywood Products Pvt. Ltd, -v.v.- ITO order dated 01.05.2019.

Thus, in the clear opinion of the Hon'ble Mumbai High Court in the aforesaid case, the Hon'ble Apex Court's judgment in the case of Lovely Exports (P) Ltd. would be relevant for the assessment years prior to A.Y. 2013-14. Applying the principles enunciated in the aforesaid case to the facts of the present case, it is submitted that since the case at hand pertains to A.Y. 2012-13, the Assessee was not bound to explain the source of source of the share capital/premium

monies since the proviso to section 68 has been made effective only from A.Ys 2013-14 onwards. In spite of the same, the source of source of funds was duly submitted by all the share applicant companies.

Further, w.r.t. share premium it is pointed out that as per definition of income as provided under section 2(24) of the Act at the relevant point of time of (i.e. AY 2012-13) did not define as income, any consideration received for issue of shares in excess of its fair market value. This came into effect from 1-4-2013 and it would have no application to the share premium received by the assessee in the previous year relevant to AY 2012-13. Your kind attention is also invited to sub-clause (vii)(b) of sub-section (2) of section 56 of the Act, which was inserted by the Finance Act, 2012 w.e.f 1-4-2013, which is also applicable only for the AY 2013-14 and not for the relevant AY 2012-13 which is in respect of computing/taxing the premium of shares in the hands of the assessee if consideration of value of shares is in excess of its fair market value and in support of it, reference is also made to section 56(vii)(b) of the Act.

Further, the assessee places reliance on the judgment of the Hon'ble Bombay High Court in the case of Vodafone India Services Pvt Ltd vs UOI and others (WRIT PETITION NO.871 OF 2014) wherein the definition of income u/s 2(24) of the Act was discussed in detail and it was held that capital receipts cannot be considered as income unless the mandate of law permit them to do so. Relevant extract of the judgment is produced below:

"25. But we have examined the issue afresh. The word income for the purpose of the Act has a well understood meaning as defined in Section 2(24) of the Act. This even when the definition in Section 2(24) of the Act is an inclusive definition. It cannot be disputed that income will not in its normal meaning include capital receipts unless it is so specified, as in Section 2(24) (vi) of the Act. In such a case, Capital Gains chargeable to tax under Section 45 of the Act are, defined to be income. The amounts received on issue of share capital including the premium is undoubtedly on capital account. Share premium have been made taxable by a legal fiction under Section 56(2)(viib) of the Act and the same is enumerated as Income in Section 2(24)(xvi) of the Act. However, what is bought into the ambit of income is the premium received from a resident in excess of the fair market value of the shares. In this case what is being sought to be taxed is capital not received from a non-resident i.e. premium allegedly not received on application of ALP. Therefore, absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as Income. This is settled by the decision of this Court in Cadell Weaving Mill Co. vs. CIT 249 ITR 265 was upheld by the Apex Court in CIT vs. D.P. Sandu Bros. Chember (P) Ltd. "

33. Having said that, it is further submitted that as held in a number of judicial precedents, once the assessee discharged the primary onus which was casted upon it u/s 68 of the Act, it is for the Revenue to prove otherwise. There has to be some direct or circumstantial evidence on record to support the findings of the Revenue that the assessee's own money had been routed in the form of share capital justifying the addition under section 68 of the Act. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the share capital raised during the year as non-genuine. Further, before discrediting the documents filed by the share applicant companies, the Department ought to have exercised his plenary powers and conduct independent enquiries with these share applicant companies and collect material evidences against the assessee. Such outright rejection of the evidences by the Revenue is totally contrary to the law as laid down by Apex Court in the case of CIT vs Orissa Corporation Pvt Ltd (1986) 159 ITR 0078 wherein it was held that, "The assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the allowed loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse

or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises. It cannot, therefore, be said that any question of law arose in these cases. The High Court was, therefore, right in refusing to refer the questions sought for. ”

> Relying on the above judgment of the Hon'ble Apex Court the Hon'ble Gujarat High Court, in the case of *Dy. CIT v. Rohini Builders* [2002] 256 ITR 360 held that

“Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of *Orissa Corporation* (1986) 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69. ”

> Further, in the case of *Nemi Chaitd Kothari v. CIT* [2004] 136 Taxman 213 [2003] 264 ITR 254 the Hon'ble Guahati High Court has held that,

“What, thus, transpires from the above discussion is that while section 106 of the Evidence Act limits the onus of the assessee to the extent of his proving the source from which he has received the cash credit, section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the assessee. in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of the assessee himself. In other words, while section 68 gives the liberty to the Assessing Officer to enquire into the source/source from where the creditor has received the money, section 106 makes the assessee liable to disclose only the source(s) from where he has himself received the credit and IT is not the burden of the assessee to prove the creditworthiness of the source(s) of the sub-creditors. If section 106 and section 68 are to stand together, which they must, then, the interpretation of section 68 are to stand together, which they must, then the interpretation of section 68 has to be in such a way that it does not make section 106 redundant. Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income- tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be Judged vis-a-vis the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee. ”

34. In the present case, the learned AO has doubted the creditworthiness of the share applicant companies to invest in the share capital of the assessee company. In such a scenario, the

*recourse open to the learned AO of the assessee was to communicate with the respective learned AOs of the share applicant companies and re-open their individual assessment file in accordance with law. Addition cannot be made in the hands of the assessee company. Reliance in this regard is placed on the judgment of the Hon'ble Apex Court in the case of CIT vs Lovely Exports P Ltd /2008] 216 CTR 195 (SC)*

#### *Head Notes*

*Section 68 of the Income-tax Act, 1961 - Cash credit - If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company*

#### *Held*

*"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 but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company."*

*35 Again, when a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Hon'ble Calcutta High Court in the case of CIT v. DATAWARE (P.) Ltd. [ITAT No. 263 of 2011 Date 21-9-2011] that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regard, your kind attention is drawn to the decision of the Hon'ble High Court, Calcutta in the CIT v. DATAWARE (P.) Ltd. [ITAT No. 263 of 2011 Date 21 -9-2011] wherein the Court held as follows:*

*"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.*

*So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established.*

*We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."*

*Reliance is also placed on the following judgments.*

*> CIT vs Value Capital Services Pvt Ltd.(2009) 221 CTR 0511 (Del)*

*Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment year 2001-02 - If department wants to make addition on account of share application money, burden is on department to show that even if applicant did not have means to make investment, investment made by assessee actually emanated from coffers of assessee so as to enable it to be treated as undisclosed income of assessee (In the favour of assessee)*

The assessee had received an amount of Rs. 51 lakhs as share application money from 33 persons. The Assessing Officer required the assessee to produce all these persons. It appeared that some of them did appear. The Assessing Officer accepted the explanation and the statement given by the three of these persons but found that the response from the others was either not available or was inadequate. On this basis, the Assessing Officer added an amount of Rs. 46 lakhs pertaining to 30 of the persons to the income of the assessee.

Held that it is quite obvious that it is very difficult for the assessee to show the creditworthiness of strangers. If the revenue had any doubt with regard to their ability to make the investment, their returns might be reopened by the department.

In any case, what was clinching was the additional burden on the revenue. It must show that even if the assessee did not have the means to make the investment, the investment made by the assessee actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. As this had not been done insofar as the present case was concerned, addition made was to be deleted.

> *CIT vs Steller Investment Ltd (1991) 192 ITR 287 (Del)*

"It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names share had been issued and the money may have been provided by some other persons. If the assessment of the persons, who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself.

5. In our opinion, no question of law arises and the petition is, therefore, dismissed."

Aggrieved by the above judgment, Department went in appeal before the Hon'ble Supreme Court wherein dismissing the said appeal reported in (2001) 251 ITR 0263, it was held, "We have read the question which the High Court answered against the Revenue. We are in agreement with the High Court. Plainly, the Tribunal came to a conclusion on facts and no interference is called for. The appeal is dismissed. No order as to costs."

> *The Hon'ble Delhi High Court order in CIT v. Gangeshwari Metal (P.) Ltd. [IT Appeal No. 597 of 2012, dated 21-1-2012] after considering the decisions in the case of Nova Promoters & Finlease (P.) Ltd. [342 ITR 169] and judgement in the case of CIT v. Lovely Exports 2008] 216 CTR 195 (SC) held as follows:—*

'As can be seen from the above extract, two types of cases have been indicated. One in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect:—

"Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs. 1.11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs.55,50,000/- and not Rs. 1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs.55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance 4 sheet etc. of the

parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs. 5-50/000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income/penalty proceedings under Section 271(1)(c) are being initiated separately. "

The facts of Nova Promoters and Finlease (P.) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P.) Ltd. (supra). There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act 1961. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law'

> Further, in the case of CIT v. S. Kamaljeet Singh [2005] 147 Taxman 18(A11.) their lordships, on the issue of discharge of assessee's onus in relation to a cash credit appearing in his books of account, has observed and held as under:—

"4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in question. The assessee discharged the onus by placing (i) confirmation letters of the cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers. It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credit was called for. In view of this finding, we find that the Tribunal was right in reversing the order of the AA C, setting aside the assessment order. "

> Further reliance is placed on the judgment of the Hon'ble jurisdictional ITAT in the case of ITO vs. Roseberry Mercantile Pvt Ltd (ITA No. 2119/Kol/2009)

"The ratio laid down by the Hon'ble Supreme Court in the case of M/s. Lovely Exports Pvt. Ltd would be squarely applicable to the case under consideration. In the present case, the appellant has furnished all the details relevant to share capital contribution before the A.O and also before me. The A.O except noticing certain unusual features in fund flow chain could not establish the link between the unaccounted incomes of the appellant company and share capital contributors. Even otherwise as held by the Apex Court such amounts cannot be added in the hands of the appellant company. The Ld. A.R has also relied on certain case laws which are listed in the submissions. I find the cases listed are very much relevant to the issue on hand. The Ld. A.R brought to my notice that on similar facts the Hon'ble IT AT, Kolkata Bench passed orders in favour of the assessee. He also furnished copies of IT AT judgments in the case of DC IT Vs. M/s. Howrah Gases Ltd. (ITA No. 270/Kol/2009 dt. 23.4.09), ITO V. M/s. Yashuri Securities Pvt. Ltd (ITA No. 1276/Kol/2008 dt. 16.10.2008) and Bear Bull Distributors (P) Ltd. Vs. ITO (ITA No. 1652/Kol/2008 dt. 24.12.2008). I find that following the ratio laid down by Apex Court in Lovely Exports Pvt. Ltd. (supra), the Hon'ble IT AT, Kolkata Bench allowed the appeals in favour of the assessee.

Having regard to the facts and circumstances of the case and respectfully following Hon 'ble Supreme Court decision in the case of M/s. Lovely Exports Pvt. Ltd. and Kolkata Tribunal's decisions I am to hold that the share capital/premium of Rs.24,00,000/- received from investors is not liable to be treated u/s. 68 as unexplained credits and to be taxed in the hands of the appellant company. The appellants ground is allowed. "

In view of the above, and finding no contrary decisions brought on record by the revenue authorities, we find no infirmity in the order of the Ld. CIT(A) and the same is hereby upheld. The appeal of the revenue is, therefore, dismissed.

5. In the result, the appeal of the revenue is dismissed.

Aggrieved against the decision of the Hon'ble ITAT, the department went in appeal before the Hon'ble jurisdictional High Court wherein the appeal of the department was dismissed and it was held that.

“After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of C.I. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.”

> Further reliance is placed on the judgment of the Hon'ble jurisdictional High Court of Calcutta in the case of CIT v. Leonard Commercial (P) Ltd dated 13 June, 2011 in ITAT NO 114 of 2011 wherein the Court held as follows:

“The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs. 8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the Assessing Officer on account of share capital, share application money and investment in HTCCL respectively.

After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed.

It further appears that all the payments were made by the applicants by account payee cheques. It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund.

In our opinion, both the Commissioner of Income-tax (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars.

The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants.

In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged.

> Further reliance is placed on the judgment of the Hon'ble jurisdictional ITAT in the case of ITO vs Axisline Investment Consultants (P.) Ltd dated 01-07-2019 reported in [2019] 108 taxmann.com 276 (Kolkata - Trib.) wherein dismissing the appeal of the Revenue it was held that where AO made addition to assessee's income under section 68 in respect of share application money received from various applicants, in view of fact that assessee had provided details of name, address, PAN of share applicants together with copies of their balance sheets and returns and, moreover, amount had been received by account payee cheques out of sufficient bank balances maintained by of share applicants, impugned addition deserved to be deleted. The relevant extract of the judgment is reproduced below:

“28. In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance. Applying the propositions laid down in these case laws to

*the facts of this case, we are inclined to uphold the order of the Ld. Commissioner of Income Tax (Appeals).*

29. *To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do not want to interfere in the impugned order of Ld. CIT(A) which is confirmed and consequently the appeal of Revenue is dismissed.*

30. *In the result, appeal of the Revenue is dismissed.*

> *Again in the case of Tradelink Carrying (P.) Ltd. vs ITO pronounced on 20-12-2019 reported in [2020] 113 taxmann.com 520 (Kolkata - Trib.), the Hon'ble jurisdictional ITAT held that,*

34. *In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance. Applying the propositions laid down in these case laws to the facts of this case, we are inclined to allow the appeal of the assessee.*

35. *To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore we delete the addition of Rs 5,60,000/- and consequently the appeal of assessee is allowed.*

36. *In the result, the appeal of the assessee is allowed.*

> *Again, in the case of Satyam Smertex (P.) Ltd vs DCIT reported in [2020] 117 taxmann.com 93 (Kolkata - Trib.) pronounced on 29-05-2020, the Hon'ble jurisdictional ITAT held that*

30. *To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source, it shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record, including that of the directors and share holders of share subscribing entities as discussed supra. Accordingly all the three conditions as required*

*u/s. 68 of the Act Le. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO and confirmed by Ld CIT(A) are based on conjectures and surmises, so their impugned action cannot be justified.*

*In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do allow the appeal of assessee and direct deletion of addition of Rs 16 cr under section 68 of the Act. ”*

*Hence, it has been held again and again by the jurisdictional IT AT, Kolkata that in a case, where the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance. Additions cannot be made on surmises and conjectures.*

*Further reliance is placed on the following judgments:*

> *The Delhi High Court in case of Commissioner of Income-tax v. Lovely Exports P. Ltd. [299 ITR 268] held that “In the case of a company the following are the propositions of law under section 68. The assessee has to prima facie prove (1) the identity of the creditor/subscriber ; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels ; (3) the creditworthiness or financial strength of the creditor/subscriber ; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders’ register, share application forms, share transfer register, etc., it would constitute acceptable proof or acceptable explanation by the assessee ; ”*

*SLP filed by the Revenue against the aforesaid judgment was dismissed by the Supreme Court (216 CTR 195) and it was held that,*

*“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company ”*

> *The Hon’ble Mumbai High Court in the case of CIT vs Green Infra Limited reported in [2017] 392 ITR 7 (Bom) held that*

*The identity of the subscribers was confirmed by virtue of the Assessing Officer issuing a no under section 133(6) to them. Further, it holds that the revenue itself makes no grievance of identity of the subscribers. So far as the genuineness of the transaction of share subscrib concerned, it concludes as the entire transaction is recorded in the books of account and refit in the financial statements of the assessee since the subscription was done through the ban channels as evidenced by bank statements which were examined by the Tribunal. With regard U capacity of the subscribers the impugned order records a finding that 98 per cent of the shares is by IDFC Private Equity Fund-II which is a Fund Manager of IDFC Ltd. Moreover, the contribution in IDFC Private Equity Fund-II are all by public sector undertakings. [Para 3(b)]*

*The Tribunal has examined the case of the revenue on the parameters of section 68 and foun facts that it is not so hit. Therefore, section 68 cannot be invoked. The revenue has not been at show in any manner the factual finding recorded by Tribunal is perverse in any manner. [3(c)]*

> *CIT vs Oasis Hospitalities Pvt Ltd and others (333ITR 119) (Del HC)*

*“The initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove (i) the identity of the share-holder, (ii) the genuineness of the transaction,*

and (c) the creditworthiness of the shareholders. In case the investor/shareholder is an individual, some documents will have to be filed or the shareholder will have to be produced before the Assessing Officer to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc., can be furnished. When the money is received by cheque and is transmitted through banking or other indisputable channels, the genuineness of the transaction would be proved. Other documents showing the genuineness of the transaction could be copies of the shareholders register, share application forms, share transfer register, etc.

*"Held, dismissing the appeal, that the addition was rightly deleted by the Commissioner (Appeals) and the Tribunal. Requisite documents were furnished showing the existence of the shareholders from accounts and even their Income-tax details. From bank accounts of these shareholders, it was found that they had deposited certain cash and the source thereof was questionable. The Assessing Officer should have made further probe which he failed to do. Moreover, the remedy with the Department lay in reopening the case of the investors and the addition could not be made in the hands of the assessee.*

> *The Hon 'ble IT AT Kolkata in the case of ITO vs. Harshwardhan Gems Pvt Ltd ITA no. 1337/Kol/2010 order dt. 03.02.2016 upheld the deletion of share capital by CIT(A) and observed at para 6 of the judgment,*

*"6. In the instant case also facts and circumstances are identical as the assessee has prima facie proved the identity of the share subscriber, the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels, the creditworthiness or financial strength of the share subscriber. The relevant details of the address or PAN identity of the share subscriber are furnished to the AO along with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee. The revenue would not be justified in drawing an adverse inference only because the share applicant failed to respond to notices. As held by Hon'ble Delhi High Court AO is duty-bound to investigate the creditworthiness of the share applicant and the genuineness of the transaction. Further, the AO the assessed has discharged its onus of proving the identity of the share applicants.*

*In the given facts the AO had not brought any material or evidence which would indicate that the share applicants were (a) benamidars or (b) fictitious persons or (c) that any part of the share capital represented the company's own income from undisclosed sources. In view of the facts and precedent before us, we are of the view that CIT(A) has rightly deleted the addition and we confirm the order of CIT(A) on this issue. "*

> *DCIT Vs Bhajjee Commodities (P) Ltd. (ITAT Delhi) dated 13-06-2019 in ITA No. 5323/Del/2015*

*"5.3 On the anvil of the above judgement to the facts of this case, it is seen that the assessee has filed sufficient documents e.g. Permanent Account Numbers, bank statements, etc. to establish the identities and creditworthiness of the two share applicants. The copies of the bank statements of the share subscribers wherein the transactions are reflected as well as the fact that they are assessed to income tax establish the creditworthiness of the parties concerned while the genuineness of the transaction is borne out by the fact that the transactions were through banking channels. On going through the assessment order, it is seen that the assessing officer has not been able to rebut or find any discrepancy about the documents submitted by the assessee. If that be the case, the Assessing Officer cannot make addition under Section 68 in the hands of the appellant company. The assessee company has been able to prove its case and in case the assessee has failed to produce the shareholders, as held by the jurisdictional High Court in the case cited above, the Assessing Officer cannot shift the burden on the assessee company. In case the Assessing Officer had any doubt about the shareholders, nothing stopped him from taking appropriate action or proceeding against these shareholders. It is a case where the assessee has been able to meet the requirements to justify its case. If the notices issued by the A.O. to the share subscribers were not complied with or came back unserved, this could not be held against the assessee, which had discharged the initial onus which lay upon it*

by proving the identity of the share applicants and the genuineness of the transactions. This principle has been laid down in the case of *C.I.T. vs. Orissa Corporation Pvt. Ltd.*, [1986] 159ITR 78 (SC), wherein it was held as follows:-

*"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.*

5.4 We note that as held by the Hon'ble Delhi High Court in the case of *CIT vs. Value Capital Services Pvt. Ltd.* in ITA No. 348/2008, that "there is an additional burden cast on the revenue to prove that the investment made by the share applicants actually emanated from the coffers of the assessee, so that the amount was to be treated as undisclosed income. As observed by the Ld. CIT(A), in the present case, the AO did not bring anything on record to the effect that the investment made by the share applicant had come actually from the coffers of the assessee company only."

5.5 We further note that the Hon'ble Supreme Court of India in the case of *Pr. CIT vs. Chain House International (P) Ltd.* (2019) 103 taxguru.in 435 (SC) vide its decision dated 18.2.2019 has observed that "once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium."

6. In view of above, the addition is not warranted, hence, the Ld. CIT(A) has rightly directed the Assessing Officer to delete the addition of Rs. 6 crores made by the AO on account of share capital, which does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 & 2 raised by the Revenue. The judicial decisions relied upon by the Ld. Sr. DR have also been duly considered, which have already been relied upon by the Assessing Officer in his assessment order. In our considered view, we do not find any parity in the facts of the decisions relied upon by the Ld. Sr. DR of the Department with the peculiar facts of the case in hand."

35. On an application of the above to the facts of the present case, it may thus be concluded that in the instant case no addition is called for u/s 68 on account of the following reasons:

(i) During the course of assessment, notice u/s 142(1) of the Act was issued to the assessee and requisite documents were submitted in response to the said notice. Further, notice u/s 133(6) of the Act were issued to all the share applicant companies and in response to the said notice all the parties submitted have duly submitted their replies along with documentary evidences such as ITR acknowledgment, Certificate of Incorporation, Bank Statements, Audited Accounts and source of source of funds. Entire inflow and outflow of funds was made through normal banking channels. All these documents clearly substantiate the identity and creditworthiness of the investor companies and the genuineness of the transactions.

(ii) The learned AO has not recorded his satisfaction which would even remotely suggest that the share application money received by the assessee was unexplained money of the assessee. He has not prepared any money trail/fund flow in his order which would even remotely suggest that the assessee's own money had been routed in the form of share capital. More so, it is not the allegation of the Revenue that cash was deposited in the Bank A/c of the share applicant companies before investing in the share capital of the assessee company. The learned AO has himself shown in the chart prepared by him the amount of share premium and non-current investment in the books of these investor companies. On a perusal of the same, it is

*evident that the reserves and surplus of these companies is commensurate with the investment made by these investor companies. So creditworthiness of the parties is proven.*

*(iii) It has been repeatedly held by the Hon'ble High Courts and Hon'ble ITATs that non-compliance of summons issued by the Assessing Officer under section 131 by the alleged share applicant companies will not be sufficient to draw and adverse inference against the assessee.*

*(iv) The Department has failed to bring on record any adverse material to reject/disprove the explanations and evidences submitted by the Assessee and share applicant companies.*

*(v) It is pertinent to note that at no stage of the assessment proceedings the Assessee was informed of the fact that summon issued u/s 131 of the Act remained unserved in case of certain investors. The names of the parties in whose cases notices were allegedly received back unserved and the addresses at which such notices were issued to such parties were not revealed to the Assessee in course of the reassessment proceedings and have also not been specified in the Assessment Order.*

*(vi) The Ld. A.O has thus operated merely on the basis of surmises and conjecture and not on the basis of any credible information or tangible/cogent material or evidence.*

*In view of the above facts of the case and the submissions made by the assessee, the addition made by the learned AO of Rs.5.91 crores and so sustained by the learned CIT(A) is totally unjustified both on merits of the case and in law. Therefore it is humbly requested before Your Honours to quash the orders passed by the lower authorities."*

6. The ld. D/R on the other hand, has relied upon the observations made by the AO in para 1.4 and para 2.1 of the Assessment Order. He has further relied upon the impugned order of the ld. CIT(A).

7. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment Order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO, himself, has tabulated in para 2.5 of the order recording the financial credentials of the share subscribers from which it can be noted that the said share subscribers were having enough finances in the form of reserves and surpluses to make investment in the assessee company. The AO has simply noted that the share subscribers have sent a bundle of papers in his office. However, we fail to understand that without examining those documents how could the AO came to a conclusion that the transactions in question were not genuine. The AO has not pointed

out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The AO could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO.

In this case, as detailed in the written submissions of the assessee, the assessee had duly submitted details and evidences to prove the identity and creditworthiness of each of the share subscribers separately. However, the Id. AO, in the impugned Assessment Order has not recorded any peculiar facts of circumstance which would suggest that the assessee had routed his own money through the above stated subscribers. The AO has not brought any material or evidence on the file to show that these share applicants were fictitious persons. The another relevant factor on the file is that in response to the notices issued u/ s 133(6) of the Act by the earlier AO, the requisite details were furnished by the assessee as well as the share subscribers. After receipt of said details, the concerned AO did not proceed to make further enquiries, which implies that he was satisfied with the evidences and explanations received by him. After the transfer of the case on 05.12.2014 the subsequent AO issued summons on 09.02.2015 to the directors of the assessee companies to produce before him the directors of the subscriber companies on 20.02.2015. In our view, it was otherwise not possible for the directors of the assessee company to produce all the directors of the share subscribers within such a short time period. It has to be further noted that as per para 2.1 of the Assessment Order, summons were sent through post to the share subscribers on 25.02.2015 and 02.03.2015 to appear before him. However, the Assessment Order in question was passed by the AO on 28.03.2015 itself. Under the normal circumstances, in case of the summons sent through post, one month's time is required to be given for service of summons upon a person and further a reasonable time was required to be given for personal appearance of the summoned persons. It

appears that in this case, the AO has just completed an official formality of issuing summons to subscribers without giving any reasonable opportunity and time to the subscribers to appear. We are convinced with the contention of the Id. Counsel for the assessee that since the assessment was becoming time barred, the AO has passed the impugned Assessment Order in a hurried manner even without pointing out any defect or discrepancy in the evidences and details furnished by the assessee and even without giving reasonable time of appearance to the concerned directors of the share holding companies. Even, we find that the case laws relied upon by the AO in the Assessment Order are also not applicable to the facts and circumstances of the present case as in those cases, the material fact was that the assessee had not furnished the details and evidences before the AO. However, in this case it is not the case of AO that the assessee has not furnished the relevant details and evidences to prove the identity, creditworthiness and genuineness of the transaction.

7.1. It has to be further noted that though powers of the Id. CIT(A) are co-terminus with the AO and the Id. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the Id. CIT(A) shows that the Id. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply cited the case laws rendered in the case of *M/s. Rajmandir Estate Pvt. Ltd.* reported in GA No. 509 of 2016 by the Hon'ble Calcutta High Court and further on the judgement of Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax (Central) - 1 vs. NRA Iron & Steel Pvt. Ltd.* arising out of *SLP (Civil) No. 29855 of 2018*, even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. The order of the Id. CIT(A) is a non-speaking order. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the Id. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

7.2. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

8. The appeal of the assessee stands allowed.

Order is pronounced in the open court on 26.10.2021.

Sd/-  
[M.L. Meena]  
Accountant Member

Dated: 26.10.2021

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **M/s. Soleman Traders Pvt. Ltd., 10, Pheras Lane, 3<sup>rd</sup> Floor, Kolkata-700 012.**
2. **ITO, Ward-1(3), Kolkata.**
3. CIT(A)-17, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar/DDO  
ITAT, Kolkata Benches