

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.3203/Mum/2019
(Assessment Year :2010-11)**

DCIT-9(3)(2) R.No.418, 4 th Floor Aayakar Bhawan Churchgate, Mumbai – 400 020	Vs.	M/s. G.L. Construction Pvt. Ltd., Plot No.5, Road No.6 Hatkesh Cooperative Housing Society JVPD Scheme Vile Parle (W) Mumbai – 400 056
PAN/GIR No.AAACG3438P		
(Appellant)	..	(Respondent)

Revenue by	Shri T.S. Khalsa
Assessee by	Shri N.R. Agrawal
Date of Hearing	09/08/2021
Date of Pronouncement	26/10/2021

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

This appeal in ITA No.3203/Mum/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-16, Mumbai in appeal No.CIT(A)-16/DCIT-9(3)(2)/IT-10177/2017-18 dated 28/02/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/12/2017 by the Id. Dy. Commissioner of Income Tax-9(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue raised in this appeal is against the deletion of addition of Rs.3,96,80,000/- by Id CIT(A) as made by the AO on account of unexplained cash credit u/s.68 of the Act towards share capital and share premium.

3. The facts in brief are that this is second round of litigation and in the first round, the Tribunal restored the issue back to the file of the Id. AO by making observation that though the assessee has filed details as called for by the Id. AO in support of share capital subscribed by various shareholders, however, the parties were not produced before the Id. AO even after the Id. AO specifically asked for the same. With these observations, the Tribunal restored the matter back to Id. AO with the direction to produce these parties before the Id. AO and the Id. AO is directed to decide the issue afresh. In the set aside proceedings, the Id. AO again added an amount of Rs.3,96,80,000/- to the income of the assessee by framing assessment u/s.143(3) r.w.s. 254 of the Act vide order dated 28/12/2017 failure of the assessee to provide the proofs of delivery of share certificates issued to the shareholder, service proof of delivery of financial statements for F.Y.2010-11 to 2016-17 to respective share holders and service proofs of notice and agenda of Annual General Body Meeting and thus, treated these loans as non-genuine.

4. The Id. CIT(A) allowed the appeal of the assessee by holding and observing as under:-

4. Decision:

I have carefully considered the assessment order and the submissions of the appellant. After taking into consideration totality of facts, circumstances and relevant law, the appeal is disposed of as under:-

4.1. In assessee's appeal before Hon'ble ITAT, appeal no. ITA/2269/Mum/2015, order was passed dated 22/06/2016 setting aside the addition on account of share capital u/s.68 of the act, to the file of AO.

By observing as under in para 13,

'From the records we found that even though assessee has filed the details asked by AO in support of the share capital being subscribed by respective share holders, however, they were not produced before AO even after asking by the AO. In view of documentary evidence placed on record & considering the fact that share holders had not appeared before AO, we restore the matter back to the file of AO for deciding afresh after considering the evidence filed by the assessee in support of identity, genuineness and creditworthiness of the share holders, We direct accordingly.

4.1.1. From the submission made by the assessee, it is observed that in response to notices issued by the A.O. u/s 133(6), all shareholders have filed replies along with the supporting papers such as Copy of their PAN, Bank Statement, ledger extract in their books of accounts, Audited financials, Copy of Income Tax Return Acknowledgement, Copy of share certificate, share application form, Board Resolution etc. ,

4.1.2. It is also seen that in response to notice u/s 131 of the IT Act, 1961, Directors of all share holder companies have appeared personally before the A.O. along with the relevant information and supporting papers. Their statement recorded on oath by the A.O. All the share holder companies are continues to be the shareholders in assessee company. Further, no adverse findings from the statements have been brought out by the Assessing Officer in the assessment Order.

4.1.3. From replies to notices u/s 133(6) & to summons u/s 131 of the act following facts have emerged in each case of share holder.

a). M/s Empower Industries India Ltd.

This investor company had filed reply to notice u/s 133(6) on 14/12/2017 copy of which alongwith statement of Director Shri Mangesh Gurav recorded u/s 131 of the act was filed during appellate proceedings:

It is observed that

i). Acknowledgement for filing the return for AY 2010/11 .declaring taxable income of Rs. 44,72,859/-

- ii). Scrutiny of balance sheet reveals that company has paid up share capital of Rs.99,31,430/- as on 31/3/2009 & Reserve & surplus of Rs. 11,59,82,840/-. iii). Bank statements of investor company shows payment to assessee company in which assessee company's name is also appearing
iv). Confirmation 'has been filed with AO confirming the investment with PAN No. AAACH3967N
v). Investor **company had** filed share certificate copies dated 16/03/2013.
vi). Statement of Director Shri Mangesh Gurav recorded u/s 131 of the act

Relevant question & answered by Director are as under.

Q. 5 Do you know M/s G.L. Construction Pvt. Ltd.,? If Yes How you know the company

Ans. Yes, We happen to know about GL Construction from Mumbai based finance broker Mr. Hiren Shah

Q. 6. Do you know who are directors of M/s G,L. Construction Pvt. Ltd. & where is office of M/s G.L. Construction Pvt. Ltd.

Ans. Yes. The Directors of GL Construction are Mr. Sunil Mathreja, Mr. Vivek Mathreja & Mr. Vishal Mathreja & Mr, Narayan Mathreja. Their H.O. is situated at 304, Gokul Arcade, 'B' Subhash Road, Vile Parle (E) Mumbai 400057

Q.7. Have you invested in M/s. G.L. Construction Pvt. Ltd.,, if yes when and how much ?

Ans. Yes The company had invested in M/s. GL Construction Pvt. Ltd. 14550 equity shares Of Rs.10 at a premium of Rs. 300 per share worth Rs. 45,10,500/- as follows:-

1. RTGS from Yes Bank dated 25.03.2010 Rs. 46,50,000/-
 2. RFTGS from Yes Bank dated 26.03.2010 Rs. 46,50,000/-
 3. RTGS from Yes Bank dated 30.03.2010 Rs. 46,50,000/-
- Total Rs. 1,39,50,000/-

Copy of share certificate number 99 to 101 are enclosed here with.

Q. 10 What is your source of funds for making investment in M/s G.L. Construction Pvt.

Ltd., And are you assessed to tax, if yes, where ?

Ans. The Company had received loan returned by Adila Traders Pvt Ltd. Rs.1,00,00,000/- on 25/3/2010 out of which it made first payment of Rs. 46,50,000/-. Second payment of Rs. 46,50,000/- was made on 26/3/2010, was made out of loan returned by M/s Naseen Trade Links Pvt Ltd. Rs. 55,00,000/- on 26/3/2010.

Balance amount of Rs. 46,50,000/- was given on 30/3/2010 was out of loan returned by Rosewood Vintrade Pvt Ltd. of Rs. 79,00,000/- on 30/3/2010

The company is assessed under Pan No. AAACH3967N in Mumbai ward ITO

b) M/s Kush Hindustan Entertainment Ltd.

This investor company had filed reply to notice u/s 133(6) on 23/11/2017 Statement of Director Shri Nilesh Fulchanbhai Parmar recorded u/s 131 of the act.

Following facts emerges in this case:

i). Acknowledgement for filling the return for AY 2010/11 declaring taxable income of Rs. 63,035/-

ii) Scrutiny of balance sheet reveals that company has paid up share capital of Rs.3,00,00,000/- as on 31/03/2009 & Reserve & surplus of Rs.67,76,378/-.

iii) Bank statements of investor company shows payment to assessee company, in which assessee company's name is also appearing

iv) Confirmation has been filed with AO confirming the investment.

v) Investor company had filed share certificate copies dated 5/04/2010.

vi). Investor company is assessed u/s 143(3) for AY 2011/12 with ITO 8(2)(2) by order dated 24/2/2014. Copy of order is also filed.

vii). Statement of Director Shri Nilesh Fulchanbhai Parmar recorded u/s 131 of the act on 17/11/2017

iii Relevant question & answered by Director are as under.

Q. 5 Do you know M/s G.L. Construction Pvt. Ltd., ? If Yes How you know he company

Ans. Yes, Shri Maresh Dani came to us with proposal that G L Constructions were looking rm Ions term investor

Q. 6. Do you know who are directors of M/s G.L. Construction Pvt. Ltd & where is office of M/s. G.L. Construction Pvt. Ltd.,

Ans. Yes. The GL Construction is owned & controlled by Mathreja family, Mr. Narayan Mathreja, Mr. Sunil Mathreja, Mr. Vivek Mathreja Mr. Vishal Mathreja. Their office is situated at 304, Gokul Arcade, 'B' Subhash Road, Vile Parle (E) Mumbai 400057

Q. 7 Have you invested in M/s G.L. Construction Pvt. Ltd., if yes when and how much ?

Ans. Yes We have paid Rs. 46,50,000/- by PO no. 035403 dated 13/3/2010 drawn on Axis Bank Ltd for 15000 equity shares @ 310/- including share premium of Rs. 300/- per share.

Q.10 What is your source of funds for making investment in M/s G.L. Construction Pvt.Ltd., And are you assessed to tax, if yes, where ?

Ans. Investment of Rs. 46,50,000/- was made out of funds received on 13/03/2010 from New Planet Trading Company against the sale of shares.

The company is assessed under Pan No. AACCK3597M in Mumbai ward, ITO WD 8(2)(4).

c). M/s. Prabhav Industries Ltd.

This investor company had filed reply to notice u/s.133(6) on 11/12/2017. Statement of director Shri Antony Isabu Esak was recorded on 22/11/2017 u/s 131 of the act.

It is observed that

i). Acknowledgement for filing the return for AY 2010/11 declaring loss of Rs. 7,29,208/-

While profit as per profit & loss account is Rs. 10,06,126/-

ii). Scrutiny of balance sheet reveals that company has paid up share capital of Rs.5,98,91,000/- as on 31/3/2009 & Reserve & surplus of Rs. 2,33,57,000/-.

iii) Bank statements of investor company shows payment to assessee company in which assessee company's name is also appearing.

iv). Confirmation has been filed with AO confirming the investment.

v). Investor company had filed share certificate copies dated 16/03/2013.

vi). Investor company is a Listed company on Bombay Stock Exchange.

vii). AO had issued Summons u/s 131 of the act dated 9/10/2017, copy attached on page no.235 of the paper book. Statement of Director Shri Antonv Isabu Esak was recorded u/s 131 of the act on 22/11/2017.

Relevant question & answered by Director are as under:

Q. 5 Do you know M/s G.L. Construction Pvt. LTd., ? If Yes How you know the company

Ans. Yes, Shri Hiren Shah, Financial broker informed us about G L Constructions & were looking form long term investor

Q. 6. Do you know who are directors of M/s G.L. Construction Pvt. Ltd. & where is office of M/s G.L. Construction Pvt. Ltd. and where is office of M/s. G L Constructions Pvt. Ltd.,

Ans. Yes. Shri Hiren Shah introduced the board of Directors of M/s GL Construction Pin Ltd. to the directors of our company Mr. Chirag Gada & Mr. Bhavin Desai Our directors met the board of directors of M/s GL Construction Pvt Ltd at their registered office in Vile Parle We also visited Turbhe plant of GL Construction Pvt Ltd.

Q. 7 Have you invested in M/s G.L. Construction Pvt. LTd., if yes when and how much ?

Ans. Yes We have, paid Rs. 93,00,000/- in shares of GL Construction Pvt Ltd calculated @310/- per share including share premium of Rs. 300/- per share in AY 2010/11 The details of payments are as follow.

<u>No.Of Shares</u>	<u>Date</u>	<u>Amount</u>	<u>Payment mode</u>	<u>Bank Name & Branch</u>
15000	20.3.2010	46,50,000/-	RTGS	Standard Chartered Bank
15000	20.3.2010	46,50,000/-	RTGS	Standard Chartered Bank

Q. 10 What is your source of funds for making investment is M/s G.L. Construction Pvt. ltd., At d are you assessed to tax, if yes, where ?

Ans. Amount of Rs. 46,50,000/- paid on 20/3/2010 was .given out of loan returned by Monopoly Vincom Pvt Ltd.

Rs. 46,50,000/- paid on 27/3/2010 was given out of loan returned by Sunflower Interiors Pvt Ltd. Rs.35,00,000/- on 26/3/2010 & 35,00,000/- being returned by Noori Infraprojects Pvt Ltd. on 26.3.2010

The company is assessed under Pan No, AAACE4247Q ITO Ward 4(2)(2).

d) M/s. Overseas Pvt Ltd:

This company had also filed reply to notice u/s 133(6) on 23/11/2017. Statement of Shri Praveen Kumar Jain recorded u/s 131 of the act on 16/11/2017.

In this case

- i). Acknowledgement for filling the return for AY 2010/11 declaring taxable income of Rs. 19,66,970/-.
- ii). Scrutiny of balance sheet reveals that company has paid up share capital of Rs. 1,96,37,000/- as on 31/3/2009 & Reserve & surplus of Rs. 57,57,344/-.
- iii). Bank statements of investor company shows payment to assessee company in which assessee company's name is also appearing
- iv). Confirmation has been filed with AO confirming the investment.
- v) Investor company had filed share certificate copies dated 5/04/2010.
- vi) Investor company has filed board resolution dated 1/1/2010 for investment in assessee company.
- vii). Statement of Director Shri Praveen Kumar Jain recorded u/s 131 of the act on 16/11/2017.

Relevant question & answered by Director are as under.

Q. 5 Do you know M/s G.L. Construction Pvt. Ltd., ? If Yes How you know the company Ans. Yes, G.L. Construction Pvt Ltd was introduced by a Mumbai based broker Mr. Naresh Dani who informed us that G L Constructions Pvt Ltd. are in long term funds.

Q.6. Do you know who are directors of M/s G.L. Construction Pvt. Ltd. & where is office of M/s G.L. Construction Pvt. Ltd.

Ans. Yes. The director of M/s G. L. Construction are Mr. Sunil Mathreja, , Mr. Mathreja Mr. Vishal Mathreja & Mr. Narayan Mathreja,. Their registered office is situated at 304, Gokul Arcade "B" Subhash Road, Vile Park (E) Mumbai 400057 & Plant is at Turbhe, Navi Mumbai.

Q. 7 Have you invested in M/s G.L. Construction Pvt. Ltd., if yes when and how much?

Ans. Yes, we have paid Rs. 62,00,000/- for purchase of 20,000 equity shares of Rs. 10/- at a premium of Rs.300/-per share. The details are as under.

<u>No Of shares</u>	<u>Date</u>	<u>Amount</u>	<u>Cheque No.</u>	<u>Bank Name & Branch</u>
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10000	3.2.2010	31,00,000/-	034562	Axis Bank Powai Branch
10000	5.2.2010	31,00,000/-	034561	Axis Bank Powai Branch

Q. 10 What is your source of funds for making investment in M/s G.L. Construction. Pvt. Ltd., And are you assessed to tax, if yes, where ?

Ans. Investment was made out of Company's operations (Debtors Realization) & repayment of inter corporate loans Etc.. Following are the details of source from which we had invested in the shares of G L Construction Pvt Ltd. Amount of Rs. 31,00,000/- was paid on 3.2.2010 was given out of proceeds of Rs.31,10,000/- received from Arihant Corporation being Sundry Debtors receivable.

Amount of Rs. 31,00,000/- was paid on 5.2.2010 was given out of proceeds from Sundry Debtors M/s Taj Impex Rs. 19,58,000/~ & Loan returned by Bharti Life style Pvt Ltd. Rs.22,00,000/- received on 5/2/2010.

The company is assessed under Pan No. AACCR4512K in Mumbai ward. ITO WD 4(3)(2).

*e) M/s Nakshatra **Business Pvt Ltd.***

*The investor company had filed reply to notice u/s 133(6) on 23/11/2017. Statement of **Director Shri** Pravven Kumar Jain recorded u/s 131 of the act on 16/11/2017.*

It is observed that

*i). Acknowledgement for filling the return for AY **2010/11** declaring taxable income of Rs. 9,82,810/-.*

ii). Scrutiny of balance sheet reveals that company has paid up share capital of Rs. 2,00,00,000/- as on 31/3/2009 & Reserve & surplus of Rs57,26,942/-

iii). Name of the company is changed from Hema Trading Company Pvt Ltd to Nakshatra Business Pvt. Ltd., Bank statements of investor company shows payment to assessee company in which assessee company's name is also appearing

iv). Confirmation has been filed with AO confirming the investment.

v) Investor company had filed share certificate copies dated 5/04/2010.

vi). Investor company has filed board resolution dated 2/1/2010 for investment in assessee company

vii). Statement of Director, Shri Pravven Kumar Jain recorded u/s 131 of the act on

Relevant question & answered by Director are as under.

Q.5. Do you know M/s. G.L. Construction Pvt. Ltd., ? If Yes How you know the company

Ans. Yes. GL Construction Pvt Ltd was introduced by a Mumbai based broker, Mr. Naresh Dani who was in the business of arranging investments & Inter corporate Loans & Bank Loans as well as private equity arrangement. He informed us that he knew M/s. GL Constructions P. Ltd for past 10 years and that he had arranged a Bank Loan for them, and that they have a very strong reputation in the road construction business, and they are in requirement of long term funds,

Q.6. Do you know who are directors of M/s G.L. Construction, Pvt. Ltd. & where is office of M/s.G.L. Construction Pvt. Ltd.,

Ans. Yes. The Director of M/s. GL Construction P. Ltd are Mr. Sunil Mathreja, Mr.Vivek Mathreja, Mr. Vishal Mathreja & The Chairman is Mr. Narayan Mathreja.

Their Registered Office is at 304, Gokul Archade, 'B' Subhash Road, Vile Park (E) Mumbai 400057 and their plant is at Turbhe, Navi Mumbai.

Q. 7 Have you invested in M/s G.L. Construction Pvt. Ltd., if yes when and how much?

Ans. Yes. We have invested in Equity Shares of M/s. GL Constructions. Total investment made by the company is of Rs.55,80,000/-for the purchase of 18,000 equity shares of Rs.10 at a premium of Rs. 300/- per share the details of which are as follows:

<i>No. Of Equity Shares</i>	<i>Date</i>	<i>Amount (in Rs.)</i>	<i>Chq. No.</i>	<i>Bank Name and Branch</i>
<i>13,500</i>	<i>08-03-2010</i>	<i>41,85,000/-</i>	<i>035256</i>	<i>Axis Bank, Powai Branch</i>
<i>4,500</i>	<i>10-03-2010</i>	<i>13,95,000/-</i>	<i>035317</i>	<i>Axis Bank, Powai Br.</i>

Copy of ROC certificate received on change in name from Hema Trading Company Pvt Ltd to Nakshatra Business Pvt. Ltd., share certificate bearing Certificate No.77,78 & 79, bank statements of the Axis Bank, Share Application

letter, Copy of Board Resolution, passed on 2nd January 2010, Copy of ledger account of GL Construction Pvt. Ltd. and copy of annual report containing Balance sheet, Profit and Loss Account, Directors Report and Auditors reports produced & filed here with.

Q. 8 why have you invested at a premium of Rs.300 per share in a relatively unknown company without any fundamentals or past history?

Ans. It is incorrect. All our investment decisions are made only with prior approval of Board after proper analysis, thorough study and with the mutual consent of all the directors. M/sGL Construction was construction business since last two generations & was a well reputed. As per the audited financials of FY'2008-09, book value per share was Rs.484. Provisional figures as on 31st Dec 2009 were shared with us. As per the provisional figures, book value per share was Rs. 573/-. As the company was a closely held company and untradable nature of shares, they were offered to us at Rs. 310~ per share which was at a discount of almost 35% to their book value due to closely held company and non-tradable security. Also the company had a steady growth and made a profit of above 100 lacs every year. Even they had sufficient orders in hand with them. Considering all these factors, offer price of Rs. 310/- per share looked attractive:

Q. 10 What is your source of funds for making investment in M/s G.L Construction Pvt. Ltd., And are you assessed to tax, if yes, where ?

Ans. The investments were made out of company's operations and repayment of intercorporate loans etc. Following are the details of source from which we had invested in the shares of GL constructions Pvt. Ltd.

Rs. 41,85,000 paid to GL Constructions P. Ltd was given out of proceeds received from M/s. Seven Star Gems being Sundry Debtors Receivable received on 08.03.2010.

Rs. 13,95,000 paid to GL Constructions P. Ltd was given out of proceeds received from M/s Ryan International, being Sundry Debtors Receivable received on 10.03.2010.

The company is assessed under PAN No.AABCH4279G, ITD Ward: AC8(2)-1, Mumbai.

Copy of acknowledgements for filing returns for A. Y. 2010/11 dated : 14.10.2010 is attached herewith.

4.1.4. *From above facts & observation, & after considering written submission following facts have emerged.*

- i) All respects are through banking channels and there is no cash deposit in bank accounts of investor companies
- ii). Nothing adverse or factual wrong was brought on record by the AO w.r.t. sources of funds invested in the assessee company from respective replies as well as from recorded u/s 131 of the act.
- iii) The information furnished by the investor companies such as Returned Income; share capital and reserve and surplus position as on 31/3/2009, Prior to investment in F.Y.2009/10, Each company has sufficient income to proves capacity of the creditor as under:

	Taxable Income	Capital & Reserve	Profit as P&L
M/s. Empower Industries India Ltd.,	44,72,859/-	1259 Lacs	64,24,409/-
M/s. Kush Hindusthan Entertainment Ltd.,	13,72,730/-	367 Lacs	1,31,278/-
M/s. Prabhav Industries Ltd.,(Loss)	7,29,208/-	832 Lacs	10,06,126/-
M/s. Olive Overseas Pvt. Ltd.,	19,66,970/-	253 Lacs	20,32,611/-
M/s. Nakshatra Business Pvt. Ltd.,	9,82,810/-	257 Lacs	9,81,614/-

iv). Identity of investor companies has also not in doubt as they are all filling income tax returns with identity of assessing officer & PAN numbers & each one of them have appeared before AO & also filed audited final amounts with acknowledgements for filling returns

v) One of the company M/s.Kush Hindustan Entertainment Ltd is assessed u/ s 143(3) for AY 2011/12 with ITO 8(2)(2) by order dated 24/2/2014 while another M/s Prabhav Industries Ltd. Investor company is a Listed company on Bombay Stock Exchange

vi). Shares are allotted at a premium of Rs. 300/- per share, book value per share of the assessee company as on 31.03.2009 was Rs. 484/-

The assessee further submitted that share premium is capital receipt and not taxable for which reliance is placed on Hon'ble High Court's Decision in case of Vodaphone India Services P.L,td. v/s Union of India 368 ITR 1 (Bombay) Para No. 25, CIT v/s Gagandeep Infrastructure Pvt. Ltd. 394 ITR 680 (Bombay High Court) and CIT v/s Anshika Consultants Pvt. Ltd. 93 CCH 0016 (Del HC) dated 16/4/2015.This submission of assessee appears to be correct as per judgments cited as above

vii). All investor companies are still share holders of the company even as on today.

4.1.5. The ITAT by the impugned order affirmed the findings of the CIT (Appeals).

Importantly, the ITAT also took note of an investigation report dated 17.12.2007 made available to the revenue authorities by the investigation wing of the Kolkata Income Tax Department. The report specifically looked into the allegations to determine whether the, share applicants/investors, companies were genuine. The relevant part of the said investigation report dated 17.12.2007 is extracted below:

"From the documents submitted by the above mentioned Kolkata based parties. It transpires that M/s. Bhuwania Brothers Pvt. Ltd. and M/s. Shri Mahabir Management & Services Pvt. Ltd. created the source of investment out of sale of stock-in-trade as on 31.03.2005, sale of investment, receipts from sundry debtors etc. whereas M/s. Star Pleat Vincom Pvt. Ltd. and M/s. Manush Marketing Pvt. Ltd. did so with the amount received from loan debtors outstanding as on 31.3.2005.

The companies produced share certificates, a few photocopies of which are enclosed. The Directors of the Companies stated, in their depositions that the companies still hold the shares. Photocopies of the statements are enclosed."

4.1.6. The ITAT also noted that the balance sheets of the investors showed that the share applicants were possessed of considerable means and had been existing for a long period of time prior, to the transaction in question. The ITAT reasoned as follows;

10. On an analysis of these records, we are of the view that the department was able to lay its hands on the addresses of the share applicants and where the share applicants are assessed. These companies are existing from long period. They have confirmed that they have contributed to the share capital of the assessee company. The next aspect is their creditworthiness. The assessee has filed balance sheet of all the investors. It emerges out from the record that in the case of Manush Marketing Pvt Ltd., there were sundry debtors of Rs.1187,50,000 as on 31.3.2005. According to the assessee, these were realized by the said investors and invested a sum of Rs.129,75,000 in A.R. Leasing Pvt. Ltd. Similarly, other investments are made in the other companies. In the case of Shri Mahabir Management Services, it is demonstrated that this concern had investment of Rs. 1186,00,080 as on 31.08.2005. It had loan and advances of Rs.1179,50,000 which were realized during the year and Rs.2 crores was invested in the A.R. Leasing Pvt Ltd. In the case of Star Pleat Vincom, the sundry debtors as on 31.3.2005 are of Rs. 1120,00,000. These were realized and a sum of Rs. 3.99 crores was

*invested in the A.R. Leasing. Thus, the companies have sufficient balance in their balance sheets in the shape of investment as well loan and advances. These companies are existing more than 10 years. Learned DIT has also verified this aspect find did not report any particular irregularity. The next issue is about the genuineness of transaction. The assessee has produced the details of bank account. All the share, application money have been issued through banking channel. The ADIT, Calcutta has pointed out that these companies were still holding the share i.e. on December 2007. During the course of hearing, we enquired about the present status of these companies' as well as position of Investment. The learned counsel for the assessee has placed, on record the details of shareholding pattern, as on 31.3.2023, it reveals that these companies are still keeping the shares of the respondent. Shri Mahabir Management is keeping 10,000 share and Bhuwania Brothers is holding 12,590 share in M/s Anshika Consultants Pvt. Ltd. Similarly, in Anant Overseas, Bhuwania Brothers is holding 12,000 shares, Star Pleat Vincom is holding 14,700 shares. In Flex International, Shri Mahabir Management Services is holding 37210 shares. Though these details were not before the Assessing Officer and could not be because this **in** the shareholding pattern as on 31.3.20 13, these were referred by the assessee, in response to query and only for the purpose that these share applicant companies are not only proper entities. They are in existence.”*

*4.1.7 The onus cast upon the assessee under Section 68 of the Act to satisfy the department about the **true** identity of an investor, its creditworthiness and genuineness of a transaction was explained by the Supreme Court in CIT vs. Lovely Exports (P) Ltd., 216 CTR 295.*

Whilst, the AO acted legitimately in enquiring into the matter, the inferences drawn by him, were, not justified at all in the circumstances of the case. Whether the assessee company charged a higher premium or not, should not have been, the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by this share applicants were from legitimate sources. The objective of Section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed on 31.12.2007, the investigation report which was specifically called from the concerned department in Kolkata was available but not discussed by the AO. Had he cared to do so, the identity of the investors, the genuineness of the 'transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants particulars were available with the AO in the form of balance sheets income tax returns, PAN details etc. While arriving at foe conclusion that he did, the AO did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed

from the assessee's account to the share applicant's account. As held concurrently by the CIT (Appeals) and the ITAT, these conclusions were clearly baseless and false. This Court is constrained to observe that the AO utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents. We place these observations on the record and direct a copy judgment to be furnished to the concerned income tax authorities for appropriate action towards reflecting these observations suitably in service record of the concerned AO to avoid such instances in the future.

7. For the above reasons, this Court is of the opinion that the concurrent findings of fact, as to identity of the share applicants, their creditworthiness and genuineness of the transaction, are based on sound reasoning and do not call for interference question of law arises. The appeals are dismissed.

4.1.8. This is a case which has gone through appellate proceedings upto ITAT already and Hon'ble ITAT through its order provided an opportunity to the assessing officer to call the parties, and make investigations. However the assessing officer during the assessment proceeding issued notices u/s 131 of the Income-tax Act and also recorded statements which not only proved identity, credit worthiness and genuineness of the transactions but also strengthen the claim of the appellant No adverse finding has been brought on record by the assessing officer. Taking into accounts, facts of the case, Submission of assessee & legal decisions relied by AO as well as by Ld AR, I am of the opinion that appellant has to succeed & hence the Ground No 1 of the assessee is allowed and AO is directed to delete the addition."

5. After hearing the rival parties and perusing the material on record including the impugned order of the Id CIT(A), we find that the Id. CIT(A) has allowed the appeal of the assessee by making a detailed observations as to various evidences filed during the course of set aside proceedings. The Id. CIT(A) discussed in details the issuance of notices u/s.133(6) of the Act to the shareholders and compliance by shareholders by filing necessary documents in the form of copies of PANs, bank statements, ledger extracts in their books of accounts, audited financials, ITR acknowledgements, share certificates, share application forms and Board resolutions etc., The Id. CIT(A) also discussed that the notices u/s. 131 of the Act was issued to Directors of all the shareholder companies and recorded a finding of fact that all these persons personally appeared

before the Id. AO with relevant information and supporting papers. We note that Id. CIT(A) also recorded a finding that statement of all these Directors were recorded by the Id. AO and these Directors have confirmed their shareholdings in the assessee company and also stated that even as on date they are the shareholders in the assessee company. The Id. CIT(A) discussed in detail in para 4.13 that the replies received by the Id. AO in response to notice u/s.133(6) and replies to summons issued u/s.131 of the Act investor wise/shareholder wise. The Id. CIT(A) discussed that these shareholders filed all the evidences before the Id. AO. We note that the assessee has complied with the directions of the Tribunal to produce all the parties before the Id. AO but despite that the Id. AO has made the addition on flimsy grounds. We also note that all these payments were received by account payee cheques by the assessee from the investors and duly reflected in the assessee's bank account as well as in the bank accounts of the investors. We have also examined the financial position of the shareholders and find the same to be having creditworthiness to make the investments. Lastly, we note that the shares were issued at a premium of Rs. 300/- per share whereas the book value of assessee's share as on 31.03.2009 was Rs.484/- per share which is higher than the issue price. Considering all these facts, we are of the considered opinion that the assessee has discharged onus cast upon it by the statute by filing all the evidences and even producing its parties in person before the Id. AO in consonance with tribunal directions. Similarly, these investors have been responded to the notice issued u/s.133(6) of the Act. Therefore, under these circumstances, we do not find any infirmity in the order of first appellate authority. The case of the assessee also squared covered by the decisions relied upon by the Id AR in the case of Vodaphone India Services P. Ltd., vs. Union of India reported in 368 ITR 1(Bom) and CIT vs. Gagandeep Infrastructure Pvt. Ltd., reported

in 394 ITR 680 (Bom) and CIT vs. Anshika Consultants Pvt. Ltd., reported in 93 CCH 0016(Del HC). In view of these facts and judiciary pronouncements, we are inclined to uphold the appeal of the CIT(A) by dismissing the appeal.

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

Order pronounced on 26/10/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai; Dated 26/10/2021
KARUNA, *sr.ps*

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai