

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : G : NEW DELHI  
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1198/Del/2017  
Assessment Year: 2012-13

ITO,  
Ward 22(4),  
New Delhi.

Vs Satkar Infrastructure Pvt. Ltd.,  
. Main Road, Bijwasan Road,  
New Delhi.

PAN : AAWCS5815E

(Appellant)

(Respondent)

Assessee by	:	Shri Sudesh Garg, Advocate
Revenue by	:	Shri H.K. Chaudhary, CIT, DR
Date of Hearing	:	09.09.2021
Date of Pronouncement	:	25.11.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 2<sup>nd</sup> December, 2016 of the CIT(A)-14, New Delhi, relating to Assessment Year 2012-13.

2. Facts of the case, in brief, are that the assessee is a company incorporated on 04.11.2011 and this is the first year. The company is registered with the main object of activities in the area of builder, land developer, land acquisition and

consolidation for itself or for other organizations, farm houses, colonization and construction activities in all areas of construction and erections. However, for the impugned assessment year, the assessee has not started its business operations and no operational income has been declared. It filed its return of income on 01.09.2013 declaring the loss of Rs.1,31,812/-. During the course of assessment proceedings, the AO noted that the assessee company has received large share premium of Rs.9,13,50,000/- on 1015000 shares @ Rs.90/- each and equity share capital of Rs.1,02,50,000/- on 10,25,000 shares @ Rs.10/- each together totaling to Rs.10,16,00,000/-. From the various details filed by the assessee, the AO noted that the share premium/share application money have been shown to have been received from the following 19 companies 12 of which are located at Kolkata and 7 are located at Delhi and the details of which are as under:-

	Name & Address of Subscriber	PAN	No. of shares purchase			Total amount of investment (Rs.)
			No	Cost	Premiu m	
1	Dhanvirdhi Sales Pvt. Ltd.,10/B, B.B. Ganguly Street,Kolkata. - 700012.	AADCD7313F	50,000	10	90	50,00000/-
2	Swabhumi Agency Pvt. Ltd.,23/1, M.D. Road, Kolkata.West Bengal - 700007.	AANCS2028N	50,000	10	90	50,00000/-
3	Swarnim Distributor Pvt. Ltd.,23, M.D. Road, Kolkata.West Bengal - 700007.	AANCS2024A	50,000	10	90	50,00000/-
4	Cindrella Commedeal Pvt. Ltd.,628, N.S. Road, 3 <sup>rd</sup> Floor, Room No. 319, Kolkata, West Bengal - 700001.	AADCC6049H	50,000	10	90	50,00000/-
5	Sungrow Agencies Pvt. Ltd.,11, Brabourne Road, 5 <sup>th</sup> Floor, Kolkata, West Bengal - 700001.	AAPCS3850A	50,000	10	90	50,00000/-
6	Good Field Commercial Pvt. Ltd.,132, Cotton Street, 2 <sup>nd</sup> Floor, Kolkata, West Bengal - 700007.	AAECG1309D	15,000	10	90	15,00000/-
7	Aakruti Infrarealty Pvt. Ltd.,10/B	AAKCA0888R	1,000	10	90	1,0000000/-

	B.B. Ganguly Street, Kolkata, West Bengal – 700012.		00			
8	Almighty Mercantile Pvt. Ltd.,11, Brabourne Road, 5 <sup>th</sup> Floor, Kolkata, West Bengal – 700001.	AAKCA0509K	1,000 00	10	90	1,0000000/-
9	Solty Financial Consultant Pvt. Ltd., 132, Cotton street, 2 <sup>nd</sup> Floor, Room No. 49 Kolkata, West Bengal – 700007.	AAPCS3849B	50,00 0.	10	90	50,00000/-
10	Function Distributor Pvt. Ltd.,3 Mangoe Lane, 2 <sup>nd</sup> Floor,Kolkata, West Bengal – 700012.	AABCF6806D	50,00 0.	10	90	50,00000/-
11	Helpful Vintrade Pvt. Ltd.,3A, Mangoe Lane, 2 <sup>nd</sup> Floor,Kolkata, West Bengal – 700001.	AACCH5925N	50,00 0.	10	90	50,00000/-
12	Justify Vanijya Pvt. Ltd.,132, Cotton Street, 2 <sup>nd</sup> Floor, Room No. 49, Kolkata, West Bengal – 700007.	AACCJ5302K	85,00 0	10	90	85,00000/-

S.No	Name & Address of Subscriber	PAN	No. of shares purchase			Total amount of investment (Rs.)
			No	Cost	Premium	
1	Ram Rahim Trading Company Pvt. Ltd., 6  304, M.J. Shopping Centre, 3 Veer Sarvarkar, New Delhi 110092	AACCR8583J	57,500.	10	90	3750020/-
2	Trendz Informatics Pvt. Ltd.,  A-22, Ground Floor,  Guru Nanak Pura, Laxmi Nagar  Delhi-110092	AAACT5615M	20,000.	10	90	20,00000/-
3	Kabir Enterprises Pvt. Ltd.,	AADCK1184F	35,000.	10	90	35,00000/-

	-85 1 <sup>ST</sup> Floor, Office No-2, St No-15, Madhu Vihar, Delhi 110092					
4	Direct Trading Company Pvt. Ltd., A-22, Ground Floor, Gali No-3, Guru Nanak Pura, Laxmi Nagar Delhi-110092	AADCD9167F	57,500.	10	90	57,50000/-
5	Domain Enterprises Pvt. Ltd. A-22, Ground Floor, Gali No-3, Guru Nanak Pura, Laxmi Nagar Delhi-110092	AAPCS3850A	25,000.	10	90	25,00000/-
6	Direct Mercantile Company Pvt Ltd 119, M.J. Shopping Centre, 3 Veer Sarvarkar, New Delhi 110092	AADCD9168L	55,000	10	90	55,00000/-
7	Legency Mercantile Pvt Ltd 119, M.J. Shopping Centre, Veer Sarvarkar, New Delhi 110092	AACCL0594K	65,000	10	90	65,00000/-

2.1 To examine the identity, genuineness and credit worthiness of the abovementioned companies, the AO issued notice u/s 133(6) to all the above 19 companies on 19.11.2014. However, there was no compliance to the said notices issued u/s 133(6) for which the AO held that the genuineness of the transaction could not be verified. He, therefore, again, directed the assessee to produce the parties for his examination on oath. However, no reply was received. The AO, thereafter, issued summons u/s 131(1) to M/s Direct Mercantile Company Pvt. Ltd & Legency Mercantile Pvt. Ltd calling for their attendance in this regard on 09.01.2015 along with the following :-

1. Personal attendance
2. Books of a/cs for FY 2011-12, 2012-13.
3. Register of shareholders for FY 2011-12, 2012-13 & 2013-14
4. Details of nature of business activity.
5. Details of change in investment from FY 2011-12 to 2013-14.

2.2 Similarly, he also issued summons u/s 131 to the Delhi based companies. However, there was also no compliance. The AO, thereafter, conducted enquiry by issue of Commission u/s 131(1)(d) of the Income tax Act, 1961, through the Addl. Director of Income tax (Inv), Unit-II & III, Kolkata to examine identity and creditworthiness of the companies and genuineness of the transactions made by the assessee company with the above mentioned twelve different companies based in Kolkata. The ADI (Inv.), Kolkata conducted the enquiries and filed a detailed report where it was clearly stated that notices u/s 131 could not be served on the above twelve companies due to non-existence of these companies in the addresses provided. The AO, thereafter, issued another letter to the assessee confronting the assessee regarding the report of the Investigation Wing at Kolkata. The assessee company, thereafter, filed its final reply on 12<sup>th</sup> March, 2015 which the AO has reproduced and which reads as under:-

*"this is with reference above cited and the final notice dated 4<sup>th</sup> March 2015, where in the show cause has been given U/s 68, for the inclusion of share capital money received along with share premium amounting to Rs. -10.15 crore in the income of the respective year as this was reported by the investigating Officer that the notice could not be served due to non-existence of the companies in the address provided. Also in the respect of companies having officer in Delhi, the directors of the said companies could not be produced.*

*We would like to refer our earlier submissions in regard to the transactions relating to receipt of share capital and share premium. We have already filed the following documents evidencing the existence and genuineness of the Companies Investors:*

- 1 Copies of Incorporation Certificate.*
- 2 Copies of MOA & AOA.*
- 3 Permanent Account Number (PAN)*
- 4 Copies of Income Tax Return filled along with the financial statements of respective years.*
- 5 Copies of board resolution duly passed at the meetings of the companies with the regards to Investments in Satkar Infrastructure Pvt. Ltd.*
- 6 Copies of bank statements as a support of investments made by the companies and also evidencing that all the transactions had duly made through banking channel only.*
- 7 Copy of board resolution for the issuance of shares to the respective investors duly passed in the meeting of directors of Satkar Infrastructure along with the return of allotment filled with the ROC.*
- 8 Copy of the Share Register stating the investment by such companies.*

*Also, we are submitting the latest audited balance, annual return, master data of companies, details of directors, and the copies of change in registered office in support of the genuineness. Please refer to the attachment from page no A1 to Q137 for each company. These information is also available on the MCA website and can independently verified along with the PAN already been provided.*

*There are four companies where we found that registered office has been changed.. We would like to intimate here that the documents and the details provided by us are sufficient for evidence the genuineness of the transactions and existence of the investor.*

*Further, where as the question of non confirmation of address of the corporate investors is concerned, we would like to submit that we have provided all the relevant information and documents as available with us in establishing the existence of the corporate investor and in such a case where these corporate investors could not be found by the investigating ITO, it could not be considered as lake of genuineness and attract section 68 of Income Tax Act, 1961.*

*We would like to refer the decision of Hon'ble High Court, Delhi (Commissioner of Income Tax – IV. Vs M/s Dwarkadish Capital Pvt. Ltd.) The said case had been decided by ITAT No. (s) 4799/DEL/04 and 4800/DEL/04, where in the ITAT after accepting the relevant documents and details (as mentioned in our submissions also) in genuineness of the transaction, after being accepting by*

*CIT(A) and reached this conclusion that ITA had relied upon the Division Leasing & Fianacing Ltd. (2008) 299 ITR 268 (Delhi).*

*Further, in the Special Leave Petition filed against the said division bench judgment was dismissed by Supreme Court of India by way of speaking order in Commissioner of Income Tax vs. Lovely Exports Pvt. Ltd. 216 CTR 195 (SC). The Supreme Court In Lovely Exports Pvt. Ltd. (Supra) has as under: .....*

*Reliance has also been placed on judgment of the Supreme Court of India in Lovely Exports Pvt Ltd and has requested that all the relevant details documents and explanation has already been provided with regard to the investment by way of share capital and share premium.”*

2.3 However, the AO was not satisfied with the submissions made by the assessee. Relying on various decisions, the AO made addition of Rs.10,15,00,000/- to the total income of the assessee u/s 68 of the IT Act. The AO, accordingly, determined the total income of the assessee at Rs.10,13,68,190/-.

3. Before the CIT(A), it was submitted that the finding given by the AO and report of the ITO (Inv.) Kolkata are contradictory to each other. The AO himself has mentioned that the notices u/s 133(6) of the I.T. Act has been served but no compliance has been received. If the notices have been served by the postal authority how can it be reported by the ITO (Inv.) Kolkata that these companies are not in existence at the addresses provided. The report of the ITO (Inv) is therefore not correct and cannot be relied upon. Moreover there is another very important reason to say that these companies are in existence at the address provided i.e. scrutiny assessments have been completed u/s 143(3) of the I.T. Act, for multiple number of assessment years. Details of such assessment are as under:-

Sr. No.	Name of the company	Scrutiny Assessment for A.Y.		
		2012-13	2013-14	2014-15
1	Swabhumi Agency Pvt. Ltd.	Yes	Yes	
2	Swarnim Distributor Pvt. Ltd.	Yes	Yes	
3	Cindrella Commodeal Pvt. Ltd.	Yes		
4	Good Field Pvt. Ltd.	Yes	Yes	
5	Solty Financial Consultant Pvt. Ltd.	Yes	Yes	
6	Function Distributor Pvt. Ltd.	Yes	Yes	
7	Helpful Vintrade Pvt. Ltd.	Yes	Yes	Yes
8	Justify Vanija Pvt. Ltd.	Yes	Yes	

3.1 Copies of scrutiny assessment orders in the aforesaid cases were filed before Id.CIT(A). It was accordingly argued that it cannot be said that the subscriber companies do not exist at the addresses provided. The report of the ITO (Inv.) is therefore not correct and cannot be relied upon.

3.2 So far as the objection of the AO that the subscribers were not produced in spite of opportunities provided to the assessee, it was submitted that the assessee has submitted sufficient evidence to prove the ingredients of section 68 of the I.T. Act, i.e. identity and creditworthiness of the subscriber and genuineness of transaction. Relying on various decisions including the decision of the Honøble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd. and Dwarkadhish Capital Pvt. Ltd. (2011) 330 ITR 298, it was submitted that no disallowance u/s 68 of the Act can be made merely for non-attendance of the subscribers companies when all the evidences have been filed by the assessee. It was submitted that the subscribers to the share capital in all cases are companies

incorporated by a due and rigorous process of law as laid down in the Companies Act, 1956 duly administered by the quasi-legal/administrative authorities, as laid out in the Companies Act, 1956 of which the jurisdictional Registrar of Companies acts as the fulcrum. The entire functioning of companies incorporated under the Companies Act, are duly administered and regulated by the Companies Act, 1956 and the authorities created thereunder involving statutory/regulatory compliances such as regular and periodical filing of statutory documents as prescribed coupled with other powers such as investigation and inspection of the affairs of the Company. Therefore, there is no reason to say that identity is not proved once complete copy of final accounts is filed showing all proofs that the company is registered with Registrar of Companies. Further, the Department has allotted PAN, after following due procedure for allotment of PAN. It was submitted that all the companies have filed the confirmations duly signed by their authorized signatories and bank accounts were filed evidencing the payments made through banking channel. So far as the non-attendance of the subscribers personally, it was submitted that all the subscribers who have subscribed to the share capital are in the nature of passive investors with a view to profit from the long-term appreciation of the shares in the company and over whom the assessee company has only the power of moral persuasion but no statutory or compulsive control. Relying on various decisions, it was argued that the addition made by the AO is not sustainable.

3.3 Based on the arguments advanced by the assessee, the Id.CIT(A) deleted the addition by observing as under:-

I have considered the submissions of the appellant as well as the findings of the Ld. AO and judicial pronouncements of higher appellate authorities and the Honøble Courts relied upon by the Ld. AO and Ld. AR & I incline to agree with the contention of the Ld. AR that the Ld. AO is not justified in making the addition of Rs.10,15,00,000/- u/s 68 of the Act in view of the following facts and circumstances of the appellant's case:-

1. As per the assessment order the appellant company had provided the required documents to the Ld. AO to establish the identity of the subscriber, confirmation, creditworthiness of the subscriber by filing copy of ITR, final accounts duly certified by the auditor, the copy of bank statement of the subscriber company.

2. The Ld. AR has submitted that all the Investing Companies were duly incorporated by due process of law under the Companies Act, 1956 and all the investing companies continue to exist on the records of the ROC as well as Income Tax department. The notices were served in most of the cases u/s 133(6). None of the investor has denied or contradicted the claim of the appellant. Most of the investors independently verified the transaction in response to notices u/s 133(6). The appellant had no legal rights over the investors to enforce their attendance before the AO. On the contrary the AO was legally competent to compel and ensure attendance of the investing companies/witnesses u/s 131 with ample authority to even coerce or penalise them if they failed to appear. Section 68 has no requirement of physical production of the person who has made investments to prove the bonafides of cash credits to support nature and source of the cash credits. In the case of juridical persons like companies the requirement of physical production is even less required. There is no allegation Against the appellant that some entry operator was behind the investing companies who provided entries of share capital in lieu of cash having been provided to them. There is no cash deposit in the bank accounts of the investing companies before the investments were made by them in the appellant company. The AO has brought no evidence on record except his suspicion about the genuineness and creditworthiness of the investing shareholders. It was incumbent upon the AO to bring evidences on record to dispel the claim of the appellant about genuineness of cash credits u/s 68 of the Act. The matter pertains to financial year 2011-12. There was no restriction on issue of shares on premium until financial year 2011-12. Restrictions u/s 56 was placed on issue of shares on premium from AY 12-13 onwards. Suspicion of the AO on account of issue of shares on premium is not justifiable. The AOs of investing companies have made assessments u/s 143(3) in several of cases and nothing wrong has been found by them

against those investing companies. This supports the claim of the appellant and leaves no ground to support the suspicion of the AO. When the assessments u/s 143(3) have been completed and everything has been found to be in order there can be no justification for suspicion on existence of the investing companies on the basis of inspector's reports etc

3. The appellant has relied on a plethora of cases in support of his contention that looking at the facts of the matter additions u/s 68 are not called for. Section 68 is one of the most litigated sections in the IT Act. In the case of *Lovely Exports Pvt Ltd [(2008) 299 ITR 268 (Delhi)]* Hon'ble jurisdictional High Court laid down very clear and precise guidelines in such matters. As per these the taxpayer cannot be penalised if he has discharged his onus. The Hon'ble Court has held that "the Department would not be justified in drawing an adverse inference only because the creditor/ subscriber fails or neglects to respond to its notices" Hon'ble Court further held that "a delicate balance must be maintained while walking the tightrope of sections 68 and 69 of the Income -Tax Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription, he is empowered, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company"

Hon'ble Supreme Court endorsed the aforesaid proposition of law by rejecting the SLP stating that "We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the Assessee Company From alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

Further, Hon'ble jurisdictional High Court in the case of *Gangeshwari Metal P Ltd (2013) 30 Taxmann.com 328* where in the Hon'ble Court has held that "There are two types of cases, 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.

"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 Act. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law.ö

This proposition of law was followed in several cases including Goel Sons Estates (P)Ltd ITA number 212/2102.

In the case of Shiv Dhuti Pearls & Investments Ltd cited vide (2015) 64 Taxmann.com 329 the Honøble jurisdictional High Court has reiterated that the taxpayer is liable to disclose only source(s) from where has received credit and it is not burden of the assessee to prove creditworthiness of his source(s) In another case relied upon by the appellant ( Five Vision Promoters P Ltd (2016) 65 Taxmann.com 71) Honøble jurisdictional High Court has held that merely because addresses of the investing companies are common or same that should not become a cause to suspect the genuineness when the taxpayer had discharged his primary onus. In yet another case Honøble jurisdictional HC (SVP Builders Pvt Ltd (2106) 67 Taxmann.com 5)has held when the AO had not undertaken any particular investigation into the affairs of the investing companies apart from issuance of notices u/s 131 and failed to substantiate his allegation that the investors were not genuine or creditworthy is not sufficient to make additions u/s 68 of the Act.

The brief of the above discussion is as under:-

- > The entire amount had been received by the appellant company through normal banking channels by account payee cheques/demand drafts.
- > Suspicion of the AO on account of issue of shares on premium is not justifiable as the matter pertains to financial year 2011-12 as there was no restriction on issue of shares on premium until financial year 2011-12. Restrictions u/s 56 was placed on issue of shares on premium from AY 12-13 onwards hence not relevant for the year under consideration.
- > A mere perusal of the said documents would reveal that the onus on the Appellant Company with regard to the duties enjoined upon it regarding receipt of cash credit have been fulfilled and discharged and it cannot be said that the Appellant Company had failed to establish the creditworthiness of the cash creditors and genuineness of transactions. As such no adverse inference is warranted nor justified or sustainable on the facts of the case;
- > The AR of the appellant has submitted that the AOs of investing companies have made assessments u/s 143(3) of the Act in majority of investing companies and nothing wrong has been found by them against those investing companies. When the assessments u/s 143(3) have been

completed and everything has been found to be in order there can be no justification for suspicion on existence of the investing companies on the basis of inspector's reports etc

> The appellant company has allotted shares for the share capital and share application money received by it.

In this regard, I have also taken into consideration the jurisdictional Delhi High Court rulings which lays down the parameters for verification of share application money which has been further confirmed by the Apex court.

In respect of the share application money the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC) has held as under:-

“Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.”

Keeping into consideration the entirety of the facts and circumstances of the appellant's case and respectfully following the judicial pronouncements supra relied on by the Ld. AR I am of the opinion that the Ld. AO is not justified in making the addition u/s 68 of the Act amounting to Rs. 10,15,00,000/- on account of share capital and share premium money received by the appellant company and the same deserves to be deleted. I order accordingly.”

4. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

1. "On the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in deleting the addition of Rs. 10,15,00,000/- made by the AO on account of unexplained share premium and share capital by treating it as unexplained credit in the books of the assessee within the meaning of Section 68 of the Income Tax Act. 1961."

2. "On the facts and in the circumstances of the case and in law. The Ld. CIT(A) erred in holding that the assessee has established the identity, credit worthiness and genuineness of the shareholders disregarding the fact that no such companies were found at the addresses given. Assessee also failed to produce the directors of Delhi based investor companies"

3. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in placing reliance on the decision of Hon'ble Apex court in the case of m/s Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC) disregarding the fact that the facts of the assessee's case are completely different from the facts of the case before the Hon'ble Apex Court."

4. "The appellant craves leave to add, Alter or amend any of the ground(s) of appeal before or during the course of hearing of the appeal,"

5. The Id. DR strongly challenged the order of the CIT(A) in deleting the addition made by the AO. He submitted that the AO, after thorough analysis of the facts of the case had given a finding that the Kolkata based companies are non-existent and the assessee failed to prove the three ingredients of provisions of section 68 of the Act, i.e., identity and credit worthiness of the investor companies and the genuineness of the transaction. He submitted that the Id.CIT(A), without properly appreciating the facts, has deleted the addition which is not justified under the facts and circumstances of the case.

6. The Id. Counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). He submitted that the basic reason for which the AO made the addition u/s 68 is that the shareholders were not found at their addresses and the assessee could not produce the directors of the investor companies. Referring to the following decisions, the Id. Counsel submitted that when identity, credit worthiness and genuineness of the transaction is not in doubt, then addition cannot be made just because the assessee could not produce the directors of the subscriber companies or when the share applicants were not found at their addresses:-

1. Hi-Tech Residency (P) Ltd. [2018] 96 taxmann.com 403 (SC)
2. Hi-Tech Residency (P) Ltd. [2018] 96 taxmann.com 402 (Delhi)
3. Softline Creations (P) Ltd. 2016-TIOL-2130-HC-DEL-IT
4. Victor Electrodes Ltd. 2010-TIOL-988-HC-DEL-IT
5. Gangeshwari Metal (P) Ltd. [2013] 30 taxmann.com 328 (Delhi)
6. CIT V. Goel Sons Golden Estate (P) Ltd ITA No. 212/2012
7. Orbital Communication (P) Ltd. [2010] 327ITR 560 (Delhi)
8. Dwarkadhish Investment (P) Ltd. [2011] 330 ITR 298 (Delhi)
9. Globus Infrastructures (P) Ltd. 2014-TIOL-805-ITAT-DEL
10. ITO vs. Trend Infra Developers (P) Ltd. 2018-TIOL-2189-ITAT-KOL
11. Fizaan Commotrade (P) Ltd. 2021-TIOL-1457-ITAT-KOL
12. Swiftsol (I) (P) Ltd. [2018] 95 taxmann.com 286 (Nagpur-Trib.)

6.1 Referring to the following decisions, he submitted that the Revenue cannot allege that investors are bogus when assessments u/s 143(3) of the Act of the share subscriber companies were completed at the same time by the Income Tax Department:-

1. Ninestar Merchants (P) Ltd. 2021-TIOL-406-ITAT-KOL
2. Sanmin Trading & Holding (P) Ltd. ITA No. 2020/Kol/2019 dated 13.11.20
3. Brahmaputra Finlease (P) Ltd. vs. DCIT 2020-TIOL-359-ITAT-DEL

6.2 Referring to the following decisions, the ld. Counsel for the assessee submitted that once genuineness, creditworthiness and identity of investors are

established, no addition can be made on account of unexplained share capital/premium:-

1. ACIT vs. Supreme Placement Services (P) Ltd. 2021-TIOL-893-ITAT-MUM
2. Flourish Builders & Developers vs. DCIT [2019] 103 taxmann.com 72 (Delhi- Trib.)
3. Renu Proptech (P) Ltd. vs. ACIT [2021] 128 taxmann.com 242 (Delhi-Trib.)
4. ITO vs. Commitment Financial Services (P) Ltd. 2020-TIOL-218-ITAT-DEL
5. ITO vs. Saktideep Suppliers (P) Ltd. 2019-TIOL-47-ITAT-KOL
6. Metro Woven Sacks (P) Ltd. vs. DCIT 2020-TIOL-386-ITAT-MUM
7. Shree Silica Product (P) Ltd. vs. ITO 2020-TIOL-362-ITAT-JAIPUR
8. Stellar Investment Ltd. [1991] 192ITR 287 (Delhi)
9. Lovely Exports (P) Ltd. [2008] 299 ITR 268 (Delhi)
10. Lovely Exports (P) Ltd. [2008] 216 CTR195 (SC)
11. A-One Housing Complex Ltd. [2008] 299 ITR (AT) 327 (Delhi)
12. CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi)
13. CIT vs. M/s Vacmet Packaging (India) (P) Ltd. [2014] 45 taxmann.com 204 (Allahabad)
14. CIT vs. M/s Vacmet Packaging (India) (P) Ltd. [2014] 45 taxmann.com 204 (Allahabad)
15. CIT v. Apex Therm Packaging (P) Ltd. [2014] 42 taxmann.com 473 (Gujarat)
16. CIT v. Morani Automotives (P) Ltd. [2014] 45 taxmann.com 473 (Rajasthan)

17. ACIT v. Bahubali Dyes Ltd. 2015] 55 taxmann.com 357 (Delhi - Trib.)
18. CIT v. Shiv Dhooti Pearls & Investment Ltd. [2015] 64 taxmann.com 329 (Delhi)
19. CIT v. Five Vision Promoters (P) Ltd. [2016] 65 taxmann.com 71 (Delhi)
20. CIT v. SVP Builders (India) Ltd. [2016] 67 taxmann.com 5 (Delhi)
21. CIT v. Anshika Consultants (P) Ltd. [2015] 62 taxmann.com 192 (Delhi)
22. CIT v. Rama Krishna Jewellers [2014] 52 taxmann.com 23 (Delhi)
23. ITO v. Neelkanth Finbuild Ltd. [2015] 61taxmann.com 132 (Delhi - Trib.)
24. Gulshan Verma v. DCIT, [2015] 61taxmann.com 178 (Chandigarh - Trib.)
25. ACIT vs. Real Time Marketing (P) Ltd [(2008) 306 ITR 35 (Del)]
26. CIT vs. Value Capital Services (P) Ltd [(2008) 307 ITR 334 (Delhi)]
27. CIT v. Winstral Petrochemicals (P) Ltd [(2011) 330 ITR 603 (Delhi)]
28. CIT v. Gangour Investment Ltd [(2011) 335 ITR 359 (Delhi)]
29. CIT vs Kamdhenu Steel & Alloys Limited and Others (in ITA No. 978/2009 vide order dated 23, December, 2011)
30. Pr. CIT vs. Softline Creations (P) Ltd. 2016-TIOL-2130-HC-DEL-IT
31. Pr. CIT vs. ISF Securities (P) Ltd. 2016-TIOL-2038-HC-DEL-IT
32. ACIT vs. M/s Ottoman Steel Tubes (P) Ltd. ITA No.3810/Del/2011 ITAT Bench-E, Delhi
33. DCIT Vs. Pali Fabrics (P) Ltd. [2019] 110 taxmann.com 310 (Mumbai)
34. DCIT vs. Aero Exports Trade (P) Ltd. [2019] 111 taxmann.com 51 (Mumbai- Trib.)
35. ITO vs. Axisline Investment Consultants (P) Ltd. [2019] 108 taxmann.com 276 (Kolkata-Trib.)

6.3 The Id. Counsel for the assessee, referring to paper book pages 35-68, drew the attention of the Bench to the orders passed u/s 143(3) of the IT act for AYs 2012-13 and 2013-14 in case of the investor companies. Referring to pages 69-85 of the paper book, he drew the attention of the Bench to the copy of investor companies' master data downloaded from MCA website.

6.4 Referring to the decision of the Honøble Delhi High Court in the case of PCIT vs. Hi-Tech Residency (P) Ltd., he submitted that the Honøble High Court in the said decision has held that where the assessee has discharged its onus of establishing identity, genuineness and credit worthiness of both investors to whom shares were allotted by the assessee as well as lenders from whom unsecured loans were taken, no addition u/s 68 can be made. In that case, section 68 addition was made in the hands of the assessee since the assessee was unable to produce any of the directors, shareholders or principal officers of companies to whom shares were allotted and lenders from whom unsecured loans were taken. The Tribunal considered the said issue in detail and deleted the said addition holding that the assessee has discharged its onus of establishing identity, genuineness and credit worthiness of both the investors as well as lenders. On further appeal by the Tribunal, the Honøble High Court dismissed the appeal filed by the Revenue. The Revenue filed SLP before the Honøble Supreme Court and the Honøble Supreme Court dismissed the SLP filed by the Revenue as reiterated in PCIT vs. Hi-Tech Residency (P) Ltd. (2018) 96 taxmann.com 403 (SC).

6.5 He accordingly submitted that since the order of the CIT(A) is in accordance with the law and all the investor companies are assessed u/s 143(3) in the very same assessment year and the concerned AOs have verified their investments while calculating the disallowance u/s 14A on the basis of 0.5% of the average investments and this being the first year of the assessee company, no addition u/s 68 of the Act could have been made.

7. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.10,15,00,000/- u/s 68 of the IT Act on the ground that the assessee company has received share premium of Rs.90/- each at face value of Rs.10/- on 10,15,000/- shares from 19 companies and the shareholders were not found at their respective addresses and the assessee could not produce the directors of the investor companies. We find, the Id.CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the CIT(A) on this issue. A perusal of the paper book filed on behalf of the assessee shows that these investor companies are assessed u/s 143(3) by the concerned AOs almost at the same time when the Investigation Wing had submitted its report to the AO regarding their non-existence. The AO, in the case of Swabhumi Agency Pvt. Ltd., passed the order u/s 143(3) on 20<sup>th</sup> March, 2015,

copy of which is placed at pages 35 and 36 of the paper book. Similarly, for AY 2013-14, the AO passed the order u/s 143(3) in the case of Swabhumi Agency Pvt. Ltd. on 11.03.2016 copy of which is placed at pages 37 and 38 of the paper book. In the AY 2013-14, the AO, while making disallowance of deduction u/s 14A has also gone through the average investment of this company at Rs.2,84,85,000/-. Similarly, for Swarnim Distributor Pvt. Ltd., the order for AY 2013-14 u/s 143(3) was passed on 20<sup>th</sup> March, 2015 and for 2013-14 the order was passed on 11<sup>th</sup> March, 2016, copies of which are placed at pages 39 to 42 of the paper book. In the AY 2013-14, the AO has considered the average investment at Rs.4,94,50,000/- while computing the disallowance of 0.5% of average investment at Rs.2,58,213/- u/s 14A. We find, in the case of Cindrella Commodeal Pvt. Ltd., the AO has passed order u/s 143(3) on 24<sup>th</sup> March, 2015 for AY 2012-13 wherein he has considered the average investment at Rs.5,18,06,500/- for computing the disallowance u/s 14A. In the case of M/s Good Field Commercial Pvt. Ltd., the order for AY 2012-13 has been passed u/s 143(3) on 25<sup>th</sup> March, 2015 and on 29.01.2016 the order has been passed u/s 143(3) for AY 2013-14, copies of which are placed at pages 45-48 of the paper book. The AO has considered the average value of investment at Rs.16,71,60,000/- for AY 2012-13 and Rs.13,37,20,000/- for AY 2013-14 for computation of disallowance u/s 14A. Similarly, in the case of Solty Financial Consultant Pvt. Ltd., the order u/s 143(3) for AY 2012-13 was passed on 20<sup>th</sup> March, 2015 and for AY 2013-14 the order was passed u/s 143(3) on 11<sup>th</sup> March,

2016 copies of which are placed at pages 49-53 of the paper book. In the AY 2013-14, the AO has considered the average investment at Rs.3,42,06,253/-. Similarly, in the case of M/s Functions Distributors Pvt. Ltd., the AO passed the order u/s 143(3) on 25<sup>th</sup> March, 2015 and for AY 2013-14, the order u/s 143(3) was passed on 29<sup>th</sup> January, 2016, copies of which are placed at pages 54 to 57 of the paper book. In this case also the AO has considered the average investment at Rs.12,23,75,000/- while computing the disallowance u/s 14A for AY 2013-14. Similarly, we find, the AO passed the order u/s 143(3) on 26<sup>th</sup> March, 2015 for AY 2012-13 and on 29<sup>th</sup> January, 2016 for AY 2013-14 in the case of M/s Helpful Vintrade Pvt. Ltd., copies of which are placed at pages 58 to 61 of the paper book. In this case also the AO has considered the average investment at Rs.13,21,25,000/- for calculating the disallowance u/s 14A of the Act. We find, the assessee has filed the order u/s 143(3) in the case of M/s Helpful Vintrade Pvt. Ltd. for AY 2014-15 passed on 24<sup>th</sup> August, 2016, copy of which is placed at pages 62 and 63 of the paper book wherein the AO has considered the average investment at Rs.12,71,55,000/- while completing the disallowance u/s 14A. Similarly, in the case of M/s Justify Vanijya Pvt. Ltd., the AO has passed the order u/s 143(3) on 24<sup>th</sup> March, 2015 for AY 2012-13 and on 29<sup>th</sup> February, 2016 for AY 2013-14 copies of which are placed at pages 64-68 of the paper book. Here also the AO while computing the disallowance u/s 14A has considered the average investment at Rs.15,16,50,000/- for the AY 2012-13 and Rs.13,05,50,000/- for AY 2013-14. We further find from the various details

furnished by the assessee in the paper book that it has filed the master data of all the investor companies as downloaded from the MCA website, copies of which are placed at pages 69-84 of the paper book. Therefore, we find merit in the argument of the Id. Counsel that the Revenue cannot allege that the investor companies are bogus when the assessments u/s 143(3) of the Act of the subscriber companies were completed by the Income-tax Department during the same period.

8. We find, the entire amount had been received by the assessee company through normal banking channel by account payee cheques or demand drafts, majority of the investment companies are assessed u/s 143(3) of the Act and nothing was brought on record by the Revenue that either these orders were subject to reopening u/s 147 or set aside u/s 263 of the IT act. It is also to be noted that this is the first year of incorporation of the company and, therefore, it cannot be said that the assessee company has brought in its own unaccounted funds through these investor companies as bogus share capital or share premium. Further, it has been held in various decisions relied on by Id. Counsel that when identity, credit worthiness and genuineness of the transaction is not in doubt, then, addition cannot be made just because the assessee could not produce the directors of the subscriber companies or when the share applicants were not found at their addresses. It has also been held in various decisions that once genuineness, credit worthiness and identity of investors are established and whose assessments were completed u/s 143(3) at almost the same time, then, no

addition can be made on account of unexplained share capital/premium. In this view of the matter and in view of the detailed reasoning given by the Id.CIT(A) while deleting the addition, we do not find any infirmity in his order. Accordingly, we uphold the order of Id.CIT(A) and the grounds raised by the Revenue are dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 25.11.2021.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 25<sup>th</sup> November, 2021.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi