

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.6956/Del/2018
Assessment Year: 2015-16

ACIT,
Central Circle-15,
New Delhi.

Vs Hal Offshore Ltd.,
25, Bazar Lane,
Bengali Market,
New Delhi.

(Appellant)

(Respondent)

Assessee by : Shri Gautam Jain, Advocate &
Shri Lalit Mohan, CA
Revenue by : Ms Paramita M. Biswas, CIT, DR
Date of Hearing : 16.09.2021
Date of Pronouncement : 14.12.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 2nd August, 2018 of the CIT(A)-26, New Delhi, relating to assessment year 2015-16.

2. Facts of the case, in brief, are that the assessee is one of the group companies of MMG Group and has business interest in several segments like chartering and leasing of vessels to ONGC and shipping, etc. In this case, a search and seizure operation u/s 132 of the IT act, 1961 was carried out on 28th March,

2015. During the course of search, documents and data storage devices, etc., belonging to the assessee were found and seized. The assessee filed its return of income on 29th July, 2016 for the assessment year 2015-16 declaring the total income at Rs.12,15,49,580/-. Notice u/s 143(2) was issued on 20th May, 2016 which was duly served on the assessee. Subsequently, notice u/s 142(1) along with a questionnaire was issued to the assessee calling for certain information. The assessee complied to the said questionnaire by filing the requisite details.

2.1 During the course of assessment proceedings, the AO noted that the assessee has received an amount of Rs.29,44,58,400/- on account of share application money from three investors, namely, M/s SE Finvest Private Ltd., M/s RPL Capital Finance Ltd. and M/s Prince IT solutions Pvt. Ltd., the details of which are as under:-

S. No.	Name of Subscriber	No. of shares subscribed	Face value of share	Paid up value	Premium received	Total
1.	S.E. Finvest (P) Ltd.	18,21,840	10/-	1,82,18,400	14,57,47,200	16,39,65,600
2.	RPL Capital Finance Ltd.	13,63,920	10/-	1,36,39,200	10,91,13,600	12,27,52,800
3.	Prince IT Solutions (P) Ltd.	86,000	10/-	8,60,000	68,80,000	77,40,000
	Total	32,71,760		3,27,17,600	26,17,40,800	29,44,58,400

2.2 He, therefore, asked the assessee to substantiate the above share capital/share application money by filing the requisite details. The assessee, in order to prove the identity, genuineness and credit worthiness of the investors, filed the relevant extracts of the bank statements of the investors showing the payments

made towards share application money, copies of allotment letters, share application form duly filed by the investor companies, confirmation in respect of allotment of equity shares to the investors, copy of PAN cards of the investor companies, Memorandum and Articles of Association of Investor companies depicting their corporate identity No., copies of share certificates issued by the assessee company, a chart showing details of directors of the investor companies, chart showing details of shareholders of the investor companies, copies of their income-tax return acknowledgements along with their audited financials for the year ending 31st March, 2015 and master data extracts from MCA site data extract of all such investor companies evidencing existence of investor companies and their identity.

2.3 However, the AO was not satisfied with the arguments advanced by the assessee and made addition of the same on the ground that the assessee failed to establish the identity, credit worthiness and genuineness of the share applicants/investors from whom the assessee has received the funds who were the group companies of the assessee group. Further M/s SE Finvest Private Ltd., is a dummy company which is not engaged in any substantial business. The given address was a residential premises in the name of Smt. Prabha Agrawal, mother of Shri Sanjeev Agrawal, Managing Director of M.M. Agrawala group. Further SE Finvest Private Ltd. holds fixed assets of 12810 only and the Director of the company could not give details regarding the business of the company and being

just a signatory dummy director, it is established beyond doubt that this company is only a conduit for routing the unaccounted money.

2.4 Similarly, in the case of M/s RPL Capital Finance Ltd., he noted that this company was floated for the purpose of strengthening the group company's financial statements, the given address was a small shop located at ground floor of DDA flat. There was neither any computer nor any sign of any company being run from this place. The statement of former director Shri Narender Kumar Jain recorded u/s 132(4) shows that he was getting a salary of only Rs.20,000/- per month although he was director of more than 20 companies. Shri Mukesh Aggarwal, another director of the company, whose statement was recorded on oath during the search, failed to give any details regarding the business of the company which establishes beyond doubt that this company is only a conduit for routing of unaccounted money.

2.5 Similarly, M/s Prince IT solutions Pvt. Ltd., is also a dummy company being operated to facilitate the accommodation entry. Here also, the address given was the residential premises in the name of Smt. Prabha Agrwal, mother of Shri Sanjeev Agrwal. Shri Mukesh Aggarwal in his statement recorded on oath failed to give any details regarding the business of the company. In view of the above and relying on various decisions, the AO made addition of Rs.29,44,58,400/- to the total income of the assessee.

3. Before the CIT(A), the assessee challenged the validity of assessment proceedings u/s 153A in absence of any incriminating material found during the course of search and the addition on merit. It was submitted that the assessee has filed the requisite details before the AO such as bank statement, audited accounts, copy of income-tax returns, confirmations from the companies, copy of PAN Cards of the investor companies, share application form duly filled in by the investor companies, copy of allotment letters, copy of Board Resolution, etc., to substantiate the identity and credit worthiness of the investor companies and genuineness of the transactions. These three companies had responded to notice issued u/s 133(6) and 131. The assessee has, thus, discharged the initial onus cast on it by filing the primary evidences before the AO which were not found to be false or untrue.

3.1 So far as the source of Rs.16,39,65,600/- invested by M/s SE Finvest Private Ltd. is concerned, it was submitted that it is a registered NBFC. It had ample funds in the form of accumulated profits and security premium aggregating to Rs. 35,11,96,604/-at the beginning of impugned assessment year. Otherwise also, the funds of Rs. 15,00,00,000/- were received by M/s SE Finvest Pvt. Ltd from M/s Mould craft India Pvt. Ltd., Funds of Rs. 74,00,000 were received by M/s SE Finvest Pvt. Ltd from Sh. Sanjeev Aggarwal, director of the company and funds of Rs.54,30,000/- were received by M/s SE Finvest Pvt. Ltd from M/s Indian pre-build Pvt. Ltd.

4. So far as RPL Capital Finance Ltd., is concerned, it was submitted that the assessee has received an amount of Rs. 12,27,52,800/- from M/s RPL Capital Finance Limited. Regarding source of investment made by M/s RPL Capital Finance Limited it was submitted that the company is a registered Non-banking finance company (NBFC). The company has ample funds in the form of accumulated profits and security premium aggregating to Rs. 51,19,75,256/- at the beginning of impugned assessment year. Otherwise also, the funds to the tune of Rs. 6,88,00,000/- were received by M/s RPL Capital Finance Limited from M/s Mould craft India Pvt. Ltd., funds of Rs. 4,70,45,000/- were received from M/s Indian Durobuild Pvt. Ltd. and balance of Rs. 69,07,800/- were received from M/s SE Finvest Pvt. Ltd.

5. It was submitted that the assessee has received amount of Rs. 77,40,000/- from M/s Prince IT Solutions Pvt. Ltd. The investment was made by the company from its internal accruals/own funds generated from the business of the company in the form of accumulated profits and share capital aggregating to Rs. 6,04,99,532/- at the beginning of impugned assessment year.

6. So far as the allegations made by the AO that SE Finvest Pvt. Ltd., is a dummy company is concerned, it was submitted that the company is a non-banking finance company incorporated on 15/01/1996. From audited accounts of the company for AY 2015-16 it is very clear that the company has earned revenue from operations amounting to Rs. 20,12,28,924/- on account of sale of shares. This

shows that the company is doing roaring business because turnover of more than 20Cr is not insignificant. The Ld. AO without appreciating the facts has just observed that it is a dummy company which is based on surmises and conjectures. Further, the company has incurred employee benefit expenses of Rs. 7,71,068/- which clearly indicates that the company is not a dummy company but a working one. Therefore, the allegations made by the Ld. AO that the company is a dummy company is against the facts on record.

7. As regards the allegation of the AO that address of the company is residential premises of Smt. Prabha Agarwal, mother of Sh. Sanjeev Agarwal is concerned, it was submitted that it is an admitted fact that M/s SE Finvest Pvt Ltd is a group company and there is no bar that investment cannot be made in group companies or it has to have an independent address vis a vis promoters, directors etc. Therefore, the finding of the Ld. AO does not have any relevance.

8. As regards the allegation of the AO that the value of fixed assets held by the assessee as on 31.03.2015 are only Rs. 12,810/- is concerned, it was submitted that the AO has considered depreciated value of the assets. From note no. 6 of the audited accounts it is very clear that the assessee is having computers as its fixed assets, cost of which is Rs. 4,35,630/- and being NBFC, the main requirement of the company is to carry its business in computers and manpower. Therefore, no negative cognizance is warranted. The AO has completely ignored the turnover of Rs. 20,12,28,924/- and net profit before tax of Rs. 51,49,507/-.

9. As regards RPL Capital Pvt. Ltd., is concerned, it was argued that it is the allegation of the AO that this company is a dummy company. It was submitted that the company is a non-banking finance company incorporated on 06/03/2000. From audited accounts of the company for AY 2015- 16 it is very clear that the company has earned total revenue of Rs. 24,04,34,180/- on account of sale of shares/ mutual funds, interest on bank FDRs, dividend income, rental income etc. Further, the company has incurred employee benefit expenses of Rs. 5,35,230/-, cost of total fixed assets held by the company as on 31.03.2015 is Rs. 3,68,11,823/- which clearly indicates that the company is not a dummy company but a working one. Therefore, the allegations made by the Ld. AO that the company is a dummy company is against the facts on record. He has completely ignored the total revenue of Rs. 24,04,34,180/- and net profit before tax of Rs. 1,09,77,302/-

10. As regards size of premises from where the company is working it was submitted that the company is a NBFC where basic requirement to carry on its business is a few computers and man power. The work of the company can also be done by the employees from their home, they do not need to sit whole time in the office for carrying trading in shares or other investments. Even for the purpose of cost reduction, policy of work from home has been applied by many corporates. Therefore, the allegation made by the Ld. AO on the basis of size of office is not justified.

11. As regards M/s Prince IT Solutions Pvt. Ltd., it was argued that the AO alleged that the company is a dummy company. It was submitted that the company is a group company of M. M. Agarwal group and was incorporated on 25/01/2008. From audited accounts of the company for AY 2015-16 it is very clear that the company has earned revenue of Rs. 1,00,78,508/- on account of interest and rental income. Further, the company has incurred employee benefit expenses of Rs. 7,80,000/- which clearly indicates that the company is not a dummy company but a working one. Therefore, the allegations made by the Ld. AO that the company is a dummy company is against the facts on record. He has completely ignored the total revenue of Rs. 1,00,78,508/- and net profit before tax of Rs. 75,01,104/-.

12. So far as the allegation of the AO that address of the company is residential premises of Smt. Prabha Agarwal, mother of Sh. Sanjeev Agarwal is concerned, it was argued that M/s SE Finvest Pvt. Ltd is a group company which is an admitted fact and there is no bar that investment cannot be made in group companies or it has to have an independent address vis a vis promoters, directors etc. Therefore, the finding of the Ld. AO does not have any relevance.

13. It was argued that on page 14 and 83 of the assessment order, the Ld. AO has referred to the statement of Sh. Narender Kumar Jain, but the statement does not have any relevance to the case of assessee because the person has not stated anything against the assessee in his statement. Therefore, reference to this statement is infructuous. Similarly, on page 25 and 83 of the assessment order, the

AO has referred to the statement of Sh. Mukesh Aggarwal, but the statement does not have any relevance to the case of assessee because the person has not stated anything against the assessee in his statement. Therefore, reference to this statement is infructuous. Various decisions were brought to the notice of the CIT(A) for the proposition that when every detail is given before the AO, merely because the Director of the said company could not be produced cannot be a ground to make the addition.

14. Based on the arguments advanced by the assessee, the Id.CIT(A) upheld the validity of assessment proceedings u/s 153A but deleted the addition by observing as under:-

5. Findings:

I have considered the submission of Ld. A.R., assessment order and cases law cited in this regard. The AO invoked the process u/s 153A after the search on appellant group on 28.03.2015 and on receipt of appraisal report from Directorate of Investigations) with the allegation that the appellant company had received unexplained credit in its books u/s 68 of the IT Act. All the grounds of appeal are dealt with together being of similar nature.

5.1 The basis of addition as taken by the A.O. was statement recorded of Shri Sanjeev Agarwal during the course of search wherein he has surrendered an amount of Rs. 88.52 crore out of which a sum of Rs. 30.78 crores were referred to for the assessment year 2008-09 and balance amount was not described specifically and was also surrendered subject to cross checking of the facts and to explain after access to the books of accounts. The said statement was retracted by said Shri Sanjeev Agarwal on 18.05.2015 within two months from the date of original statement. Though the appellant has stated to have recorded all the transactions under appeal in its books of account and offered all the necessary and relevant proof thereof as such. Since the assessment proceedings were pending at the time of search and was abated, the legal ground objected as such by the appellant was not valid as such the same is bound to be rejected. These being primary and basic the legal ground going to the root of the assessment, it is necessary to examine the

nature of incriminating material conferring upon the AO necessary jurisdiction u/s 153 A to utilize such material arising consequent to the search operation. The material so found and seized and thereafter relied upon and utilized thereon in the assessment of the assessee leading the AO to conclude that the share application / capital received by the appellant are unexplained.

But, it is undisputed fact that the department found information in respect of the share certificates and the counterfoils thereof and other significant related material during the course of search operations that upon collating with the information received by the department lead to specific inputs in respect of doubtful nature on genuineness of the equity infused in the companies of the group. The material so gathered is prima facie incriminating in its nature and substance so as to attract the provisions of S. 153 A of the Act in the case of the appellant. The overall scheme that emerges there from indicates that there was prima facie material available in this regard to enable the AO to initiate proceedings u/s 153A. The assessee contentions in this regard as under-

a) In respect of share certificate found during the course of search in respect of companies mentioned at serial no.1 & 2. It has also been submitted that companies JA Builders Ltd and JPM Automobiles Ltd was also assessed with the ACIT, Central Circle - 13, New Delhi and the order have also been passed at the same time. In the order passed in the case of JA Builders Ltd and JPM Automobiles Ltd no addition towards share capital have been made. As such the appellant contended that same Assessing officer while passing the order at the same time in respect of same issue has formed two different views.

b) The shares certificates found in respect of companies mentioned at serial no 3 to 5 is related to investments made by group concerns of JPM group and does not pertain to outsiders

5.2 These merit examination of the case under 153A of the I T Act 1961. The availability of such documents raises valid doubts on the genuineness of the transactions involved herein. The issue of existence of incriminating material has to be considered in totality. The assessee cannot hide behind seizure or non seizure of documents. The same has to be construed with the trade practices and the expected action on part of an independent entity in normal circumstances. Any such entity will surely expect due returns or capital appreciation in due course. The investor is surprisingly bereft of interest in the matter. The AO and this appellate forum too have to construe the incriminating material in a harmonious fashion. Honøble Delhi High court has also reiterated in many rulings that action u/s 153 A is bound to be initiated in such situations. Therefore, this action of the AO is in tune with judgment of Honøble Delhi High Court in CIT (C)-111 vs. Kabul Chawla (Delhi) [2015] 61 taxman.com 412 (Delhi), 234 Taxman 30. The same is

further strengthened by the judgment of Honøble Delhi High Court in the case of Dayawanti Gupta vs CIT in -ITA Nos 357,358,359/2015 and otherø dated 27/10/2016. Having considered the detailed and belaboured submissions of the Ld AR and the material on record, I am drawn to the conclusion that the action of the AO does not go at variance with the provisions of law and the available jurisprudence in this matter in so far as invoking the proceedings per section 153A is concerned. The AO was well within his powers to invoke section 153 A of the Act on prima facie finding about information that surfaced during the search. Basis above discussions, these grounds of appeal are not sustainable. The ground no. 4 (a) and 4 (b) are therefore dismissed.

5.3 The findings supra merit examination of the case under 153A of the IT Act 1961, prima facie. The availability of such documents raises valid doubts on the genuineness of the transactions involved herein. The issue of existence of incriminating material has to be considered in totality. The assessee cannot hide behind seizure or non seizure of documents. The same has to be construed with the trade practices and the expected action on part of independent entity in normal circumstances. Any such entity will surely expect due returns or capital appreciation in due course. The investor is surprisingly bereft of interest in the matter. The AO and this appellate forum too have to construe the incriminating material in a harmonious fashion. Honøble Delhi High Court has also reiterated in many rulings that action u/s 153A is bound to be initiated in such situations. Therefore, this action of the AO is in tune with judgement of Honøble Delhi High Court in CIT (C)-III vs. Kabul Chawla (Delhi) [2015] 61 taxman.com 412(Delhi), 234 Taxman 30. The same is further strengthened by the judgement of Honøble Delhi High Court in the case of Dayawanti Gupta vs CIT in -ITA Nos 357,358,359/2015 and otherø dated 27/10/2016. Having considered the detailed and belaboured submissions of the Ld AR and the material on record, I am drawn to the conclusion that the action of the AO does not go at variance with the provisions of law and the available jurisprudence in this matter in so far as invoking the proceedings per section 153A is concerned. The AO was well within his powers to invoke section 153 A of the Act on prima facie finding about information that surfaced during the search. Basis above discussions, these grounds of appeal are not sustainable. The ground no. 4(a) and 4(b) are therefore dismissed.

5.4 Regarding the merit, as per grounds of appeal no.3, I have gone through the assessment order passed by and A.O. and verified the material placed on paper book and was part of the assessment records also. Necessary information and documents were requisitioned to verify the identity, genuineness of the transaction and credit worthiness of the investors by issuing notices u/s 133(6) of the Act which were duly submitted by the respective investors. The notice u/s 133(6) was given to:-

- a) M/s S E Finvest Pvt. Limited

- b) M/s RPL Capital Finance Limited
- c) M/s Prince IT Solutions Pvt Limited

5.5 And information And documents requisitioned u/s 133(6) were as under:

- i) Relevant extracts Statement of bank account statement of the investors showing payments made towards share application money.
- ii) Copies of allotment letters.
- iii) Share Application form duly filled by the investor companies.
- iv) Confirmation in respect of allotment of equity shares to the investors.
- v) Copy of PAN card of the Investor companies.
- vi) Memorandum& Articles of Association of the investors companies clearly depicting their corporate identity number.
- vii) Copies of share certificate issued by the assessee company.
- viii) A chart showing details of director of the investor companies.
- ix) A chart showing details of shareholders of the investor companies.
- x) Copies of the acknowledgement of the income tax return filed for AY 2015-16 by the investor companies along with their audited financials for the year ended 31st March 2015.

5.6. The notice u/s 133(6) of the act was complied with and the requisite information and documents were furnished to the AO required information and documents were available according to text of order itself. The assessee has furnished the detail of financials of the investing entities. The final accounts of the investing entities are as below and clearly indicate availability of funds and hence capacity for making such investment.

S E FINVEST PRIVATE LIMITED
BALANCE SHEET AS AT 31ST MARCH, 2015

PARTICULARS		Note No.	(Amount in Rs.)	
			AS AT 31ST MARCH, 2015	AS AT 31ST MARCH, 2014
I	EQUITY AND LIABILITIES			
1	Shareholder's Funds			
	a) Share Capital	2	3,06,42,860.00	3,06,42,860.00
	b) Reserves and Surplus	3	35,85,91,431.98	35,51,93,099.67
			38,92,34,291.98	38,58,35,959.67
2	Share Application Money Pending Allotment			
3	Non-Current Liabilities			
4	Current Liabilities			
	a) Short Term Borrowings		4,81,02,575.00	4,70,64,384.00
	b) Trade payables			
	c) Other Current Liabilities	4	19,12,70,489.00	24,95,42,953.00
	d) Short Term Provisions	5	66,86,173.50	49,34,998.50
			24,60,59,237.50	30,15,42,335.50
	Total		63,52,93,529.48	68,73,78,295.17
II	ASSETS			
1	Non-Current Assets			
	a) Fixed Assets	6	12,810.00	15,750.00
	b) Non-Current Investments	7	8,85,50,850.00	8,50,00,000.00
	c) Long Term Loan and Advances	8	33,15,65,843.27	35,62,25,506.26
			42,02,29,503.27	44,12,41,256.26
2	Current Assets			
	a) Current Investment			
	b) Inventories	9	19,95,58,992.25	16,25,45,617.28
	c) Trade Receivables			
	d) Cash and Cash Equivalents	10	1,00,93,365.97	7,89,86,836.54
	e) Short Term Loans and Advances	11	54,11,667.99	46,04,584.99
			21,50,64,026.21	24,61,37,038.91
	Total		63,52,93,529.48	68,73,78,295.17
	Significant Accounting Policies	1		
	Other Notes to Financial Statements	2-19		

This is the Balance Sheet referred to in our report of even date.

For ASHWANI VERMA & CO.
(Chartered Accountants)

Firm Registration Number: 011780N

(ASHWANI VERMA)
Proprietor
M No. 90593



Date: 30th June, 2015
Place: Patiala

For S E Finvest Private Limited

MUKESH AGGARWAL
Director
DIN: 00810649

RASHMI KANT MITTAL
Director
DIN: 01812102

S E FINVEST PRIVATE LIMITED
PROFIT AND LOSS STATEMENT FOR THE YEAR ENDED 31ST MARCH, 2015

PARTICULARS		Note No.	Current Year 2014-15	Previous Year 2013-14
I.	Revenue from Operations	12	20,12,28,924.84	28,89,797.50
II.	Other Income	13	53,90,562.86	1,35,57,604.07
III.	Total Revenue		20,66,19,487.70	1,64,47,401.57
IV.	Expenses:			
	Purchases	14	23,65,13,758.25	1,45,60,752.53
	Change in Inventories	15	(3,70,13,374.97)	(67,16,926.28)
	Employee Benefits Expenses	16	7,71,068.00	6,78,450.00
	Depreciation	6	2,940.00	23,626.00
	Finance Cost	17	10,40,696.40	79,839.00
	Loss on Sale of Asset		-	72,473.00
	Loss on Future & Options		-	6,53,079.55
	Other Expenses	18	1,54,892.71	1,54,979.07
	Total Expenses		20,14,69,980.39	95,06,272.87
V.	Profit before Extraordinary items		51,49,507.31	69,41,128.70
VI.	Extraordinary items		-	-
VII.	Profit before Tax		51,49,507.31	69,41,128.70
VIII.	Income Tax Provision		15,91,198.00	13,61,000.00
IX.	Profit for the year		35,58,309.31	55,80,128.70
X.	Amount Transferred to Special Reserve Fund		10,29,901.00	13,88,230.00
	Provision On Standard Assets		1,59,977.00	4,67,845.00
	Net Profit/ (Loss)		23,68,431.31	37,24,053.70
	Earnings per equity share			
	i) Basic		0.80	1.26
	ii) Diluted		0.80	1.26

This is the Profit & Loss account referred to in our report of even date.

For ASHWANI VERMA & CO.

(Chartered Accountants)

Firm Registration Number: 011780N

Ashwani Verma
 (ASHWANI VERMA)

Proprietor
 M No. 90593



Date: 30th June, 2015

Place : Patiala

For S E Finvest Private Limited

Mukesh Aggarwal
 MUKESH AGGARWAL
 Director
 DIN: 00810649

Rashmi Kant Mittal
 RASHMI KANT MITTAL
 Director
 DIN: 01812102

Certified

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RPL CAPITAL FINANCE LIMITED
BALANCE SHEET AS AT 31ST MARCH 2015

PARTICULARS	Note No.	AS AT	
		31.03.2015	31.03.2014
I EQUITY AND LIABILITIES			
1 Shareholder's Funds			
a) Share Capital	2	174,734,180	174,734,180
b) Reserves and Surplus	3	519,509,575	511,975,256
		694,243,755	686,709,436
2 Share App. Money Pending Allotment			
3 Non-Current Liabilities			
a) Long Term Borrowings			
b) Deferred Tax Liabilities			4,579
4 Current Liabilities			4,579
a) Short Term Borrowings	4	48,102,575	73,100,000
b) Trade payables			
c) Other Current Liabilities	5	27,403,549	21,127,249
d) Short Term Provisions	6	5,798,567	4,947,947
		81,304,691	99,175,196
Total		775,548,446	785,889,211
II ASSETS			
1 Non-Current Assets			
a) Fixed Assets			
i) Tangible Assets	7	27,109,691	28,566,229
ii) Intangible Assets			
iii) Deferred Tax Assets		6,579	
b) Non-Current Investments	8	142,657,733	131,898,039
c) Long Term Loan and Advances	9	204,850,000	95,604,088
		374,624,003	256,068,356
2 Current Assets			
a) Current Investment			
b) Inventories	10	293,592,840	389,846,203
c) Trade Receivables			
d) Cash and Cash Equivalents	11	24,165,475	116,445,361
e) Short Term Loans and Advances	12	83,166,128	21,529,292
		400,924,443	527,820,856
Total		775,548,446	785,889,211
Significant Accounting Policies	1		
Notes Forming Part of Financial Statements	2-22		

For KAMAL & CO.

Chartered Accountants

Firm Registration No. 000033

(KAMAL KISHORE)

Partner

M No 012736N



Date: This 4th Day of September, 2015
Place: Kashmere Gate, New Delhi

For or on behalf of the board

(MUKESH AGGARWAL)

Managing Director

DIN: 00810649

(RASHMI KANT MITTAL)

Director

DIN: 01612102

(ANKIT AGRAWAL)

Chief Financial Officer

(RAKESH KHURANA)

Company Secretary

M.No. 38398

RPL CAPITAL FINANCE LIMITED
STATEMENT OF PROFIT & LOSS FOR THE YEAR ENDED 31ST MARCH, 2015

PARTICULARS	Note No.	Year ended	Year ended
		31.03.2015	31.03.2014
Revenue from Operations	13	225,356,844	1,839,056
Profit on Sale of Investment	14	8,556,905	10,812,439
Other Income	15	6,520,431	9,697,219
Total Revenue		240,434,180	22,348,713
Expenses			
Purchase of Stock-in-Trade	16	128,812,507	19,928,830
Change in Inventories	17	96,253,363	(18,428,820)
Employee Benefits Expenses	18	535,230	448,491
Depreciation (Including Arrear)	7	1,456,538	8,238,140
Finance Cost	19	1,554,136	100,668
Loss on Future & Options			830,954
Other Expenses	20	845,102	1,829,282
Total Expenses		229,456,877	12,947,535
Profit before Extraordinary items		10,977,302	9,401,178
Extraordinary Items			
Profit before Tax		10,977,302	9,401,178
Tax expense:			
Less: Current Tax expense for current year		2,091,922	1,850,000
Less: Previous Years Income Tax provision Write off		925,970	-
Less: Additional Provision on Standard Assets @0.25%		436,250	-
Add: Deferred tax Asset Recognised		11,158	(31,886)
Profit After Tax		7,534,318	7,523,064
Tfd to Statutory Reserve Fund u/s 45IC of the RBI Act Provision On Standard Assets		2,196,000	1,881,000
Net Profit from operation		5,338,318	5,702,064
Earnings per equity share			
i) Basic		0.31	0.33
ii) Diluted		0.31	0.33

For KAMAL & CO.

Chartered Accountants

Firm Registration No. 0010338N

KAMAL KISHORE

Partner

M No. 012738N

M No. 012738N

M No. 012738N

Date: This 4th Day of September, 2015

Place: Kashmere Gate, New Delhi



For or on behalf of the board

(MUKESH AGGARWAL)

Managing Director

DIN: 00810649

DIN: 00810649

DIN: 00810649

DIN: 00810649

DIN: 00810649

DIN: 00810649

DIN: 00810649

(RASHMI KANT MITTAL)

Director

DIN: 01812102

DIN: 01812102

DIN: 01812102

DIN: 01812102

DIN: 01812102

DIN: 01812102

DIN: 01812102

(ANKIT AGRAWAL)

Chief Financial Officer

DIN: 00810649

DIN: 00810649

DIN: 00810649

(RAKESH KHURANA)

Company Secretary

M No. 38392

M No. 38392

M No. 38392

PRINCE IT SOLUTIONS PRIVATE LIMITED
BALANCE SHEET AS AT 31ST MARCH, 2015

PARTICULARS		NOTE NO.	(Amount in Rs.)	
			AS AT 31ST MARCH, 2015	AS AT 31ST MARCH, 2014
I EQUITY AND LIABILITIES				
1 Shareholder's Funds				
a) Share Capital				
		2	62,70,000	62,70,000
b) Reserves and Surplus				
		3	5,97,60,635	5,42,29,532
			6,60,30,635	6,04,99,532
2 Share Application Money Pending Allotment				
3 Non-Current Liabilities				
Long Term Liabilities				
		4	18,15,000	87,56,666
			18,15,000	87,56,666
4 Current Liabilities				
a) Other Current Liabilities				
		5	5,69,56,512	6,33,70,433
b) Short Term Provisions				
		6	33,50,000	37,17,100
			6,03,06,512	6,70,87,533
Total			12,81,52,147	13,63,43,731
II ASSETS				
1 Non-Current Assets				
a) Fixed Assets				
i) Tangible Assets				
		7	5,46,75,931	5,62,47,387
ii) Capital Work in progress				
		8	3,00,00,000	3,00,00,000
b) Long Term Loan and Advances				
		9	4,98,700	49,37,464
Total			8,51,74,631	9,11,84,851
2 Current Assets				
a) Inventories				
		10	2,17,67,920	70,95,000
b) Trade Receivables				
		11	24,64,437	1,66,41,683
c) Cash and Cash Equivalents				
		12	1,55,29,459	1,76,87,545
d) Short Term Loans and Advances				
		13	32,15,700	37,34,652
			4,29,77,516	4,51,58,880
Total			12,81,52,147	13,63,43,731
Significant Accounting Policies		1		
Other Notes to financial Statements		2-20		

This is the Balance Sheet referred to in our report of even date.

FOR ASHWANI VERMA & CO.

(Chartered Accountants)

F.R.No. 011780N

Ashwani Verma

(ASHWANI VERMA)

PROPRIETOR

M. No : 090593

Dated : 31st July 2015

Place : Patiala



FOR OR ON BEHALF OF THE BOARD

Mukesh Aggarwal
MUKESH AGGARWAL
DIRECTOR
DIN: 00810649

Krishna Kumar Agarwal
KRISHNA KUMAR AGARWAL
DIRECTOR
DIN: 06713077

PRINCE IT SOLUTIONS PRIVATE LIMITED
PROFIT AND LOSS STATEMENT FOR THE YEAR ENDED 31ST MARCH, 2015

		(Amount in Rs.)	
Particulars	Note No.	Current Year 2014-15	Current Year 2013-14
I. Revenue from Operations	14		91,80,000
II. Other Income	15	1,00,78,508	80,19,998
III. Total Revenue		1,00,78,508	1,71,99,998
IV. Expenses:			
Purchases	16	1,46,72,920	
Change in Inventories	17	(1,46,72,920)	90,00,000
Employee Benefits Expenses	18	7,80,000	7,71,300
Depreciation	7	15,71,455	40,00,113
Other Expenses	19	2,25,949	1,69,556
Total Expenses		25,77,404	1,39,40,969
V. Profit before Extraordinary items		75,01,104	32,59,029
VI. Extraordinary items			
VII. Profit before Tax		75,01,104	32,59,029
VIII. Add : Refund			
IX. Income Tax Provision		19,70,000	15,90,000
X. Profit for the year		55,31,104	16,69,029
Earnings per equity share			
i) Basic		8.82	2.66
ii) Diluted		8.82	2.66

This is the Profit & Loss Account referred to in our report of even date.

FOR ASHWANI VERMA & CO.

(Chartered Accountants)

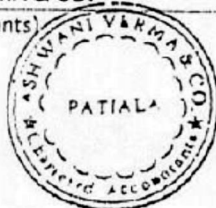
F.R.No. 011780N

Ashwani Verma

(ASHWANI VERMA)

PROPRIETOR

M. No : 090593



FOR OR ON BEHALF OF THE BOARD

Mukesh Aggarwal
MUKESH AGGARWAL
DIRECTOR
DIN: 00810649

Kpawal
KRISHNA KUMAR AGARWAL
DIRECTOR
DIN: 06713077

Dated : 31st July 2015

Place : Patiala

I have also perused the bank statements of the investing entities in this regard. After considering the identities and financials and credit worthiness of the investor companies and genuineness of transaction and source and availability of fund by investor, I am of the view that the AO has only accepted the appraisal report of the Investigation Wing without meeting the touchstone tests of section 68 like- credit worthiness, identities and genuineness of transaction. Further A.O has made such addition stating that the income declared by the investors is lesser than the investment made by them which in my opinion has no criteria. The capacity to invest has other ingredients also including availability of funds required. Thus, it is only source and availability of fund which remains the factor to observe accordingly the addition made by A.O u/s 68 of the Act is deleted.

5.7. Ld AR also placed reliance on the judgments in CIT vs. Sophia Finance Ltd. [1994] 205 ITR 98 (FB) (Delhi), CIT vs. Nipuan Auto (P) Ltd. {[2014] 49 taxmann.com 13 (Del.) 361 ITR 155 (Del.)}, Commissioner of Income-Tax vs Winstral Petrochemicals p. Ltd. 2011 330 ITR 603 (Del.), CIT v. Divine Leasing and Finance Ltd. [2008] 299 ITR 268 (Delhi), CIT v. Stellar Investments Ltd 192 ITR 287 (Del.) & CIT v. Stellar Investment Ltd 2001 251 ITR 263 (SC) and contented that the appellant duly discharged the initial burden to establish the identity, creditworthiness and genuineness by submitting necessary documentary evidences in respect of the shares application money. Reliance is also placed on the judgments in CIT v. Lovely Exports Pvt. Ltd. 319 ITR (ST.) 5 (SC), CIT v. Divine Leasing & Finance Ltd 299 ITR 268 (Del.), [SLP rejected by Honøble SC vide order dated 21.01.2008], CTT vs Five Vision Promoters Pvt. Ltd 65 taxmann.com 71 (Delhi HC), CIT v. Vrindavan Farms Pvt. Ltd (ITA 71/2015) (Delhi HC), CIT V. Kamdhenu Steel & Alloys Ltd. [2004] 361 ITR 0220 (Del HC).

5.8. It is pertinent to refer to the recent judgment dated 01st August 2017 in the case of Principal Commissioner of Income Tax, Delhi - 2 vs Best Infrastructure India Pvt. Ltd. ITA No 13/2017 covers the case of the appellant on the facts. Relevant Para of the judgment is extracted below:-

ø31. In Principal Commissioner of Income Tax Central - 2, New Delhi v. Meeta Gutgutia (supra), this court had considered the entire gamut of case law on the assumption of jurisdiction under Section 153A of the Act. In Principal Commissioner of Income Tax Central-2, New Delhi v. Meeta Gutgutia (supra) this Court had the occasion to extensively discuss the decision in Smt. Dayawanti Gupta v. CIT (supra) to point out why the said decision was distinguishable in its application to the facts of the former case. However, since the same arguments have been advanced by the Revenue in the present case, the said decision in Smt. Dayawanti Gupta v. CIT (supra) is being again discussed herein.

32. In *Smt. Dayawanti Gupta v. CIT (supra)* the Assesseees were dealing in the business of pan masala, gutkha, etc. Firstly, the Assesseees therein were, by their own admission not maintaining regular books of accounts. Secondly, they also admitted that the papers recovered during the search contained "details of various transactions include purchase/sales/manufacturing trading of Gutkha, Supari made in cash outside books of accounts" and they were "actually unaccounted transactions made by two of the firms of the Assessee. Thirdly, the court found as a matter of fact that the Assessee were "habitually concealing income" and that they were "indulging in clandestine operations" and that such persons "can hardly be expected to maintain meticulous books or record for long." As pointed out by this court in *Principal Commissioner Of Income Tax Central-2 New Delhi v. Meeta Gutgutia (supra)* the decision in *Smt. Dayavanti Gupta v. CIT(supra)*, therefore turned on its own facts and did not dilute the law explained in *Commissioner of Income Tax (Central-III) v. Kabul chawla(supra)*.

33. At this stage, it requires to be noticed that the decision of this court in *Commissioner of Income Tax (Central -III) v. Kabul chawla(supra)* took note inter alia of the decision of Bombay High court in the *Commissioner of Income tax v. Continental Ware housing Corporation (NhavaSheva) Ltd.[2015]58 taxmann.com 78(Bom)*, wherein it was held that if no incriminating materials was found during the course of search, in respect of each issue, then no addition in respect of any such issue can be made to the assessment under Section 153A and 153C of the Act. The decisions of this court in *CIT v Anil Kumar Bhatia (supra)* and *CIT v. Chetan Das Lachman Das [2012]254 CTR 392 (Del)* were extensively discussed in *Commissioner of Income Tax (Central-III) v Kabul Chawla (supra)*. The Court in *Commissioner of Income Tax (Central-III) v Kabul Chawla (supra)* had also discussed and concurred with the decision of the Rajasthan High Court in *Jai Steel (India), Jodhpur v. ACIT (2013) 36 Taxman 523 (Raj)* which had held that the assessment in respect of each of the six assessment years, preceding the year of search "is a separate and distinct assessment." It was further held in the said decision that "If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be made in relation to that assessment year in exercise of power under section 153A of the Act and the earlier assessment shall have to be reiterated."

38. Before the learned CIT (A), the assessee had produced the copy of bank account of all share applicant companies. The CIT(A) has admitted the same as, additional evidence and has called for the remand report from the Assessing Officer. There is no cash deposit in

the bank Account of any of the share applicant before the issue of cheque for share application money to the group companies of the assessee. On the other hand, the credit is by way of transaction. During remand proceedings, the Assessing Officer has made necessary verification from the bank of the share applicant and no adverse finding is recorded by him in the remand report. Therefore, the facts on record are contrary to the allegation of the Revenue that the assessee gave cash to Shri Tarun Goyal and he, after depositing the same in the bank account of various companies, issued cheques for share application money. On these facts, the decision of Honøble Jurisdictional High Court in the case of Harjeev Aggarwal (supra) would be squarely applicable. Therefore, we hold that the statement of Shri Tarun Goyal cannot be used against the assessee because:

(i) His statement was recorded behind the back of the assessee and the assessee was not allowed any opportunity to cross-examine him.

(ii) There is no corroborative evidence in support of the statement of Shri Tarun Goyal. On the other hand, the material found during the course of search and other evidences placed on record by the assessee are contrary to the allegation made by ShriTarunGoyal in his statement.

-----Conclusion-----

44. Accordingly the question framed by the Court in 1TA Nos. 11, 12 and 21 of 2017 by the order dated 21st March, 2017 is answered in the negative i.e. in favour of the Assessee and against the Revenue by holding that the additions made under Section 68 of the Act on account of the statements made by the Assesseeø Directors in the course of search under Section 132of the Act were rightly deleted by the ITAT.ö

5.9. Respectfully following the above judgment, which is on identical factual matrix, it can be reasonably inferred that material found during the search in respect of the equity received by the assessee cannot lead to the conclusions drawn by the AO. No specific corroborative evidence has been brought on record by Assessing Officer to prove that the equity subscription is an accommodation entry. Besides, appellant has also discharged its onus and submitted all the documentary evidence in respect of the investment. The details submitted in this regard by the appellant have also been made part of order by Assessing officer. It is also undisputed fact that the Director of appellant companies have never made any statement regarding the share capital/share premium/share application money and no disclosure have been made with regard to share capital/share premium/share application money/unsecured loan. As such the addition made by the Assessing officer is

unsustainable on the various legal grounds and on facts of the case. The addition made in the case of the appellant is deleted. These grounds are accordingly allowed.ö

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

ö1 The Ld. CIT(A) has erred on facts and in law in deleting the addition made on account of unexplained cash credit u/s 68 of Rs. 29,44,58,400/-.

2. The Ld. CIT(A) has erred on facts and in law by stating that the Director of the appellant companies have never made any statement regarding the share capital/share premium/share application money and no disclosure have been made as the statement of the Sh. Sanjeev Agarwal was recorded u/s 132(4) on 29.03.2015 and he admitted that his group companies have received share premium amounting to Rs. 88.52 Crores from various non-descript entities.

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.ö

16. The ld. DR strongly challenged the order of the CIT(A) in deleting the addition made by the AO. He submitted that the AO, in the instant case, has thoroughly discussed the issue and had given a finding that the assessee has received share capital and share premium from companies which are only paper companies having no worth of business. The directors were never produced before the AO. Under these circumstances, the ld.CIT(A) was not justified in deleting the addition made by the AO. Relying on various decisions, he submitted that since the assessee, in the instant case, has failed to substantiate the credit worthiness of the share applicants who have invested in the assessee company with huge premium, therefore, the order of the ld.CIT(A) should be set aside and the order of the AO be restored.

19. He submitted that in any case there was no surrender of any sum. In fact, the sum of Rs.57.74 crores was not even surrendered. On the contrary, the ld. Counsel, referring to page 84 to 91 of the paper book, submitted that the amount of Rs.30.78 crores was retracted and the ld.CIT(A) also has referred to the same in para 5.1 at page 23 of the order.

20. The ld. Counsel for the assessee, referring to the order of the CIT(A) (para 5.1, page 18), submitted that the ld.CIT(A) has given a finding that there was no surrender for the instant year, namely, AY 2015-16 and the surrender was only for AY 2008-09 which too was retracted within two months. He submitted that the statement was non-descriptive and vague and subjected to cross-checking of facts to be explained after access to books of account. He submitted that there is no incriminating material found as a result of search and all the entries were already recorded in the regular books of account maintained by the assessee company. Referring to the decision of the coordinate Bench of the Tribunal in the case of Moon Beverages Ltd., vide ITA No.7374/Del/2007, order dated 7th June, 2018 for AY 2013-14, copy of which is placed at pages 226-261 of the common paper book, the ld. Counsel for the assessee submitted that the Tribunal has quashed the assessment proceedings u/s 153A in absence of finding of any incriminating material and the addition was made on the basis of statement recorded u/s 132(4) of the Act and post search enquiries and no incriminating material was found during the course of search. Referring to the decision of the Tribunal in the case of

group companies, he submitted that the Tribunal has deleted identical additions made on the basis of such surrender which was subsequently retracted.

21. The ld. counsel for the assessee, referring to various decisions submitted that when surrender is non-descriptive, vague and subject to cross checking on the basis of books of account such addition is not sustainable in absence of any corroborative evidence. For the above proposition, he relied on the decision of Hon'ble Allahabad High Court in the case of CIT vs. Dilbagh Rai Arora reported in 263 Taxman 30. He also relied on the following decisions to the proposition that although statement recorded u/s 132(4) has certain evidentiary value, however, the statement cannot be on a stand alone basis and without reference to any other material discovered during the search and seizure operation, empowers the AO to frame the block assessment:-

- a) PCIT vs. Anand Kumar Jain (HUF), 432 ITR 384 (Del);
- b) CIT vs. Best Infrastructure (India) (P) Ltd., 397 ITR 82 (Del);
- c) CIT vs. Harjeev Agarwal, 290 CTR 263 (Del);
- d) M.S. Aggarwal vs. CIT, 406 ITR 609 (Del);
- e) Smt. Shivali Mahajan vs. ACIT, ITA No.5585/Del/2015, order dated 19th March, 2019 for AY 2006-07 Delhi ITAT).
- f) M/s Brahmaputra Finlease (P) Ltd. vs. DCIT, ITA No.3332/Del/2017, order dated 29.12.2017 (Delhi ITAT).

22. The Id. Counsel for the assessee submitted that there was no corroborative evidences found, gathered or seized to support such an inference against the assessee company. Referring to the CBDT Instructions No.F. No.286/2/2013-IT (Inv.II) dated 10th March, 2003, he submitted that the Board has given clear instruction that confessions, if any, not based upon reliable evidence which are later on retracted by the concerned assessee while filing the return of income do not serve any useful purpose for which the AOs were advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income-tax Department.

22.1 Referring to the decision of the Honøble Andhra Pradesh High Court in the case of CIT vs. Naresh Kumar Aggarwal reported in 369 ITR 171, he submitted that the Honøble High Court has held that a statement is not a limited licence to script the financial obituary of an assessee. Referring to various other decisions, he submitted that an admission or acquiescence cannot be the foundation for assessment. Admission made by the assessee is an important piece of evidence, but, it cannot be held to be conclusive. The Id. Counsel for the assessee, relying on various decisions, submitted that the assessing officer cannot proceed to make assessment on the basis of surrender made at the time of search when corroboration through an independent source is a must which has not been done by the assessing authority in the instant case.

23. So far as the merit of the addition is concerned, the Id. Counsel for the assessee submitted that the AO, in the instant case, has issued notice u/s 133(6) in respect of the investors to give various details which the investors had complied with. Further, the investors have replied to summons u/s 131(1) of the IT Act. So far as the various findings given by the AO are concerned, he submitted that in the case of SE Finvest Pvt. Ltd., the company has earned revenue from operations amounting to Rs.20,12,29,924/- on account of sale of shares. Similarly, in the case of RPL Capital Finance Ltd., the total revenue of the company for the impugned assessment year is Rs.24,04,34,180/- and net profit before tax was Rs.1,09,77,302/-. Similarly, in the case of Prince IT Solutions Pvt. Ltd., the company has earned revenue for AY 2015-16 at Rs.1,00,78,508/- and net profit before tax was Rs.75,01,104/-. He submitted that the assessee, in the instant case, has discharged the burden cast on it as per the provisions of section 68 by providing all the requisite details to prove the identity and credit worthiness of the investors who are group companies and the genuineness of the transactions. Relying on various decisions, he submitted that the Id.CIT(A), after thoroughly discussing the issue has deleted the addition, which is in accordance with the law and, therefore, the ground raised by the Revenue on this issue should be dismissed.

24. We have heard 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, has made addition of Rs.29,44,58,400/- u/s 68 of the Act being the amount of share capital and share premium received from three companies, the details of which are given at para 2.1 of this order. We find, the Id.CIT(A) deleted the addition the reasons of which are already given in the preceding paragraphs. We do not find any infirmity in the order of the CIT(A) on this issue. We find, the AO, in the instant case, has issued summons u/s 131 of the Act for the purpose of verification of identity, credit worthiness of the share applicants and the replies were received which is evident from pages 48 to 49 of the assessment order. We find, in para 5.32 of the assessment order the AO has prepared the table and at item Nos.22,23 and 24, the AO in the remark column has categorically mentioned that replies were received in compliance to summons u/s 131 of the IT Act in the case of RPL Capital Finance Ltd., SE Finvest (P) Ltd. and Prince IT Solutions Private Limited.. Further, it is also an admitted fact that the AO had called for the following details u/s 133(6) of the Act which were complied with by furnishing the requisite information and documents before the AO:-

- i) Relevant extracts Statement of bank account statement of the investors showing payments made towards share application money.
- ii) Copies of allotment letters.
- iii) Share Application form duly filled by the investor companies.
- iv) Confirmation in respect of allotment of equity shares to the investors.
- v) Copy of PAN card of the Investor companies.
- vi) Memorandum & Articles of Association of the investors companies clearly depicting their corporate identity number.
- vii) Copies of share certificate issued by the assessee company.
- viii) A chart showing details of director of the investor companies.
- ix) A chart showing details of shareholders of the investor companies.

- x) Copies of the acknowledgement of the income tax return filed for AY 2015-16 by the investor companies along with their audited financials for the year ended 31st March 2015.

25. It is also an admitted fact that all the investor companies are group companies who were allotted shares by the assessee company during the relevant period under consideration. It is also an admitted fact that the assessee has filed the details of source of source i.e., the source of funds received by the investors. It is also an admitted fact that the assessee filed copies of bank statements and ledger accounts of the group companies which made the funds available to the investor companies which, in turn, invested such funds in the assessee company in the shape of share application money and share premium.

26. So far as the allegation of the AO that certain funds were received in the form of accommodation entries in a layered structure and that the assessee has received undisclosed funds in the share of share capital in the shell companies of the group which in turn remitted the same to the operating companies are concerned and that the assessee failed to substantiate the source of funds received by its investors and that the assessee did not produce the directors of other office bearers of the investor companies are concerned, we find the Id.CIT(A) has discussed all these issues thoroughly. We find, the assessee, in the instant case, has discharged the initial burden cast on it by filing the requisite details before the AO, summons u/s 131 were replied, there was a compliance to the notice u/s 133(6), the investor companies have shown huge amount as revenue from

operations. Merely because these companies have taxable income which is less than the amount invested during the year in our opinion cannot be a ground for making the addition especially when all the investor companies have got huge net worth, substantial turnover and are group companies and all transactions are through proper banking channel.

27. We find, the Honøble Delhi High Court in the case of CIT vs. Goodview Trading Pvt. Ltd., vide ITA No.377/2016, order dated 21.11.2016, has held as under:-

õ5. The revenue urges that the CIT (A) and the ITAT both grievously erred in cancelling the additions made. It is submitted that the genuineness of the transactions and the credit worthiness is suspect in the circumstances of the case. Learned counsel relied upon a tabular chart prepared by the AO to submit that most of the share applicants had paid little or no income tax and that analysis of the bank statements furnished by such investors revealed that the amounts were deposited in cash and also routed through different entities. It was submitted that whereas the identity of the investors was no doubt established, neither the genuineness nor credit worthiness could be said to have been satisfied to pass the test of bona fide transactions. It is submitted that in these circumstances, the CIT (A)ø decision - as endorsed by the ITAT - is required to be set aside in this appeal.

6. This Court has considered the materials on record.

7. As against the AOø tabular appreciation of the facts, the CIT (A) also framed another chart which interestingly reveals the net worth of the companies that had invested in the course of the share offerings, of the applicant.

8. It is quite evident from the CIT (A)ø reasoning in paragraph 4.3, that the materials clearly pointed to the share applicantsø possessing substantial means to invest in the assesseeø company. The AO seized certain material to say that minimal or insubstantial amounts was paid as tax by such share applicants and did not carry out a deeper analysis or rather chose to ignore it. In these circumstances, the inferences drawn by the CIT (A) are not only factual but facially accurate.

9. Having regard to these circumstances, the court discerns no question of law, least a substantial question, having regard to the factö

28. We find, the Honöble Delhi High Court in the case of CIT vs. Vrindavan Farms (P) Ltd., in ITA No.71/2015, order dated 12.08.2015, has held as under:-

ö3. The IT AT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the shareholders.ö

[

29. Further, in the instant case, it is an admitted fact that the investors are group companies and no incriminating material was found as a result of search to support the allegation that money invested by the investor is unaccounted money of the assessee. The Honöble Delhi High Court in the case of CIT vs. Nipun Auto (P) Ltd., 361 ITR 155, has held that the addition is not tenable where investment has been made by group Companies. The relevant observations of the Honöble High Court from para 10 onwards read as under:-

ö10. From a reading of the above extract, it is apparent that the case of Nipun Builders & Developers (P.) Ltd.(supra) was different and is distinguishable from the present ease. In that case, the summons sent by the AO to the companies who had applied for shares had been returned with the remarks "no such company". Whereas in the present case, the identity of the two companies which are sister companies stood established. Furthermore, this is not a case of mere furnishing of copies of bank accounts of the subscribers. But, in the present case, as noted by the CIT(A) the assessee had filed the IT returns of the subscriber companies as also their bank

statements and balance sheets in addition to the confirmation letters from the said two companies. A copy of the Form No. 2 filed by the assessee with the RoC regarding the allotment of shares to the said two companies had also been furnished. It is in this backdrop that the CIT(A) had concluded that the assessee had been able to prove its case and that the AO could not shift the burden back on to the assessee company without the AO producing any tangible material to doubt the veracity of the documents furnished the assessee. The Tribunal concurred with the views taken by the CIT(A).ö

30. We find, the Honøble Delhi High Court in the case of Taneja Developers & Infrastructure (P) Ltd., vide ITA No.108/2100, order dated 18.02.2020 has observed as under:-

ö5. The IT AT has concurred with the said finding. From the above, it would be seen that the investor company, namely. M/s. Epic Developers Pvt. Ltd. was one of the group entities of Benda Amtek Ltd. and Amtek Auto Ltd. and both had substantial returned income in the year in question of Rs. 1,28,24,076/- and Rs. 10,93,50,350/-. Therefore, there was no reason to doubt either, the credit worthiness of the investor or the genuineness of the transaction. The aforesaid findings are purely factual in nature and do not raise any substantial question of law for consideration of this Court. We do not find any reason to interfere with the impugned order.ö

31. We find, the coordinate Bench of the Tribunal in ITO vs. Angel Cement (P) Ltd. vide ITA No.4691/Del/2016, order dated 18.03.2021, has held as under:-

öHeld, In so far as genuineness of the transaction is concerned, the funds have been received through banking channels and bank statement of all the investors/lenders company have been filed which prove conclusively that the assessee companies had received the funds from the said investors, who in turn have received money from the same group companies; and they have not only corroborated this fact in their confirmation along with copies of income tax return but also from their audited balance sheets filed alongwith their Income Tax Returns. [Para 62]

63. Again, in so far as the creditworthiness is concerned, these companies have made investments through banking channels duly reflected in the bank statement and have also filed balance sheets and detailed explanation thereafter showing their availability of funds for making the

investments. The case of the Department before us has been that these companies had very meager income however the Revenue from the operations did not justify such an investment. First of all, what is required to be seen is whether the lender/investor companies had sufficient funds available with them in the books/ balance sheets and it is not necessary that loan or advances or shares are subscribed, should be out of taxable income only. Either it could be from borrowed funds or from the investments standing in their balance sheet. If the Assessing Officer doubted the source of the fund of the investor companies, then Assessing Officer was required to at least conduct prima facie inquiry from these investors to rebut the assessee's explanation about the source of the funds in the hands of the investor companies. Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms (P) Ltd., ITA No. 71, 72, 84/2015, vide judgment and order dated 12.08.2015, wherein one of the ground raised by the revenue was that creditworthiness is not proved, because lender companies had shown low income in their Income Tax Return. The Court found that the entire details of share applicants were made available to the Assessing Officer, including PAN, confirmations, bank statements, their balance sheets and profit & loss accounts and certificates of incorporation, etc. Assessing Officer had not undertaken any inquiry or investigation of the veracity of above documents. Hence Tribunal has rightly held that without doubting the document, the Assessing Officer cannot make the addition only on presumption that low return of income is sufficient to doubt the creditworthiness of the share holders. The Assessee by producing the above documents has discharged its initial onus of showing the genuineness and creditworthiness of the share holders. Same ratio will apply here also.

64. Now coming to the arguments raised on behalf of the Revenue that in some of the case notices u/s 133(6) has not been served or responded and directors of the lender companies were not produced. First of all, it was only in few cases that notices were not responded to and in majority of cases they were duly responded. But be that as may be, where notices have not been served or not responded to, then also in the present cases their identity cannot be disputed, because in all the cases assessments have been done under scrutiny proceedings u/ss. 143(3) or 147; and in most of the cases appeals are also pending. Hence this factor, itself will not vitiate the case of the assessee. Similarly, even if directors were not produced, then there is no legal obligation on the assessee to produced the directors as held in many cases as relied upon by the Ld. Counsel in foregoing para 27. Apart from that, once assessments have been made on substantive basis in each and every case, then mere non production of directors loses its significance when all the statutory records and sources of funds have been duly explained, on which no adverse material has been brought to rebut the same by the Assessing Officer. Thus, in our opinion this factor on the facts of the present case is not so detrimental.

67. Thus, it is quite evident that in various chains of links and the flow of the funds, nowhere there are any unaccounted funds of any of the lender companies or if any of the assessee companies which can be said to have been introduced either by the assessee company or by the lender company. The source of the source has been proved at all levels, right from origin of the funds to the final destination stands substantiated and neither there is unaccounted money nor there is any outside entry operator to route the unaccounted funds for making such investments. Although looking to the peculiarity of the facts and circumstances of the case where these companies can be reckoned as conduit entities for rotation of money, but nowhere can it be said that any of the entities have routed their own unaccounted money. This is the precise reason that in most of the cases Ld. CIT Appeals have deleted the addition; and in 3 cases, he has held that they must have received some commission for such rotation of funds, albeit such observation may not have legal and factual legs to stand.

68. Thus, in view of our discussion and finding of fact, we do not find any reason or justification for sustaining such an addition of share capital or share premium under the deeming provision of Section 68. We are in tandem with the arguments raised by the Id. counsel and the explanation given by him in view of supporting documents as dealt and incorporated above and are accepted. In the result additions as made by the Assessing Officer on this score are directed to be deleted.ö

32. We find, the Honøble Delhi High Court in the case of CIT vs. Victor Electrodes Ltd., reported in 329 ITR 271, has observed as under:-

ö9. There was no legal obligation on the assessee to produce some director or other representative of the applicant-companies before the Assessing Officer. Therefore, failure of the assessee to produce them could not, by itself, have justified the additions made by the Assessing Officer, when the assessee had furnished documents, on the basis of which, the Assessing Officer, if he so wanted, could have summoned them for verification. No attempt was made by the Assessing Officer to summon the directors of the applicant-companies. The addresses of these companies must be available on the share applications, memorandum and articles of association and their income-tax returns. If the Assessing Officer had any doubt about identity of the share applicants, he could have summoned the directors of the applicant-companies. No such attempt was, however, made by him. Therefore, the Commissioner of Income- tax (Appeals) and the Income-tax Appellate Tribunal, in our view, were justified in holding that the identity of the share applicants and the genuineness of the transactions had been established by the assessee. For the reasons given in the preceding paragraphs, no substantial question of law arises for our consideration.ö

33. So far as the allegation of the Revenue that there was surrender made by the director of the company Shri Sanjeev Aggarwal in his statement recorded u/s 132(4) is concerned, we find, this issue was also considered by the coordinate Bench of the Tribunal in the case of Moon Beverages and Hindustan Aqua Ltd., vide ITA Nos.7374/Del/2017 and 7567/Del/2017 for AY 2013-14, order dated 7th June, 2018 where the Tribunal has observed as under:-

37. We further find from the order of the Id. CIT(A) that there was no surrender of income for the impugned assessment year and the surrender was only for the assessment year 2008-09 which too was retracted within two months. He has also observed that the statement was non descriptive and vague and subject to cross checking of fact to be explained after access to books of accounts. We, therefore, find merit in the submissions of the Id. counsel for the assessee that the addition made by the Assessing Officer u/s 68 of the [I.T. Act](#) is not based on any incriminating material and is based on statements recorded during search u/s 132(4) and post-search enquiries.

38. The Hon'ble Delhi High Court in the case of [CIT vs. Best Infrastructure \(India\) \(P\) Ltd.](#) reported in 397 ITR 82 has held that statements recorded u/s 132(4) of the [I.T. Act](#) do not by themselves constitute incriminating material. The relevant observation of the Hon'ble High Court reads as under :-

"38. Fifthly, statements recorded under [Section 132](#) (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in [Commissioner of Income Tax v. Harjeev Aggarwal](#) (supra). Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in [Smt. Dayawanti Gupta v. CIT](#) (supra) where the admission by the Assessee themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessee were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission.

39. For all the aforementioned reasons, the Court is of the view that the ITAT was fully justified in concluding that the assumption of jurisdiction under [Section 153A](#) of the Act qua the Assessee herein was not justified in law."

39. We find the Hon'ble Delhi High Court in the case of [CIT vs. Harjeev Aggarwal](#) reported in 290 CTR 263 has observed as under :-

"23. It is also necessary to mention that the aforesaid interpretation of [Section 132\(4\)](#) of the Act must be read with the explanation to [Section 132\(4\)](#) of the Act which expressly provides that the scope of examination under [Section 132\(4\)](#) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of [Section 158BB\(1\)](#) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under [Section 132\(4\)](#) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment."

40. The Co-ordinate Bench of the Tribunal in the case of Brahmputra Finlease (P) Ltd. vide ITA No.3332/Del/2017 order dated 29.12.2017, following the above decision of the Hon'ble Delhi High Court, has observed as under :-

"4.19 We find that in the case of best infrastructure (India) private limited (supra), despite the admission of accommodation entry in statements under [section 132\(4\)](#) of the Act, the court held that the statement do not constitute as incriminating material. In the instant case, neither is there any statement of any accommodation entry operator claiming that any entry was not provided nor any director has admitted that assessee obtained accommodation entry. Thus, the case of the assessee is on better footing then the case of Best Infrastructure (I) P. Ltd (supra). In such facts and circumstances, respectfully following the decision of the Hon'ble Delhi High Court in the case of best infrastructure (India) private limited (supra), we do not have any hesitation to hold that the statement under section 132(4) of Sh. Sampat Sharma cannot be treated as incriminating material found during the course of search. In the result, we hold that addition of share capital in the year under consideration has been made without relying on any incriminating material found during the course of search."

41. In the light of the above decisions, statements recorded u/s 132(4) of the [I.T. Act](#), 1961 cannot constitute as incriminating material.ö

34. In this view of the matter and in view of the detailed reasoning given by the CIT(A) on this issue, we find no infirmity in his order. Accordingly, the ground raised by the Revenue is dismissed.

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

Order pronounced in the open court on 14th December, 2021.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 14th December, 2021.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi