

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

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

ITA No.4401/Del/2017
Assessment Year: 2013-14

ACIT,
Central Circle-3,
New Delhi.

Vs Jotindra Steel & Tubes Ltd.,
14/3, Mathura Road,
Village- Mewla Maharajpur,
Faridabad.

PAN: AAACJ1872C

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Shri Aditya Chhajed, Advocate
Revenue by	:	Shri Surender Pal, CIT, DR
Date of Hearing	:	17.11.2021
Date of Pronouncement	:	18.01.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 27th April, 2017 of the CIT(A)-23, New Delhi, relating to assessment year 2013-14.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing and trading of steel/tubes and pipes and erection fabrication work and furnace unit. It filed its return of income 12.09.2015

declaring the total income at Rs.1,52,26,930/-. A search and seizure proceedings u/s 132 of the IT Act was conducted in the case of M/s Mauria Udyog Ltd. and its group concerns including the assessee and residential/factory premises of the partners, directors and proprietors of the group on 7th August, 2013. In response to the notice u/s 153A of the Act, the assessee filed the return of income on 12th September, 2015 declaring an income of Rs.1,52,26,930/- which is the same income as per the original return of income filed.

2.1 During the course of assessment proceedings, the AO noted that the assessee has invested in share application money in the following two companies and has subsequently sold the shares the details of which are as under:-

S.No.	Name of company	Shares	Amount
1.	M/s Nexus Commosales Pvt. Ltd.	29,95,000	2,99,50,000
2.	M/s Linkwise Marketing Pvt. Ltd.	29,95,000	2,99,50,000

S.No.	Name of company	Sold to	Amount (in Cr.)
1.	M/s Nexus Commosales Pvt.Ltd.	M/s Seema Holdings Pvt. Ltd.	2.50
		M/s Siddheshwari Vyapaar Pvt. Ltd.	.50
		Total	3
2.	M/s Linkwise Marketing Pvt. Ltd.	M/s Samrat Finvestor Pvt. Ltd..	3
		Total	3

3. In an attempt to establish the multi-layered transactions, the AO called for the bank statement of the Kolkata based companies which, according to him, are bogus. From the details of the said bank statements, he noted that all the above companies are maintaining their bank accounts with the same bank branch in Kolkata, i.e., Oriental Bank of Commerce, Bhowanipore. He further noted from

the bank statements that these are channels to layer the fund flow, ultimately being credited into Mauria Group of companies. He noted that whatever amount is credited into the bank accounts gets debited the same day or the next day and every other day and the bank account is left with almost identical minimum balance. After analyzing the bank statements and the modus operandi adopted by the assessee, he held that these bank accounts are in the nature of merely providing inlet and outlet to and from various sources. These funds are infused mostly through bank accounts of companies of different names having bank accounts in the same branch and these bank accounts from which funds are credited into the Kolkata companies further resemble that of a layering channel. Moreover, although the money was received through banking channels, but, did not reflect the actual genuine business activities. The AO, despite his heavy workload of time barring matters in the month of March, 2016, decided to go to Kolkata to make field inquiries and recorded the statements of some of the persons. After confronting the same to the assessee and rejecting the various explanations given by the assessee and relying on various decisions, the AO held that the amount of Rs.6 crores that has been introduced as sale of shares from these parties is unaccounted income of the assessee company and accordingly added the same to the total income of the assessee u/s 68 of the IT Act.

4. During the course of assessment proceedings, the AO further noted that during the search and survey operations at various premises of Mauria group,

incriminating documents related to the transactions undertaken by the group with Amrapali group were seized. The documents depicting cash payments by Amrapali group to M/s Mauria Udyog Ltd. and M/s Jotindra Steel & Tubes Ltd. were found and seized. One such document which was an xls file, titled as amrapali sapphire details.xls was extracted from Annexure A-2 Party P-17 which is the residence of Shri Rohtash Kumar. He further noted that the statement of Shri Rohtash Kumar who was working as an Accounts Manager in M/s Mauria Udyog Ltd. was recorded u/s 132(4) of the IT Act. The AO, during the course of assessment proceedings again recorded the statement of Shri Rohtash Kumar wherein he has endorsed the statements given during the search and post search proceedings. The AO noted that Shri Rohtash Kumar had himself admitted that the amounts that are mentioned in this .xls file are nothing but payments that have been made by different Amrapali group companies to Mauria group companies, namely, M/s Mauria Udyog Ltd. and M/s Jotindra Steel & Tubes Ltd. The title of the .xls file was basically a misnomer and actually the title should have been "Amount transferred to Bihariji Group." Further, Shri Rohtash Kumar specified that in his correspondences, names Bihariji Group and Mauria Group were used interchangeably. He noted that during the F.Y. 2012-13, Rs.9 crore was received in cash. Shri Pramod Kumar Aggarwal, a property dealer and close associate of Shri Navneet Kumar Sureka received Rs.50 lakhs each on 11.12.2012 and 01.02.2013, Shri Vaibhav Jain, as per Shri Akhil Kumar Sureka received to Rs.1 crore in cash on 16.02.2013 and 14.03.2013, Shri Akhil Kumar Sureka himself

received Rs.1 crore cash on 21.02.2013, Shri Sonu and Shri Ravindra Adhana both field boys of M/s Mauria Udyog Ltd., received Rs.50 lakhs in cash on 31.01.2013. The remaining amount of Rs.4.50 crore which is not directly attributable to any of the entities is to be added to the income of M/s Mauria Udyog Ltd., M/s Bihariji Ispat Udyog Ltd. and M/s Jotindra Steel & Tubes Ltd., in proportion to the turnover of these companies with M/s Amrapali Group for FY 2012-13 appearing in the documents. After recording the following details, the AO proposed an addition of Rs.1,14,75,000/- in the hands of the assessee company and, accordingly, issued a show cause notice asking the assessee to explain as to why cash received should not be added to the total income of the assessee:-

Turnover of M/s MUL for F.Y. 2012-13	Rs.41,50,00,000/-	61.8 %
Turnover of M/s BIUL for F.Y. 2012-13	Rs. 8,50,00,000/-	12.7 %
Turnover of M/s JSTL for F.Y. 2012-13	<u>Rs.17,15,36,572/-</u>	25.5%
Total Turnover of these three companies with Amrapali Group for F.Y. 2012-13	<u>Rs.67,15,36,572/-</u>	
Addition in the hands of M/s MUL	61.8 % of Rs. 4,50,00,000 =	Rs.2,78,10,000/-
Addition in the hands of M/s BIUL	12.7 % of Rs. 4,50,00,000 =	Rs. 57,15,000/-
Addition in the hands of M/s JSTL	25.5 % of Rs. 4,50,00,000 =	Rs.1,14,75,000/-

5. Rejecting the various explanations given by the assessee, the AO made addition of Rs.1,14,75,000/- to the total income of the assessee.

6. The AO, however, noted that the assessee in his reply to the question asking to file details of share application money received, has stated that it has received share application money to the tune of Rs.13,01,395/- from Mr. Hemand Vinkatramani Lalith Raj, M/s Sneha Santosh Tirodkar, Mr. Digvijay Singh and Smt. Deepa Subramaniam. He, therefore, asked the assessee to submit its reply to prove the identity and credit worthiness of the share applicants and genuineness of the transactions. In absence of any proper explanation to his satisfaction, the AO, relying on various decisions, made addition of Rs.13,01,395/- to the total income of the assessee u/s 68 of the IT Act.

7. In appeal, the Id.CIT(A) deleted all the three additions. So far as the addition of Rs.6 crore made by the AO on account of unexplained share application money is concerned, he deleted the same by observing as under:-

¶4.4 Ground nos. 6 to 9 relate to addition of an amount of Rs.6,00,00,000/- on account of sale proceed of shares received u/s S. 68 of the Act. on account of sale of shares held by the appellant in M/s Nexus Commosales Pvt. Ltd. (NCPL) and M/s Linkwise Marketing Pvt. Ltd. (LMPL) to M/s Seema Holding Pvt. Ltd., M/s Siddeshwari Vyapaar Pvt Ltd. (SVPL) and M/s Samrt Finvestor Pvt Ltd. The facts of the matter are similar to that of the case of M/s Mauria Udyod Ltd. (MUL) for AY 2013-14 which have been dealt by me in detail in my order dt. 20.10.2016 in Appeal No.15/16-17 at paras 4.2.3 to 4.2.5. In this case the facts related to the purchase and sale of shares of NCPL & NMPL by the appellant company and corresponding payments made/received through banking channels is enclosed as Annex.1 to this order. As mentioned above, the facts related to the addition are similar to that in the case of MUL for AY 2013-14 and for the detailed reasons in my order of MUL for AY 2013-14 (supra) the addition made by the AO is not sustainable on merits as well. The addition made on this account is therefore deleted.ö

8. So far as the addition of Rs.1,14,75,000/- made by the AO on account of unexplained cash is concerned, the Id.CIT(A) deleted the same by observing as under:-

ø4.5 Ground nos. 10 (i) to (iv) relate to addition of Rs.1,14,75,000/- on account of alleged cash received from Amrapali group of companies by the Mauria group of companies/ individuals as per account found in the e-mail of Sh. Rohtash Kumar sent to Sh. Akhil Kumar Sureka, and added by the AO in the hand of the Mauria group companies/individuals on proportionate basis, u/s 69 of the Act. The facts of the matter and the assessment order at paras-6 to 6.14 as well as the submissions of the appellant are similar to that considered by me in the appellate order dt. 31.08.2016 in the case of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 in Appeal No.23/16-17 wherein I have held as under:

ø4.1 Ground no. 01 which emanate from Form-35 relates to the addition of Rs. 1,64,20,000/- on account of alleged cash received from Amrapali group of companies by the Mauria group of companies/ individuals as per account found in the e-mail of Sh. Rohtash Kumar sent to Sh. Akhil Kumar Sureka, and added by the AO in the hand of the Mauria group companies/individuals on proportionate basis. The AO, has observed that the cash payments from Amrapali group are related to M/s Mauria Udyog Ltd, M/s Bihariji Ispat Udyog Ltd. and M/s Jyotindra Steel & Tubes Ltd. and made additions in the hands of these three companies in proportion to their turnover. The facts of the matter are similar to that of the assessment order in the case of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 and the observations of the AO at paras-5 to 5.18 are verbatim the same as that of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14. The impugned addition being based on the seized document found from the residence of Sh. Rohtash Kumar being .xls file extracted from øpath c:\outlook.pst\sentø seized as Annx.-A2/P-17 which is an e-mail sent by Sh. Rohtash Kumar from his e-mail ID rohtash@mauria.com to Sh. Navneet Kumar Sureka (navneet@mauria.com) and Sh. Akhil Kumar Sureka (akhil@mauria.com) on 12.07.2013 at 4:15 PM, the appellant, vide order sheet dt. 05.07.2012 and 03.08.2016, was asked to submit a statement of all transactions noted in these pages explaining the entries, date-wise, alongwith copies of the ledgers of the persons in the books of the group companies relating to cheque transactions indicating the nature and purpose of transactions. The appellantø AR has submitted the necessary statement which indicate that the cheque transactions were

related to only M/s Mauria Udyog Ltd. and M/s Bihariji Ispat Udyog Ltd. and not with M/s Jyotindra Steel & Tubes Ltd., being transaction related to sale of iron/steel to the Amrapali group companies by M/s Mauria Udyog Ltd. and share application/advances in respect of both these companies of the appellant group. The copy of ledgers of the Mauria group companies with regard to the cheque transactions have also been filed, being ledgers of M/s Amrapali Sapphire developers Pvt. Ltd, M/s Amrapali Dream Valley Pvt. Ltd., M/s Amrapali Smart City Developers Pvt. Ltd., M/s Amrapali Leisure Valley Development Ltd., M/s Amrapali Princely Estates Pvt. Ltd, M/s Amrapali Silicon City Pvt. Ltd., M/s Ultra Home Construction Pvt. Ltd. and M/s Amrapali Zodiac Developers Pvt. Ltd. in the books of the appellant, and which have been verified. The AO has also not taken any adverse view with regard to these cheque transactions being duly accounted for. The matter has been considered by me in the appellate order of even date in the case of M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 in Appeal No.23/16- 17 wherein having dealt with the matter in detail I have deleted the addition so made in that case. Since the facts of the matter is similar in the case of the appellant as well, based on my decision in M/s Bihariji Ispat Udyog Ltd. for AY 2013-14 the addition made in this case as well is deleted.ö

and following the same the addition made on this account in this case as well is deleted.ö

9. So far as the addition of Rs.13,01,395/- made by the AO on account of unexplained share application money is concerned, the Id.CIT(A) deleted the same by observing as under:-

ö4.6 Ground no. 11 (i) to (ii) relate to addition of Rs. 13,01,395/- on account of share application money u/s 68 of the Act. The facts of the matter and the assessment order at paras-7 to 7.2 as well as the submissions of the appellant are similar to that considered by me in the case of appellant for AY 2010-11 in A.No. 299/16-17 vide my order dt. 18.04.2017 at paras-4.4 to 4.4.2 wherein the facts related to the receipt of the entire share application money of Rs.8,10,00,000/- has been considered and the addition of Rs.7,96,98,605/- was deleted by me. The amount of Rs. 13,01,395/- have been received during the year from the same persons as difference in the amount paid by them in the year relevant to AY 2010-11 arising due to foreign exchange fluctuation and having held the share application money

received from them as genuine in AY 2010-11 the addition made on this account in this year is also deleted.ö

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

ö1. The order of Ld. CIT (A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs.6,00,00,000/- made by AO on account of Unexplained Share Application Money.

3. On the facts & circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,14,75,000/- made by AO on account of Unexplained Cash.

4. On the facts & circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.13,01,395/- made by AO on account of Unexplained share application money received from non genuine parties.

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

11. Grounds No.1 and 5 by the Revenue being general in nature are dismissed.

12. Ground No.2 raised by the Revenue relate to the order of the CIT(A) in deleting the addition of Rs.6 crore made by the AO on account of unexplained share application money.

13. The ld. DR strongly supported the order of the AO and submitted that the ld.CIT(A), without verifying the facts narrated by the AO has deleted the addition and, therefore, the order is a perverse one. The vital findings given by the AO have not at all been considered by the CIT(A). Referring to the decision of the Hon^{ble} Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019),

reported in 103 taxmann.com 48, he submitted that the order of the CIT(A) should be reversed and that of the AO on this issue be restored.

14. The Id. counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that the Id.CIT(A) while deleting the addition has relied on the order passed by him in AY 2013-14 in the case of Maurya Udyog Limited wherein similar additions were made by the AO on account of sale of shares of the same parties. Thereafter, the Revenue filed an appeal before the Tribunal against the order of the CIT(A) and the Tribunal, vide ITA No.6660/Del/2016, order dated 29.11.2018 deleted the addition. In the present case also, the assessee has sold the shares of M/s Nexus Common Sales Pvt. Ltd. and M/s Linkwise Marketing Pvt. Ltd. which is evident from the assessment order itself. Therefore, this issue being squarely covered in favour of the assessee by the decision of the Tribunal, the order of the CIT(A) on this issue be upheld and the ground raised by the Revenue on this issue should be dismissed.

15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and 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.6 crores on account of sale proceeds of shares received by invoking the provisions of section 68 of the IT Act on the ground that the existence of the parties at the given address is not verifiable. According to the AO, the assessee has created a paper trail to prove the

genuineness of the transaction and a close examination of the documents show that the companies through whom money is being routed are only dormant companies with nil business activities. Since the assessee failed to discharge the onus cast on it by proving the identity and credit worthiness of the persons and the genuineness of the transaction, the AO held that the assessee has introduced its own cash in the garb of sale of shares. We find, the Id.CIT(A) deleted the addition, the reasons of which have already been given in the preceding paragraphs. We do not find any infirmity in the order of the CIT(A) on this issue. We find, the Id.CIT(A), while deleting the addition, has relied on his decision for AY 2013-14 in the case of Maurya Udyog Ltd., which is the sister concern of the assessee wherein similar additions were also made by the AO on account of sale of shares of the same parties. We find, the Revenue filed an appeal before the Tribunal against the order of the CIT(A) and the Tribunal, vide ITA No.6660/Del/2016, order dated 29.11.2018, has dismissed the appeal of Revenue by observing as under:-

¶19. After considering the facts and submissions, the CIT(A) observed as under:

¶4.2:5 Further, on perusal of the facts of the case it is observed that the appellant company is a listed company and is amenable to the SEBI guidelines, the shares of NCPL & LMPL held by MUL are not investments but are in the nature of trading in shares, and the impugned transactions relate to sale of shares by the appellant company to third parties; the purchase of the shares of NCPL and LMPL by MUL or the 10 source of payments to NCPL & LMPL for purchase of these shares have not been doubted by the AO; the advances/sale proceeds against the sale of these shares were duly credited in the P&L account and profits therefrom offered in the income declared, and therefore these receipts do not constitute 'cash credits' within the meaning of s.68 of the Act; the transactions involved with regard to the

sale of shares by MUL were through banking channels and in spite of collating the bank accounts of various persons related to the source of payments by SHPL, PCPL & DMPL to MUL the AO has not brought on record any material found during the search or during post search/assessment proceedings so as to say that the source of the money utilized by SHPL, PCPL & DMPL for payments against the purchase of shares from MUL was in fact the unaccounted money of MUL routed through non-banking channels. I have also examined the confirmations of account, the bills of the sale of shares, the share transfer forms, the ITRs, audited accounts and the bank statements of SHPL, PCPL & DMPL submitted in the PB, also submitted before the AO with their various replies mentioned earlier in this order, and I do not find anything adverse so as to conclude that the source of the money utilized by PCPL, DMPL & SHPL for payments to MUL was in fact the unaccounted money of MUL. Even on consideration of the status of the impugned shares of NCPL and LMPL post sale by MUL, the shares were delivered to SHPL, PCPL & DMPL and if any 11 adverse inference on material evidence was necessitated it was to be considered in the hands of PCPL, DMPL & SHPL. Besides, from the assessment order it is apparent that the initial purchase of shares by MUL from NCPL & LMPL and source thereof have not been questioned by the AO and have apparently been accepted by the AO, and even if it is considered that the sale transactions were bogus and the sale proceeds represent unaccounted income of the appellant in keeping with AO's conclusion one has to consider as to what happened to the funds invested by the appellant for purchase of these shares initially which are accepted as explained by the AO since there is no adverse finding in this regard in the assessment order, and therefore even if the sale is bogus only the difference of sale proceeds and the initial initial investment could be unexplained. On the other hand the above details indicate that MUL purchased the shares of NCPL & LMPL on 01.03.2013 which were sold to PCPL, DMPL & SHPL within a short time between 02.03.2013 to 09.03.2013 thus suggestive of trading transactions for short term profit. From the audited accounts of MUL it is observed that out of the total revenue receipts of Rs.893,22,65,662/- receipts from trading in shares have been shown at Rs.529,17,12,498/- (as against Rs.895,97,98,703/- and Rs.642,90,81,504/- in the preceding year) which include the receipts from trading in shares of only Rs.6.00 crore from PCPL, DMPL & SHPL, which too is suggestive of the business of trading in shares by MUL, 12 the appellant company. Furthermore, I am also inclined to agree with the appellant's AR that the advances or the sale proceeds against the sale of shares

held by MUL do not constitute "cash credits" within the meaning of s.68 of the Act as considered and applied by the AO, and even otherwise in view of the discussion herein above the explanation offered by the appellant/appellants AR as mentioned above cannot be considered to be unsatisfactory in terms of the provisions of s.68 of the Act or the first Proviso to s.68 of the Act inserted w.e.f. 01.04.2013. The conclusion of the AO to treat the advances/sale proceeds of the shares as "cash credits" is misconceived, and the addition made on this account is not sustainable. I hold accordingly. The addition made on this account is therefore deleted.

20. Before us, the ld. DR could not point out any factual error in the findings of the CIT(A). There is no dispute that the purchase of shares of the aforesaid companies has been accepted by the Assessing Officer. Assuming, yet not accepting that the sale consideration is bogus, then the question which has to be answered by the Assessing Officer is that where did the purchase money go since he has accepted the purchase of shares of two companies? Considering the facts of the case in hand in totality, we do not find any error in the findings of the CIT(A). This ground is also dismissed.

16. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of Maurya Udyog Ltd., therefore, respectfully following the decision of the Tribunal in the case of Maurya Udyog Ltd., we uphold the order of the CIT(A) and the ground raised by the Revenue on this issue is dismissed.

17. Ground of appeal No.3 by the Revenue relates to the order of the CIT(A) in deleting the addition of Rs.1,14,75,000/- made by the AO on account of unexplained cash.

18. The ld. DR heavily relied on the order of the AO.

19. The ld. Counsel, on the other hand, submitted that the AO made proportionate disallowance in the hands of the three companies, namely, Mayrya Udyog Ltd. ó Rs.2,78,10,000/-; Bihariji Ispat Udyog Ltd. ó Rs.57,15,000/-; and Jotindra Steel & Tubes Ltd., i.e., the assessee ó Rs.1,14,75,000/-.

20. He submitted that the proportionate disallowance in the hands of the two companies, namely, Maurya Udyog Ltd and Bihariji Ispat Udyog Ltd., has been deleted by the CIT(A) and on appeal by the Revenue, the Tribunal, vide ITA No.6660/Del/2016, order dated 29.11.2018 in the case of Maurya Udoyog Ltd., has deleted the addition. So far as the addition made in the hands of Bihariji Ispat Udyog Ltd., is concerned, the appeal filed by the Revenue was dismissed on account of low tax effect vide ITA No.5570/Del/2016, order dated 02.08.2018, copy of which is placed at pages 684-686 of the paper book. He accordingly submitted that the issue stands squarely covered in favour of the assessee by the decision of the Tribunal in the case of Maurya Udyog Ltd.

21. 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 para 6.7 of the assessment order, observed that cash payment of Rs.4,50,00,000/- from Amrapali Group are related to M/s Mauria Udyog Ltd., M/s Bihariji Ispat Udyog Ltd and M/s Jotindra Steel & Tubes Ltd. and, accordingly, made the addition in the hands of these three companies on the basis of their

turnover with Amrapali group of companies the details of which are already reproduced in para 4 above. We find, the Id.CIT(A) deleted the addition the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the CIT(A) on this issue. We find, the addition made by the AO in the case of Maurya Udyog Ltd. was deleted by the CIT(A) relying upon the order passed by him in the case of Bijariji Ispat Udyog Ltd. We find, the appeal filed by the Revenue was dismissed by the Tribunal vide ITA No.6660/Del/2016, order dated 29.11.2018 by observing as under:-

10. A plain reading of the aforesaid section clearly shows that it is applicable in a case where the assessee is found to be owner of any money, bullion, jewellery or other valuable article. The facts of the case in hand show that the assessee was never found to be in possession of any real money. The addition having been made only on the strength of some notings found in some file extracted from the computer of Shri Rohtash, clearly establish that the provisions of section 69A of the Act do not apply. We agree with the contention of the Id. AR that the foundation itself is weak and the addition should not survive. However, the Assessing Officer made the addition on the strength of the statement of Shri Rohtash wherein he has admitted that Rs. 1 crore has been received. Exhibit 85 of the paper books reveals that on the date of receipt of the impugned amount, the same was returned back to Amrapali Group by M/s Bihariji group. The entries of Rs. 50 lakhs each on 11.12.2012 and 01.02.2013 can be seen from the said Exhibit 85 of the paper book. This means that the date on which the alleged Rs. 1 crore was received, on the very same day the same was returned back.

11. More importantly, there is no mention of the assessee's name in the impugned document. The Assessing Officer has simply assumed that the reference to the impugned amount is in relation to the assessee. In our understanding, no addition can be made on the basis of presumptions and surmises. Assuming, yet not accepting that the amounts were received by the assessee, the same were returned back on the very same date as per Exhibit 85 of the paper book. Even on this count, addition is uncalled for.

12. In the result, the appeal filed by the Revenue is dismissed.ö

22. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of Maurya Udyog Ltd. (supra), therefore, respectfully following the decision of the Tribunal, we do not find any infirmity in the order of the CIT(A). Accordingly, the same is upheld and the ground raised by the Revenue is dismissed.

23. Ground No.4 relates to the order of the CIT(A) deleting the addition of Rs.13,01,395/- on account of unexplained share application money received from non-genuine parties.

24. The ld. DR heavily relied on the order of the AO. He submitted that the assessee failed to substantiate with evidence to the satisfaction of the AO regarding the identity and credit worthiness of the share applicants and genuineness of the transaction. He submitted that the ld.CIT(A), without considering the facts narrated by the AO has deleted the addition which is not justified. He accordingly submitted that the order of the CIT(A) on this issue be reversed and that of the AO be restored.

25. The ld. Counsel for the assessee, on the other hand, submitted that during the assessment year 2010-11, the assessee company has allotted shares amounting to Rs.1,35,00,000 at the share premium of Rs.6,75,00,000/- from aboard which is evident from the balance sheet for AY 2010-11 placed at page 539 of the paper

book. He submitted that the entire amount was to be received in foreign currency and out of Rs.8,10,00,000/- the equivalent INR amount of Rs. 7,96,98,605/- was received in AY 2010-11 and the shortfall amount of Rs. 13,01,395/- on account of foreign exchange fluctuation was received by the assessee in AY 2013-14. He filed the following details:-

S.No.	Name of Remitter	AY 2010-11	AY 2013-14	Total
1	Mr.Hemant Venkatramani Lalith Raj	1,99,35,405/-	3,13,095/-	20,250,000
			1,500/-	
2	Ms. Sneha Santosh Tirodkar	1,99,35,903/-	3,14,097/-	20,250,000
3	Mr. Digvijay Singh	1,98,91,892/-	3,58,108/-	20,250,000
4	Mrs. Deepa Subramanian	1,99,35,405/-	3,13,095/-	20,250,000
			1,500/-	
	Total	7,96,98,605/-	13,01,395/-	81,000,000

26. He submitted that the AO ignoring all the details filed by the assessee made the addition which was deleted by the CIT(A). He submitted that the assessee in the instant case has filed all the documents to justify the identity and credit worthiness of the share applicants and the genuineness of the transaction. Further, the RBI has noted that the assessee has followed due procedure which is required to be followed for issue to foreign share applicants. Since the Id.CIT(A) has rightly deleted the addition, the same does not call for any interference. He accordingly submitted that the ground raised by the Revenue should be dismissed.

27. 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 an addition of Rs.13,01,395/- being share application money received from Mr. Hemand Vinkatramani Lalith Raj, M/s Sneha Santosh Tirodkar, Mr. Digvijay Singh and Smt. Deepa Subramaniam on the ground that the assessee failed to prove the identity and credit worthiness of the share applicants and the genuineness of the transaction. 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. He has given a categorical finding that in the assessment year 2010-11, the assessee had received an amount of Rs.7,90,98,605/- out of the share application money of Rs.8,10,00,000/- which was deleted by him. The balance amount of Rs.13,01,395/- was received during the year from the same parties which is due to foreign exchange fluctuation. We find, the assessee, during the course of assessment proceedings, has filed the following documents to substantiate the identity and credit worthiness of the share applicants and genuineness of the transaction:-

Sl. No.	Document	References PB
1	Share application form duly filed and signed from respective Share applicant and same was filed along with Certificate of Bankers in respect of receipt of proceeds of share application money.	(Ref: PB Page No. 492-500).
2	Bank Statement of state bank of Patiala-assessee's bank in respect of amount received. Amount received has been duly numbered as per list enclosed.	(Ref: PB Page 501-512).
3	Copy of Board of Directors resolution and special resolution EGM and evidence of filing such resolution with ROC including filing of documents for increase in Authorized Share Capital	(Ref PB Page 462-477).
4	Share Allotment Return filed with ROC	(Ref PB Page 480-487).

5	Letter written dt. 06.05.2009 to RBI in respect of FDI amount received.	(Ref PB Page 488-487).
6	RBI letter to assessee dt. 02.02.2016 for submission to KYC of share applicants.	(Ref PB Page 513-514).
7	State Bank of Patiala letter dated to 18.02.2015 to RBI for submission of KYC to RBI.	(Ref PB Page 515-519).
8	RBI letter dated 20.03.2015 informing the assessee of having made necessary compliance by the assessee in respect of share allotted to NRI under FDI scheme.	(Ref PB Page 520-521).

28. The assessee has established the identity of the share applicants by the KYC particulars forwarded by the assessee's bankers to RBI. Further, the bank has informed the RBI that it has received the proceeds from NRI in the form of inward remittances certificate for each amount received. RBI has noted that the assessee has followed due procedure which is required to be followed for issue of shares to foreign share applicants. Moreover, the Department's query from share applicants during extended period of time barring recorded no adverse remarks. Under these circumstances, we do not find any infirmity in the order of the CIT(A) deleting the addition on this issue. Accordingly, the same is upheld and the ground raised by the Revenue on this issue is dismissed.

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

Order pronounced in the open court on 18.01.2022.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th January, 2022.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi