

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI**

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

**ITA No.1350/DEL/2021
[Assessment Year: 2006-07]**

Prime Quality Consultants (P) Ltd. 103, B-3, Prerna Complex, Subhas Chowk, Laxmi Nagar, Delhi-110092	Vs	ITO-20(1), C.R. Building, I.P. Estate, New Delhi-110002
PAN-AACCP8427H		
Assessee		Revenue

Assessee by	Sh. V.K. Tulsian, CA
Revenue by	Sh. Parikshit Singh, Sr. DR

Date of Hearing	22.03.2022
Date of Pronouncement	27.04.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 11.10.2018 of the learned CIT(A)-7, New Delhi, relating to AY 2006-07.

2. The facts of the case, in brief, are that the assessee is a company and filed its return of income on 29.03.2007, declaring total income of Rs.2,228/-. The assessment was completed u/s143(3) of the Act determining the total income of the assessee at Rs.2,29,25,630/-. The AO in the said order

had made addition of Rs.2,29,23,400/-as unexplained cash credit u/s 68 of the Act being the cash and cheque deposit in the bank account of the assessee on the ground that the assessee could not substantiate the source of such deposit. In appeal, the Ld. CIT(A) confirmed the addition made by the AO and on further appeal filed by the assessee, the Tribunal vide order dated 05.09.2016 restored the matter to the file of the AO for fresh adjudication of the issue by observing as under:-

“5. We have heard the Ld. A.R. of the assessee and perused the records. In the interest of justice and the contention raised by the Assessee’s counsel that additional evidence filed by the Assessee by way of Paper Book No. 2 from pages no. 80 to 158 i.e. Confirmation and Acknowledgement from seller of shares with their ITR etc. Provided by it of Suren Electronic & Electrical (P) Ltd. Etc....; Confirmation and Acknowledgement from seller of shares with their ITR etc. provided by it of Suren Electronic & Electrical (P) Ltd. Etc.... Confirmation and Acknowledgement from seller of shares with their ITR etc. Provided by it of Amardeep Const. (P) Ltd. Etc..... Balance sheet from seller of shares provided by Yansan Plastic (P) Ltd. Etc.; Confirmation and Acknowledgement from seller of shares with their ITR etc. provided by it of Sunstar Securities (P) Ltd. Etc. and Confirmation and Acknowledgement from seller of shares with their ITR etc. provided by it of Metro Fincap (P) Ltd., Kaziranga Garments, Ardent Consultancy Service Pvt. Ltd..... are very essential and goes to the root of the matter, hence, the same are admitted. We are also of the view that the additional evidences filed by the assessee requires thorough examination at the level of the AO, therefore, in the interest of justice, we are setting aside the issues in dispute to the file of the AO to examine the additional evidences filed by the assessee and decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.”

3. Accordingly, the AO issued show-cause notice u/s 254/143(3) of the Act to the assessee to furnish the documentary evidence in respect of cash deposit of Rs.1,84,45,000/- and bank deposit of Rs.44,78,400/- deposited through various cheques in Indusind Bank, Preet Vihar Branch, Delhi. The assessee filed the details as called for by the AO from time to time and explained that the assessee had purchased the unquoted shares of private domestic companies. In respect of the same, the assessee also produced the books of accounts before the AO, which were test checked. The assessee before the AO inter alia submitted as under:-

“It is relevant to mention here on behalf of the assessee that the brief details about the WIP - for purchase of company is that

1. That the company had purchased the shares of a number of private domestic companies in the interest of its business for taking them over either by becoming a director or by making an investment as a strategic program of business expansion. For this purpose the shares of one or two companies were purchased on a hit and trial basis. The shares were then tested for feasibility and if found in order they were held. Otherwise, they were immediately disposed off at cost-to-cost basis and further, shares of another company were purchased. This strategy were adopted till the final and expected results were achieved. All the activities were carried out by the old directors. A detail of the purchase of the shares is being enclosed by way of Annexure 'A'.

2. It is further submitted on behalf of the assessee that the cash deposits is nothing but part of the immediate

realization by way of the proceeds of the shares returned by the assessee company. The assessee neither receive any profit on these capital in nature transactions nor was there any stock of these shares at the end of the year. Hence, when the WIP squared up position are there no need to reflect.

In the light of the above facts it is respectfully submitted that the above details and explanations may kindly be taken on record and for remaining explanation the proceedings may kindly shortly be adjourned for 08.12.2017, since the matter is time barred, in the interest of justice.”

4. However, the AO was not fully satisfied with the arguments advanced by the assessee. While he accepted the cheque deposits, however, he did not accept the cash deposit made by the assessee in the bank account. He noted that it is not the case where money is first withdrawn and then deposited. It is unique case where the assessee goes on depositing the money in his undisclosed bank account throughout the year. He further noted that the bank account maintained with Indusind Bank was closed on 01.04.2006 which shows that the assessee tried to erase the trace of his account with Induind Bank. According to him, the said bank account maintained with Indusind Bank was never disclosed to the Income Tax Department which itself shows a dishonest intention on the part of the assessee. Finally, the AO held that the submissions made by the assessee are not acceptable for the following reasons:-

"I have carefully considered the submissions of the Assessee, and the submissions of the assessee not acceptable for the following facts:-

i) On perusal of the details filed and perusal of the assessment record it is noticed that assessee has intentionally concealed the bank account bearing no. 0031-230588-050 with Indus Bank Preet Vihar Branch Delhi - 110092 in which the assessee has deposited the cash of Rs. 1,84,45,000/- is not shown in the Income Tax Return.

ii) On perusal of the balance sheet and ITR it is seen that the assessee has not shown of the share transactions and no short term/long term capital gain has been shown in the return of the income.

iii) On perusal of the details/copy of the sales voucher of the shares filed by the assessee on 12.12.2017 & 20.12.2017. It is noticed that there is neither the name of buyer, nor the no. of shares sold, name of the company and rate at which shares have been sold is mentioned.

iv) Assessee was asked to submit the documentary evidence in regard to the cash deposited of Rs. 1,84,45,000/-. Assessee has intentionally not produced the any documentary evidence of cash deposit during the original assessment proceedings, before the ld. CIT(A) and Hon'ble ITAT and till date.

v) The assessee has not submitted required information inspite of enough opportunities given it to do so,

vi) The assessee claimed that the purpose of investment was to purchase the shares of number of unquoted shares of private domestic companies in the interest of its business for taking them over either by becoming a director or by making a investment as a strategic program of business expansion and thereafter sold the shares either in cash or by cheque as per the buyer term and vouchers in support of cash sales had filed. The assessee has failed to give any information regarding purchase and sale of shares, name of the companies whose shares were purchased and sold, name and address of the share broker through whom transaction was done nor any details filed as to which shares were purchased and sold, of which companies, at which rate, and on what date etc.

No copy of contract note and bills of share broker, distinctive No. of shares, share certificates No, mode of consideration for purchases of shares paid and mode of consideration for sales received have also been field by the assessee company during the course of assessment proceedings despite adequate opportunities provided it for the purpose.”

5. The AO accordingly accepted the cheque deposit of Rs.44,78,400/- and made addition of Rs.1,84,45,000/- being cash deposit in the bank account by invoking provisions of section 68 of the Act.

6. In appeal, the Ld. CIT(A) sustained addition of Rs.2,29,23,400/- as unexplained cash credit u/s 68 of the Act by observing as under:-

“3.3. The short issue to be decided in the present case is whether in the facts and in the circumstances of the case, the AO was justified in treating Rs.2,29,23,400/- as unexplained cash credit u/s 68 in the hands of the appellant.

3.4. The AO has added the entire amount of cash as well as cheque u/s 68 of the Act. As per the appellant’s own admission that it has deposited cash of Rs. 1,84,45,000/- in bank account. The appellant claims the deposit out of sale proceeds of the shares. But the details of the sale of the shares were never disclosed. The appellant could not submit the evidence of the purchase of shares and source of money for purchase of those shares. No share certificate number, distinctive numbers of the shares, basis of valuation to determine the purchase and sale price was submitted either before the AO or before me. It goes without saying that such details were never produced before the AO on which ground he has added the entire amount u/s 68 of the Act.

3.5. Before proceedings further it appears to me that true import of section 68 of the Act is in question in the present circumstances. The aforesaid section warrants an assessee to prove the credit in his books as to the nature and source of

such amount credited so that if explanation is not satisfactory, the AO could treat it as income of the assessee (as done in the present case) but whether an inference as to explanation is satisfactory in a particular case is essentially one of fact. It is not open to the tax payer for avoiding the burden of the proof regarding the genuineness of the credit in his books by merely introducing an intermediary. It is an admitted fact that repeated opportunities were allowed by the AO/by this office.

3.6. *in order to decide as to whether the impugned deposit in the bank account was explained or not, one has to look not only at the documents produced but also at the surrounding circumstances. In this connection, it is worth while to reproduce the following observations made by the Hon'ble Supreme court in CIT v. Durga Prasad More [1971] 82 ITR 540:*

"It is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinders while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

3.7. *According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of broad principles of common law governing the issue under consideration.*

3.8. *In the case of Gordhandas Hargovandas & Another Vs. CIT (126 ITR 560) (Bom.) the Hon'ble High Court observed as under:-*

"Though in isolation each piece of evidence may appear to be of little weight, on an overall appreciation it would be permissible to consider their cumulative effect and decide one way or the other."

3.9. *Genuineness of transaction has to be gathered on the parameters spelt out in S.3 of the Evidence Act, which provides as to when a fact should be treated as proved. The observations of Hon'bie Supreme Court made in the case of Director of Income Tax Vs Bharat Diamond Bourse (259 ITR 280) which are relevant and as under:*

"The story rings false from beginning to end, and yet, the Tribunal accepted it by saying, as regards the bonafides of the transaction, in our opinion, there is nothing to suspect the same.' The Tribunal says, 'there is a transparency about the entire transaction which nullifies any attempt to make out the transaction as something unusual and out of the ordinary.' That diamonds are not transparent, that they dazzle with a brilliance that blinds the eye, seems to have escaped the notice of the Tribunal. It un-discerningly accepted the glib explanation of the assessee, though seeming with improbabilities and strenuous on credulity."

3.10. *The aforesaid observations emphasize the importance that a glib explanation tendered by the assessee, teeming with improbabilities and strenuous on credulity cannot be accepted.*

3.11. *In the case of Indus Vaily Promoters (P) Ltd Vs CIT 305 ITR 202, Hon bie Delhi High Court observed as under:-*

"....It is well settled that the assessee must discharge the burden of proving the identity of the creditors and also to give the source of the deposits. In other words, the creditworthiness of the depositors must be established to the satisfaction of the AO. Where there is an unexplained cash credits, it is open to the AO to hold that it is income of the assessee and no further burden lies on the AO to show that income in question comes from any particular source."

3.12. *It was observed by the Hon'ble Gujrat High Court in the case of Gujco Carriers Vs CIT (256 ITR 50) that startling facts could not be ignored.*

3.13. *It is a settled proposition of law that the appellant has a legal obligation to explain the nature and source of credit as held in the case of Shrilekha Banerjee Vs CIT (1963) 49 ITR SC 112. in order to prove the transaction is not hit by section 68, the appellant has to establish first the identity, second the creditworthiness of the creditor and third the genuineness of transaction. It is to be mentioned that not one or two of the ingredients are to be proved to the satisfaction of the AO, all the three ingredients are to be established to make out a case that the assessee's case will not fall under the aforesaid criteria. Only when all these ingredients are established, prima facie the onus shifts on the Department. In the instant case not even the identity could be established, neither the creditworthiness nor the genuineness of the transaction could be established beyond any iota of doubt. This view was taken in the case of Shanker Industries Vs CIT (1978) 114 ITR 678 (Cat). The onus is stated to be shifted only when there is evidence to sufficiently establish a prima facie case in favour of the party on whom onus lies.*

3.14. *In the facts and circumstances of the appellants case, I am of the view that the appellant has failed to explain the reasons for concealing the bank account maintained with Indusind Bank from the Department. The appellant has also failed to explain the source of deposit in the above bank account. The story of deposit out of sale proceeds of shares is only a tell tale story and after thought as the appellant could not produce any convincing evidence in respect of purchase and sale of shares. Even primary information like name of the companies, share certificate nos., distinctive number of shares, details of D-Mat account, name and addresses of brokers were not submitted. The appellant is dealing in the business of trading of cloth. Total sales turn over from the cloth business has been shown at Rs.11,25,600/-. Thus, for an assessee whose total turnover from the main business is only Rs. 11,25.600/- for entire year, the claim that they purchased the shares on hit and trial basis to the extent of Rs.2.2.9 crores is without any basis.*

Moreover, it is seen that the entire trading in cloth was done in the last quarter of financial year. The appellant had shown total purchase of Rs.9,93,745/- from one single party M/s. R.K. Enterprises from 18.01.2006 to 02.03.2006 and entire sales of Rs. 11,25,600/- to a single party M/s Insat Commercial Pvt. Ltd. from 18.02.2006 to 15.03.2006.

3.15. It should be noted that in the return of income, the appellant has shown the place of the business at 1313, Kunde Walan, Ajrrieri Gate, Delhi- 6. During the assessment proceedings, the AO deputed the inspector of Income Tax (ITI) to make on the spot enquiries. The ITI in his report dated 18.12.2008 submitted to the AO has reported that the address is a residence and no office works from the above place. He further submitted that the letters in the name of Prime Quality Consultant are being received by the relatives who are living there and all correspondence has been made by Mr. Mahesh Grover living in Geeta Colony and his office is located in Laxmi Nagar.

3.16. Without prejudice to the above discussion, for the sake of argument, if it is to be believed that the appellant received money on account of the sale of the shares, the question will be where from the appellant purchased the shares? Naturally, the appellant has to explain the source of such purchase. The record revealed that the appellant has not disclosed any investment in shares in the balance sheet. From the perusal of the bank account with the Indusind Bank it is seen that the appellant has started depositing the money from 2nd April, 2005 itself. It is not the case where money is first withdrawn and then deposited. It is a unique case where the appellant goes on depositing the money in his undisclosed bank account throughout the year. It is all the more interesting to note that the main business of the appellant that is trading in cloth took place only in the month of January and March, 2006 and there was no business of cloth trading during the remaining period of year. It will be relevant to

reproduce the transactions recorded in the undisclosed bank account of the appellant with the Indusind Bank as under:-

Prime Quality Consulant Pvt. Ltd.				
Bank Statement- Indusind Bank				
From 01.04.2005 to 31.03.2006				
Date	Particulars	Deposit	Withdrawal	Balance
01.04.2005				11,940.00
02.04.2005	Transfer from 232608050 Kailash Enterprises	225,000.00		236,940.00
02.04.2005	Transfer from 231734	450,000.00		686,940.00
02.04.2005	Transfer from 231733	325,000.00		1,011,940.00
02.04.2005	Cheque Deposit BOB/985893	469,200.00		1,481,140.00
02.04.2005	Cheque Deposit BOP/662446	388,000.00		1,869,140.00
02.04.2005	Cheque Deposit VIJYA 641724	207,000.00		2,076,140.00
04.04.2005	Cash Deposit	250,000.00		2,326,140.00
04.04.2005	Cheque Paid 760156 TOKHINA		500,000.00	1,826,140.00
04.04.2005	Cheque Paid 760157 Ayomi		500,000.00	1,326,140.00
05.04.2005	Returned cheque 003104020042-001		469,200.00	856,940.00
05.04.2005	Cash Deposit	185,000.00		1,041,940.00
05.04.2005	Cash Deposit	160,000.00		1,201,940.00
05.04.2005	Transfer Debit		5.00	1,201,935.00
05.04.2005	Cheque Paid 760159 Shilpkar		500,000.00	701,935.00
05.04.2005	Cheque Paid 760160 Core Capital		500,000.00	201,935.00
05.04.2005	Cheque Paid 760162 to A/c No. 0031231212050		160,000.00	41,935.00
05.04.2005	Cheque Deposit BOB/985893	469,200.00		511,135.00
06.04.2005	Cash Deposit	470,000.00		981,135.00
06.04.2005	Cheque Paid 760161 Amardeep		500,000.00	481,135.00

07.04.2005	Cash Deposit	30,000.00	511,135.00
08.04.2005	Cash Deposit	250,000.00	761,135.00
08.04.2005	Cheque Paid 760152 Jenco Overseas	500,000.00	261,135.00
08.04.2005	Cheque Paid 760153 A/c No. 0031231734050	250,000.00	11,135.00
08.04.2005	Transfer from 0031231734050	500,000.00	511,135.00
09.04.2005	Cheque Paid 760167 Amardeep	500,000.00	11,135.00
12.04.2005	Cash Deposit	400,000.00	411,135.00
13.04.2005	Cash Deposit	400,000.00	811,135.00
15.04.2005	Cash Deposit	100,000.00	911,135.00
15.04.2005	Cheque Paid 760154 Universal Electrique	400,000.00	511,135.00
16.04.2005	Cheque Paid 760163 Ardent Consultancy	500,000.00	11,135.00
18.04.2005	Cash Deposit	250,000.00	261,135.00
20.04.2005	Cash Deposit	350,000.00	611,135.00
20.04.2005	Cheque Paid 760164 Jenco	400,000.00	211,135.00
20.04.2005	Cheque Paid 760165 to A/c No. 231734050	200,000.00	11,135.00
21.04.2005	Cash Deposit	400,000.00	411,135.00
23.04.2005	Transfer from 0031233319050	350,000.00	761,135.00
23.04.2005	Transfer from 0031233318050	350,000.00	1,111,135.00
23.04.2005	Transfer From 0031231232050	350,000.00	1,461,135.00
23.04.2005	Cash Deposit	450,000.00	1,911,135.00
23.04.2005	Cheque Deposit ABN/240597	50,000.00	1,961,135.00
25.04.2005	Cash Deposit	350,000.00	2,311,135.00
25.04.2005	Cheque Paid 760168 Vikas Paraffins	500,000.00	1,811,135.00
26.04.2005	Cheque Paid 760169 Indo Holland	600,000.00	1,211,135.00
26.04.2005	Cheque Paid 760170 Indo Holland	600,000.00	611,135.00
26.04.2005	Cheque Paid 760171 Indo Holland	600,000.00	11,135.00
28.04.2005	Cash Deposit	200,000.00	211,135.00
29.04.2005	Cash Deposit	200,000.00	411,135.00
29.04.2005	Cash Deposit		

		100,000.00	511,135.00
29.04.2005	Cheque Paid 760166 to A/c No. 0031231230050	500,000.00	11,135.00
02.05.2005	Cash Deposit	400,000.00	411,135.00
02.05.2005	Cheque Paid 760172 to A/c No. 233318050	400,000.00	11,135.00
03.05.2005	Cash Deposit	485,000.00	496,135.00
04.05.2005	Cash Deposit	480,000.00	976,135.00
05.05.2005	Cash Deposit	485,000.00	1,461,135.00
05.05.2005	Cheque Paid 760173 Roseco Bldrs	500,000.00	961,135.00
05.05.2005	Cheque Paid 760174 Sunstar Securities	500,000.00	461,135.00
06.05.2005	Cash Deposit	490,000.00	951,135.00
07.05.2005	Cash Deposit	60,000.00	1,011,135.00
07.05.2005	Cheque Paid 760178 Great Himalaya	500,000.00	511,135.00
09.05.2005	Cash Deposit	250,000.00	761,135.00
09.05.2005	Cheque Paid 760175 to A/c No. 0031231733050	250,000.00	511,135.00
09.05.2005	Cheque Paid 760179 Nagira Mktg	500,000.00	11,135.00
12.05.2005	Cash Deposit	400,000.00	411,135.00
12.05.2005	Cheque Paid 760176 to A/c No. 0031230783050	200,000.00	211,135.00
12.05.2005	Cheque Paid 760177 to A/c No. 0031230728050	200,000.00	11,135.00
18.05.2005	Cash Deposit	450,000.00	461,135.00
19.05.2005	Cheque Paid 760182 Metro Fincap P Ltd.	50,000.00	411,135.00
20.05.2005	Cheque Paid 760180 Yansan Plastics P Ltd.	200,000.00	211,135.00
20.05.2005	Cheque Paid 760181 Suren Electronics & Electricals Ltd.	200,000.00	11,135.00
24.05.2005	Cash Deposit	200,000.00	211,135.00
24.05.2005	Cash Deposit	200,000.00	411,135.00
25.05.2005	Cash Deposit	350,000.00	761,135.00
25.05.2005	Cheque Paid 760183 Intelligent Shave Brokers P Ltd.	500,000.00	261,135.00
25.05.2005	Cheque Paid 760184 Alpine India P Ltd.	250,000.00	11,135.00
26.05.2005	Cash Deposit	250,000.00	261,135.00
27.05.2005	Cheque Paid 760185 Intelligent Share Brokers P Ltd.	250,000.00	11,135.00

31.05.2005	Cash Deposit	250,000.00	261,135.00
01.06.2005	Cheque Paid 760186 Muskan Enterprises	250,000.00	11,135.00
02.06.2005	Cash Deposit	200,000.00	211,135.00
02.06.2005	Cheque Paid 760187 Muskan Enterprises	200,000.00	11,135.00
07.06.2005	Cash Deposit	200,000.00	211,135.00
07.06.2005	Cash Deposit	200,000.00	411,135.00
07.06.2005	Cheque Paid 760188 Muskan Enterprises	200,000.00	211,135.00
07.06.2005	Cheque Paid 760189 Millenium Agro	200,000.00	11,135.00
15.06.2005	Cash Deposit	300,000.00	311,135.00
15.06.2005	Cheque Paid 760190 Swetang Intl.	300,000.00	11,135.00
16.06.2005	Cash Deposit	250,000.00	261,135.00
17.06.2005	Cheque Paid 760191Jenco Overseas	250,000.00	11,135.00
18.06.2005	Cash Deposit	250,000.00	261,135.00
20.06.2005	Cash Deposit	400,000.00	661,135.00
20.06.2005	Cheque Paid 760192 Universal Elecrique Motors	250,000.00	411,135.00
20.06.2005	Cheque Paid 760193 Swetang Intl.	100,000.00	311,135.00
21.06.2005	Cheque Paid 760194 Universal Elecrique Motors	300,000.00	11,135.00
23.06.2005	Cash Deposit	400,000.00	411,135.00
24.06.2005	Cash Deposit	200,000.00	611,135.00
24.06.2005	Cheque Paid 760195 Universal Elecrique Motors	400,000.00	211,135.00
24.06.2005	Cheque Paid 760196 Alpine India P Ltd.	200,000.00	11,135.00
25.06.2005	Cash Deposit	250,000.00	261,135.00
27.06.2005	Cash Deposit	200,000.00	461,135.00
27.06.2005	Cheque Paid 760197 Intelligent Share Brokers P Ltd.	250,000.00	211,135.00
28.06.2005	Cash Deposit	400,000.00	611,135.00
28.06.2005	Cheque Paid 760198Jenco Overseas	200,000.00	411,135.00
28.06.2005	Cheque Paid 760199 Millenium Agro Sys	400,000.00	11,135.00
29.06.2005	Cash Deposit	400,000.00	411,135.00
29.06.2005	Cheque Paid 760200 Swetang Intl.		

		400,000.00	11,135.00
07.07.2005	Cash Deposit	400,000.00	411,135.00
08.07.2005	Cheque Paid 765801 to A/c No. 0031231212050	400,000.00	11,135.00
09.07.2005	Cash Deposit	300,000.00	311,135.00
11.07.2005	Cash Deposit	250,000.00	561,135.00
11.07.2005	Cheque Book issue	100.00	561,035.00
11.07.2005	Cheque Paid 765802 Universal Elecrique Motors	300,000.00	261,035.00
12.07.2005	Cash Deposit	450,000.00	711,035.00
12.07.2005	Cheque Paid 765804 Swetang Intl.	450,000.00	261,035.00
13.07.2005	Cheque Paid 765803 Intelligent Share Brokers P Ltd.	250,000.00	11,035.00
25.07.2005	Cash Deposit	83,000.00	94,035.00
26.07.2005	Cheque Paid 765806 to A/c No. 0031231733050	83,000.00	11,035.00
27.07.2005	Cash Deposit	250,000.00	261,035.00
27.07.2005	Cheque Paid 765807 to A/c No. 0031231733050	250,000.00	11,035.00
28.07.2005	Cash Deposit	250,000.00	261,035.00
29.07.2005	Cheque Paid 765808 to A/c No. 231733050	250,000.00	11,035.00
01.08.2005	Cash Deposit	250,000.00	261,035.00
03.08.2005	Cheque Paid 765805 Jenco Overseas	250,000.00	11,035.00
06.08.2005	Cash Deposit	250,000.00	261,035.00
08.08.2005	Cash Deposit	105,000.00	366,035.00
08.08.2005	Cheque Paid 765809 Universal	250,000.00	116,035.00
09.08.2005	Cash Deposit	180,000.00	296,035.00
09.08.2005	Cash Deposit	205,000.00	501,035.00
09.08.2005	Cheque Paid 765810 to A/c No. 0031231733050	240,000.00	261,035.00
12.08.2005	Cash Deposit	350,000.00	611,035.00
13.08.2005	Cheque Paid 765812 to A/c No. 0031231212050	350,000.00	261,035.00
18.08.2005	Cash Deposit	300,000.00	561,035.00
18.08.2005	Cheque Paid 765813 to A/c No. 0031231733050	300,000.00	261,035.00
23.08.2005	Cash Deposit	250,000.00	511,035.00

24.08.2005	Cheque Paid 765814 Jenco		250,000.00	261,035.00
25.08.2005	Cash Deposit	250,000.00		511,035.00
25.08.2005	Cheque Paid 765815 Universal Elecricque		250,000.00	261,035.00
30.08.2005	Cheque Deposit PNB/ 396343	60,000.00		321,035.00
02.09.2005	Transfer Debit 765811 to A/c No. 230558050		250,000.00	71,035.00
02.09.2005	Cheque Paid 765805 Jenco Overseas P Ltd.		60,000.00	11,035.00
03.09.2005	Cash Deposit	400,000.00		411,035.00
03.09.2005	Cheque Paid 765821 Universal		400,000.00	11,035.00
05.09.2005	Cash Deposit	250,000.00		261,035.00
05.09.2005	Cheque Paid 765817 to A/c No. 0031231212050		250,000.00	11,035.00
12.09.2005	Cash Deposit	250,000.00		261,035.00
12.09.2005	Cheque Paid 765818 Universal		250,000.00	11,035.00
13.09.2005	Cash Deposit	250,000.00		261,035.00
13.09.2005	Cheque Paid 765819 to A/c No. 0031231733050		250,000.00	11,035.00
17.09.2005	Cash Deposit	400,000.00		411,035.00
19.09.2005	Cheque Paid 765820 Universal		400,000.00	11,035.00
16.01.2006	Cheque Deposit 090232/PNB	205,000.00		216,035.00
16.01.2006	Cheque Deposit 990764/PNB	80,000.00		296,035.00
18.01.2006	Cheque Paid 765823 Alpine India P Ltd.		285,000.00	11,035.00
20.02.2006	Transfer Debit A/ CHGS Ded From A/c No. 230588		220.00	10,815.00
20.02.2006	Cheque cashed 765824 Self		10,815.00	-

3.17. It is seen that the above bank account with the Indusind Bank was closed on 01.04.2006. This shows that the appellant tried to erase the trace of his account with Indusind Bank, it needs to be again mentioned that the above bank account with the Indusind Bank was never disclosed to the Income Tax Department. This itself shows a dishonest intention on the part of the appellant.

3.18. The Hon'ble Delhi High Court in CIT vs. Focus Exports Pvt. Ltd. (228 Taxman 88) while examining the provisions of section 68 has ruled that where the assessee failed to offer a reasonable and acceptable explanation regarding the source and nature of credit, the AO is entitled to draw inference that

the receipt are that of an assessable nature. The High Court observed as under:

"9. A bare reading of Section 68 of the Act suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be a sum during the previous year and if the assessee offers no explanation about the nature and source of such credit or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year. The expression 'no explanation is offered' or 'the explanation offered is not satisfactory' puts an onus on the assessee to offer a lucid, reasonable and acceptable explanation before the Assessing Officer and thereupon the Assessing Officer should form an opinion accepting or rejecting the explanation based upon appreciation of facts/materials and other attending circumstances. Section 68 of the Act was examined in *A. Govindarajulu Mudaliar v. CIT*, [1958] 34 ITR 807 (SC) observing that there were ample authorities for the proposition that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during an accounting year, the Assessing Officer is entitled to draw inference that the receipts are of an assessable nature. Whether explanation should be accepted or not is not to be examined factually but having regard to test of human probabilities and normal course of conduct. Reference can be made to *CIT v. Durga Prasad More* 11971182 ITR 540 (SC). *CIT v. Dau/at Ram Rawatmull*, [1973] 187 ITR 349 (CSC) and other cases referred to in *CIT v. Nova Promoters & Finlease (P.) Ltd.* 120121 342 ITR 169/206 Taxman 207/18 taxmann.com 217 (Delhi). In these cases, it has been observed that what is apparent must be considered real until it is shown that there are reasons to believe that the apparent is not real. Caution must be exercised on self-serving statements made in the documents as they are easy to make and rely upon in case an assessee wants to evade taxes. Proof is required and the assessing authorities should not put blinkers while looking at the documents before them. Surrounding circumstances are equally important."

3.19. The Hon'ble High Court in the case of *N.R Portfolio* observed as under:

"29. In *CIT v. Nipun Builders & Developers (P.) Ltd.* [2013] 350 ITR 407 (Delhi), this principle has been reiterated holding that the assessee and the Assessing Officer have to adopt a reasonable approach and when the initial onus on the assessee would stand discharged depends upon facts and circumstances of

each case. In case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call monies, dividends, warrants etc. have to be sent and the relationship is/was a continuing one. In such cases, therefore, the assessee cannot simply furnish details and remain quiet even when summons issued to shareholders under Section 131 return unserved and uncomplied. This approach would be unreasonable as a general proposition as the assessee cannot plead that they had received money, but could do nothing more and it was for the assessing officer to enforce share holders attendance. Some cases might require or justify visit by the Inspector to ascertain whether the shareholders/subscribers were functioning or available at the addresses, but it would be incorrect to state that the assessing officer should

get the addresses from Registrar of Companies' website or search for the addresses of shareholders and communicate with them. Similarly, creditworthiness was not proved by mere issue of a cheque or by furnishing a copy of statement of bank account. Circumstances might require that there should be some evidence of positive nature to show that the said subscribers had made a genuine investment, acted as angel investors, after due diligence or for personal reasons. Thus, finding or a conclusion must be practicable, pragmatic and might in a given case take into account that the assessee might find it difficult to unimpeachably establish creditworthiness of the shareholders.

30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons

behind the company who take the decisions, controls and manage them."

3.20. *The Hon'ble High Court in the case of CIT - II vs. MAF Academy (P) Ltd. held as under:*

"23. The contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. In A. Govindarajiu Mudaliar v. CIT [1958] 34 ITR 807, Supreme Court observed that it was not the duty of the Revenue to adduce evidence to show from what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the accounting year. Similarly observations were made in CIT vs. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC), inter alia holding that it was not necessary for the Revenue to locate the exact source. This principle was reiterated in CIT vs. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 (SC), wherein the contention that the Assessing Officer should indicate the source of income before it was taxable, was described as an incorrect legal position. Thus when there is an unexplained cash credit, it is open to the Assessing Officer to hold that it was income of the assessee and no further burden lies on him to show the source. In Yadu Hari Dalmia vs. CIT [1980] 126 ITR 48, a Division Bench of Delhi High Court has observed'-

"It is well known that the whole catena of sections starting from s. 68 have been introduced into the taxing enactments step by step in order to plug loopholes and in order to place certain situations beyond doubt even though there were judicial decisions covering some of the aspects. For example, even long prior to the introduction of s. 68 in the statute book, courts had held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the ITO, not satisfactory, the sums so credited could be charged to income-tax as income of the assessee of a relevant previous year. Section 68 was inserted in the I.T. Act, 1961, only to provide statutory recognition to a principle which had been clearly adumbrated in judicial decisions."

3.21. *Adverting to the facts in the appellant's case, it is obvious that half baked documentary evidence are filed to*

explain the source of the impugned credit. Despite, repeated opportunities, during assessment and appellate proceedings, no positive evidence to satisfactorily explain the impugned credits were filed. These facts only show that a paper trail is sought to be created to camouflage the entire transaction.

3.22. Under these circumstances, I hold that the appellant has failed to explain the source of deposit in the bank account and the AO was justified in making the addition of Rs.2,29,23,400/. I, therefore, confirm the addition made by the AO. The ground of appeal is rejected.

4. In the result, the appeal is dismissed.”

7. Aggrieved with such order, the assessee is in appeal before the Tribunal by raising the following grounds:-

- 1. Whether the Ld. CIT (A) was justified by passing the Ex-parte order dt.11.10.18 without providing an opportunity / reasonable opportunity for hearing as appeared from order itself.*
- 2. Whether the Ld. CIT (A) was justified by upholding the Ld. A.O. order dt.28.12.2017, without disputing the explanations and evidence on record before A.O., in a mechanical/hurried manner as appeared from the record to the effect that details have been filed in comprehensive with available evidences which was neither considered at all nor without proper apprising the details and explanations filed time to time , suffers from patent illegality and deserve for cancellation.*
- 3. Whether the Ld. CIT (A) was justified in passing the order by dismissing the Appeal by wrongly arrive at a suo-motto conclusion to treat all the credit entries in bank account as unexplained under the garb of section 68 without affording an opportunity admittedly the same were utilized for WIP resulting no financial impact hence it was not the part and parcel of the financial statements.*
- 4. Whether the Ld. CIT (A) was justified in passing the order by upholding A.O. Order without considering the GOA whereas it was specifically stated that while passing the order by A.O.dt. 28.12.2017 is in a mechanical/hurried manner because on 26.12.17 matter kept for 29.12.17 for discussion and on being appearance Along with an alternate submissions*

before that the order has already been passed without discussions.

5. *Whether the Ld. CIT (A) was justified to uphold the Ld. AO order, by arriving at a suo-motto conclusion solely based on various citations, by completely side tracking the evidence/explanations on record, which have nothing to do in the present matter which are totally contrary to law and a such the order suffers from patent illegality.*
6. *Whether the Ld. CIT (A) was justified by passing the order in mechanical manner just by deciding one ground instead as per GOA as per Memo of Appeal.”*

8. The ld. Counsel for the assessee strongly challenged the order of the Ld. CIT(A) in treating Rs.2,29,23,400/- as unexplained cash credit u/s 68 of the Act in the hands of the assessee. He submitted that the AO in the original assessment order had made addition of Rs.2,29,23,400/- being cash deposit of Rs.1,84,45,000/- and cheque deposit of Rs.44,78,400/-. After the matter was remanded back by the Tribunal to the file of the AO, the AO accepted the cheque deposit of Rs.44,78,400/- but retained the addition of cash deposit of Rs.1,84,45,000/- as unexplained. He submitted that the ld. CIT(A) without considering the facts properly has merely repeated the earlier order passed by his predecessor, which was challenged before the Tribunal and the Tribunal had restored the matter to the file of the AO. Accordingly, the AO had

deleted the addition of Rs.44,48,400/-. The ld. CIT(A) without issuing any enhancement notice travelled beyond the addition made by the AO and sustained the addition of Rs.2,29,23,400/- made by the AO and sustained in the original assessment. Relying on various decisions, he submitted that the Ld. CIT(A) without giving enhancement notice cannot make any addition or go on to a make an addition which was not the case of the AO. Relying on various decisions, he submitted that the First Appellate Authority cannot enhance the income of the assessee on altogether new facts.

9. So far as the cash deposit of Rs.1,84,45,000/- made by the AO and sustained by the Ld. CIT(A) is concerned, he submitted that the premises on which the AO made the addition is that the bank account was an undisclosed bank account and it was never disclosed to the Income Tax Department. Referring to the copy of the balance sheet for the year ending 31st March, 2005, he submitted that the said bank account was very much disclosed in the balance sheet where an amount of Rs.11,940/- was shown in the name of Indusind Bank under the head balance with scheduled banks. He

submitted that during the year ending on 31.03.2006 the balance was Nil and accordingly Nil balance was shown disclosing the said bank account in the balance sheet. Therefore, the very basis on which the addition has been made by the AO and sustained by the Ld.CIT(A) is incorrect, since, the said bank account was duly disclosed in the balance sheet of the company and it was not a hidden bank account. So far as the cash deposits are concerned, he submitted that the company used to purchase the shares by paying cheque and sell them in cash and such cash was deposited in the bank account. Therefore, when the purchases and sales have not been disputed by the lower authorities, the cash deposited out of sale of investment in cash should not have been doubted and no addition u/s 68 of the Act is called for. He submitted that the assessee during the course of assessment proceedings had produced books of accounts, which were test checked by the AO and no defects were found. The assessee had filed vouchers in respect of each sale of investment and the AO had not found any defect in such vouchers. Further, the assessee had also filed confirmation for purchases Company wise. Those companies had also clarified that they had received consideration by cheque. Similarly, as regards sale of

investment, the assessee had filed the vouchers to whom the shares were transferred and the consideration has been received in cash which were duly accepted by the parties concerned. Therefore, no addition is called for. In his alternate contention, he submitted that only some profit on estimate basis can be added treating the assessee as a broker/mediator and the entire cash deposit cannot be added u/s 68 of the Act.

10. The Ld. DR, on the other hand, heavily relied on the order of the AO and the ld. CIT(A).

11. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. 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 original assessment in this case was completed u/s 143(3) of the Act on 22.12.2008 determining the total income at Rs.2,29,25,630/- wherein, an addition of Rs.2,29,23,400/- was made being cash deposit of Rs.1,84,45,000/- and a cheque deposit of Rs.44,78,400/-. We find the ld. CIT(A) upheld the action vide order dated 31.03.2010 and in further appeal the Tribunal restored the matter to the file of the AO with certain directions, the reasons of which have already been

reproduced in the preceding paragraph. We find after the matter was set-aside by the Tribunal to the file of the AO, he accepted the cheque deposits but sustained addition of Rs.1,84,45,000/- being cash deposit in the bank account of the assessee treating the same as unexplained vide order dated 28.12.2017 passed u/s 254/143(3). We find the Ld. CIT(A) vide order dated 11.10.2018 sustained the addition of Rs.2,29,23,402/-, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel for the assessee that the ld. CIT(A) has repeated the original order passed by his predecessor. Further, the Ld. CIT(A), without issuing any enhancement notice, has travelled beyond the subject matter of the assessment and directed the AO to make the addition of Rs.44,78,400/- being cheque deposit which the AO had accepted in the order passed u/s 254/143(3) as explained. So far as the addition of Rs.1,84,45,000/- is concerned, it is the submission of the ld. Counsel for the assessee that the assessee had filed full details in respect of cash so deposited in the bank account, which is not an undisclosed bank account and therefore, such addition is uncalled for. It is his alternate contention that at best some commission/profit on estimate basis can be added treating the

assessee as a broker/mediator and the entire cash deposit cannot be added u/s 68 of the Act.

12. Before dwelling upon the issues raised by the assessee in the grounds of appeal, we have to see the order of the Ld. CIT(A) in sustaining the addition of Rs.2,29,23,402/- as mentioned earlier after the matter was set-aside by the Tribunal to the file of the AO. The AO has accepted the bank deposit of Rs.44,78,400/- as explained and has not made any addition. The ld. CIT(A) without issuing any enhancement notice to the assessee has repeated the order of his predecessor and sustained the addition of Rs.2,29,23,400/- which in our opinion is not justified in view of the provisions of section 251(2) of the Income Tax Act, 1961.

13. We find the provisions of section 251 are as under:-

“251. (1) *In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.”

13.1. A perusal of the above shows that the ld. CIT(A) shall not enhance the assessment without giving a reasonable opportunity to the assessee to show-cause against such enhancement, which is a mandatory requirement. However, the Ld. CIT(A) in the instant case has not followed the mandatory requirement of law. Therefore, we find merit in the argument of the ld. counsel for the assessee that the addition of Rs.44,78,400/- deposited through various cheques, which was accepted by the AO as no addition has been made on this issue has to be deleted. We accordingly direct the AO to delete the addition of Rs.44,78,400/- out of the addition of Rs.2,29,23,402/- sustained by the ld. CIT(A).

14. So far as the remaining addition of Rs.1,84,45,000/- being unexplained cash deposit in the bank account is concerned, we find, it was the submission of the ld. counsel for the assessee before the AO that the assessee was purchasing the shares of different companies in cheque and selling such investment in cash. It is an admitted fact that the AO has not disputed the purchase and sale of shares/investments as mentioned earlier. Further, the account maintained with Indusind Bank is very much disclosed and not a hidden account. We find the basis of addition made by the AO was that the bank account maintained with Indusind Bank was hidden/undisclosed bank account and the assessee failed to explain the source of the cash deposit. However, we have already mentioned above that the said bank account was very much disclosed in the balance sheet in the preceding assessment year and for the current year the amount was standing at Nil but the bank account was shown in the balance sheet. Therefore, it cannot be said that cash deposit in the bank account was a hidden bank account. At the same time the conduct of the assessee in our opinion is not above board. It is not understood as to why a person shall purchase and sale the investment at the same price without incurring loss or

making profit. Therefore, we do not find merit in the arguments of the Id. Counsel for the assessee that no addition should be made on this account. However, at the same time, the entire addition of the cash deposit in the bank account cannot be made in the instant case especially when the purchases have been made through banking channel and sales have been made in cash and at the end of the year all the shares purchased have been sold leaving no balance. The assessee in the instant case in our opinion has typically acted as broker/mediator/commission agent. The various Coordinate Benches of the Tribunal under such type of bogus purchases/sales are estimating the profit ranging from 0.25% to 3% of the purchases/sales as the case may be. Considering the totality of the facts of the case and in the interest of justice, we are of the considered opinion that adoption of profit @ 2.5% of the total cash deposit of Rs.1,84,45,000/- in the instant case as against entire addition of Rs.1,84,45,000/- will meet the ends of justice. We hold and direct accordingly. The order of the Id. CIT(A) is accordingly modified and the grounds raised by the assessee are partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced in the open court on 27.04.2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

Delhi; Dated: 27.04.2022.

Shekhar, Sr. P.S

Copy forwarded to:

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

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi