

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.7129/Del/2018
Assessment Year: 2015-16

ACIT,
Central Circle-15,
New Delhi.

Vs Enrich Agro Food Products Pvt. Ltd.,
B-1643, Pocket 1,
Vasant Kunj,
New Delhi.

PAN: AAACE0807C

(Appellant)

(Respondent)

Assessee by	:	Shri V.K. Aggarwal, AR & Ms Shweta Bansal, CA
Revenue by	:	Shri Vivek Vardhan, Sr. DR
Date of Hearing	:	26.04.2022
Date of Pronouncement	:	29.04.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 23rd August, 2018 of the CIT(A)-26, New Delhi, for AY 2015-16.

2. Facts of the case, in brief, are that the assessee company is one of the group companies of Kandhari group and is engaged in the business of preparation, manufacturing, packing and sale of soft drinks on the basis of concentrate and other raw material procured from Coca Cola in the capacity of bottler and distributor of Coca Cola products in India. It filed its return of

income on 28.11.2015 declaring the total income at Rs.14,81,76,850/-. A search and seizure operation u/s 132 of the IT Act was carried out on 28th March, 2015 in the case of M.M Aggarwal group of cases. The case of the assessee was also covered in the search u/s 132(1) of the IT Act. During the course of search carried out at different premises of M.M. Aggarwal group, documents, data storage devices, etc. belonging to the assessee were found and seized.

2.1. The A.O. during the course of assessment proceedings noted that the assessee company has received share capital and share premium of Rs.4,87,99,855/- including share premium of Rs.4,61,62,025/- on account of issue of 263783 equity shares of Rs.10/- each at a premium of Rs.175/-.

3. The AO noted that during the course of pre search enquiries, it was gathered that the assessee group had received substantial amount of share capital and share premium from various non descript and shell companies which did not have any factual identity and, creditworthiness. It was also gathered that the investment by such entities with the assessee group was mainly in the form of share capital which was subscribed at an abnormally high premium which lacked genuineness on their part to have agreed to subscribe at such premium without having received any return either in the form of dividends or appreciation in the value of their investment till date.

4. Further, the search action established beyond doubt that the assessee company like other group companies had received the impugned share capital from various non descript and shell entities/companies which grossly lacked creditworthiness and were in the nature of accommodation entries to convert the undisclosed income of the assessee group having been received in the form of such share capital from the stated entities/companies.

5. Further, the search and survey actions on the group established the fact that most of the companies of the group which had contributed share capital with the assessee company were not traceable at the stated addresses and their so called registered offices were non existent or were being used for other purposes rather than transacting business of companies . Consequently neither any books of account nor -any secretarial records could either be found or seized from such non- existent registered offices of the shell/non descript companies.

6. He noted that during pre-search verification, spot enquiries were made at the registered address of M/s MSG Finance India Pvt. Ltd at 201H, Gautam Nagar, New Delhi from whom Rs 3.50 crores were shown to have been received by M/s Heritage Beverages Pvt. Ltd. It was found that no company is being run from the stated address. It is pertinent to note that Kandhari group had also received bogus share premium from Indogulf Infrastructure Investment Pvt. Ltd who had also provided share premium to MM Agrawal group of companies.

7. The A.O. further noted that during the course of search action conducted at the office premises of Sh. Varinder Pal Singh Kandhari at Plot no. 237-238, Udyog Vihar, Gurgaon on 28/03/2015. the above facts were confronted to Mr. Pradeep Kumar Shastri, Director in Kandhari group companies, who had admitted that a part of share premium received by M/s Indogulf Infrastructure Investment Pvt. Ltd and M/s MSG Finance India Pvt Ltd which was further given to M/s Heritage Beverages Pvt. Ltd and M/s Versatile Polytech Pvt. Ltd was nothing but its own unexplained income from undisclosed sources of these two companies introduced in the names of other entities. Therefore, he admitted to offer for taxation a sum of Rs.8,63,36,000/- in the hands of M/s Indogulf Infrastructure Investment Pvt. Ltd for the F.Y. 2008-09 and further sum of Rs.3,50,00,000/- in the hands of M/s MSG Finance Pvt. Ltd for the F.Y. 2010-11, aggregating to Rs. 12,13,36,000/-.

8. The AO, in order to verify the issue called for the bank statements of some of the investor companies for his examination. He observed from the bank statements that these are back to back transactions of same amount i.e., credit and debit of the same amount on the same date/following dates with no other deposits and transactions. According to the AO, no investor was produced by the assessee group which clearly shows that the assessee failed to furnish any documentary evidence regarding the existence of such investors. According to him, mere filing of confirmations from parties does not discharge the onus cast

on the assessee. Further, according to him, it cannot be believed that investors invest their crores of rupees in a non-listed company without any return and the recipient company even does not have the particulars/contact details of such investors. The AO also observed that the credit worthiness of the investors is not proved since the source of funds with these purported investors remained highly suspicious. Rejecting the various explanations given by the assessee and relying on various decisions, the AO held that the assessee failed to discharge the onus cast on it by proving the identity and credit worthiness of the investor to invest an amount of Rs.4,87,99,855/- and the genuineness of the transaction. He accordingly made addition of the same to the total income of the assessee under section 68 of the I.T. Act, 1961.

9. In appeal, the Id.CIT(A) deleted the addition by observing as under:-

“ 5. Findings

I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during assessment as well as appellate proceedings.

- i. I have considered the submissions of the Ld. AR, assessment order and case laws cited in this regard. Search on appellant group was conducted on 28.03.2015 and the AO received appraisal report from the DI (Investigation) with the allegation that the appellant company has received unexplained credit in its book u/s 68 of the IT Act. All the grounds of appeal are dealt with together being of similar in nature.
- ii. Regarding the merits, as per ground of appeal no. 3,1 have gone through the assessment order passed by the A.O. and verified the material produced during the course of hearing which was also part of the assessment records. All necessary information/documents to verify the identity, genuineness of transaction and credit worthiness of the investor were duly submitted by the appellant. The Ld. AR

submitted the following documents to prove identity, genuineness and creditworthiness of the investor:

- a. Form PAS-3 filed before ROC
- b. Confirmation from the investor
- c. Statements of bank account of the investor showing payments towards share application money.
- d. Share Application form duly filled by the investor.
- e. Copy of PAN card of the investor.
- f. A copy of the acknowledgement of the Income tax return filed for AY 2015-16 by the investor along with the statement of affairs for the year ended 31st March 2015.

The assessee has furnished the details of investor. After considering the identities and financials and creditworthiness of the investors and genuineness of transaction and source and availability of fund by investor, I am of the considered view that the AO has merely 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 AO has made such addition stating that the income declared by the investor companies over the years is negligible. The bank statements of the investor filed by the Ld. AR clearly indicates the availability of funds in his hands. The observation of the AO is against the material on record because the investor is not a company but an individual. Further, even the AO himself has admitted in para 4.22 of the assessment order that the investor is a salaried employee.

- iii. The AO has also referred to the statements of Sh. Pradeep Kumar Shastri and Sh. Varinder Pal Singh Kandhari but these statements pertain to M/s Indogulf Infrastructure & Investment Pvt. Ltd. and M/s MSG Finance India Pvt. Ltd. and hence, are not relevant in the case of the appellant. The investor, Sh. Tar an Pal Singh Kandhari is one of the promoter director of the appellant company. During AY 2015-16, Sh. Taran Pal Singh Kandhari has drawn salary amounting to Rs. 24,00,000/- from appellant company itself. Source of investment is as under:-

S. No.	Particulars	Amount(Rs.)
1	Unsecured Loan (Details are as under)	4,78,00,000
2	Salary (Form -16 enclosed)	24,00,000
	Total	5,02,00,000

Details of Unsecured Loan:

S. No.	Particulars	Amount(Rs.)
1	M/s SE Finvest Pvt. Ltd.	75,00,000
2	M/s Glacier Tradex Pvt. Ltd.	60,00,000
3	M/s K. G. Finvest Ltd.	1,40,00,000
4	M/s Glacier Communication Pvt. Ltd.	10,00,000
5	M/s Perigee Land & Housing Pvt. Ltd.	25,00,000
6	M/s Perigee Power & Infrastructure Pvt. Ltd.	25,00,000
7	Sh. Saranjit Singh Chadha	50,00,000
8	M/s G. C. Bhala & Sons (HUF)	93,00,000
	Total	4,78,00,000

b) Following documents has already been submitted before the Ld. AO to prove identity, genuineness and creditworthiness of above mentioned unsecured loan:

- i) Extracts from MCA
- ii) Confirmation from lenders
- iii) Bank statements of lenders showing payment towards loan
- iv) Copy of PAN Card of lenders
- v) Copy of Acknowledgement of income tax return filed for the AY 2015-16 by lenders along with the copy of Audited financial statements for the year ended 31-03-2015.

c) Further, the Ld. AR also placed reliance on the judgments in CIT vs. Ganeshwari Metals Pvt. Ltd., 2013-TIOL-96-HC-DEL-IT, CIT vs. Kamdhenu Steel & Alloys Ltd., 2012-TIOL-236-HC-DEL-IT, CIT vs. Oasis Hospitalities Pvt. Ltd., 2011-TIOL-69-HC-DEL-IT, CIT vs. Pratham





Projects & Finance Ltd., ITA 638/2010, Delhi High Court, and contended that the appellant duly discharged the initial burden to establish the identity, creditworthiness and genuineness by submitting necessary documentary evidences in respect of the share application money. Reliance is also placed on the judgments in CIT v. Lovely Exports Pvt. Ltd. 319 ITR (ST.), CIT vs. Winstral Petrochemicals Pvt. Ltd., (2010) 41 DTR 139 (Del), ITO Vs Neelkanth Finance Ltd; 2015-TIOL-1082-ITAT-DEL, Root Invest Pvt Ltd Vs ITO; 2015-TIOL-238-ITAT-DEL, ITO Vs Reliance Marketing Pvt Ltd; 2015-TIOL-319-ITAT-DEL, ACIT Vs Divine (India) Infrastructure Pvt Ltd; 2015-TIOL-106-ITAT-DEL.

d) After going through all these documents and the case laws, all the three criteria, i.e., identity & creditworthiness of the investor as well as the genuineness of the transaction is clearly proved. The AO has simply made the addition on the basis of information received from the investigation wing. He has not brought any material on record to disprove the contents of these documents filed before AO.

iv. As regards the valuation of shares at a premium of Rs. 175/-, the Ld. AR submitted the valuation report from M/s H. S. & Associates, Chartered Accountants, wherein value of shares is calculated at Rs. 185/- per shares on the basis of net worth per the book value as per audited accounts. Therefore, basis above referred valuation report and the audited accounts,

the premium of Rs. 175/- per share is found justified as per rule 11UA.

Extracts of valuation report filed by the Id. AR is reproduced hereunder:

	<p>H.S. & ASSOCIATES Chartered Accountants</p>
	<p>H.O. : 14, 2nd Floor, Arjun Nagar, Safdarjung Enclave, New Delhi-29. Ph.:+91-9312208880, admin@caharpreet.com, www.caharpreet.com B.O. : 803, Golden Apartments, Sector-47, The Green Wood C.G.H.S. Ltd., Gurgaon-122002. Ph. : +91-9810597975, e-mail : info@caharpal.co.in</p>
<p>M/s Enrich Agro Food Products Pvt.Ltd. Plot Nos. 276-277,Udyog Vihar Phase-II <u>Gurgaon (HR)</u></p>	
<p>Sub: Valuation of Equity Share of M/s Enrich Agro Food Products Pvt. Ltd. Dear Sirs,</p>	
<p>1. We have been requested to offer an opinion on the fair value of equity shares of Enrich Agro Food Products Pvt. Ltd. We understand the objective for the exercise is to obtain an independent opinion on the fair value of the Equity Shares of the company for allotment of Equity Shares.</p>	
<p>We are pleased to submit our opinion on the fair value of the equity shares of the company.</p>	
<p>2. This valuation report is for the sole purpose of determination of fair market value of Equity shares to be used for new allotment of Equity Shares.</p>	
<p>3. We have taken the following Assumptions:</p>	
<p>i. That the Consideration received is assumed on the date of offer of Private Placement Offer Letter. ii. We have considered the Latest Audited Balance Sheet for Valuation audited as on 31.03.2014.</p>	
<p>On the basis of valuation carried out by us, the fair value comes to Rs. 185/- approx. per Equity Shares. The detailed calculation of fair value is enclosed as per Annexure -I.</p>	
<p>Date: 20.09.2014 Place: Gurgaon</p> 	<p>For HS & Associates Reg. No.- 021126N Chartered Accountant</p>  <p>Harpal Singh Partner M.S: 095222</p> 
<p>Page 17 of 19</p>	

ENRICH AGRO FOOD PRODUCTS PVT.LTD.	
Calculation of Fair Market Value of Equity Shares/ Share Premiun	
Particulars	Amount-Rs.
Book Value of Assets (A)	1,750,088,570
Book Value of Liabilities (L)	630,615,553
Amount of Paid up equity share (PE)	60,745,000
Paid up value of equity share (PV)	10
(A-L)	1,119,473,017
Fair market value of unquoted equity share((A-L)/PE*PV)	185
(Security Premium Maximum Amount)	Say Rs. 185/-
Note No.1- Calculation of Books Value of Assets	
Particulars	
Total Value of Assets	1,751,404,016
Less:	
Advance Tax	-
Tax Deducted at Sources /TCS	1,315,446
Book Value of Assets	1,750,088,570
Note No.2- Calculation of Books Value of Liabilities	
Particulars	
Total Value of Liabilities	1,751,404,016
Less:	
Paid up share capital	60,745,000
Reserve & Surplus	875,221,280
Provision for taxation	19,642,920
Any amount representing provisions made for unascertained liabilities	165,179,263
Any amount representing Contingent Liabilities	-
Book Value of Liabilities	630,615,553
Note No.3- Calculation of Amount of Paid up of Equity Shares	
Particulars	
Paid up share capital	60,745,000
Amount of Share Capital	60,745,000

Note :

The Unascertained Liabilities of Rs. 16,51,79,263/- is towards the deposit against returnable Empties of Glass Bottle & Shells. The said deposit against the returnable empties & shells is not to be given which has been accumulated on year to year basis since inception of the company because of the fact the glass bottles must has been broken. As these were never received back and there is no likelihood of receiving them back.



- iv. Respectfully following the above judgments, which are on similar factual matrix, it can be reasonably inferred that 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. Even the AO has mentioned in the assessment order that all the necessary documents have been filed by the assessee. He has also not brought any material on record to disprove the documents filed by the appellant. As such, the addition made by the Assessing officer is unsustainable on the various legal grounds and on facts of the case. The addition of Rs. 4,87,99,855/- made by the AO u/s 68 is hereby deleted. Therefore, ground no. 3 is allowed.

- v. Ground no 4 is dismissed as the interest charging is a statutory action. The AO shall calculate and charge interest as per the final income computed.
- vi. Grounds 1, 2 and 5 are general in nature, hence not adjudicated upon as the specific imputations of the appellant have been addressed.”

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

“1. That the Ld. CIT(A) has erred on facts and in law 'n deleting the addition made on account of unexplained cash credit u/s 68 ignoring the fact that the assessee has taken the unsecured loan from only the dummy/shell companies who are actually entry operators.

2. That the Ld. CIT(A) has erred on facts and in law by not accepting the fact that the source of the source is equally important and the loan was arranged just to create a layering for providing entries to the assessee company.

3. That the Ld. CIT(A) has erred on facts and in law by not appreciating the fact that the assessee was only a salaried employee and don't has the capacity to advance Rs. 4.87 Crores to the company.

4. That the Ld. CIT(A) has erred on facts and in law by ignoring the basic fact that Mr. Taran Pal Singh Kandhari (the person who advanced the loan of Rs. 4.87 crores) doesn't have the creditworthiness of advancing such a big amount.

5. That the Ld. CIT(A) has erred on facts and in law by accepting the high valuation of shares @ Rs 185 per share (Rs. 175 premium on Rs. 10/ face value).

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

11. The Id. DR heavily relied on the order of the AO. He submitted that the assessee, in the instant case, has miserably failed to discharge the onus cast on it by proving the credit worthiness of Mr.Taran Pal Singh Kandhari. He submitted that Shri Taran Pal Singh Kandhari has shown salary income of Rs.24 lakhs and, therefore, his capacity to invest such huge amount of Rs.4.88 crores remains suspicious. He submitted that the Id.CIT(A) without any valid reason has deleted the addition which is not justified under the facts and circumstances of the case. Relying on various decisions he submitted that the order of the Id.CIT(A) be reversed and the order of the AO be restored. In his alternate contention, he submitted that the matter may be remanded back to the file of the AO.

12. The Id. Counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). He submitted that during the period under consideration, the assessee company issued 263783 equity shares of face value of Rs.10/- each at a premium of Rs.175/- per share to Shri Taran Pal Singh Kandhari, one of the shareholders and raised share capital amounting to Rs.4,87,9,855/- including the share premium of Rs.4,61,62,025/-. He submitted that during the course of assessment proceedings, the assessee, in order to prove the identity and credit

worthiness of the investor and the genuineness of the transaction, had filed the following details:-

- a. Form PAS-3 filed before ROC
- b. Confirmation from the investor
- c. Statements of bank account of the investor showing payments towards share application money.
- d. Share Application form duly filled by the investor.
- e. Copy of PAN card of the investor.
- f. A copy of the acknowledgement of the Income tax return filed for AY 2015-16 by the investor along with the statement of affairs for the year ended 31st March 2015.

13. He submitted that the AO did not find any fault with the documents filed by the assessee which clearly prove the identity and credit worthiness of the investor and the genuineness of the transaction. Otherwise also, the AO has not brought any material on record to indicate that the investment is unexplained. Referring to various decisions, he submitted that if the initial burden of proof stood discharged by the assessee and the AO fails to comment upon relevant documents, then, the addition cannot be made u/s 68 of the Act.

14. The Id. Counsel submitted that the AO, in the assessment order, has referred to the statements of Shri Pradeep Kumar Shastri and Shri Varinder Pal Singh Kandhari. However, the statement did not have any relevant to the case

of the assessee as they pertained to M/s Indo Gulf Infrastructure and Investment Pvt. Ltd and M/s MSG Finance India Pvt. Ltd. Therefore, reference to these statements is infructuous. So far as the source of investment is concerned, the Id. Counsel for the assessee submitted that the assessee has raised Unsecured Loan of Rs.4,78,00,000 and Salary income of Rs.24,00,000/- out of which it has invested the amount of Rs.4,87,99,855/-. So far as the unsecured loan of Rs.4,78,000/- is concerned, he submitted that the assessee has raised unsecured loan of Rs.4,78,000/- the details of which are as under:-

S. No.	Particulars	Amount(Rs.)
1	M/s SE Finvest Pvt. Ltd.	75,00,000
2	M/s Glacier Tradex Pvt. Ltd.	60,00,000
3	M/s K. G. Finvest Ltd.	1,40,00,000
4	M/s Glacier Communication Pvt. Ltd.	10,00,000
5	M/s Perigee Land & Housing Pvt. Ltd.	25,00,000
6	M/s Perigee Power & Infrastructure Pvt. Ltd.	25,00,000
7	Sh. Saranjit Singh Chadha	50,00,000
8	M/s G. C. Bhala & Sons (HUF)	93,00,000
	Total	4,78,00,000

15. The Id. Counsel for the assessee submitted that the following documents were filed before the AO to prove the identity, genuineness and credit worthiness of the abovementioned unsecured loan creditors.

- i) Extracts from MCA;
- ii) Confirmation from lenders;
- iii) Bank statements of lenders showing payment towards loan;
- iv) Copy of PAN Card of lenders; &

- v) Copy of Acknowledgement of income tax return filed for the AY 2015-16 by lenders along with the copy of Audited financial statements for the year ended 31-03-2015.

16. He submitted that M /s SE Finvest Pvt. Ltd., had declared revenue from operations at Rs.212.38 lakhs besides other income of Rs.53.90 lakhs. The company had net worth of Rs. 3892.34 lacs as on 31.03.2015. So far as M/s Glacier Communication Pvt. Ltd., is concerned, this sub creditor is having revenue from operations of Rs. 136.10 lacs besides other income of Rs. 127.27 lacs which includes Rs.126.62 lacs by way of interest on loan during AY 2015-16. In fact, as on 31.03.2015, the company is having loans and advances of Rs. 1715.05 lacs and net worth of Rs. 2251.85 lacs.

17. So far as M/s Glacier Tradex Pvt. Ltd., is concerned, this sub creditor is having revenue from operations of Rs. 50.10 lacs besides other income of Rs. 29.30 lacs which includes 28.56 lacs by way of interest on loan during AY 2015-16. In fact, as on 31.03.2015, the company is having loans and advances of Rs. 1734.22 lacs and net worth of Rs.1800.93 lacs.

18. So far as M/s K. G. Finvest Pvt. Ltd., is concerned, this sub creditor is earning interest on loan of Rs. 13.97 lacs during AY 2015-16. In fact, as on 31.03.2015, the company is having loans and advances of Rs. 3562.87 lacs and net worth of Rs. 4672.83 lacs.

19. So far as M/s Perigee Land & Housing Pvt. Ltd., is concerned, this sub creditor is having revenue from operations of Rs. 8.94 lacs besides other income of Rs. 14.79 lacs which includes 13.56 lacs by way of interest on loan during AY 2015-16. In fact , as on 31.03.2015, the company is having loans and advances of Rs. 2507.73 lacs and net worth of Rs. 2251.02 lacs.

20. So far as M/s Perigee Power & Infrastructure Pvt. Ltd., is concerned, as on 31.03.2015, this sub creditor is having loans and advances of Rs. 1046.99 lacs and net worth of Rs. 1174.11 lacs.

21. So far as Sh. Saraniit Singh Chadha is concerned, Shri Saranjit Singh Chadha is a salaried employee earning annual salary income of Rs. 6,75,000/- from M/s European Works Pvt. Ltd. during AY 2015-16 besides being partner in M/s Jagat Auto Sales with 40% share in profit. He has earned Rs. 8,81,520 as remuneration and interest and Rs. 94,046 as share in profit. During the year, he has earned Capital gain of Rs. 552.55 lacs from sale of property. He is being assessed to income tax regularly vide PAN No. AAMPC3706E.

22. So far as M/s G. C. Bhala & Sons [HUF] is concerned, during AY 2015-16, the HUF has declared gross total income of Rs. 13.80 lacs besides long term capital gain of Rs. 218.20 lacs. The HUF has duly filed his return of income in AY 2015-16 and declared all income. The HUF is being assessed to income tax regularly vide PAN No. AAAHG6765N.

23. He accordingly submitted that source of funds in respect of share application of Rs.4,87,99,855/- in the hands of Shri Taran Pal Singh Kandhari is conclusively proved.

24. So far as the allegation of the AO at para 4.10 of the assessment order that the profit declared by the investor companies over the years is negligible and even the turnover declared by the investor companies is also not very significant in most of the cases is concerned, he submitted that the observation of the AO is infructuous as the investor in the instant case is not a company but an individual. He submitted that since the assessee has not only explained the source, but, source of the source by giving all possible details of the sub creditors including their bank statements, turnover, income etc., and the bank statements of the investor as well as sub creditors were filed before the AO which clearly indicates the availability of funds in their hands, the addition made by the AO is not justified. He submitted that the Id.CIT(A) after considering the various details has deleted the addition and, therefore, the same should be upheld.

25. So far as the observation of the AO at para 4.12 of assessment order that no investor has been produced by the assessee group is concerned, he submitted that the assessee was never asked to produce any investor. This issue has been created for the first time in the assessment order itself. Since there is only one investor, who is a shareholder, therefore, there could not be any reference to

"No Investor". The finding of the AO indicates that there are many investors and none was produced. He submitted that the investor being promoter, could have been easily produced had the AO asked for the same. Referring to the assessment order, he submitted that the AO nowhere has mentioned that he has asked the assessee to produce the investor. The AO had simply issued notice u/s 131 in response to which the investor had filed a detailed reply through his authorized representative and the same has not been found to be false or untrue.

26. So far as the valuation u/r 11UA as per sec 56(2)(viib) is concerned, he submitted that the AO has not made any addition on the issue of justification of share premium u/s 56(2)(viib). The addition has been made by the AO u/s 68 of the I.T. Act, 1961. He submitted that for addition u/s 68, the only requirement is to establish the identity, genuineness and creditworthiness of the investors and not the value of share premium. Therefore, ground no. 5 of the Revenue regarding valuation of shares is only for improvement of the assessment order which cannot be permitted. He accordingly submitted that the ground of appeal No.5 by the Revenue is infructuous. He submitted that otherwise also the valuation of shares was done by M/s H. S. & Associates, qualified chartered accountants. The valuation report was also filed before the Ld. CIT(A) to satisfy this requirement, though the issue did not emanate from the assessment order. The valuation as per rule 11UA on the basis of book value of the assets and liabilities as appearing in audited accounts of the assessee has been determined

at Rs.185/- per share and the assessee has also raised its share capital at a value of Rs.185/- per share including premium. Therefore, from perusal of the valuation report and audited accounts of the assessee, it is very clear that the issue price of shares is justified.

27. The Id. Counsel for the assessee submitted that the addition in the instant case has been made by the AO on mere surmises and conjectures and while making the addition, there was absolutely no evidence from which any inference could be drawn against the assessee that it was the assessee who has provided funds to the investor for making the investment. He submitted that the AO has not brought on record any evidence to substantiate the allegation against the assessee. He accordingly submitted that the order of the CIT(A) being in accordance with law should be upheld and the grounds raised by the Revenue should be dismissed. He also relied on following decisions.

1. CIT vs., Dwarkadhish Investment Pvt. Ltd., [2010] 45 DTR 281 (Del.).
2. PCIT vs., M/s. Pranidhi Holdings Pvt. Ltd., 2018-TIOL-622-HC-DEL-IT.
3. CIT vs., Ganeshwari Metals Pvt. Ltd., 2013-TiOL-96-HC-Del-IT.
4. CIT vs., Kamdhenu Steel & Alloys Ltd., 2012-TIOL-236-HC-Del.-IT.
5. CIT vs., Oasis Hospitalities Pvt. Ltd., 2011-TIOL-69-HC-Del.-IT

6. CIT vs., Pratham Projects & Finlease Ltd., ITA.638/2010 Delhi High Court.
7. CIT vs., Winstral Petrochemicals Pvt. Ltd., [2010] 41 DTR 139 (Del.)
8. Jindal ITF Ltd., vs., DCIT [TS-506-ITAT-2020 (Del.)]
9. ITO vs., Computer Home Information Plus Pvt. Ltd., ITA.No.5680/Del./2016 dt.24/05/2019.
10. Prabhatam Investment Pvt. Ltd., vs., ACIT 2017-TIOL-714-ITAT-Del.
11. ITO vs., R.B. Horticulture & Animal Projects Co. Ltd., 2016-TIOL-510-ITAT-Kol.
12. DCIT vs., Nirmal Minda 2018-TIOL-731-ITAT-Del.

28. We have heard the rival arguments made by both sides, perused the orders of the AO 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 assessee in the instant case has issued 263783 equity shares of Rs.10/- each at a premium of Rs.175/- per share to Mr. Taranpal Singh Kandhari totaling to Rs.4,87,99,855 including share premium of Rs.4,61,62,025/-. We find the A.O. invoking the provisions of Section 68 of the I.T. Act, 1961 made the addition of Rs.4,87,99,855/- on the ground that the assessee could not substantiate with evidence to his satisfaction regarding the creditworthiness of the investor. The

premises for making this addition is the report of the Director of Income Tax (Investigation) according to which the assessee has received unexplained credit in its books of account. We find the Ld. CIT(A) deleted the addition, the reasons of which was already been reproduced in the preceding paragraphs.

29. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. First of all the assessee in the instant case has received the share capital and share premium from one Mr. Taranpal Singh Kandhari, one of the shareholder and not a number of companies. We find the assessee during the course of assessment proceedings has filed the following documents to substantiate the identity and creditworthiness of the investor and genuineness of the transaction.

- a) Form PAS-3 filed before ROC
- b) Confirmation from the investor
- c) Statements of bank account of the investor showing payments towards share application money.
- d) Share Application form duly filled by the investor.
- e) Copy of PAN card of the investor.
- f) A copy of the acknowledgement of the Income tax return filed for AY 2015-16 by the investor along with the statement of affairs for the year ended 31st March 2015.

29.1. We find the A.O. has not found anything adverse on these evidences. We find the assessee has given the source of Mr. Taranpal Singh Kandhari according to which he has received unsecured loan of Rs.4,78,00,000/- from the following 08 parties apart from salary of Rs.24,00,000/-.

S. No.	Particulars	Amount(Rs.)
1	M/s SE Finvest Pvt. Ltd.	75,00,000
2	M/s Glacier Tradex Pvt. Ltd.	60,00,000
3	M/s K. G. Finvest Ltd.	1,40,00,000
4	M/s Glacier Communication Pvt. Ltd.	10,00,000
5	M/s Perigee Land & Housing Pvt. Ltd.	25,00,000
6	M/s Perigee Power & Infrastructure Pvt. Ltd.	25,00,000
7	Sh. Saranjit Singh Chadha	50,00,000
8	M/s G. C. Bhala & Sons (HUF)	93,00,000
	Total	4,78,00,000

29.2. We find the assessee while explaining the capacity of loan creditors who had given unsecured loan of Rs.4,78,00,000/- to Mr. Taranpal Singh Kandhari had filed the following details :

- i) Extracts from MCA
- ii) Confirmation from lenders
- iii) Bank statements of lenders showing payment towards loan
- iv) Copy of PAN Card of lenders
- v) Copy of Acknowledgement of income tax return filed for the AY 2015-16 by lenders along with the copy of Audited financial statements for the year ended 31- 03-2015.

29.3. A perusal of the details filed by the assessee in the paper book in respect of the above 08 parties who had extended unsecured loan of Rs.4,78,00,000/- shows that they have sufficient capacity to extend the loan to Mr. Taranpal Singh Kandhari who in turn had invested in the shares of the assessee company. There is no evidence on record to show that the funds of the assessee company has gone to these persons which in turn had come back to the assessee company.

29.4. Secondly, the A.O. has referred to the statements of Shri Pradeep Kumar Shastri and Shri Varindar Pal Singh Kandhari. However, these statements pertain to M/s. Indogulf Infrastructure and Investment Pvt. Ltd. and M/s. MSG Finance India Pvt. Ltd., and these statements do not have any relevance to the case of the assessee. We, therefore, find merit in the submissions of the Learned Counsel for the Assessee that reference to these statements is infructuous.

29.5. Thirdly, one of the observations of the A.O. at para 4.10 of the assessment order is that the profit declared by the investor companies over the years is negligible and even the turnover declared by the investor companies is not very significant in most of the cases. However, the assessee company has received share capital and share premium only from one individual namely Shri Taranpal Singh Kandhari and, therefore, we find merit in the argument of the

Learned Counsel for the Assessee that this observation of the A.O. is infructuous. Even otherwise also the assessee company has filed sufficient details to not only prove the source but the source of the source. We, therefore, hold that addition could not have been made on this issue also.

29.6. So far as the allegation of the A.O. that the investor was not produced by the assessee group is concerned, the submissions of the Learned Counsel for the Assessee that the A.O. never asked the assessee to produce any investor, could not be controverted by the Ld. D.R. The assessee filed the requisite details in response to summon under section 131 of the I.T. Act, 1961 and the order nowhere speaks that the A.O. had asked the assessee to produce the investor.

29.7. So far as the valuation under section 11UA of the I.T. Act, 1961 as per Section 56(2)(viib) is concerned, we find the A.O. has not made any addition on the issue of justification of share premium u/s 56(2)(viib). The addition has been made by the AO u/s 68 of the I.T. Act, 1961. For addition u/s 68, the only requirement is to establish the identity, genuineness and creditworthiness of the investors and not the value of share premium. Therefore, ground no. 5 of the Revenue regarding valuation of shares is only for improvement of the assessment order which in our opinion cannot be permitted.

29.7.1. Otherwise also we find valuation of shares was done by M/s H. S. & Associates, qualified Chartered Accountants and the report was also filed before the Ld. CIT(A) to satisfy his requirement, though the issue did not emanate from the assessment order. The valuation as per rule 11UA on the basis of book value of the assets and liabilities as appearing in audited accounts of the appellant has been determined at Rs.185 per share and the assessee has also raised its share capital at a value of Rs.185 per share including premium. Therefore, from perusal of the valuation report and audited accounts of the appellant, it is very clear that the issue price of shares is justified.

29.8. We find the Hon'ble Delhi High Court in the case of PCIT Vs M/s Pranidhi Holdings Pvt Ltd., 2018-T10L-622-HC-DEL-IT held that if initial burden of proof stood discharged by assessee and the AO fails to comment upon relevant documents produced before the FAA during appellate proceedings, addition under section 68 of the I.T. Act, 1961 cannot be sustained.

29.9. We find the Hon'ble Delhi High Court in the case of CIT vs. Ganeshwari Metals Pvt. Ltd., 2013-TIOL-96-HC-DEL-IT held as under:

"3...In response to the query with regard to the said sum of Rs.55.5 lakhs, the respondent/ assessee had furnished various documents in support of the share application money received by it. Those documents included: -

- (i) Complete names and addresses of the share applicants and PAN/ G1R details.
- (ii) Confirmatory letters of the share applicants.
- (iii) Copies of Bank statements of the share applicants.
- (iv) Copies of bank a/c of the appellant.
- (v) Certificate of incorporation of the share applicants.
- (vi) Memorandum of Association of the share applicants.
- (vii) Copies of the share application forms."

“9. As can be seen from the above extract, two types of cases have been indicated. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the assessing officer, after noting the facts, merely rejected the same....”

"10. The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with

facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the assessing officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under section 68 of the Act. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law.”

29.10. We find the Hon’ble Delhi High Court in the case of CIT vs. Kamdhenu Steel & Alloys Ltd., 2012-TIOL-236-HC-DEL-IT held as under :

“The initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove (a) Identity of shareholder (b) Genuineness of transaction and (c) Credit worthiness of shareholders. In case the investor / shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the AO to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished;

Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. When the money is

received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc;

As far as creditworthiness or financial strength of the credit/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the AO to scrutinize the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion;

No second opportunity can be given to the revenue for the reason that it is not a case where some procedural defect or irregularity had crept in the order of the AO. It is a case where the AO did not collect the required evidence which they were supposed to do. Once the assessee had discharged their onus and the burden shifted on the AO, they could not come out with any cogent evidence to make the additions.

The AO(s) could have embark upon further inquiry but if that is not done and the AO did not care to discharge the onus which was laid down, for this "negligence" on the part of the AO, he cannot be provided with "fresh innings".....”

SLP filed in this case by the Department has been dismissed by the Hon'ble SC vide order dated 27/09/2012 in CC15640/2012.

29.11. We find the Hon'ble Delhi High Court in the case of CIT vs. Oasis Hospitalities Pvt. Ltd., 2011-TIOL-69-HC-DEL-IT held as under :

"That addition could not be sustained as the primary onus was discharged by the assessee by producing PAN no., Bank Account, copies of Income Tax Return of the share applicants, etc. AO was influenced by the information received from the investigation wing and on that basis generally modus operandi by such entry operator was discussed in detail.”

29.12. We find the Hon'ble Delhi High Court in the case of CIT vs. Pratham Projects & Finlease Ltd., in ITA 638/2010 held as under :

"Since the confirmation letters, copies of Income tax return, PAN no. and certificate of the incorporation of the companies were placed on the record by the assessee, the identities of the share applicants had been

established. Moreover, the payments had been received through normal banking channels and there was nothing to do with the creditworthiness of the said applicants. The appeal is dismissed"

29.13. We find the Hon'ble Delhi High Court in the case of CIT vs. Winstral Petrochemicals Pvt. Ltd., (2010) 41 DTR 139 (Del) held as under :

"Assessee company was found to have received the money through banking channels - Assessee company also furnished written confirmations from the applicant companies, copies of certificates of incorporation, PAN card, PAN details and company details etc. of the applicants.Merely because the applicants did not respond to the notices sent to them, AO was not justified in adding the amount of share application money to the income of the assessee."

29.14. We find the Hon'ble Delhi High Court in the case of DCIT Vs Nirmal Minda; 2018-TIOL-731-ITAT-DEL held as under :

"9.6. We are, thus, of the opinion that unless any evidence is brought on record justifying that it was the assessee who had made any such investment, the addition is unsustainable in law. It is well settled rule of law that suspicion howsoever strong cannot par take the character of evidence. We, thus, find no infirmity in the order of Ld. CIT(A) who has deleted the addition and we endorse the findings of the conclusion of the

AO that the assessee had made the investment/paid cash to M/s Pioneer Finvest Ltd."

29.15. In view of our discussion above, we find no infirmity in the order of the Ld. CIT(A) in deleting the addition. We, therefore, uphold the same and the grounds raised by the Revenue are dismissed.

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

Order pronounced in the open court on 29.04.2022.

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 29th April, 2022.

dk

Copy forwarded to

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

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi