

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.3160/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Lalithaa Jewellery Mart Pvt. Ltd 123, Usman Road, T.Nagar, Chennai-600 017.	Vs	Assistant Commissioner of Income Tax, Central Circle-I(4) Chennai.
PAN: AAACL 1523A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकरअपीलसं./I.T.A.No.274/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2012-13)

Assistant Commissioner of Income Tax, Central Circle-I(4) Chennai.	Vs	M/s. Lalithaa Jewellery Mart Pvt. Ltd 123, Usman Road, T.Nagar, Chennai-600 017.
		PAN: AAACL 1523A
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Mr. G. Baskar, Advocate
प्रत्यर्थी की ओरसे/Revenue by	:	Dr. S.Palani Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	17.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	27.05.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

These cross appeals filed by the assessee, as well as the Revenue are directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 26.10.2017 and pertains to assessment year 2012-13. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

ITA No.274/Chny/2018:-

2. The Revenue has raised following grounds of appeal:-

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The leaned CIT(A) erred in deleting the addition of Rs.51,00,00,000/- made by the Assessing Officer towards share application money/share premium treated as unexplained cash credit u/s 68 of the Income Tax Act, 1961, in the assessment for A.Y 2012-13 passed u/s 143(3) r.w.s.153A of the IT Act in the assessee's case.

2.1 Having relied on the decision of Hon'ble High Court in the assessee's own case for AY 2007-08 in 2017(9) TMI 665, the d.CIT(A) ought to have appreciated that the facts of the case for the year under consideration are different in that, for AY 2007-08, he investor has admitted to have invested in share application money/share premium, whereas for A.Y 2012-13, Shri. Shirish Chandrakant Shah, Director of the investor Companies and his associates have confessed on oath vide sworn statement recorded by the Investigation Wing during searches conducted in Mumbai and Ahmadabad, that the transactions in shares with M/s Lalithaa Jewellery Mart Pvt. Ltd. were only accommodation entries provided for a commission.

2.2 The Id.CIT(A) ought to have taken cognizance of the decision of the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs Union Of India & others AIR 1997 SC 2560] that confession in the statements on oath, even if retracted later is an admission and binds the person and having regard to the admission of the investors in their statements on oath that they were providing accommodation entries for a commission, for which they received cash and returned the money via banking channels as required by their clients including the assessee, the Id.CIT(A) ought to have confirmed the addition.

2.3 The Id.CIT(A) ought to have appreciated that the assessee did not rebut the statements of Shri. Shrish Chandrakanth Shah and his associates at any point of time nor sought cross

examination of them when the admission made by Shri. Shrish Chandrakanth Shah and his associates regarding accommodation entries given by them using certain companies is a clinching evidence in support of the finding that the assessee introduced its unaccounted income in the form of share application money/share premium.

2.4 The Id. CIT(A) ought to have appreciated that the decision of Hon'ble High Court of Delhi in the case of M/s Navodaya Castle (P) Ltd. reported as (2014) 367 ITR 306, that certificate of incorporation, PAN etc., were not sufficient for the purpose of identification of subscriber company, when there was material to show that subscriber was a accommodation entry giver and not a genuine investor was upheld by the Hon'ble Supreme Court in (2015) 56 taxmann.com 18 (SC) and since the facts are identical in the assessee's case, the Id.CIT(A) ought to have confirmed the addition.

2.5 The Id. 1T(A) ought to have appreciated the decision of Hon'ble Calcuta High Court in the case of Rajmandir Estates Pvt. Ltd. Vs Pr.CIT, Kolkatta III (2016) 70 taxrann.com 124, which, though rendered in the context of application of section 263 with respect to introduction of Share capital/Share Premium, held that money allegedly received on account of share application can be roped in under section 68 of the IT Act, if the source of receipt is not satisfactorily established by the assessee.

2.6 The Id.CIT(A) ought to have taken cognizance of the decision of the Hon'ble Kolkota High Court in the case of CIT Vs Precision Finance P Ltd[1994] 208 ITR 465, wherein it was held that "mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine It is for the assessee to prove the identity of the creditors, their credit worthiness and the genuineness of the transactions. Mere furnishing of the particulars is not enough"

2.7 The Id.CIT(A) ought to have appreciated that in the case of Sri.Sanjay Bimalchand Jain L/H of Late Santidevi Vs Pr.CIT-1,Nagpur, in ITA No.18/2017 dated 10.04.2017, the Hon'ble Bombay High Court, upheld the action of the AO in treating the sale of shares as adventure in the nature of business for

the reasons that the assessee could not adduce any reason for the exorbitant jump in the sale price of shares sold.

2.8 Having regard to the documentary evidence gathered and admission made by the Director of the investing company during search and post search proceedings, establishing that the alleged share holders were only accommodation entry providers whose credit worthiness and the genuineness of the transactions were not established, the Id.CIT(A) ought to have confirmed the addition made by the Assessing Officer u/s 68 of the IT Act, towards unproved share application money/share premium receipts in the assessment passed u/s 143(3) r.w.s. 153A of the IT Act, 1961 in the case of the assessee, for A.Y 2012-13.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.”

3. Brief facts of the case are that the assessee company is engaged in the business of retail trading in gold jewellery, filed its return of income for the assessment year 2012-13 on 28.09.2012 declaring total income of Rs.27,59,23,680/-. A search & seizure operation u/s.132 of the Income Tax Act, 1961, was conducted in the case of the assessee on 02.09.2014. Consequent to search, notice u/s.153A of the Act dated 09.01.2015 was issued and served on the assessee. In response to notice, the assessee filed its return of income on 16.06.2015 and declared total income of Rs.27,59,23,680/-, which was the same total income returned in the original return

filed u/s.139(1) of the Income Tax Act, 1961. The case has been taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that during previous years 2010-11 to 2014-15, the assessee company had received share application money/ share premium from its Managing Director Mr. Kiran Kumar and various other companies and details of which are as under:-

FY	OPENING CAPITAL		ADDITIONAL SHARES ISSUED			CLOSING CAPITAL	
	FV	PREMIUM	NO. OF SHARES ISSUED	FV	PREMIUM	FV	PREMIUM
2010-11	9,76,64,390	21,81,94,110	66,666	6,66,660	4,93,32,840	9,83,31,050	26,75,26,950
2011-12	9,83,31,050	26,75,26,950	4,52,082	45,20,820	60,54,78,680	10,28,51,870	87,30,05,630
2012-13	10,28,51,870	87,30,05,630	2,64,167	26,41,670	39,73,58,080	10,54,93,540	127,03,63,710
2013-14	10,54,93,540	127,03,63,710	10,86,864	1,08,68,640	81,57,80,710	11,63,62,180	208,61,44,420

3.2 The details of the share application money/share premium received relevant to the AY under consideration from various companies are as follows;

Name of investor	FY	FV (Rs.)	Premium (Rs.)	FV+P (Rs.)	Shares	Amount (in Rs. Lakhs)
Speciality Papers Ltd	2011-12	10	1590	1600	81,250	1300
Emporis Projects Ltd	2011-12	10	1590	1600	62,500	1000
Sanguine Media Ltd	2011-12	10	1590	1600	68,750	1100
Swastik Securities & Finance Ltd	2011-12	10	1590	1600	18,750	300
Secunderabad Healthcare Ltd	2011-12	10	1590	1600	56,250	900
Oasis cine Communication Ltd	2011-12	10	1590	1600	31,250	500
				Total		5100

4. During the course of assessment proceedings, the Assessing Officer, on the basis of information received from Directorate of Income Tax (Investigation), Ahmedabad, called upon the assessee to justify share capital / share application

money received from certain shareholders, including companies from Kolkata. The Assessing Officer has taken note of fact that search operation was conducted u/s.132 of the Income Tax Act, 1961 in the case of Mr.Shrish Chandrakanth Shah by the Directorate of Income Tax (Investigation), Ahmedabad. During the course of search, it came to light that Mr.Shrish Chandrakanth Shah had been involved in the business of providing accommodation entries of share capital to various parties through web off companies floated by him. During the course of investigation, statements were recorded u/s.132(4) of the Act, from Mr. Shrish Chandrakanth Shah and his associates Mr. Deepak Patwari from Kolkata, Mr. Hare Krishna Behara from Kolkata Mr.Rajendra Bhubna from Kolkata Mr.Goutham Ghouse from Howrah, Mr. Mahendra Sethia from Kolkata. Mr. Shrish Chandrakanth Shah, in response to various questions admitted that he had floated various companies to provide accommodation entries of share capital to various beneficiaries through number of layer of transactions. The relevant statements recorded from Mr. Shrish Chandrakanth Shah is reproduced at para 3.6 of the assessment order. From the statements recorded from Mr. Shrish Chandrakanth Shah, the

Assessing Officer noticed that, he had floated more than 200 companies with dummy directors, who are either his employees or associates and through said companies facilitated accommodation entries of share capital / share premium to various companies, including Assessee Company. The Directorate of Income Tax (Investigation), Ahmedabad had also recorded statements from employees and associates of Mr. Shrish Chandrakanth Shah. Shri Kumar Raichand Madan, in response to question No.10 very categorically admitted that he is working for Mr. Shrish Chandrakanth Shah and acting as director in various companies. The Assessing Officer further noted that although, Mr.Shrish Chandrakanth Shah managed to get all his companies to operate seemingly as regular companies doing normal business activities, but in reality, they are bogus companies and used to provide accommodation entries for various persons.

5. The Assessing Officer has discussed modus operandi of Mr. Shrish Chandrakanth Shah in light of statements recorded from him and his associates and observed that Mr. Shrish Chandrakanth Shah received cash from beneficiaries and same

has been sent to Pintu, who is engaged in the activity of collecting cash from Mr. Shrish Chandrakanth Shah and routed through various companies and ultimately returned cash to the customers. The Assessing Officer had also taken note of number of companies and their registered office address and observed that all those companies are incorporated in the same address and directors of the companies are found to be dummy directors who were appointed by Mr. Shrish Chandrakanth Shah. The Assessing Officer further observed that during pre-search verification conducted by the DDIT, Unit 1-(3), Mumbai, also indicated that many of those premises which were given as registered office of various companies as residential premises and no business activity was carried out. The Assessing Officer further observed that the assessee company had received share capital and share application money from M/s. Speciality Paper Mills Ltd. M/s. Emporis Projects Ltd. M/s. Sanguine Media Ltd., M/s. Swastik Securities and Finance Ltd and Secunderabad Health Care Ltd. and these companies that were managed and controlled by Mr. Shrish Chandrakanth Shah. Therefore, the Assessing Officer opined that so called share application money received from above companies is

accommodation entries, but not real transactions between the assessee. The Assessing Officer further observed that Mr. Shrish Chandrakanth Shah in his statement recorded u/s.131 of the Income Tax Act, 1961, dated 04.03.2015 has very categorically admitted that investments that flowed in M/s. Lalithaa Jewellery Mart Pvt. Ltd. from certain companies were bogus and further, stated that he had merely transferred money and sent papers for purchase of shares as requested by M/s. Lalithaa Jewellery Mart Pvt.Ltd. Therefore, from the information gathered during the course of search in the case of Mr. Shrish Chandrakanth Shah, coupled with statements recorded from his associates, the Assessing Officer came to the conclusion that the assessee is one of the beneficiaries of accommodation entries of share capital / share application money received from various companies floated and controlled by Mr. Shrish Chandrakanth Shah. The Assessing Officer had also taken note of fact that the department has provided an opportunity to Managing Director of the assessee company Mr. M.Kiran Kumar, to appear either in person or with an Authorized Representative at the time of recording statement from Mr. Shrish Chandrakanth Shah so as to enable him to cross

examine the witness. However, the assessee company and its Director did not avail opportunity and thus, the Assessing Officer came to the conclusion that so called share application money received from companies controlled and operated by Mr. Shrish Chandrakanth Shah is nothing but accommodation entries used by the assessee company to convert its undisclosed income in the form of share application money / share premium. The Assessing Officer has discussed the issue at length in light of profile of few companies and their financial statements to arrive at a conclusion that transaction between the assessee and shareholders is not a genuine transaction which does not satisfy conditions prescribed u/s.68 of the Income Tax Act, 1961. Therefore, the Assessing Officer was of the opinion that amount of share application money / share premium received from companies controlled by Mr. Shrish Chandrakanth Shah is unexplained cash credit which is taxable u/s.68 of the Income Tax Act, 1961. Hence, the Assessing Officer treated a sum of Rs.51 crores share capital / share premium as unexplained cash credit and brought to tax u/s.68 of the Act. The relevant findings of the Assessing Officer are as under:-

3.23 The assessee submitted its reply vide letter dated NIL. It can be seen from the reply that the assessee company made the following submissions.

The statement of Shri. Shrish Chandrakanth Shah is not substantive evidence without any documentary evidence and therefore not binding.

> It is not known who Shri. Shrish Chandrakanth Shah is and the company is not connected with his acts or deeds.

> The company was in need to infuse the funds for its expansion of business and thus share capital was issued to various companies at a premium.

> Issue price of shares and also premium had been fixed, since share holder offered the said price after discussions taking into consideration of various aspects such as order book value, goodwill and financial strength and product of the company as it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholder to offer.

> Further company also accepted the offer given by the shareholders with premium with a view to strengthen capital base keeping share low so that servicing of share capital (by paying dividend and issue of free shares/bonus shares) is easy and better in future.

> The shares were issued after calling for application from the assessee, along with their copies of financial statements and memorandum of association and articles of association.

Since there is no requirement either in the Companies Act, 1956 or under the provisions of IT Act, 1961 to obtaining of certificate from Chartered Accountant with regard to the valuation of shares, with regard to allotment of shares to resident Indian, the same is not obtained. However, the growth, goodwill and present value of the business has been duly

explained to the prospective subscribers to convince their investment in our company.

> Further one more practical advantage was to save on account of cost of fees payable on increase of authorised capital. When shares are issued at premium, number of shares and authorised capital increase lesser in comparison of capital raised by way of capital and premium.

Entire payments including premium had been received from shareholders by means of banking transactions duly recorded in the books of account of the company.

> After receipt of payment and ratification the allotment of shares had been communicated to the Registrar of Company by filing requisite forms.

3.24 The submissions made by the assessee have been duly considered. A duty is cast on the assessee to substantiate the share premium charged, as to how it is arrived at. This onus cannot be wished away by saying that it is prerogative of Board of Director of company to decide the premium. As can be seen from the assessee's submission, no financials are relied upon by the assessee to show how the premium is arrived at. As regards the argument that the premium was charged to save cost of fees payable on increase of authorised capital, this in itself is an important pointer towards the fraudulent nature of transaction.

3.25 The facts narrated above and the various statements recorded from various persons lead to an unassailable conclusion that the entire transaction of receipt of share application money / share premium is a Sham Transaction and it was the assessee's unaccounted income that was invested through various companies. During the course of search, Shri. M.Kiran Kumar, Managing Director of the assessee was confronted with the statements of Shri Shrish Chandrakanth Shah and various other associated persons and with the

evidence collected and was given an opportunity to rebut the statements and findings. But the record would show that Shri. M.Kiran Kumar, Managing Director of the assessee company failed to either rebut the findings or submit any evidence in his favour. In one of the statements, Shri. M. Kiran Kumar claims that the entire transactions are through banking channels and therefore should be accepted as genuine. This statement of the assessee hardly merits any attention since the transaction would not get legitimacy if done through a banking channel when all other attendant circumstances and facts prove otherwise as it has happened in the present case.

3.26 In view of the incriminating statements of Shri. Shrish Chandrakanth Shah and others, heavy burden was cast on the assessee to prove the genuineness of the share application money/share premium beyond shadow of doubt. Merely claiming that the transactions are through banking channels and that the investors are shown as share holders of the books and shares are allotted would not amount to a satisfactory explanation. It was incumbent upon the assessee to produce the alleged investors and make them give a statement to the effect that the investments are genuine. The assessee company failed in this regard. Even during the scrutiny proceedings, the assessee did not make any attempt to establish the genuineness of the transaction. It may be pertinent to mention here that the assessee had not sought cross examination of Shri. Shrish Chandrakanth and other persons at any point of time. The admission made by Shri Shrish Chandrakanth Shah and others regarding accommodation entries given by him using certain companies is a clinching evidence in support of finding that the assessee introduced its unaccounted income in the form of share application money! share premium.

3.27 In the light of the aforesaid pieces of evidence and the prima facie finding, it can be said that the three requirements: (A) identity of the shareholders; (B) genuineness of the transaction and (C) the creditworthiness of the share-holders repeatedly impressed, by assessee have not been satisfied. Identity of the alleged shareholders is known but the transaction was not a genuine transaction. The transaction was nominal rather than real. The creditworthiness of the alleged shareholders is also not established because they did not have any money of their own. Each one of them received from somebody and that somebody received from a third person. Therefore, prima facie, the share-holders are mere name lenders.

3.28 Judicial pronouncements, while recognizing that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company. The Courts have drawn a distinction and emphasized that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large.

3.29 In the case of closely held companies, investments are made by known persons. Therefore, a higher onus is required to be placed on such companies besides the general onus to establish identity and credit worthiness of creditor and genuineness of transaction. This additional onus, needs to be placed on such companies to also prove the source of money in the hands of shareholder or persons making payment towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum

shall be treated as income of the company and added to its income.

3.30 An assessee's duty to establish that the amounts which the AO proposes to add back, under Section 68 are properly sourced, does not cease by merely furnishing the names, addresses and PAN particulars, or relying on entries in a Registrar of Companies website. One must remember that in all such cases, more often than not, the company is a private one, and share applicants are known to it. That apart, the concept of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, or during proceedings, the AO cannot contact the share applicants, or that the information becomes unverifiable, there are further doubts in the pursuit of such details, the onus shifts back to the assessee. At that stage, if it falters, the consequence may well be in addition under Section 68."

6. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A) the assessee had filed detailed written submissions along with certain judicial precedents and argued that the Assessing Officer has erred in making additions towards share capital received from certain companies as unexplained cash credit u/s.68 of the Income Tax Act, 1961 only on the basis of statement of certain third parties without any further evidences contrary to various evidences filed by the assessee, including name & addresses of persons from whom

share capital is received, their PAN, financial statements and also confirmation from the parties.

7. The learned CIT(A), after considering relevant submissions of the assessee and also by following various judicial precedents, including decision of the Hon'ble Jurisdictional High Court of Madras in assessee's own case for assessment year 2007-08 reported in (2017) 399 ITR 425 (Mad), has deleted additions made by the Assessing Officer towards share capital received from certain companies by holding that the assessee has filed necessary evidence and proved identity of the persons from whom share capital / share application money was received and also proved genuineness of transaction and creditworthiness of parties. The relevant findings of the learned CIT(A) are as under:-

"10. Next coming to the addition on unexplained cash credit u/s 68, the AO added a sum of Rs.51,00,00,000/- being share capital (including premium) received from the following companies as unexplained cash credit u/s 68.

- (i) M/S Speciality Papers Ltd., 81,250 shares*
- (ii) M/s Emporis Projects Ltd., -- 62,500 shares*
- (iii) M/s Sanguine Media Ltd., -- 68,750 shares*
- (iv) M/s Swastik Securities and Finance Ltd., -- 18750 Shares*
- (v) M/s Secunderabad Healthcare Ltd., -- 56,250 Shares*
- (vi) M/s Oasis Cine Communication Ltd., 31,250 Shares*

10.1. During the impugned Asst.year 2012-13, the appellant had allotted 3,18,750 shares of Rs.10/- face value each at a

premium of Rs.1590/- per share to the above referred companies. The share capital had been received by the appellant through regular banking channels. However, the AC had stated that the appellant had introduced its unaccounted income in the form of share application / share premium based on a statement recorded from a third party Mr. Shrish Chandrakanth Shah, in a search conducted at Mumbai wherein he had purportedly admitted that accommodation entries were given by him using certain companies. The AO concluded that, the transaction of receipt of share capital is not genuine and that the appellant had not established the credit worthiness of the shareholders.

10.2. The genesis of the addition is the search conducted in the case of Mr. Chandrakanth Shah by Directorate of Income Tax Investigation, Ahmedabad. During the course of the search, it came to light that Shri. Chandrakanth Shah had men giving accommodation entries of share capital for commission and also that he was controlling and managing 212 companies, which were dummy companies which were utilized for providing accommodation entries without any commercial substance. The averments entirely emanated from the statements recorded u/s132(4) from Mr. Shah and the connected persons, namely Deepak Patwari, Hare Krishna Behara, Rajendra Bubna, Gautham Ghose and Mahendra Sethia. Based on his statements, it was concluded as follows:

- (i) Mr. Shah had the complete infrastructure to receive cash and in return, transfer money through banking channels.*
- (ii) He has provided such accommodation entries and one of the beneficiaries is the appellant:*
- (iii) The companies from which the funds have flown are part of the overall 212 dummy companies managed by Mr. Shah.*
- (iv) All the investment that flew into the appellant company was bogus, There was no need for him to conduct a due diligence to determine the share premium value in the normal course and that he only sent the relevant papers and transferred money for purchase of shares as requested.*
- (v) This was a negotiated deal executed for introducing money through banks from a public limited company to the appellant company in a manner that lends credibility and acceptance. There was no real investment that transpired in this case.*

10.3. In response to the show cause notice to add the amounts as unexplained credits U/s.68. Pie appellant stated as follows:

- (i) The appellant has no nexus whatsoever with Mr. Shah or his activities.
- (ii) The appellant needed funds for business expansion and hence shares were issued to various companies at a premium
- (iii) All statutory requirements for issue of shares at a premium were duly met and the money was brought in after due deliberations with the applicants on the issue price and share premium.
- (iv) The rationale for issue of shares at a higher share premium was to reduce the cost of fees payable to Registrar of Companies for increase in authorised share capital,
- (v) There is no statutory provision requiring the valuation shares by a chartered accountant and that the subscribers were convinced on the goodwill and the present value of the business.
- (vi) All requisite documentation is complete and the transaction is routed through bunking channels

10.4 However, the submission have not been accepted on the ground that the onus of substantiating the share premium charged and how it is arrived at, has not been discharged and that the mere fact of the transaction having taken place through banking channel does not imply that the transaction is genuine. As per the Assessing Officer, it was necessary for the appellant to produce the alleged investors and make them a statement to the effect that the investments are genuine. As per the Assessing Officer, although the identity of the share-holders is established, the genuineness and creditworthiness of the subscribers have not been substantiated. Therefore, the entire share capital including premium have been added as unexplained credit u/s.68.

10.5. Before embarking on deciding the issue, it is to be pointed out that, the Hon'ble Jurisdictional High Court in the Appellant's own case for the earlier Asst. Years in 2017(9) TMI 665 held as under:

“.....On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel

like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee company would still be the available and belonging to the investors, The consistent principle followed is that the investors sources and credit worthiness cannot be explained by the assessee. If the Department has a doubt the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed buck the money, The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee company. That is clearly a perverse view, as the assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past as to how much they made from their respective business enterprises The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee company, as such investors cannot gain any controlling stake.”

10.6. Respectfully, following the above decision of the Hon'ble Madras High Court, I hold that, the action of the AO in rejecting the appellant's claim and thereby making an addition of Rs.51,00,00,000/- is incorrect Accordingly, this ground is allowed.”

8. The learned DR submitted that the learned CIT(A) erred in deleting addition of Rs.51 crores made by the Assessing Officer towards share premium / share application money treated as unexplained cash credit u/s.68 of the Income Tax Act, 1961, by relied upon the decision of the Hon'ble

Jurisdictional High Court of Madras in the assessee's own case for the assessment year 2007-08, without appreciating fact that facts of the case for the year under consideration are different from that of assessment year 2007-08, because investor has admitted to have invested in share premium / share application money, whereas for the assessment year 2012-13, Mr. Shrish Chandrakanth Shah, director of the investor companies and his associates have confessed on oath vide sworn statement that transaction of share capital / share premium with M/s. Lalithaa Jewellery Mart Pvt. Ltd. was only accommodation entries provided for commission. The learned DR further referring to the decision of the Hon'ble Supreme Court in the case of Surjeet Singh Chhabra Vs Union of India & others (AIR 1997 SC 2560) submitted that confession in the statements on oath, even if retracted, later is an admission and binds the person and thus, having regard to the admission of the investors in their statements on oath that they were providing accommodation entries for commission, the learned CIT(A) ought not to have deleted the addition. The Id. DR further referring to the decision of the Hon'ble Delhi High Court in the case of M/s. Navodaya Castle (P) Ltd. (2014) 367 ITR 306

submitted that mere furnishing of certificate of incorporation, PAN etc., were not sufficient for the purpose of identification of subscriber company, when there was material to show that subscriber was accommodation entry provider and not a genuine investor. The learned DR further referring to financial statements of the assessee and also premium charged on promoter investor and to outsider, submitted that the assessee has charged premium to promoter directors, which is less than amount of premium charged to outside investors and further, the assessee has been receiving share capital year on year by collecting huge premium, which shows two different set of premiums, one for promoter, and one for outsiders which clearly proves modus operandi of the assessee company taking help from entry providers for converting unaccounted income in the form of share capital. The Assessing Officer has brought out clear facts in light of financial statements of the assessee and that of investor companies and observed that none of the companies are having sufficient source of income to establish creditworthiness of the shareholders and thus, it is incorrect on the part of the learned CIT(A) to delete additions by relying upon certain paper evidences, including name & addresses of

shareholders. In this regard, the learned DR relied upon the decision of the Hon'ble Supreme Court in the case of PCIT Vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48 and also the decision of Hon'ble Kolkata High Court in the case of Rajmandir Estates Pvt.Ltd. Vs PCIT (2016) 386 ITR 162. The learned DR has also relied upon decision of the ITAT., Mumbai Benches in the case of DCIT Vs. Leena Power Tech Engineers (P) Ltd. (2021) 130 taxmann.com 341.

9. The learned A.R for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court of Madras in assessee's own case for the assessment year 2007-08 reported in (2017) 399 ITR 425 (Mad) and also decision of the co-ordinate Bench of ITAT., Chennai in the case of ACIT Vs M/s. Suryadev Alloys & Power Pvt. Ltd. in ITA Nos. 1982, 1746 to 1751/Chny/2017 vide order dated 17.12.2021, where an identical issue has been considered by the Hon'ble Jurisdictional High Court and held that once the assessee has discharged its onus by filing various evidences to prove identity,

genuineness of transaction and creditworthiness of parties, then onus shifts to the Department to prove, otherwise that sum credited in the books of account of the assessee as share capital / share premium is unaccounted income of the assessee which has been re-routed through accommodation entries. The learned A. R for the assessee submitted that the Assessing Officer has made additions only on the basis of investigation carried out by the Department in Kolkata and also statements recorded from certain persons to allege that share capital received by the assessee from certain companies is accommodation entries, however, fact remains that nowhere in the statements any reference to assessee and in particular, exchange of cash for providing accommodation entries. Further, statements recorded from certain persons were general in nature which talks about modus operandi of entry providers. However, such statement does not show any light on the transactions of the assessee to come to a conclusion that share capital / share application money received from those companies is accommodation entries. Therefore, the learned AR submitted that the learned CIT(A), after considering relevant facts has rightly held that transaction between the

assessee and investor companies is genuine transaction which satisfies test laid down u/s.68 of the Income Tax Act, 1961.

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered plethora of case laws cited by both the parties. The solitary issue that needs to be resolved in the given facts and in the circumstances of this case, is whether share capital/share premium received by the assessee from certain companies is genuine in nature or which is unexplained cash credit u/s 68 of the Income-tax Act, 1961. The AO has made addition towards share capital received from certain Indian companies as unexplained cash credit u/s 68 of the Act, on the ground that the assessee has failed to establish identity of the subscriber to share capital, genuineness of transaction and creditworthiness of the parties. The AO had given various reasons to come to the conclusion that alleged subscriber to share capital are paper/Shell/JamaKarchi companies and they do not have any business activity to substantiate subscription of huge share capital to the assessee company.

11. The sole basis for making addition is report of investigation wing, Income tax department, Ahmadabad. Facts borne out from records shows search operation was conducted u/s.132 of the Income Tax Act, 1961 in the case of Mr.Shrish Chandrakanth Shah by the Directorate of Income Tax (Investigation), Ahmedabad. During the course of search, it came to light that Mr.Shrish Chandrakanth Shah had been involved in the business of providing accommodation entries of share capital to various parties through web off companies floated by him. During the course of investigation, statements were recorded u/s.132(4) of the Act, from Mr. Shrish Chandrakanth Shah and his associates Mr. Deepak Patwari from Kolkata, Mr. Hare Krishna Behara from Kolkata Mr.Rajendra Bhubna from Kolkata Mr.Goutham Ghouse from Howrah, Mr. Mahendra Sethia from Kolkata. Mr. Shrish Chandrakanth Shah, in response to various questions admitted that he had floated various companies to provide accommodation entries of share capital to various beneficiaries through number of layer of transactions. The relevant statements recorded from Mr. Shrish Chandrakanth Shah is reproduced at para 3.6 of the assessment order. From the statements recorded from Mr. Shrish Chandrakanth Shah, the Assessing Officer noticed that, he had floated more than

200 companies with dummy directors, who are either his employees or associates and through said companies facilitated accommodation entries of share capital / share premium to various companies, including Assessee Company. The Directorate of Income Tax (Investigation), Ahmedabad had also recorded statements from employees and associates of Mr. Shrish Chandrakanth Shah. Shri Kumar Raichand Madan, in response to question No.10 very categorically admitted that he is working for Mr. Shrish Chandrakanth Shah and acting as director in various companies. The Assessing Officer further noted that although, Mr.Shrish Chandrakanth Shah managed to get all his companies to operate seemingly as regular companies doing normal business activities, but in reality, they are bogus companies and used to provide accommodation entries for various persons. According to the AO, the investor companies bank statements reveals modus operandi of entry providers, as per which, they have deposited cheque or other transfer entries before transferring funds to beneficiary accounts leaving behind minimum balance, which clearly shows their inability to establish source for investment in assessee-company. The AO had also discussed financial strength of investor companies and observed that although companies had total assets running into

several crores, but hardly had earned any net profit which shows low profit viability of such Jamakharchi/shell/paper companies with no intention to do any prudent business and sufficiently evident that these were only created for providing accommodation entries. Therefore, he opined that share capital including share premium received from companies situated at Kolkata is nothing but accommodation entries used for converting unaccounted income of the assessee through various layers and thus, made additions u/s.68 of the Act, as unexplained credit. Therefore, it is necessary to examine the issue in light of provisions of section 68 of the Income Tax Act, 1961.

12. The provisions of section 68 of the Income Tax Act, 1961, deals with a case, where any sum is found credited in the books of an assessee maintained for any previous year and the assessee, offers no explanation about the nature and source thereof or the explanation offered by the assessee, in the opinion of the AO is not satisfactory, then sum found credited may be treated as income of the assessee of that previous year. A plain reading of section 68 of the Act, makes it very clear that in order to bring any credit within the ambit of section 68 of the Act, the AO has to examine three ingredients, i.e., identity, genuineness of transaction and creditworthiness of the parties. But, as per law, under section 68, it is

the assessee who is required to offer an explanation about the nature and the source of credit, for which an entry is found in his books and such explanation has to be to the satisfaction of the Assessing Officer. Therefore, it is for the assessee to explain credit with necessary evidences to the satisfaction of the Assessing Officer. Such proof includes proof of the identity of the creditor, the capacity of such creditor to advance the money and lastly, the genuineness of the transaction. Only when the assessee has proper evidence to establish prima facie the aforesaid facts, the onus shifts on to the Department. Once the source of the credit, the genuineness of the remittance and the identity of the sender are established, it would be for the Department to show that the amount in question is not a loan but constitutes income assessable to tax. In such a case the Departmental authorities are entitled to probe further into the matter and investigate the materials available to them to come to an independent and unbiased finding as to the genuineness of the transaction though they should not reject the assessee's explanation summarily or arbitrarily or without sufficient reason. The duty of the Assessing Officer is to examine all materials carefully and objectively. Therefore, from above discussion what is clear is that as per the provisions of section 68 of the Act, both parties shall discharge their onus one after the other.

13. The question whether such onus has been duly discharged by the assessee or has been shifted to the Revenue can only be determined after the evaluation of all the surrounding circumstances. There cannot be one general or universal proposition of law which could be the guiding yardstick in the matter. Each case has got to be decided on the facts and circumstances of that case. In holding a particular receipt as income from undisclosed source, the fate of the assessee cannot be decided by the Revenue on the basis of surmises, suspicions or probabilities. Where the assessee furnished the names and addresses and IT file numbers of the creditor and filed a confirmatory letter from him, it is for the Assessing Officer to prove that the cash credit is not genuine. He cannot arbitrarily reject the evidence on the ground that the creditor confessed that he had not invested in any firm without issuing summons under section 131 or taking any other steps in that regard. The, AO while deciding the issue, shall consider evidences on record placed by the assessee and also must consider surrounding circumstances, but he cannot simply reject evidences on summary basis on the basis of surrounding circumstances. As per the well settled principles of law by the decision of various courts, the initial onus is on the assessee. Once, assessee discharges its onus, and then onus shifts to the Assessing Officer. Therefore, in our considered view, the assessee must first file necessary evidences to prove identity, genuineness of

transaction and credit worthiness of the parties. The question of proving identity does not mean, just filing certain documentary evidences, but it is establishing real identity of the creditor. Similarly, proving genuineness of transaction does not mean payment/receipt by cheque, but it is establishing real intention of the parties to enter into transactions. Likewise, real meaning of creditworthiness of creditor means, their capacity to establish source for investments. This aspect has been explained in judgments of various courts, as per which, the courts had interpreted provisions of section 68 of the Act, and its implications on the assessee as well as the Assessing Officer. The Hon'ble Supreme court in the case of CIT v. Lovely Exports P Ltd (SC) – 216 CTR 195, has very clearly held that *If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income u/s.68 of the assessee company.* Therefore, from the above discussion what is clear is that the assessee shall first discharge its onus by filing necessary evidences and once, the assessee files all details, then it is for the AO to disprove what is claimed is not real and sum credited in the books is income from undisclosed sources of the assessee.

14. In light of above settled legal position, if we examine facts of present case, there is no doubt, the assessee has discharged burden cast upon it under section 68 of the Income-tax Act, 1961 in respect of share capital received from share capital subscribers. The AO has not disputed the fact that the assessee has furnished various evidences to prove identity of the subscribers. The assessee has filed name and address of subscribers, their PAN numbers, details of amount received and allotment made to them, return of allotment filed with Registrar of companies, company master data as available on website of Ministry of Corporate Affairs, Certification of Incorporation along with Memorandum and Articles of Association, ITR acknowledgement, audited financial statements, copies of relevant bank statements and confirmation letters from share applicants along with source of funds for investment in assessee's company. The evidences filed by the assessee clearly satisfy the condition prescribed u/s.68 of the Act. The assessee not only proved identity, but also established credit worthiness of the parties which is evident from the fact that all subscriber companies financial statement shows source of income to explain investments made in Assessee Company which is further supported from the fact that all transfer of funds was through proper bank accounts. It is a well established legal principle of law by the decisions of various courts including the Hon'ble Supreme Court in the case of CIT vs.

Stellar Investments Pvt. Ltd., *supra*, where it was clearly held that once alleged bogus shareholders details are provided to the AO then the AO is free to proceed to reopen the assessments of alleged bogus shareholders but sum received by the assessee cannot be treated as unexplained credit u/s.68 of the Act. In this case, although the assessee has filed various details, but the AO disregarded all evidences filed by the assessee and has made additions solely on the basis of investigation report without confronting those reports and statements recorded from those individuals to the assessee for rebuttal.

15. The sole basis for the AO to draw an adverse inference against assessee is investigation report of Income Tax Department Ahmadabad and statements of certain persons recorded at the time of investigation. First up all, the AO did not refer investigation report and its contents in his assessment order and further did not share copy of said report to the assessee. Further, even in statement of certain parties, no direct or indirect reference to the assessee. Nowhere the parties stated that the assessee is one of the beneficiaries of alleged transactions. In fact, the director of Assessee Company denied meeting any of the persons from whom statements were taken by the department. If you go through statement relied upon by the AO, except a general statement of modus operandi of

entry providers, there is no direct or indirect reference to Assessee Company in any of statements. From the above, it is clear that the AO totally ignored genuine documents produced before him and passed the Assessment Order on a sweeping statement without any material evidence or fact on record. The AO has merely stated modus operandi of how, the transaction took place without considering the facts of the present case. He had instead passed a general statement on the lines of suspicion and surmises without any vital material evidence against the Assessee. From the above, it is very clear that the observations of the AO in his assessment order on the basis of report of investigation wing, Kolkata is a general observation of modus operandi of certain parties who are involved in alleged activity of entry providing, but it cannot be a conclusive evidence to draw an adverse inference against the assessee of having benefited from so called alleged hawala activity. No doubt, an alleged scam may have taken place, but, it has to be seen whether the assessee is part of an alleged activity and he had any direct or indirect role in alleged scam. Unless, evidences in the possession of the AO directly or indirectly linked to the assessee, it is difficult to implicate the assessee in the alleged scam. This is because, suspicion however strong, cannot take place of evidence as held by the Hon'ble Supreme Court in the case of Umacharan Shaw & Bros vs. CIT(1959) 37 ITR 271(SC). In our considered view, on the basis

suspicion, modus operandi, preponderance of human probabilities, the claim of assessee cannot be discarded, unless specific evidences are brought on record to controvert voluminous evidences filed by the assessee. This view is fortified by the decision of Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151(SC) where it was held that no addition can be made on the basis of suspicion and conjectures. In the case of CIT vs. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC) it was held that the onus to prove that apparent is not real is on the person who claims it to be so.

16. Be that as it may. Let us come to reason given by the AO to treat share capital as unexplained cash credit u/s 68 of the Act. The AO had given various reasons to draw adverse inference against the assessee. According to the AO, entry providers admitted fact of providing accommodation entries to Assessee Company. The AO further was of the opinion that except paper documents companies could not establish their real identity and their business activity. The so called directors admitted that they are employees of Shri. Shirish Chandrakant Shah and they are dummy directors. Although transactions are routed through bank accounts, but none of the companies are having sufficient income to establish source of income for investments in Assessee Company. We have gone

through reasons given by the AO in light of various evidences filed by the assessee and we ourselves do not agree with the findings of the AO for simple reason that although, statements recorded from Shri Shirish Chandrakant Shah and his associates throw some light on general modus operandi of entry provides, but nothing is coming out about assessee from those statements recorded from them. Further, assessee has filed complete set of documents, including name and address of the parties. Once, assessee filed complete documents, it is for the AO to carry out further investigation by exercising all possible options available to him, but merely on the basis of their confession, the assessee cannot be implicated to alleged scam of hawala business. There may be various reasons for Shri SCS and his associates to confess before the Department about their activity, however unless evidences found during the course of search indicates involvements of the assessee in to alleged scam, no action can be taken on the basis of statements of those persons alone. The shareholder companies are very much available in the given address. They had filed their annual accounts with Registrar of Companies every year. As per ROC website, the companies are in active status. Further, the assessee done what best it could have done and filed, whatever information available with it, in order to satisfy the AO. Therefore, we are of the considered view that when, assessee has filed complete details to prove identity, genuineness of

transactions and creditworthiness of the parties, then there is no reason for the AO to come to the conclusion that share capital and share premium received from certain companies as unexplained cash credit.

17. In this case, there is no dispute with regard to fact that the assessee has filed all evidences, including confirmation letters from the parties to prove identity of the shareholders. The assessee had also filed financial statements and bank statements to prove genuineness of transactions, as per which transactions between the assessee and investor companies are routed through proper banking channels. The assessee had also proved creditworthiness of shareholders by filing their income tax returns filed for the relevant assessment years, as per which all the parties are having sufficient source of income in the form of income declared in the return of income or source in the form of loans & advances. In fact, the Assessing Officer never disputed fact that the assessee has filed necessary evidences, but he has ignored all the evidences filed by the assessee only on the basis of statement recorded from Mr. Shrish Chandrakanth Shah and came to the conclusion that transactions of share capital / share application money is nothing but undisclosed income of the assessee which has

been routed through share application money from web off companies floated by Mr. Shrish Chandrakanth Shah through multiple layers. In our considered view, the conclusion drawn by the Assessing Officer on the basis of statement of some persons is completely on the basis of suspicion and surmises without there being any further evidences to support his findings. Further, we have gone through statements recorded from some persons, which are part of assessment order and we find that nowhere persons directly alleged that the assessee is involved in the activity of taking accommodation entries of share capital / share application money from those companies. In fact, the assessee has proved with necessary evidence that an allegation of the Assessing Officer is wrong and transaction between the assessee and investor companies are genuine business transactions. Therefore, we are of the considered view that the Assessing Officer has completely erred in making additions towards share capital / share application money received from certain companies as unexplained cash credit which is taxable u/s.68 of the Income Tax Act, 1961.

18. The assessee has relied upon plethora of decisions in support of its arguments, including decision of the Hon'ble jurisdictional High Court in assessee own case for Asst. Year 2007-08. 13. The Hon'ble Jurisdictional High Court of Madras in the assessee's own case for assessment year 2007-08 reported in (2017) 399 ITR 425 (Mad) had considered an identical issue in light of additions made by the Assessing Officer towards share application money u/s.68 of the Income Tax Act, 1961. The Hon'ble High Court, after considering relevant facts and also by following decision of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation Pvt.Ltd. (1986) 158 ITR 78 held that when the assessee company had completely explained source of investments received by it by way of share application money, it had also disclosed identity of such investors and all payments had been received through banking channels and amount of share application money could not be treated as assessee's undisclosed income u/s.68 of the Income Tax Act, 1961.

19. The assessee had also relied upon decision of the ITAT., Chennai in assessee's own case for the assessment year

2013-14 to 2015-16 reported in (2019) 178 ITD 503. We find that co-ordinate Bench of ITAT., Chennai in the assessee's own case had considered an identical issue of additions made by the Assessing Officer towards share application money / share premium u/s.68 of the Income Tax Act, 1961, and after considering relevant facts and also following certain judicial precedents, including the decision of Hon'ble Madras High Court in assessee's own case for the assessment year 2007-08 deleted additions made by the Assessing Officer. The relevant findings of the Tribunal are as under:-

"9. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee claims share application money/share premium from its Managing Director Shri M. Kiran Kumar and one company at Kolkata M/s. Kothari Credit India Pvt. Ltd. As rightly submitted by the Ld.counsel for the assessee and the Ld. D.R. the addition was made based upon the statement recorded by the Investigation Wing of the Department from Shri Mahendra Sethia under Section 131 of the Act. Other than the statement of Shri Mahendra Sethia, no other material evidence is referred either in the assessment order or in the appellate order by the CIT (Appeals). Therefore, it is obvious that only material available on record is the statement said to be recorded from Shri Mahendra Sethia under Section 131 of the Act. The question arises for consideration is whether the statement recorded under Section 131 of the Act can be a basis for making any addition under the Income-tax Act? This

Tribunal is of the considered opinion that under Section 131 of the Act, the authorities are not empowered to administer oath to the deponent. Therefore, such a statement recorded under Section 131 of the Act has no evidentiary value. Therefore, the so called statement said to be recorded from Shri Mahendra Sethia needs to be excluded from consideration. If we exclude the statement recorded under Section 131 of the Act, there is no material available on record for making any addition either under Section 68 or Section 56(2)(viib) of the Act. Therefore, the addition made by the Assessing Officer cannot be sustained.

10. We have carefully gone through the statement said to be recorded from Shri Mahendra Sethia. The assessee claims that a copy of statement was not furnished to them. However, the Assessing Officer has extracted the statement in his order. Even though Shri Mahendra Sethia claims that accommodation entry was given to the assessee-company, it is not his claim that he received money from the assessee company. In response to question No.19, Shri Mahendra Sethia clarified that it is possible that cash would have been received by any of the group companies and he did not remember clearly. For the purpose of convenience, we are reproducing question No.19 and its answer as follows:

“Qn. No.19: Did you receive cash from either M/s. Lalithaa Jewellery Mart Pvt. Ltd. or its promoter which as finally routed back to the company as share capital and premium?”

Ans: It is possible that cash would have been received by any of the group companies. I do not remember clearly.”

11. From the above question and answer, the Assessing Officer presumed that the assessee-company paid to M/s. Kothari

Credit India Pvt. Ltd. From the above question and answer, it is obvious that it is not a categorical statement of Shri Mahendra Sethia that M/s. Kothari Credit India Pvt. Ltd. received money from the assessee. It is only a presumption. In other words, Shri Mahendra Sethia presumed that one of the group companies would have received but he is not able to recollect. The statement of Shri Mahendra Sethia is very vague and there is no basis. This Tribunal is of the considered opinion that this vague statement of Shri Mahendra Sethia cannot be a basis for making any addition under Section 68 of the Act. In response to question No.21, Shri Mahendra Sethia clarified that the original amount would have been received by cash by any one of the layers of the group. He also clarified that the amount of share premium received by the assessee-company was brought into the company by several layers of purchases and sales. For the purpose of convenience, we are reproducing question No.2 1 and answer as follows:-

Qn. No.21: The amount of Rs. 38 crores transferred by M/s. Kothari Credit (India) Limited did not belong to the company. Please confirm or deny this. If you confirm how you did get the bank balance of Rs. 38 Crores in a company that was not doing well either before this event or after this event?

Ans.: This amount of Rs. 38 Crores of bank balance was brought into the company by several layers of purchases and sales. But the original amount would be cash receipts by any one of the layers of the group. But the trace of this cash receipts are not left in the books of any of the company.”

12. It is obvious from this answer to question No.2 1 that by way of various layers of purchases and sales, the money was brought into the books of M/s. Kothari Credit India Pvt. Ltd. He

also presumed that the money might have been originally received by cash by any one of the layers. But, no concrete statement was made that money was received from the assessee-company at any stage. Moreover, no material is available on record to suggest that either the assessee-company paid money to MIs. Kothari Credit India Pvt. Ltd. or to Shri Mahendra Sethia, which was invested in the form of share premium in the assessee-company. In the absence of any material evidence, this Tribunal is of the considered opinion that there cannot be any addition on presumption and assumption under Section 68 of the Act. Moreover, as rightly submitted by the Ld.counsel for the assessee, the Assessing Officer made addition under Section 56(2)(viib) of the Act in respect of the so-called excess amount. In other words, the Assessing Officer has admittedly treated the transaction as genuine and also admitted the capacity of the person for making investment in the shares of the assessee-company. Therefore, the addition made under Section 68 of the Act cannot stand in the eye of law.

13. Moreover, the Madras High Court in the assessee's own case Lalitha Jewellery Mart (P.) Ltd. (supra) for assessment year 2007-08, considered an identical issue and observed as follows at para 42:-

42. On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee-company would still be the money available and belonging to the investors. The consistent principle followed is that the investors' sources and

creditworthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee-company. That is clearly a perverse view, as the Assessing Officer is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee-company, as such investors cannot gain any controlling stake.

14. *In view of the above observation of the Madras High Court in the assessee's own case Lalitha Jewellery Mart (P.) Ltd. (supra) for assessment year 2007-08, this Tribunal is of the considered opinion that the Assessing Officer as well as the CIT (Appeals) cannot ignore the finding of the High Court for assessment year 2007-08. The similar/identical findings recorded by the Assessing Officer as well as the CIT (Appeals) for the assessment year under consideration in this case was also recorded by this Tribunal for assessment year 2007-08. However, the High Court found such a finding was perverse. The*

High Court further found that the assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and how much they made from their respective business enterprises. In view of the above finding of the Madras High Court, this Tribunal is unable to uphold the orders of both the authorities below.

15. Now coming to valuation of shares, as rightly submitted by the Ld. counsel for the assessee, there are two limbs in Section 56(2)(viib) of the Act. As per explanation to Section 56(2)(viib) of the Act, the first limb is valuation to be made as per the prescribed method. In fact, the method for valuation of shares is prescribed under Rule 11UA of the Income-tax Rules, 1962. The second limb is the valuation of the company based on value on the date of issue including its assets. Assets include intangible assets such as goodwill, knowhow, patents, copyrights, trademarks, licences, franchises, etc. The Assessing Officer has not taken into consideration the second limb in explanation to Section 56(2)(viib) of the Act. The second limb provides that when valuation was made by the company, if the Assessing Officer is not satisfied about the valuation, he has to call for material from the assessee how the valuation was made by the assessee-company. Satisfaction of the Assessing Officer as referred in explanation to Section 56(2)(viib) of the Act would be judicial satisfaction of the Assessing Officer. Judicial satisfaction means the Assessing Officer has to take into consideration the well established method of valuation of shares including the assets as explained in Explanation 2 to Section 56(2)(viib) of the Act. It cannot be arbitrary. The Assessing Officer has to take note of the judicial and established principles in arriving at his satisfaction. In this case, the Assessing Officer has not found any specific fault in rejecting or not satisfying with the valuation made by the assessee. When the Assessing Officer has not found any defect or error in the valuation of shares by the assessee-company. it may not be necessary to apply the method of valuation prescribed under Rule 11UA of the 1.T.Rules. Therefore, this Tribunal is unable to uphold the valuation made by the Assessing Officer under Rule 11UA of the Income-tax Rules, 1962.

16. In view of the above discussion, orders of both the authorities below are set aside and the addition made both under Section 68 of the Act and under Section 56(2)(viib) of the Act is deleted.”

20. The assessee had also relied upon decision of the ITAT., Chennai in the case of ACIT Vs M/s. Suryadev Alloys & Power Pvt.Ltd. in ITA Nos.1788, 1982, 1746 to 1751/Chny/2017 & Ors. dated 17.12.2021. The Co-ordinate Bench of this Tribunal had considered an identical issue of additions made towards share application money received from certain companies on the basis of investigation carried out by income tax department on certain shell companies in Kolkata. The Tribunal, after considering relevant facts and also by relied upon certain judicial precedents deleted additions made by the Assessing Officer. The relevant findings of the Tribunal are as under:-

“26. In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, we are of the considered view that the assessee, by filing enormous details, has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the shareholders. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of report of Investigation wing, and financial statements of the subscribers that none of the subscribers had enough source of income to establish creditworthiness. Even though there were

circumstances leading to suspicion, yet having taken an action u/s.132 and enquiries made in the assessment proceedings, the assessing authority had not brought any positive material or evidence to indicate that the share application money as such represented assessee's own undisclosed money brought back in the garb of share capital. Merely because of his subjective satisfaction that the source of availability of money with the shareholder or their creditworthiness were not established, the AO could not treat the genuinely raised share capital as deemed income u/s.68 of the Act. In the event the intermediary companies were to be taken as conduits or persons without requisite creditworthiness and even if they were to be treated as bogus shareholders, then also nothing stopped the Revenue to reopen their individual assessments in accordance with law and bring to tax such unexplained money in their respective hands. Therefore, we are of the considered view that the AO was erred in making additions towards share capital, including share premium u/s 68 of the Income Tax Act, 1961. The learned CIT(A) after considering relevant facts and also by relied upon various case laws has rightly deleted additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961 for the Asst years 2008-09 to 2012-13. In so far as Asst year 2013-14, because of applicability of proviso to section 68 of the Act, the Id. CIT(A) deleted addition made by the AO towards share capital u/s 68 of the Act, wherever assessee proved source of source in the hands of shareholders. But, sustained addition made by the AO towards share capital u/s 68 of the Act, wherever the assessee could not prove source of source in the hands of share holders. In our considered view there is no error or infirmity in the order of the Id. CIT(A). Hence, we are inclined to uphold order of the Id. CIT(A) and dismiss appeal filed by the Revenue for Asst. years 2007-08 to 2013-14. The appeal filed by the assessee for Asst. Year 2013-14 is also dismissed.

21. Coming back to case laws relied upon by the learned D.R. The learned DR relied upon decision of the Hon'ble Supreme Court in the case of PCIT Vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48. We find that the Hon'ble Supreme Court in the said case has considered the issue of additions made towards share application money u/s.68 of the Income Tax Act, 1961, and after considering relevant facts held that when there is a failure of assessee to establish creditworthiness of creditor company, the Assessing Officer was justified in passing assessment order making additions u/s.68 of the Act for share capital / share application money received by the assessee. We have gone through decision of the Hon'ble Supreme Court in light of facts of the present case and we find that case law relied upon by the learned DR has no application to the facts of the present case, because in the said case, first of all, it was an ex-parte decision by the Hon'ble Supreme Court in absence of the assessee. Secondly, the Hon'ble Supreme Court has considered in light of various facts brought on record by the departmental authorities, including receipt of share capital from certain companies, in light of financials of those companies and find that it was a case of circular trading of entries by depositing

cash into one bank account and transferring amount on same day to other accounts and finally, transferred to accounts of the beneficiaries. Further, in the case before the Hon'ble Supreme Court in number of companies, the assessee could not produce banks statements of the share holders to prove genuineness of transactions and further, the assessee could not explain charging such huge premium on issue of shares. In the present case, the assessee has filed complete details, including bank statements of investor companies to prove genuineness of transactions. Further, the assessee had also proved premium charged on issue of shares with the help of its financial statements. Further, the assessee had also paid dividend every year to the shareholders, including share capital received from so called shell companies. From the above, it is very clear that facts of the present case is entirely different from facts of the case considered by the Hon'ble Supreme Court in the said case and thus, case law relied upon by the learned DR is treated as not applicable to the facts of the present case.

22. The learned DR has also relied upon the decision of Hon'ble Calcutta High Court in the case of Rajmandir Estates P.Ltd. Vs. PCIT (2016) 386 ITR 162. We case law relied upon

by the Ld. DR in the light of facts of the present case and find that the case law relied upon by the Ld. DR is not applicable, because, in this case, the subscribers to the share capital did not establish their financial capacity to subscribe share capital in the assessee company. The bank account of all the applicants have been found credited from other sources immediately before transfer of funds to the assessee company. The companies did not have any business activity to establish their financial capacity. Under those facts and circumstances, the Hon'ble Calcutta High Court came to the conclusion that the assessee has failed to establish genuineness of transactions and creditworthiness of the parties and hence confirmed addition made by the AO u/s 68 of the Income-tax Act, 1961. As regards the decision of Hon'ble Delhi High Court, we find that although Hon'ble High Court held that furnishing certificate of incorporation, PAN etc is not sufficient to prove identification of subscriber when there was enough materials to show subscriber is a paper company, but in the present case, the assessee has filed all possible evidences to establish the transactions in light of provisions of section 68 of the Act, and thus, in our considered view, the

assessee has satisfactorily, discharged its onus to come out of shadow of section 68 of the Act. Therefore, the case laws relied upon by the Revenue cannot be applied to facts of present case.

23. Be that as it may. In case of PCIT vs. Hi-Tech Residency Pvt. Ltd. (2018) 257 Taxman 335, the Hon'ble Supreme Court has considered identical issue and held that where an assessee company had discharged the onus of establishing identity, genuineness of transaction and creditworthiness of investors, no additions could be made u/s. 68 of the I.T. Act, 1961. We, further, noted that although the Apex Court has not expressed any opinion, because of dismissal of SLP filed by the Revenue, the fact of the matter is that this issue has been considered by the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd (supra), where the issue has been thoroughly examined in light of provisions of section 68 of the Act, and held that if the share application money is received by the assessee company from alleged bogus share holders, whose names are given to the AO, then the department is free to proceed to reopen their assessment in accordance with law, but sum

received from share holders cannot be regarded as undisclosed income of the assessee.

24. The learned DR had also relied upon decision of the ITAT., Mumbai in the case of DCIT Vs. M/s. Leena Power Power Tech Engineers (P) Ltd. (2021) 130 taxmann.com 341. We find that the co-ordinate Bench of ITAT., Mumbai has taken a contrary view after considering relevant facts of the case. Although, there is contrary decision against the assessee on the issue of share capital / share premium, but because the Hon'ble Jurisdictional High Court of Madras in the assessee's own case has considered very same issue and held that once the assessee filed necessary details and explained source of investments received by way of share application money, then amount of share application money could not be treated as assessee's undisclosed income u/s.68 of the Act, and thus, we prefer to follow the Hon'ble Jurisdictional High Court of Madras judgement in the assessee's own case for the assessment year 2007-08 reported in (2017) 399 ITR 425 (Mad), rather following decision of the co-ordinate Bench of ITAT., Mumbai in the case of DCIT Vs. Leena Power Tech Engineers P.Ltd (supra).

25. In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, we are of the considered view that the assessee, by filing enormous details, has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the shareholders. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of report of Investigation wing, and financial statements of the subscribers that none of the subscribers had enough source of income to establish creditworthiness. Even though there were circumstances leading to suspicion, yet having taken an action u/s.132 and enquiries made in the assessment proceedings, the assessing authority had not brought any positive material or evidence to indicate that share application money as such represented assessee's own undisclosed money brought back in the garb of share capital. Merely because of his subjective satisfaction that source of availability of money with the shareholder or their creditworthiness were not established, the AO could not treat the genuinely raised share capital as deemed income u/s.68 of the Act. In the event the intermediary

companies were to be taken as conduits or persons without requisite creditworthiness and even if they were to be treated as bogus shareholders, then also nothing stopped the Revenue to reopen their individual assessments in accordance with law and bring to tax such unexplained money in their respective hands. Therefore, we are of the considered view that the AO was erred in making additions towards share capital, including share premium u/s 68 of the Income Tax Act, 1961. The learned CIT(A) after considering relevant facts and also by relied upon various case laws has rightly deleted additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961. Hence, we are inclined to uphold reasons given by the CIT(A) to delete additions and direct the AO to delete addition made towards share capital/share premium u/s 68 of the Income Tax Act, 1961.

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

ITA No.3160/Chny/2017:-

27. The assessee has raised following grounds of appeal:-

"1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and is opposed to the principles of equity, natural justice and fair

play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment completed u/s.143(3) r.w.s.153A was bad in law.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the additions were not made on the basis of any incriminating material found during the course of search.

5. For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 12,99,429/- u/s.40A(2)(b).

6. For that the Commissioner of Income Tax (Appeals) erred in upholding the determination of market rate of rent at Rs.95/- per sq.ft., by the Assessing Officer.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the lease rent paid by the appellant company was at the market rate and that the same was based on the location of the property.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the guiding factors of rent include location of the property, ease of access, amenities available, prevailing competition in the locality etc.

9. For that the appellant company objects to the levy of interest under sections 234A, 234B and 234C.”

28. The first issue that came up for our consideration from ground Nos.5 to 8 of the assessee appeal is disallowance of rent u/s.40A(2)(b) of the I.T Act, 1961. The facts with regard to impugned dispute are that during previous year relevant to assessment year under consideration, the assessee company

has paid lease rent of Rs.16,85,400/- to Mr. Kiran Kumar, Managing Director of the assessee company for property at Door No.122, Usman Road, T.Nagar, Chennai. The Assessing Officer further noted that the assessee has paid lease rent of Rs.418/- per sq.ft and therefore, the Assessing Officer was of the opinion rent paid by the assessee to related party is compared with prevailing market rate available in the locality which is between 90 to 100 per sq.ft, rent paid by the assessee is excessive and unreasonable and thus, the Assessing Officer invoked provisions of section 40A(2)(b) of the Act and disallowed excess rent of Rs.12,99,429/-.

29. The learned A.R for the assessee submitted that this issue is covered by the decision of ITAT., Chennai in the assessee's own case for the assessment year 2013-14 to 2015-16 reported in (2019) 178 ITD 503 (Chennai Trib), where under identical set of facts, the issue has been set aside to file of the Assessing Officer with a direction to reconsider the issue in light of various averments made by the assessee, including procedure prescribed under Tamil Nadu Buildings (Lease & Rent Control) Act, 2016 and City Municipal Corporation Act

and determine fair rent of the property in the location. Therefore, this year also, the issue may be set aside to the file of the Assessing Officer with similar direction.

30. The learned DR, on the other hand, fairly agreed that the issue may be set aside to the file of the Assessing Officer with similar direction.

31. We have heard both the parties and considered relevant material available on record and we find that a similar issue had been considered by the Tribunal for earlier and subsequent assessment years in assessee's own case reported in (2019) 178 ITD 503 (Chennai Trib), where, the issue has been set aside to the file of the Assessing Officer to reconsider the issue of disallowance of lease rent paid by the assessee to related party u/s.40A(2)(b) of the Act. The relevant findings of the Tribunal for the assessment years 2013-14 to 2015-16 are as under:-

“ 18. Shri K. Mahendran, the Ld.counsel for the assessee, submitted that the assessee-company paid lease rent of Rs. 16,85,400/- to its Managing Director Shri M. Kiran Kumar in respect of the property at 122, Usman Road, T. Nagar,

Chennai-17. The area of property was 4023 sq.ft. The assessee paid the lease rent at the rate of Rs. 418/- per sq.ft. According to the Ld. counsel, the property is situated in a prime commercial location in the heart of Chennai city, therefore, the lease rent at the rate of Rs. 418/- is very reasonable. Hence, according to the Ld. counsel, it does not call for disallowance under Section 40A(2)(b) of the Act.

19. On the contrary, Shri S. Bharath, the Ld. D.R. submitted that the Assessing Officer made enquiry through Inspector. According to the Ld. D.R., no doubt, the property was situated in a prime commercial location in the heart of Chennai, but, the average lease rent paid in that area is only Rs. 100/- per sq.ft. Therefore, according to the Ld. D.R., the Assessing Officer found that the assessee was paying Rs. 318/- per sq.ft. in excess of fair market value. Hence, according to the Ld. D.R., the disallowance of Rs. 12,79,314/- was rightly made.

20. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer found that the lease rent paid by the assessee-company to its Managing Director was in excess of fair market value. This Tribunal is of the considered opinion that the fair rent has to be estimated considering the location of the building, amenities provided and prevailing market value of the land in the locality. Moreover, the Assessing Officer shall also take into consideration the procedure prescribed under Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960 and City Municipal Corporation Act. Since such an exercise was not done, the Assessing Officer shall reconsider the matter afresh. Accordingly, the orders of both the authorities below are set aside and the disallowance made under Section 40A(2)b of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.”

32. In this view of the matter and consistent with view taken by the co-ordinate Bench of this Tribunal, we are of the considered view that the issue needs to be set aside to the file of the Assessing Officer and thus, we set aside this issue to the A.O and direct the Assessing Officer to reconsider the issue in light of directions given by this Tribunal in the assessee's own case for the assessment years 2013-14 to 2015-16 and pass appropriate orders for the impugned assessment year in accordance with law.

33. The next issue that came up for our consideration from ground no.1 to 4 of the assessee appeal is validity of assessment order passed by the Assessing Officer u/s.143(3)

r.w.s 153A of the Income Tax Act, 1961. The assessee has taken a ground challenging jurisdiction of the Assessing Officer in passing assessment order in light of certain judicial precedents and argued that when the assessment for the impugned assessment year is unabated/concluded as on the date of search, then no addition can be made towards concluded issue in the assessment framed u/s.143(3) r.w.s 153A of the Income Tax Act, 1961. The learned A.R for the assessee referring to assessment order submitted that the Assessing Officer has made additions towards share capital / share premium and also disallowance of rent u/s.40A(2)(b) of the Act, without reference to any incriminating materials found as a result of search. It is well settled position of law that in absence of any incriminating materials found during the course of search, no addition can be made in assessments framed u/s.143(3) r.w.s 153A of the Act, when the assessment for the impugned assessment order is unabated / concluded.

34. The learned DR, on the other hand, supporting order of the learned CIT(A), submitted that assessment has been completed on the basis of materials found during the course of

search, which suggest escapement of income. Therefore, there is no merit in legal ground taken by the assessee challenging validity of assessment proceedings.

35. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Having considered relevant materials available on record, we find that there is no merit in legal ground taken by the assessee challenging validity of assessment order passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961. We further noted that assessment for the impugned assessment year has been completed consequent to search operation conducted in the case of the assessee, where certain incriminating materials were found and seized which suggest escapement of income. Therefore, we are of the considered view that there is no merit in legal ground taken by the assessee in light of certain judicial precedents and thus, grounds of appeal filed by the assessee are rejected.

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

37. To sum up, the appeal filed for the assessee is partly allowed and appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 27th May, 2022

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th May, 2022

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.