

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.7907/Mum/2019
(निर्धारण वर्ष / Assessment Year:2013-14)

Chemicon Engineering Consultant Pvt. Ltd. 21 & 22, 2 nd Floor, 230, Sakhar Bhawan, Nariman Point, Mumbai-400021.	बनाम/ Vs.	ACIT, Circle 3(1)(2) Room No.607, Aayakar Bhawan, Maharshi Karve Road, Mumbai-400020.
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आयकर अपील सं/ I.T.A. No. 833/Mum/2020
(निर्धारण वर्ष / Assessment Year:2013-14)

ACIT, Circle 3(1)(2) Room No.607, Aayakar Bhawan, Maharshi Karve Road, Mumbai-400020.	बनाम/ Vs.	Chemicon Engineering Consultant Pvt. Ltd. 21 & 22, 2 nd Floor, 230, Sakhar Bhawan, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC2686H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anuj Kisnadwala
Revenue by:	Shri H. N. Singh (DR)

सुनवाई की तारीख / Date of Hearing: 11/05/2022
घोषणा की तारीख /Date of Pronouncement: 17/06/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee and revenue respectively against the order of the Ld. CIT(A)-08, Mumbai dated 29.11.2019 for the A.Y.2013-14.

2. The grounds raised by the both the parties are as follows:

Assessee Grounds: -

1. For that on the facts and circumstances of the case the orders passed by the Assessing Officer u/s 143(3) of the Act, 1961 (the “Act”) and



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that by the CIT(A) u/s 250 of the Act so far it relates to in confirming of the additions to the extent of

a) Rs. 6,22,05,000/- received from certain companies out of total Rs. 13,13,50,000/- in respect of shares allotted against share application money;

b) Rs. 79,00,000/- received from Dhanlaxmi Tie up Private Limited out of total Rs. 21,86,05,000 in respect of deposits received is arbitrary, against the principal of natural justice, bad in Law and liable to be set aside.

2. For that the learned CIT(A) erred in confirming the additions to the extent of

a) Rs. 6,22,05,000/- received from certain companies out of total Rs. 13,13,50,000/- in respect of share allotted against share application money;

b) Rs. 79,00,000/received from Dhanlaxmi Tie up Private Limited out of total Rs. 21,86,05,000/- in respect of deposits received;

inspite of holding and appreciating the fact that there was no specific findings made in the assessment Order by the Assessing Officer as regards the creditworthiness of the share applicant and/or depositor and the enquiries made by the Assessing Officer were sketchy and sporadic.

3. For that the order of Learned CIT (A) erred in not adjudicating each grounds raised by the appellant before allowing part relief, instead of deleting the additions in full.



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4. For that on the facts and in the circumstances of the case, the Assessing Officer erred in passing the Order under section 143(3) of the Act with a prejudiced mindset ignoring the evidences relating to the identity, creditworthiness of the shareholders and genuineness of the transaction brought on record by the Appellant and the CIT(A) further erred in confirming the same allowing only part relief to the appellant Company.

5. For that the learned CIT(A) further erred in confirming the part addition without giving any specific findings as regards the creditworthiness of the share applicant, failing to bring on record any evidence or material to show that the subscriber to the shares were paper/ bogus companies or briefcase companies and do not have any existence.

6. For that both the Assessing Officer and the CIT(A) failed to appreciate that details with evidences in the form of confirmations from all shareholders, Bank Statements showing source, audited Financial Statements and source in the hands of the shareholder who invested in the share capital of the Company were duly confirmed, explained with evidences and forms part of the assessment records and appellate proceedings.

7. For that the CIT(A) failed to appreciate that the report of Investigation Wing was the only basis for additions on account of share application money without giving any specific findings relating to transactions with the Company and that the complete report was never shared with the Appellant on repeated request and also does not form part of the assessment record.



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8. a) For that the Assessing Officer erred in making addition in respect of amount received towards share application money under Section 68 of the Act and the Learned CIT(A) further erred in confirming the same to the extent of Rs. 6,22,05,000/- without appreciating that Section 68 of the Act is not applicable in the case of appellant.

b. For that the Learned CIT(A) erred in holding that the appellant failed to discharge the primary onus cast upon it by assuming that the shareholders were not found at their stated address and appellant could not produce their current address as requested by Assessing Officer.

c. For that the Learned CIT(A) failed to appreciate that all the shareholders responded to the notices issued under section 133(6) of the Act and forms part of the Assessment records.

d. For that the Learned CIT(A) further erred in holding that the appellant failed to discharge the primary onus of producing the shareholders and failing to appreciate that neither there is any mandatory provision for producing the shareholder before the Assessing Officer nor any such notice to this effect was issued by the Assessing Officer.

9) a) For that the Assessing Officer and CIT(A) erred in presuming the deposits to be loans and advances and making additions without issuing any show cause notice.

b. For that the CIT(A) failed to appreciate that not only the nature and source of receipt of Rs. 79,00,000/- from Dhanlakshmi Tie Up Private Limited was brought on record but also identity, creditworthiness and genuineness was proved beyond doubt by the Appellant.



c. For that the CIT(A) failed to appreciate that the 1st proviso to section 68 is not applicable in case of deposits i.e. receipts other than Share Capital and that amount of Rs. 79,00,000/- received from Dhanlakshmi Tie Up Private Limited in no circumstances can be added to the total income of the appellant under Section 68 of the Act applying the rule of 1st proviso to the section.

d) For that the CIT(A) failed to appreciate that the report of investigation Wing was the only the basis for additions of Rs. 79,00,000/- received from Dhanlakshmi Tie Up Private Limited without giving any specific findings relating to transactions with the Company and that the complete report was never shared with the Appellant on repeated request and also does not form part of the assessment record.

10) For that the Appellant craves leave to add, alter, amend, delete, modify or withdraw all or any grounds or grounds of appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”

Revenue Grounds:-

1. Whether on the facts. and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs.6,91,45,000/- made by the Assessing Officer u/s.68 of the I.T. Act, on account of large share premium, without appreciating the fact that the said additions were made, after considering the report received in response to commission issued to the DDIT(Inv), Kolkata, wherein it was reported that as per database maintained with the Directorate of Investigation, Kolkata, the companies were paper / bogus companies, entry providers and did not exist at the given addresses?



2. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs.13,10,87,300/- made by the Assessing Officer u/s.56 2)(viib) on protective basis on account of large share premium, without appreciating the fact that the share premium amount received was over and above the fair market value of the shares in terms of section 56(2)(viib) of the Income Tax Act read with Rule 11UA of the Income tax Rule 1962

3. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs.21,07,05,000/- made by the Assessing Officer u/s.68 of the I.T. Act, on account of unsecured loans, advances / deposits received by the assessee, without appreciating the fact that the said additions were made, after considering the report received in response to commission issued to the DDIT(Inv), Kolkata, and statement recorded on oath of Mr. Suresh Kumar Agarwal, to whom the said report was shown ?

4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

5. The appellant craves leave to amend, alter, delete or add grounds which may be necessary.”

3. Ground No. 1 of the Revenue’s appeal and Ground Nos. 1(a), 2(a), 3 to 8 of the assessee appeal are inter-connected and are therefore being taken up together. Briefly stated, the facts of the case are that, the assessee is a company, which is engaged in the business of letting out properties. For the relevant AY 2013-14, the assessee had filed return of income declaring total loss of Rs.1,68,66,440/- on



25-09-2013. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued on 04-09-2014. In the course of assessment, the AO noted that, during the year the assessee had issued 2627 shares having face value of Rs.100/- at a premium of Rs.49,900/- to sixteen (16) bodies corporate and had accordingly raised share capital of Rs.13,13,50,000/-. Based on the information provided by the assessee, the AO made enquiries from each of the share subscribers by issue of notice u/s 133(6) of the Act dated 10-12-2015. All the notices were served, except one. The AO at Para 4.3.2 of the order has observed that all replies were received from the share subscribers. However, not being satisfied with the details, the AO sent a commission u/s 131(1)(d) of the Act to DDIT(Inv), Unit-1(3), Kolkata on 09-03-2016 who furnished his report dated 22-03-2016. In the said report, the DDIT(Inv) stated that the Inspectors attached with his office could not find the shareholders at their given addresses and that these shareholders belonged to purported entry operators. This commission report was confronted to the Director of the assessee company and his statement was recorded on oath u/s 131 of the Act, which is reproduced at Para 4.3.10 of the assessment order. In his statement, the Director denied the allegation/contents of the said report and claimed that all the shareholders are real companies actively involved in business. The assessee also furnished written explanation in response to the show cause given by the AO. The AO however did not agree with the same and thus added the aggregate



amount of Rs.13,13,50,000/- received from the share subscribers during the year by way of unexplained cash credit u/s 68 of the Act.

4. Aggrieved by the above order of the AO, the assessee preferred an appeal before the Ld. CIT(A). The assessee furnished written submissions and also filed addition evidences, which were forwarded to the AO on 29-08-2017. The AO furnished his remand report dated 10-09-2018. According to Ld. CIT(A), although the AO had raised doubt on the creditworthiness of all the share subscribers but the AO had failed to undertake qualitative exercise into the same in as much as the AO had failed to enquire into the source of source of funds received by the assessee. The Ld. CIT(A) therefore on his own volition required the assessee to give the '*source of source*' of funds, which was furnished by the assessee vide submissions dated 19-11-2019, which has been extensively extracted by the Ld. CIT(A) at Pages 90 to 103 of his appellate order. After analyzing the money trail, the Ld. CIT(A) divided the share subscription monies received by the assessee into two parts viz., (a) amounts received from those shareholders whose 'source of source' was the funds received from the flagship company of the Group to which the assessee belonged i.e. M/s Rika Global Impex Ltd (RGIL) and (b) amounts received from those shareholders whose 'source of source' were other bodies corporate (apart from RGIL). According to Ld. CIT(A), the share subscription monies aggregating to Rs.6,91,45,000/- whose '*source of source*' emanated from RGIL was genuine and the remaining sum of



Rs.6,22,05,000/- whose '*source of source*' of funds were other unrelated bodies corporate were bogus. Accordingly, out of the total addition of Rs.13,13,50,000/- made by the AO u/s 68 of the Act, the Ld. CIT(A) deleted sum of Rs.6,91,45,000/- and confirmed the remaining amount of Rs.6,22,05,000/-.

5. Aggrieved by the above order of the Ld. CIT(A), the Revenue is now in appeal before us contesting the deletion of addition of Rs.6,91,45,000/- u/s 68 of the Act [*Ground No. 1*]. On the other hand, the assessee is in appeal against the Ld. CIT(A)'s action of upholding addition u/s 68 of the Act to the extent of Rs.6,22,05,000/- [*Ground Nos. 1(a), 2(a), 3 to 8*].

6. Assailing the action of the Ld. CIT(A) in giving relief to the assessee, the Ld. CIT-DR supported the order of the AO. The Ld. CIT-DR submitted that the AO had made field enquiries by way of commission made u/s 131(1)(d) of the Act through DDIT, Unit 1(3), Kolkata, whose report, according to him, showed that the very existence of these shareholders were in doubt, and since these shareholders could not place any credible evidence to prove that they were in genuine business activity, the AO had rightly made the addition u/s 68 of the Act. In support of the action of the AO, the Ld. CIT-DR placed reliance on the judgment of the Hon'ble Apex Court on the case of **Pr.CIT vs. NRA Iron & Steel (P) Ltd reported in 103 taxmann.com 48 (SC)** and contended that since none of the shareholders were traceable, the entire addition made u/s 68 of the Act



ought to be upheld. He thus prayed that the Ld. CIT(A)'s impugned order partly deleting the impugned addition may be reversed and the AO's order be restored.

7. Per contra, the Ld. AR of the assessee, pointed out that each of the shareholders had duly filed all the documents to substantiate their identity, creditworthiness and genuineness before the A.O during assessment proceedings, and in that process, the initial onus which lay under Section 68 of the Act stood discharged. The Ld. AR took us through the several observations made by the AO in the impugned order for justifying the impugned addition, which according to him were empty and ludicrous allegations. The Ld. AR also took us through the report obtained by the AO u/s 131(1)(d) of the Act and pointed out that it was fraught with several infirmities which raised serious doubt on the veracity of the same [*details of which is discussed infra*]. Qua the sum of Rs.6,91,45,000/- deleted by the Ld. CIT(A), he supported the order of the Ld. CIT(A). With regard to remaining sum of Rs.6,22,05,000/-, he argued that the assessee had furnished complete details of the '*source of source*' of funds but the Ld. CIT(A) had simply rejected the same by making unsubstantiated observations that the source originated from paper companies, which was not based on any credible evidence or material. The Ld. AR took us through the details of the '*source of source*' of funds which were placed in the paper book, and contended that the Ld. CIT(A)'s action of rejecting these contemporaneous evidences smacks of arbitrariness



and his action being whimsical was bad in law. He thus urged that, even the remaining amount confirmed by the Ld. CIT(A), ought to be deleted.

8. Having heard both the parties and after perusing the material placed before us, it is noted that the issue for our consideration raised by both sides is whether the addition made u/s 68 of the Act was right or erroneous. Before advertng to the facts, let us first look at Section 68 of the Act. We note that the relevant assessment year [A.Y] before us is A.Y 2013-14 wherein we note that a Proviso has been inserted by Finance Act 2012 w.e.f. 01.04.2013 in section 68 of the Act which is applicable for this relevant AY and for ready reference, the relevant and applicable in this case of section 68 of the Act with the aforesaid proviso is reproduced as under :

“Where any sum is found credited in the books²⁴ 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 him is not, in the opinion of the ²⁵[Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:



Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

9. The phraseology of Section 68 of the Act is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case, the Legislative mandate is not in terms of the word 'shall' be charged to income-tax as the income of the assessee of that previous year. The Supreme Court while interpreting similar phraseology used in Section 69 of the Act has held that in creating the legal fiction, the phraseology used therein employs the word "may" and not "shall". Thus, the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as also held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.

10. Hence, the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are:

- (i) identity of the investors;
- (ii) their creditworthiness/investments; and
- (iii) Genuineness of the transaction.

11. The said provision casts the initial onus to prove the nature of credit on the recipient i.e. the assessee. There is a marked distinction



between ‘*onus of proof*’ and ‘*burden of proof*’. The ‘*burden of proof*’ lies on a person who has to prove a fact initially and if he fails to prove it, when asked to do so by the AO, then AO can draw adverse inference against the assessee u/s 68 of the Act. But if the assessee discharges its obligation and prove the nature & source of the credit entries to AO’s satisfaction, then the ‘*onus of proof*’ shifts. However, for the purposes of Section 68 of the Act, the ‘burden to proof’ begins with the assessee and once the assessee submits evidence in support of the credit and makes out a prima facie case, then the ‘onus of proof’ shifts to the Revenue. Such shifting of ‘onus’ is a continuous process in the evaluation of evidence. If the evidence on record weighs in favour of the assessee [*based on preponderance of probability which is the standard of proof required in income tax assessments*] or that the explanation put forth cannot be said to be completely unsatisfactory, then the onus cast upon the assessee u/s 68 of the Act can be said to have been discharged. In view of the foregoing, we are of the considered view that the initial burden on the assessee was only to substantiate the source of its share application monies and if it is found that the identity and creditworthiness of the share applicants along with the genuineness of the transaction is established, then the addition u/s 68 of the Act would be unwarranted.

12. Now the next aspect which requires our consideration, is the proviso to Section 68 of the Act, which was inserted by the Finance Act, 2012, which now put further burden upon the assesseees to



substantiate the '*source of source*' of funds. We note that even though the Parliament has inserted the proviso in section 68 of the Act, by the Finance Act, 2012, w.e.f. 01.04.2013, we must bear in mind that there is no change or amendment in the substantive provision of section 68 of the Act wherein if any sum is found by the AO to have been credited in the books of an assessee in the relevant financial year, then when called upon by him (AO) to the assessee to explain the nature and source of the credit; and pursuant to which if the assessee fails to explain to the satisfaction of AO the nature and source of the credit, then the AO may treat the credit as income chargeable to tax. In other words, if the assessee is able to explain the nature and source of the credit to the satisfaction of AO, then AO cannot use this provision to charge the credit appearing in the books of the assessee as income for the purpose of taxation under the Act. It is settled position of law that 'satisfaction' contemplated in section 68 of the Act is that of a reasonable prudent person (AO) and not that of an unreasonable person. So, when the AO calls upon the assessee to explain the nature and source of the credit found in assessee's book, then initial burden is on the assessee to bring material on record to show the nature and source of the credit i.e. identity, creditworthiness and genuineness of the transaction in question. And once an assessee is able to discharge the initial burden which lies upon it, then the onus shifts to the AO to disprove/rebut the material adduced by the assessee to substantiate the nature and source of the credit transaction. And if the AO is not able



to disprove/rebut the evidence brought on record by the assessee to prove the nature and source of the credit entry, then section 68 of the Act cannot be used by the AO to charge the credit appearing in the books of the assessee as income for taxation. This position of law we note remains the same even after the insertion of Finance Act 2012, wherein additional requirement/burden is brought in by the Parliament in the cases of an assessee which is a corporate entity (not being a company in which the public are substantially interested) claims to have received share application money, share capital, share premium or any such amount, then with effect from 01.04.2013, while giving the explanation to the AO regarding the nature and source of such sum credited in its books, the share subscribers has to offer the proof of 'source of source' of the share application money, share capital, share premium. So, we note that till AY 2012-13, the requirement of law as per section 68 of the Act was that when there is a credit entry in the books, then assessee was required to satisfy the AO in respect of the nature and source (i.e. First source from which it received) and that position of law remains in force till now also, except that after 01.04.2013 (i.e. AY 2013-14) onwards when an assessee company (not a public company) if they collect share application money, share capital, share premium then an additional burden is imposed by the first proviso to bring to the notice of AO the "source of source" of the credit entry i.e. source of the share applicant which had been invested in the assessee company. In other words from AY 2013-14 and



onwards, in the event if an assessee company when called upon by the AO to explain the nature of the credit in its books claims that the credit entry is share application money, share capital and share premium, then the additional requirement of law as per the proviso to section 68 of the Act kicks in and share subscriber should be able to show the source from which it was able to invest in the assessee company. And if the 'source of source' of share application/ capital/ premium is shown to AO and if he is satisfied with the explanation, then the deeming provision will not apply.

13. Having regard to the above legal position, we now proceed to examine the facts of the case on hand. So, in this relevant assessment year, as noted earlier, the assessee company had issued 2627 shares to sixteen (16) share holding companies, shares at a face value of Rs.100/- each with a premium of Rs.49,900/-. Before the AO, the assessee has furnished the necessary details of all the shareholders *inter alia* including the name, PAN, address of the shareholders, details of share application monies received, shares allotted along with bank statements evidencing that all payments were received through banking channel. Based on information gathered, the AO had made enquiries u/s 133(6) of the Act from all the shareholders, who in response had filed copies of their Income-tax Acknowledgments, financial statements, bank statements, explanation regarding source of their funds, etc. in support of their identity, creditworthiness and genuineness of these transactions. It is noted that the Ld. CIT(A) had



requisitioned further details regarding 'source of source' of funds in terms of proviso to Section 68 of the Act, which was also furnished by the assessee. Upon perusing the orders impugned before us in light of the documents furnished by the shareholders and assessee, we therefore first deem it fit to look into the facts of each investors which invested money in the assessee company in the form of share capital along with share premium.

- i. Siddhweshwari Vyapaar Pvt. Ltd. - Rs.20,00,000/- : It is noted that in response to the notice issued by the AO u/s 133(6), this shareholder had filed its response dated 23.12.2015, which is available at Page 34 of the paper book. The reply comprised of its IT Acknowledgement, financial statements, share valuation report as well as the bank statement evidencing source of source of funds. Perusal of these details reveal that, this shareholder is a body corporate having CIN: U51909WB2009PTC137187 which is registered as Non-Banking Finance Company with the Reserve Bank of India holding certificate No. N.05.06847 [Page 391 of PB]. Being an NBFC, the primary business of the shareholder is advancing loans and making investments. This shareholder is assessed to income-tax under the PAN AANCS23371J. From the audited financial statements, which is found placed at Pages 23 to 33 of the paper book, it is revealed that the company was having



sufficient own funds in the form of capital and reserves to the tune of Rs.7720 lacs to make the investment of Rs.20,00,000/- in the assessee company. With regard to the source of source of funds, it is noted that the shareholder had initially placed on record its bank statement, which evidenced the source out of which it subscribed to the shares of the assessee. Before the Ld. CIT(A), explanation regarding the source of funds of the shareholders was also placed on record, which is noted to comprise of proceeds from repayment of the loans advanced earlier to M/s Eversight Tradecomm Pvt. Ltd. In support of the source of source of funds, Certificate of Incorporation of M/s Eversight Tradecomm Pvt. Ltd as well as its Annual Return filed by M/s Eversight Tradecomm Pvt. Ltd before the ROC was placed on record, which is available at Pages 490-497 of the paper book.

- ii. Rika Global Impex Limited – Rs.50,00,000/- : We note that the details of M/s. Rika Global Impex Ltd are set out at Pages 252-313 of the paper book. From the reply furnished by this shareholder in response to the notice u/s 133(6), which is at Page 252-253 of the paperbook, it is noted that this shareholder is a flagship company of the Group to which the assessee belongs. The shareholder is noted to be a Star Export House having CIN: U51101WB2007PLC117031 which



engaged in the business import and export of agri-commodities. From the audited financial statements, which is found placed at Pages 263 to 297 of the paperbook, it is noted that the company was having own funds in the form of capital and reserves to the tune of Rs.4431 lakhs as on 31-03-2013 which justifies the investment of Rs.50 lacs made in the shares of assessee company. It is further noted that the shareholder had achieved turnover in excess of Rs.111541.05 lacs during the relevant year and had reported profit before tax of Rs.1457.33 lacs. This shareholder is assessed to tax under PAN AADCR6582N and for the relevant AY 2013-14, it had undergone income-tax assessment u/s 143(3) of the Act. Copy of the assessment order is available at Page 406-413 of the paperbook. The bank statement of the shareholder was found placed at Page 254-261 of the Paper book, which shows that the source of source of funds were the payments made out of the overdraft cash credit facility obtained by the shareholder from Oriental Bank of Commerce. Copy of the OD facility agreement is placed at Pages 301 to 312 of the paperbook.

- iii. Sharma Hire Purchase Private Limited - Rs.25,00,000/- : We note that at Pages 36-48 of the paper book, the details of M/s. Sharma Hire Purchase Pvt. Ltd. are set out. Perusal of the reply furnished by this shareholder in response to the notice of



AO u/s 133(6) of the Act, which is enclosed at Page 47 of the paperbook, shows that this shareholder is having PAN AABCS9097D and CIN: U65921WB1984PLC153574. This shareholder is also a Non-Banking Financial Company engaged in the business of advancing loans and making investments, holding certificate No. B.06.00567 issued by RBI [Page 392 of PB]. From the audited financial statements, available at Pages 36-46 of the paperbook, it is noted that this shareholder was having own funds of Rs.8172 lacs and therefore it had sufficient creditworthiness to make investment of Rs.25 lacs with the assessee. The details of source of funds from which this shareholder had made the share application is also available on record [Page 48 of PB] viz., the shareholder had sold some of its existing investments to M/s.Hardsoft Exim Pvt. Ltd. and the proceeds received was re-invested in the assessee. The shareholder has placed on record the certificate of incorporation and IT acknowledgement of M/s Hardsoft Exim Pvt. Ltd. at pages 470-471 of the paperbook. Also, the bank statement of M/s Hardsoft Exim Pvt. Ltd. is available at Pages 519 of the paperbook evidencing that the source of funds out of which M/s Hardsoft Exim Pvt. Ltd. purchased the investments of the shareholder, which in turn, was utilized by this shareholder to invest in the shares of assessee company.



- iv. Nitin Hire Purchase Pvt. Ltd. - Rs.1,20,00,000/- : We find at Pages 355-367 of the paper book, the details of M/s. Nitin Hire Purchase Pvt. Ltd. are set out. This shareholder had filed their response-dated 28.12.2015 to the notice of AO u/s 133(6) of the Act, which is at Page 368 of the paperbook. The shareholder had furnished its IT Acknowledgement, financial statements, share valuation report as well as the bank statement. It is noted that this shareholder is having CIN: U65921PB1995PTC016302 and is a Non-Banking Finance Company having registration no. B.02.00304 [Page 390]. Being an NBFC, the shareholder is primarily engaged in the business of granting loans, from which it had derived interest income of Rs.66.89 lacs during the year. The shareholder is also noted to be engaged in the business of trading in derivatives on the stock exchange and is filing its return of income under the PAN AABCN8093Q. From the audited financial statements, which are found placed at Pages 355 to 367 of the paper book, it is revealed that the shareholder was having own funds in the form of capital and reserves to the tune of Rs.2714 lacs and therefore it is noted to have sufficient creditworthiness to make the investment of Rs.120 lacs in the assessee. From the explanation given regarding the source of source of funds, it is noted that the source of source of funds



of the shareholder comprised of the proceeds received upon sale of investments. The shareholder had furnished the details of the purchasers [PAN & Certificate of Incorporation (Pages 472-479)] from whom the proceeds were received viz., M/s Crystal Developers Pvt. Ltd., M/s SKM Travels Pvt. Ltd. and M/s Lower Vyapaar Pvt. Ltd. The shareholder had also provided sample bank statements of the purchasers, M/s SKM Travels Pvt. Ltd. and M/s Lower Vyapaar Pvt. Ltd., available at Pages 522-523 of the paperbook, which showed that there was no prior deposit of cash before they made payment to the shareholder for acquiring their investments.

- v. Balajee Vinimay Pvt. Ltd. – Rs.1,85,50,000/- : We find from pages 143-185 of the paper book, the details of M/s. Balajee Vinimay Pvt. Ltd. are set out. This shareholder is noted to be a group/associate company of the assessee having common directors. From the reply furnished by this shareholder in response to the notice of AO u/s 133(6) of the Act, page 163 of the paperbook, it is noted that this shareholder having CIN: U51909WB2004PTC100306 is a Core Investment Company of the Rika Group whose primary objective is to make investments in group entities and provide them financial assistance. From the audited financial statements, which is found placed at Pages 143 to 162 of the paper book, it is



revealed that the company was having sufficient own funds in the form of capital and reserves to the tune of Rs.1126 lacs which is sufficient to make the investment. It is noted that this shareholder had reported profit of Rs.25.08 lacs as against revenue from operations of Rs.33.35 lacs, on which it had paid taxes aggregating to Rs.7.75 lacs. This shareholder is also noted to have declared dividend to its preference shareholders on which it had paid dividend distribution tax u/s 115-O of the Act. With regard to the source of source of funds, it is noted from the bank statement, that this shareholder had received funds from the flagship company of the Group, M/s Rika Global Impex Ltd. by way of refund of advances granted to the latter in earlier year/s, which in turn was utilized to invest in shares of the assessee company. From the bank statement of M/s Rika Global Impex Ltd which is found at Pages 604 to 623 of paper book, it is noted that its source of funds was a mix of the overdraft facility availed from the Oriental Bank of Commerce, proceeds received from sale of goods or maturity of fixed deposits held by M/s Rika Global Impex Ltd.

- vi. Allied Dealmark Private Limited - Rs.55,00,000/- : We note from pages 102-115 of the paper book, the details of M/s. Allied Dealmark Pvt. Ltd. are set out. Perusal of the reply furnished by this shareholder in response to the notice of AO



u/s 133(6) of the Act, which is enclosed at Page 113 of the paperbook, shows that this shareholder is a private limited company having PAN AAKCA0971H and CIN: U74999WB2011PTC171062. Perusal of the audited financial statements, set out at Pages 102-112 of the paperbook, it is noted that the company was having own funds in the form of capital and free reserves to the tune of Rs.2054 lacs in comparison to investment of Rs.55 lacs made in the assessee company. The bank statement of the shareholder is available at Pages 114 -115 of the paper book which shows that the payment was made through proper banking channel. As regards the source of source of funds, it is noted that the shareholder had sold certain investments to M/s.Spice Merchants Pvt. Ltd. and the sale proceeds were re-invested with the assessee. The certificate of incorporation, PAN details of the source of source viz., M/s Spice Merchants Pvt. Ltd. is found at pages 480-481 of the paperbook.

- vii. *Flyhigh Exports Pvt. Ltd. - Rs.65,00,000/-* : It is noted that the shareholder had complied with the notice issued by the AO u/s 133(6), and the details so furnished are available at Pages 339 to 354 of the paper book, which comprises of IT Acknowledgement, financial statements, share valuation report as well as the bank statement evidencing source of source of



funds. Perusal of these details reveal that, this shareholder is a body corporate having CIN: U51909AS1993PTC004008 which is registered as Non-Banking Finance Company with the Reserve Bank of India holding certificate No. B.08.00130 [Page 393 of PB]. Being an NBFC, the primary business of the shareholder is advancing loans and making investments. This shareholder is assessed to income-tax under the PAN AAACF2813R. From the audited financial statements, which are found placed at Pages 339 to 351 of the paper book, it is revealed that the company was having sufficient own funds in the form of capital and reserves to the tune of Rs.2252 lacs to make the investment of Rs.65 lacs in the assessee company. As regards the source of source of funds, it is noted that the shareholder had initially placed on record its bank statement, which evidenced the source out of which it subscribed to the shares of the assessee. Before the Ld. CIT(A), explanation regarding the source of funds of the shareholders was also placed on record, which was the proceeds from sale of investments to M/s Mukesh Textile Mills Pvt. Ltd. and M/s Lower Vyapaar Pvt. Ltd, whose Certificate of Incorporation and PAN details are found available at Pages 477-479 and Pages 498-500 of the paperbook respectively.



- viii. Manmohak Infrastructure Pvt. Ltd. - Rs.50,00,000/- : We note from, Pages 116 to 130 of the paper book the details of share applicant M/s. Manmohak Infrastructure Pvt. Ltd is set out. The share applicant had submitted IT acknowledgement, explanation of source of fund, financial statements and bank statement along with the reply dated 20.12.2013 before the AO, in response to the notice issued u/s 133(6) of the Act, which is available at page 129 of the paperbook. Perusal of these documents shows that the shareholder is a Private Limited Company having CIN - U70109WB2011PTC162458. It is noted to be regularly assessed to tax under PAN - AAHCM17368. The net worth of the shareholder as on 31.3.2013 is noted to be Rs.376.61 lakhs (PB page 123) as against the investment of Rs.50 lacs made in the assessee. The bank statement of the shareholder shows that the investment was made on 05.11.2012 by way of account payee cheque. The source of source funds is also evidenced by the bank statement, which is explained to be the proceeds received on sale of investments to M/s Spice Merchants Pvt. Ltd., whose certificate of incorporation, PAN details are found to be available on record.
- ix. Shyama Properties Sales Pvt. Ltd. - Rs.73,00,000/- : We find that at Pages 80-101 of the paper book, the details of M/s.



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Shyama Properties Sales Pvt. Ltd. are set out. This shareholder had filed its response to the notice of AO u/s 133(6) of the Act, which is at Page 80 of the paper book in which it furnished the IT Acknowledgement, financial statements, share valuation report as well as its bank statement for the relevant year. Perusal of the same shows that the shareholder is a private limited company having CIN: U65921PB1995PTC016302. The shareholder is noted to be assessed to income-tax under the PAN AALCS0267K. The share applicant had invested Rs.53,00,000/- and Rs.20,00,000/- by way of RTGS on 25.03.2013 & 28.03.2013 respectively. The audited financial statements, which is found placed at Pages 83 to 101 of the paper book, reveals that the shareholder had sufficient own funds in the form of capital and reserves to the tune of Rs.932 lacs to make the investment. In support of the source of source of funds, the shareholder company had placed on record the copy of its bank statement for the relevant period at Page 81 of the Paper book, which shows that there was no prior deposit of cash before making investment in shares of assessee company. The explanation regarding source of source of funds was stated to be proceeds received on sale of its investments to M/s Winall Vinimay Pvt. Ltd., Daveshree Ispat Pvt. Ltd. and Suryakanta Hydra Engineers Pvt. Ltd. The shareholder had provided the



Certificate of Incorporation and PAN details of these three purchasers along with their sample bank statements, which is found placed at Pages 484-489 and 535 of the paper book.

- x. Sarwar Steel Pvt. Ltd. - Rs.2,30,00,000/- : We find at pages 314-338 of the paper book, the details of M/s. Sarwar Steel Pvt. Ltd. are set out. From the reply furnished by this shareholder in response to the notice of AO u/s 133(6) of the Act [page 332], it is noted that this shareholder is an associate company of the assessee having common shareholders/directors. This shareholder having U27100WB2008PTC123879 is a Core Investment Company of the Rika Group whose primary objective is to make investments in group entities and provide them financial assistance. From the audited financial statements, which is found placed at Pages 314 to 331 of the paper book, it is revealed that the shareholder was having sufficient own funds in the form of capital and reserves to the tune of Rs.686 lacs as opposed to the investment of Rs.230 lacs made in the assessee company. The bank statement of the shareholder shows that the source of funds comprised of monies received from group entity, M/s Rika Global Impex Ltd. [Rs.1,45,95,000] and other bodies corporate, M/s Spice Merchants Pvt. Ltd., M/s Rudramukhi Distributors Pvt. Ltd. and M/s Oversure



Construction Pvt. Ltd [Rs.1,43,65,000]. The details of M/s Rika Global Impex Ltd are already available on record, which has already been discussed earlier. With regard to the other three bodies corporate from whom this shareholder had received monies out of which it invested in shares of the assessee, it is noted that the shareholder had furnished their Certificate of Incorporation and PAN details which are found to have been placed on record at Pages, 480-481,503-508 of the paperbook. From the bank statements of M/s Rika Global Impex Ltd, M/s Rudramukhi Distributors Pvt. Ltd. and M/s Oversure Construction Pvt. Ltd. [Pages 557-558, 564, 604 to 623], it is noted that there was no prior deposit of cash at the source of source of funds.

- xi. Panchkoti Infrabuild Pvt. Ltd. - Rs.20,00,000/- : It is noted that the share applicants had furnished all requisite details as sought for by the AO in his notice issued under section 133(6) of the Act, which is found at Pages 131 to 142 of the paper book. The shareholder is a Private Limited Company having PAN AAGCP4032L and CIN number is U45400WB2012PTC172924. This share applicant had invested sum of Rs.20,00,000/- in the assessee company by way of RTGS on 26.03.2013. The financial statements (Pages 131 to 140) of the shareholder reveal that it had net worth of



Rs.518 lakhs (page 135) and therefore it had sufficient own funds to make the aforesaid investment. The bank statement of the shareholder shows that there was no cash deposit at the source of source of funds. The shareholder had explained that it had received monies from M/s Crable Devcon Pvt. Ltd by way of RTGS, out of which it made investment of Rs.20,00,000/- in the assessee company. The certificate of incorporation, PAN details and bank statement of the source of source i.e. M/s Crable Devcon Pvt. Ltd. are found available at Pages 482-483, 532 of the paperbook.

- xii. Nupur Vinimay Pvt. Ltd. – Rs.1,00,00,000/- : From the reply furnished by this shareholder in response to the notice of AO u/s 133(6) of the Act, page 247 of the paperbook, it is noted that this shareholder is an associate company of the assessee having common shareholders/ directors. This shareholder having CIN: U51109WB2007PTC113033 is a Core Investment Company of the Rika Group whose primary objective is to make investments in group entities and provide them financial assistance. From the audited financial statements, which is found placed at Pages 230-246A of the paper book, it reveals that the company was having sufficient own funds in the form of capital and reserves to the tune of Rs.951 lacs which is sufficient to make the investment. It is



noted that this shareholder had reported profit of Rs.28 lacs against revenue from operations of Rs.35 lacs, on which it had paid taxes aggregating to Rs.8.91 lacs. This shareholder is also noted to have declared dividend to its preference shareholders on which it had paid dividend distribution tax u/s 115-O of the Act. With regard to the source of source of funds, it is noted from the bank statement of the shareholder that it had received funds from the flagship company of the Group, M/s Rika Global Impex Ltd. From the bank statement of M/s Rika Global Impex Ltd which is found at Pages 604 to 623 of paper book, it is noted that its source of funds was either the overdraft facility availed from the Oriental Bank of Commerce or proceeds received from sale of goods or maturity of fixed deposits held by M/s Rika Global Impex Ltd.

- xiii. Speedfast Constructions Pvt. Ltd. - Rs.75,00,000/- : We note that Pages 49 to 66 of the Paper book contain the details of share applicant M/s. Speedfast Constructions Pvt. Ltd. It is noted that this shareholder had furnished two letters dated 11.01.2016 & 22.12.2017 before the AO in support of the investment made with the assessee, which inter alia comprised of certificate of incorporation, IT Acknowledgement, Bank statement, explanation regarding source of fund as well as financial statements. Perusal of the same shows that the



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shareholder is a private limited company having PAN AAQCS9037A and CIN U45400WB2012PTC172960. The net worth of this shareholder as on 31.3.2013 was in excess of Rs.4,33,00,000/- [Page 69 of PB] in comparison to investment of Rs. 75,00,000/- made by this shareholder in the assessee company. From the bank statement of the shareholder, it is noted that the payments towards share application monies was made on several dates viz., 02.11.2012, 03.12.2012, 06.12.2012 & 26.03.2013 through NEFT. From the explanation given regarding the source of source of funds, it is noted that the source of the shareholder was the proceeds received upon sale of its investments. Before the Ld. CIT(A), the shareholder had furnished the details of the purchasers (PAN & Certificate of Incorporation) from whom the proceeds were received viz., M/s Sukalyan Infraproject Pvt. Ltd., M/s Dolphin Equipment Trader Pvt. Ltd., M/s Sunlight Tradecom Pvt. Ltd. and M/s Tirupati Wholesale Traders Pvt. Ltd. The shareholder had also provided sample bank statements of the purchasers, M/s Dolphin Equipment Trader Pvt. Ltd. and Sunlight Tradecom Pvt. Ltd., available at Pages 562-563 of the paperbook, which showed that the source of payments made to the shareholder for purchasing investments, was monies received through proper banking channel.



- xiv. Oversure Construction Pvt. Ltd. - Rs.5,00,000/- : The details of this shareholder is found available at Pages 67 to 79 of paper book. The share applicant has furnished its reply to the notice u/s 133(6), which is available at Page 77 of the paperbook. This shareolder is noted to have CIN - U45400WB2012PTC172936 and PAN AABCO5954F. The financial statements of the share applicant are available at Pages 67 to 77 of the paperbook, perusal of which shows that the Net worth of this company as on 31.3.2013 was in excess of Rs.434 lakhs [PB-page 69] and investment made in the assessee was only Rs. 5,00,000/-, which was paid by way of RTGS on on 28.03.2013. The bank statement provided by the shareholder evidenced its source of funds, which was explained to be proceeds received from sale of investments to another body corporate, M/s Wealthy Height Pvt. Ltd. The PAN Card as well as certificate of incorporation of the source of source of funds viz., M/s Wealthy Height Pvt. Ltd. is found to be available at Pages 516 & 516A of the paperbook.
- xv. Kingston Jewellery Pvt. Ltd. - Rs.50,00,000/- : It is noted, from pages 209-229 of the paper book, the details along with the reply furnished by M/s Kingston Jewellery Pvt. Ltd. in response to the notice of AO u/s 133(6) of the Act, is set out. This shareholder is noted to be a group company of the



assessee having CIN U27205WB2008PTC123886. From the audited financial statements, which is at Page 209 to 227 of paperbook, it is noted that the shareholder was having own funds in the form of capital and reserves to the tune of Rs.573 lacs which was sufficiently higher than the investment made in the assessee company. The shareholder is noted to have derived revenues of Rs.135.54 lacs from the business of dealing in agri-commodities, against which it reported net profit of Rs.36.91 lacs. The shareholder is assessed to tax under the PAN - AACCN4477B. This shareholder is also noted to have declared dividend to its preference shareholders on which it had paid dividend distribution tax u/s 115-O of the Act. With regard to the source of source of funds, it is noted from the bank statement of the shareholder that it had received funds from the flagship company of the Group, M/s Rika Global Impex Ltd. by way of refund of advances granted to the latter in earlier year/s. From the bank statement of M/s Rika Global Impex Ltd which is found at Pages 604 to 623 of paper book, it is noted that its source of funds was either the overdraft facility availed from the Oriental Bank of Commerce or proceeds received from sale of goods or maturity of fixed deposits held by M/s Rika Global Impex Ltd.



- xvi. Dhanlaxmi Tie-up Pvt. Ltd. - Rs.1,90,00,000/- : The details along with the reply furnished by M/s Dhanlaxmi Tie-up Pvt. Ltd. in response to the notice of AO u/s 133(6) of the Act, is found to be set out at Pages 186-208 of the paper book. This shareholder is noted to be a group company of the assessee having CIN: U51109WB2007PTC118438. From the audited financial statements, which is at Page 186 to 205 of paperbook, it is noted that the shareholder was having own funds in the form of capital and reserves to the tune of Rs.573 lacs which was sufficient to justify the investment made in the assessee company. The shareholder is noted to have derived revenues of Rs.136.20 lacs from the business of dealing in agri-commodities, against which it reported net profit of Rs.16.25 lacs. The shareholder is assessed to tax under the PAN : AACCD7769E. With regard to the source of source of funds, it is noted from the bank statement of the shareholder [Pages 207-208] that it had received funds to the tune of Rs.1,60,00,000/- from the flagship company of the Group, M/s Rika Global Impex Ltd. and Rs.30,00,000/- from another company, M/s Signet Vinimay Pvt Ltd. The details of M/s Rika Global Impex Ltd are already available on record, which has already been discussed earlier. With regard to the monies received from M/s Signet Vinimay Pvt Ltd, it is noted that the shareholder had furnished its Certificate of Incorporation,



PAN details and bank statement, which are found to have been placed on record at Pages 501-502, 545-548 of the paperbook. The bank statement of M/s Signet Vinimay Pvt Ltd shows that the source of payments made to the shareholder was monies received through proper banking channel.

14. From the above, it is vivid that all the sixteen (16) share subscribers are (i) companies, which are noted to be Active as per the MCA Master Data, (ii) income tax assesseees, (ii) who are regularly filing their return of income, (iii) the share application money was paid by account payee cheques, (iv) the applicants are having substantial creditworthiness which is represented by capital & reserves and/or revenues/income as noted above from their financial statements, and (v) all the shareholders have explained their respective source of funds out of which share application monies was paid. Each of the shareholders is noted to have complied with the requisition issued by the AO u/s 133(6) of the Act and the shares are noted to have been issued by the assessee at a price marginally lower than the fair market value as certified by the Chartered Accountant in his valuation report. Hence, the share premium paid by the shareholders also stands justified. Thus, the inference that flows from the aforesaid facts is that the assessee has discharged its initial onus imposed under section 68 of the Act *[as it stood in AY 2013-14]*.

15. In light of the above facts, we first proceed to examine the findings given by the AO qua the above sixteen (16) share subscribers



for holding it to be unexplained cash credit u/s 68 of the Act. It is noted that, the AO after analyzing the financials of all the sixteen (16) share subscribers, noted that none of the companies were engaged in any active business activities. For such reason, the AO held that their creditworthiness was in doubt. The Ld. AR of the assessee however pointed out that this observation made of the AO was factually incorrect. In support of the same, he invited our attention the financial statements of M/s Dhanlaxmi Tie-Up Pvt Ltd, M/s Kingstone Jewellery Pvt Ltd, M/s Rika Global Impex Ltd, which as already noted by us above, were actively involved in the business of trading in agri-commodities. The turnover of M/s Dhanlaxmi Tie-Up Pvt Ltd & M/s Kingstone Jewellery Pvt Ltd was Rs.136.20 lacs and Rs.135.54 lacs respectively and they had reported profit from such business of Rs.16.25 lacs and Rs.36.91 lacs respectively. M/s Rika Global Impex Ltd had reported turnover of Rs.111541.05 lacs against which it had earned profit of Rs.1457.33 lacs. He further demonstrated through the financial statements of shareholders, M/s Nitin Hire Purchase Pvt Ltd and M/s Siddeshwari Vyapar Pvt Ltd that they were engaged in the business of dealing in shares & derivatives and that they held demat accounts with reputed stock brokers. The Ld. AR also pointed out that Nitin Hire Purchase Pvt Ltd, Siddeshwari Vyapar pvt Ltd, Flyhigh Exports Pvt Ltd, Sharma Hire Purchase Ltd, were registered NBFCs whose certificate of registration were placed at Pages 390 to 393 of paper book. According to him, therefore, the active business of these



four companies by virtue of their NBFC registration was that of advancing loans and making investments, and this vital fact had been overlooked by the AO. In respect of remaining shareholders, the Ld. AR submitted that these companies were core investment companies and their main object was making investments, which according to the Ld. AR is also a recognized business activity. He further pointed out that three out of the sixteen shareholders had also declared dividend out of their profits during the relevant year on which they had paid dividend distribution tax u/s 115-O of the Act. Averring to these contemporaneous evidences, the Ld. AR urged that the reasoning given by the AO viz., none of the shareholders were engaged in active business, was patently erroneous. Before us, the Ld. CIT-DR was unable to controvert these facts, as pointed out by the Ld. AR and hence, this reasoning of the AO cannot be countenanced.

16. Another reasoning given by the AO to justify the impugned addition was that, some of the shareholders had reported NIL or meagre income which did not commensurate with the investments made by them and it therefore raised doubts on their creditworthiness. As already noted by us above, each of the shareholders had sufficient own funds and reserves to justify the investments made by them in the assessee company. The fact that some of the shareholders did not derive sufficient profits during the year cannot be the sole determinative factor to doubt their creditworthiness. It is noted that, such shareholders have demonstrated that the investments made by



them with the assessee, were either out of the proceeds received on sale of investments which were made in earlier years and/or refund of loans granted earlier. The *source of source* of funds has also been provided, which has already been discussed above. On these facts, in our considered view therefore, nothing much turns on the fact that some of the shareholders had reported meagre income in the relevant year.

17. Further, according to the AO, the fact that the share subscribers had issued share capital at a premium in earlier years, whose details were not furnished by the assessee, raised doubt on their creditworthiness. This observation of the AO is also found to be of no relevance in as much as by AO's own admission, these shareholders had raised securities premium on issue of shares in their own right in earlier year/s. No fresh capital was issued during the year by these shareholders and therefore the securities premium balance appearing in their financial statements had been brought forward from earlier years. Clearly therefore, the securities premium of these shareholders did not constitute the immediate source of payment of share subscription monies to the assessee in the relevant AY 2013-14.

18. For the aforementioned reasons, we find ourselves in agreement with the Ld. AR that, the entire line of reasoning given by the AO to doubt the creditworthiness of the shareholders cannot be countenanced.

19. The other main plank on which the AO justified the addition



made u/s 68 of the Act was the commission report obtained u/s 131(1)(d) of the Act dated 22-03-2016 wherein the DDIT had stated that none of these companies were traceable at their given addresses and that all the sixteen (16) shareholders belonged to entry operators. At the time of hearing, the Ld. AR of the assessee painstakingly took us through the contents of the report and argued that the averments made therein were patently erroneous which raised serious doubt on the veracity of the report. He first invited our attention to Para 2 of the report wherein the DDIT had mentioned that he had deputed Inspectors attached with his office to verify the whereabouts of the companies and that none were found at their registered offices and even the local residents failed to acknowledge their existence. To this, he pointed out that, prior to the commission, the AO had on his own volition issued notices u/s 133(6) of the Act to these shareholders through Indian Postal authorities, which were admittedly served upon them. It was not a case that the notices were served either by hand or on e-mail. Referring to the Section 27 of the General Clauses Act, the Ld. AR stated that the fact that the notice was served through registered post upon the shareholders proved their existence. The Ld. AR thus wondered that when the Indian Postal authorities (*oblivious of the nature of these enquiries*) were able to locate the shareholders at their given addresses and serve the notices, then how come the Inspectors were unable to trace these companies. According to the Ld. AR, the fact that the commission report did not mention or provide the



report/s given by the Inspector, raised further doubts as to whether any physical verification was actually conducted by the office of the DDIT or not. To buttress his contention, the Ld. AR showed us that, even the flagship public company of the assessee, M/s Rika Global Impex Ltd was alleged to be untraceable in the said commission report. To this, he pointed out that RGIL was a Star Export House having turnover in excess of Rs.1000 crores. RGIL has also been extended several credit facilities by several Public Sector Banks and had been operating from the same registered office address since several years. He further pointed out that the other five (5) shareholders, which are admittedly group/related entities of the assessee and belong to the Rika Group also had the same registered office as that of M/s Rika Global Impex Ltd. The Ld. AR thus strenuously contended that the commission report stating that, even the group company shareholders could not be traced at their address was ex-facie false, which thus raised serious doubt on the overall authenticity of the said report claiming that none of the sixteen (16) shareholders were traceable.

20. The Ld. AR further invited our attention to Para 3 of the report of the DDIT, wherein he referring to a Database, had alleged that all the shareholders (including the six group companies) belonged to certain entry operators. In this regard, the Ld. AR first took us through the shareholding pattern and directors of the six group companies to show that the purported entry operators were neither the shareholder nor director in these six companies. He submitted that, even the lower



authorities i.e. the AO & CIT(A), were in agreement that these six companies belonged to the Rika Group, which was managed and controlled by the Agarwal family and not any so-called entry operator. The Ld. AR accordingly contended that the commission report dated 22-03-2016 was clearly in contradiction to the admitted facts of the present case. Even with regard to the remaining ten shareholders, he contended that the averment made in the report that purported entry operators were managing them was misleading. According to him, none of the named persons were shown to be either shareholder or director in these companies in the year under consideration, which would suggest that they exercise any influence over the affairs of these ten shareholders. The Ld. AR contended that heavy onus lay on the Revenue to substantiate this assertion with independent evidence, which according to him, was not done in the present case. The Ld. AR thus claimed that the allegations contained in the commission report that all the share subscribers were controlled and managed by entry operators was patently erroneous and perverse.

21. The Ld. AR particularly invited our attention to the Para 3 of the said report wherein the DDIT had stated that the statement of the entry operators [*who had stated that they managed and controlled the companies*] were attached for ready reference. He however pointed out that, inspite of several requests including in response to the RTI query, no such statement (of entry operators) was ever provided to the assessee. Even before us, it is noted that the Revenue has not brought



any such statement/s on record. In absence of these statements, which were collected at the back of the assessee, we agree with the Ld. AR that the same cannot be relied upon, without first providing the copy of the same and the assessee given an opportunity to rebut the same and even cross-examining them. In this regard, we may refer to the decision of the Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. CCE reported in (2015) 281 CTR 241 (SC)** wherein it has been held that *“failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a serious flaw which renders the order a nullity.”* We may also gainfully refer to the judgment of the Hon'ble Apex Court in the case of **CIT Vs. Odeon Builders Pvt. Ltd. (418 ITR 315)** wherein also it was held that, the addition/disallowance made solely on third party information without subjecting it to further scrutiny and denying the opportunity of cross examination of the third party renders the addition/disallowance bad in law.

22. It was also brought to our notice that, when this commission report was confronted to the Director of the assessee company and his statement was recorded on oath u/s 131 of the Act [*reproduced at Para 4.3.10 of the assessment order*], the Director had denied the allegation/contents of the said report and claimed that all the shareholders are real companies actively involved in business. To buttress this statement, the assessee had furnished a rejoinder on 09-



02-2016 wherein it negated the allegations levelled by the AO. Having regard to these facts and the sequence of events, in our considered view, if the AO wanted to rely on the commission report stating that the shareholders had some connection with entry operators, then he ought to have first of all given a copy of the statement of entry operators to the assessee and secondly, summoned the said entry operators and elicited their oral testimonies and gather independent material against the assessee and thereafter provide an opportunity to the assessee to cross examine not only the purported entry operators but also the maker of the commission report, which we find has not been done by the AO in the present case. As a consequence, the addition made by the AO based on such unreliable report, is unsafe and cannot stand the scrutiny of law. This legal proposition finds support from the decision of Hon'ble Supreme Court in the case of **Kishanchand Chellaram (125 ITR 713)**, where it was held that when, third party information is relied upon to draw an adverse inference against the assessee, the same needs to be provided and also opportunity of cross-examination shall be given, [if such opportunity is availed by the assessee]. In this regard, we may also gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **CIT Vs Dharam Pal Prem Chand Ltd (167 Taxman 168)** wherein also the AO's failure to afford cross examination to the assessee of the analyst whose report he sought to rely upon was held to be fatal to the addition made by him. The relevant findings



recorded by the Hon'ble Delhi High Court is as follows:

“9. There is no doubt that even if the strict rules of evidence may not apply, the basic principles of natural justice would apply to the facts of the case. The Assessing Officer placed reliance upon the report of the Shri Ram Institute for Industrial Research for deciding against the assessee. The report cannot be automatically accepted particularly since there is a challenge to it and the assessee had sought permission to cross-examine the analyst making the report. Since the Assessing Officer did not permit the correctness or otherwise of the report to be tested, there is a clear violation of the principles of natural justice committed by him in relying upon it to the detriment of the assessee. As observed by the Constitution Bench in *C.B. Gautam v. Union of India* [1993] 199 ITR 5301 (SC) that, "The observance of principles of natural justice is the pragmatic requirement of fair play in action."

10. We do not find any error in the view taken by the Commissioner of Income-tax (Appeals) or by the Income-tax Appellate Tribunal in setting aside the assessment order on the ground that the principles of natural justice were not complied with by the Assessing Officer who did not permit the assessee to cross-examine the analyst on the basis of whose report the assessment order was passed against the assessee.”

23. We may also refer to the decision this Tribunal in the case of **DCIT Vs Diven Dembla (145 ITR 377)**. In this case, the AO had assessed the income under the head ‘house property’ with reference to the fair market rent ascertained by the Inspector in his report which was higher than the actual rent received by the assessee. On appeal, both the Ld. CIT(A) and this Tribunal held that, inspite of request, the assessee was never afforded the opportunity to cross examine the Inspector and therefore the appellate authorities held that the Inspector’s report could not be relied upon. Further, in the case of **Sanjay Kr. Mishra Vs DCIT (100 TTJ 862)** also, this Tribunal had held that, when the assessee had disputed the veracity of the Inspector’s report by furnishing an affidavit, then his affidavit could



not have been rejected without cross-examination.

24. For the above reasons, we countenance the contention of the Ld. AR that the commission report dated 22-03-2016 cannot be relied upon for drawing adverse inference against the assessee. In light of the foregoing, we now proceed to examine the principles laid down by the Hon'ble Supreme Court in the case of **Pr.CIT v. NRA Iron & Steel (P) Ltd (supra)** relied upon by the Ld. CIT-DR and whether it is applicable to the present facts of the case or not. In the decided case, the assessee-company received share capital and premium of Rs.17.60 crores in all from nineteen parties (six from Mumbai, eleven from Kolkata and two from Guwahati). The shares had a face value of Rs.10/- and were subscribed by the investor-companies at a premium of Rs. 190 per share. The AO made the addition of Rs. 17.60 crores after carrying out various inquiries as under-

- (i) To verify the veracity of the transactions, the notices were served on three investor-companies namely Clifton Securities Pvt. Ltd.-Mumbai, Lexus Infotech Ltd.-Mumbai, Nicco Securities Pvt. Ltd. Mumbai but no reply was received.
- (ii) The address with respect to a company namely Real Gold Trading Co. Pvt. Ltd.-Mumbai was not correct.
- (iii) The notice could not be served on two investor-companies, namely Hema Trading Co. Pvt. Ltd.-Mumbai, Eternity Multi Trade Pvt. Ltd.-Mumbai.



(iv) Submissions from nine companies were received (Neha Cassetes Pvt. Ltd.-Kolkata, Warner Multimedia Ltd. Kolkata, Gopikar Supply Pvt. Ltd. Kolkata, Gromore Fund Management Ltd. Kolkata, Bayanwala Brothers Pvt. Ltd. Kolkata, Shivilaxmi Export Ltd. Kolkata, Natraj Vinimay Pvt. Ltd. Kolkata, Neelkanth Commodities Pvt. Ltd. Kolkata, Prominent Vyappar Pvt. Ltd. Kolkata), however, they had not given any reasons for paying such a huge premium.

(v) The details of share purchased and the amount of premium were not specified by certain companies, namely Super Finance Ltd. Kolkata, Ganga Builders Ltd. Kolkata. Furthermore, these companies had not enclosed the bank statement.

(vi) In addition to above, AO found that:

a. Out of the four companies at Mumbai, two companies were found to be non-existent at the address furnished.

b. With respect to the Kolkata companies, nobody appeared nor did they produce their bank statements to substantiate the alleged investments.

c. Guwahati companies - Ispat Sheet Ltd. and Novelty Traders Ltd., were found non-existent at the given address.

d. None of the investor-companies appeared before the A.O.

25. It was in light of the above conspectus of facts that it was held by the Hon'ble Apex Court, that the Assessee-Company failed to discharge the onus required under Section 68 of the Act. However in the case on hand, we find that, the shareholders had complied with the



independent enquiries conducted by the AO and discharged the onus cast under the provisions of Section 68 of the Act which has been elaborated in the preceding paragraphs. Moreover, as noted above, the commission report stating that the shareholders were not traceable at their given addresses has been found to be unreliable. In our humble understanding, the decision in the case of NRA Iron & Steel (P.) Ltd. (supra) is based on the aforesaid facts. Hence, this judgment can be applied only on those cases having similar facts and circumstances and not other cases having different facts and circumstances. In the given facts of the present case, as discussed above, this judgment relied upon by the Ld. CIT-DR is found to be factually distinguishable.

26. In this regard, we draw support and guidance form the judgment of Hon'ble Bombay High Court in case of **Pr. CIT v. Ami Industries (India) (P.) Ltd. (424 ITR 219)** where it was held as under:

“17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs. 34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under section 68 of the Act.



18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that non-responding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and credit-worthiness of the creditors were available, without any infirmity in such evidence and the explanation required under section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:—

- (a) PAN number of the companies;
- (b) Copies of Income-tax return filed by these three companies for assessment year 2010-11;
- (c) Confirmation Letter in respect of share application money paid by them; and
- (d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed



income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:—

"5.7 As per the provisions of Section 68 of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following-

- (a) Identity of the creditor
- (b) Genuineness of the transaction
- (c) Credit-worthiness of the party

(i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.

(ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious



persons or that any part of the share capital represent company's own income from undisclosed sources.

Accordingly, no addition can be made u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In NRA Iron & Steel (P.) Ltd. (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

23. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.



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24. Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed. However, there shall be no order as to cost. ”

27. Gainful reference may also be made to the decision rendered by the coordinate Bench of this Tribunal in the case of **Abhijavala Developers Pvt. Ltd. vs ITO (124 taxmann.com 72)**. In the decided case the assessee had raised share subscription monies from six bodies corporate. Although the summons issued u/s 131 of the Act remained unserved/non-complied, the assessee had furnished all documentary evidences including copies of confirmations, PAN Card, IT Acknowledgement, financial statements and bank statements of all these shareholders. Having regard to these documents and taking into account the judgments rendered in the cases of Ami Industries (I) Pvt. Ltd. (supra) and PCIT vs NRA Iron & Steel Pvt. Ltd. (supra), the Tribunal held that the assessee had discharged its primary onus of establishing the identity of the investors, proving their creditworthiness and establishing the genuineness of the transactions and accordingly deleted the addition/s made u/s 68 of the Act. The relevant extracts of the decision are as follows

“1.2 It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders/investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of CIT v. Lovely Exports (P.) Ltd. [2009] 216 CTR 195, dismissing revenue's appeal,



observed as under: —

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason 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. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of Gagandeep Infrastructure (P.) Ltd. case (supra) & subsequently in CIT v. Orchid Industries (P.) Ltd. [2017] 88 taxmann.com 502/397 ITR 136 (Bom.). The Hon'ble Delhi High Court followed the said decision in Pr. CIT v. Adamine Construction (P.) Ltd. [2019] 107 taxmann.com 84 against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in Pr. CIT v. Himachal Fibers Ltd. [2018] 98 taxmann.com 172/259 Taxman 4 against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in Pr. CIT v. Chain House International (P.) Ltd. [2018] 98 taxmann.com 47/[2019] 408 ITR 561 against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in Pr. CIT v. Ami Industries (India) (P.) Ltd. [2020] 116 taxmann.com 34/271 Taxman 75/424 ITR 219 (Bom.) which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr. CIT v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48/262 Taxman 74/412 ITR 161.

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Upon perusal of above documents, we find that the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source for this year. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for the fact that summons remained un-served, there is nothing in the armory of revenue to unsettle the assessee's claim. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. So far as the information of DGIT (Inv.) is concerned, we find that these were



merely third party statements which were never confronted to the assessee and those statements on standalone basis could not form the basis of making additions in the hands of the assessee. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the opening paragraphs duly support the said conclusion. Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed.”

28. For the reasons as aforesaid and on the given facts of the case, we thus hold that the assessee had discharged the burden cast upon it under the substantive Section 68 of the Act.

29. Now coming to the question as to whether the additional burden cast upon the assessee under proviso to Section 68 of the Act was discharged or not; as noted above at Para 15(i) to (xvi), the assessee and the shareholders had furnished relevant evidences in support of the ‘*source of source*’ of funds of the share subscription monies. These details are noted to have been examined by the Ld. CIT(A), who after analyzing the money trail, divided the share subscription monies received by the assessee into two parts viz., (a) share subscription monies whose ‘*source of source*’ was funds received from *M/s RGIL* and (b) share subscription monies whose source of source was funds received from *other bodies corporate (apart from RGIL)*. For the sake of convenience, the bifurcation made by the Ld. CIT(A) is set out below:

Name of Shareholder	Source of	Source of Source
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(A)	Source of Funds – RGIL (B)	of Funds – Other Bodies Corporate (C)
Sharma Hire Purchase Ltd	-	25,00,000
Nitin Hire Purchase Ltd	-	1,20,00,000
Siddheshwari Vyapar Pvt Ltd	-	20,00,000
Flyhigh Exports Pvt Ltd	-	65,00,000
Balajee Vinimay Pvt Ltd	1,85,50,000	-
Nupur Vinimay Pvt Ltd	1,00,00,000	-
Kingstone Jewellery Pvt Ltd	50,00,000	-
Rika Global Impex Ltd	50,00,000	-
Manmohan Infrastructure Pvt Ltd	-	50,00,000
Allied Dealmark Pvt Ltd	-	55,00,000
Speedfast Construction Pvt Ltd	-	75,00,000
Oversure Construction Pvt Ltd	-	5,00,000
Panchkoti Infrabuild Pvt Ltd	-	20,00,000
Shyama Properties Pvt Ltd	-	73,00,000
Dhanalaxmi Tie-up Pvt Ltd	1,60,00,000	30,00,000
Sarwar Steel Pvt Ltd	1,45,95,000	84,05,000
TOTAL	6,91,45,000	6,22,05,000

30. It is noted that, the Ld. CIT(A) had examined the details and documents concerning RGIL and thereafter arrived at a conclusion that the source of source viz., RGIL was an actual and existing company which was engaged in active business of import and export having substantial turnover and overdraft facilities, packing credit etc. from the Bank. Hence, with regard to the amounts mentioned in



Column (B) above, the Ld. CIT(A) found that the '*source of source*' of this share capital originated from the coffers of RGIL which had paid these amounts to the shareholders from its Overdraft/Packing Credit Accounts or proceeds received from sale of goods or maturity of fixed deposits; and therefore the Ld. CIT(A) held that these amounts could not be treated as unexplained monies of the assessee company which we concur on the basis of the uncontroverted facts as noted by Ld. CIT(A). Before us, the Ld. CIT-DR was unable to point out any infirmity in these findings of facts as decided by the Ld. CIT(A) and therefore we do not see any reason to interfere with the order of the Ld. CIT(A) deleting addition made u/s 68 of the Act to the extent of Rs.6,91,45,000/- and so we confirm the action of Ld. CIT(A).

31. With regard to the balance amount of Rs.6,22,05,000/- mentioned in Column (C) of the above Table, the Ld. CIT(A) had held that the bodies corporate from whom the shareholders had received monies, out of which they had subscribed to the share capital of the assessee, were paper companies engaged in the business of providing accommodation entries. The general yardstick adopted by the Ld. CIT(A) across all the twelve (12) shareholders mentioned in Column (C) above was that, the *source of source* of the remaining sum of Rs.6,22,05,000/- (including Rs.1,14,05,000/- received from two group entities) did not emanate from the coffers of RGIL but was received from unrelated bodies corporate, and therefore he treated it to be



bogus, alleging the *source of source* to be paper companies. This yardstick applied by the Ld. CIT(A) is found to be on erroneous assumption/basis in as much as it is found to be not based on any material or evidence. As we have noted earlier in Paras 15(i) to (xvi) above, the documents placed on record evidenced the “*source of source*” of the investment made by the share subscribers in the assessee’s share capital viz., the PAN, Certificate of Incorporation, bank statements of the ‘*source of source*’ etc. It is thus noted that *source* of money from which these share subscribers could subscribe in assessee was clearly discernible. The Ld. AR has therefore rightly pointed out that the assessee had discharged its initial burden of substantiating the “*source of source*” of funds, and no specific infirmity had been pointed out therein by the lower authorities. At the time of hearing, even the Ld. CIT-DR was unable to pin-point any defect in these evidences placed on record in support of *source of source* of funds in the paper book.

32. Further in our considered view, after the assessee had discharged its burden by furnishing the above documents in support of the *source of source* of funds, in compliance with proviso to Section 68 of the Act, then the onus of disproving or finding defects in these documents shifted to the Revenue. It was then the duty of the Revenue to bring on record cogent material/evidence, which would show that the *source of source* of funds was unreliable or not genuine, which we find has not been done by them. The Ld. AR pointed out that the Ld.



CIT(A) only made generalized observations regarding the alleged modus operandi based on which certain unscrupulous persons were providing accommodation entries. Inviting our attention to Para 3.2.21 to 3.2.25 of the impugned appellate order, he showed us that the averments made by the Ld. CIT(A) was general in nature, wherein he tacitly shirked his responsibility of looking into the documents and finding any fault therein. According to Ld. CIT(A), furnishing of corporate information pertaining to shareholders viz., bank statements, annual accounts, source of source of fund details and other paperwork cannot be treated as justifiable evidence and therefore the Ld. CIT(A) held that the assessee failed in its endeavor to discharge its onus under Section 68 of the Act. This averment of the Ld. CIT(A) is found to be ludicrous. We note that, although the Ld. CIT(A) has observed that, the documents have been properly maintained and that there is no cash trail, and that all the source of source companies maintained regular books of accounts, financial statements and regularly filed their tax returns, but the Ld. CIT(A) rejected it by simply alleging it to be a window dressing and even went on to say that ‘if’ dug deeper, it shall be found that they are not real companies. In our considered view, such an observation the Ld CIT(A) ought not to have made, because such an observation itself implies that he has not investigated about the source companies and in any case, if he nursed such a suspicion, he [Ld. CIT(A)] enjoying co-terminus powers as that of AO ought to have dug deeper/enquired/investigated and thus



should have brought on record evidence to substantiate the allegation or his adverse assumption of these companies. According to us, the Ld. CIT(A) could not have abdicated from his duty, if he harbored a suspicion that, what was apparent was not real. It is further noted that the Ld. CIT(A) was unable to point out any defect in the documents furnished by the assessee to discharge the burden to prove the “*source of source*” as required as per proviso to Section 68 of the Act and that of the shareholders. Therefore, his conclusion that the source of source of funds qua Rs.6,22,05,000/- were unexplained or represented unaccounted monies of the assessee cannot be sustained Hence, the impugned action of the Ld. CIT(A) confirming addition of Rs.6,22,05,000/- cannot be countenanced.

33. In support of the above, we may gainfully refer to the decision of the Delhi Bench of this Tribunal in the case of **Prime Comfort Products (P.) Ltd Vs DCIT (179 ITD 647)**. In the decided case also, the AO had made additions u/s 68 of the Act in relation to share subscription monies received by the assessee alleging that the source of source companies were name lenders having no creditworthiness and the Directors of such companies had not attended the summons. On appeal the Tribunal while deleting the addition had observed as under:

“18. Under the deeming provision of Section 68, the primary onus lies upon the assessee to prove the nature and source of credit. Here, in this case, the



nature has been stated to be share application money which has been duly allotted by the assessee company to the subscribing company for which all the documentary evidences, including from ROC has been filed. The source of credit has been explained from the bank statement of the subscribing company, audited balance sheet, ITRs, etc. Further, the subscribing company, M/s. Aviskar Marketing Pvt. Ltd has also explained the source of fund received by it from three other companies who have also furnished the entire details of the loan given to the said company. No adverse material has been brought on record by the Assessing Officer after assessee had filed these evidences against these companies nor any inquiry have been made that the entire transactions by these companies are colourable or sham. Here, it is not a case of any accommodation entry provider nor there is any investigation or report or inquiry that either M/s. Aviskar Marketing Pvt. Ltd. or two other companies who had given loan to M/s. Aviskar Marketing Pvt. Ltd. were involved in any bogus accommodation entry or were in collusion. One of the reason given by the Assessing Officer is that revenue from operations of M/s. Aviskar Marketing Pvt. Ltd. was Nil/meager. However, in the balance sheet itself incorporated by him in the assessment order it is clearly borne out that there is huge availability of fund in the form of long term borrowings of more than Rs. 4.15 crores and reserves and surpluses of Rs. 3.76 crores. If the said company has stated that it has subscribed to the share application money out of borrowing and has also proved the genuineness and creditworthiness of the loan taken from the 3 parties directly before the Assessing Officer, then primary onus cast upon the assessee stands fully discharged. It is not the case here that any adverse material has been unearthed or has been found that all these transactions are 'make believe arrangements' or all the evidences are mere paper trail.

19. One of key reasons harped upon by the Assessing Officer is that there were common directors. Commonality of Directors will not render a transaction non- genuine or colourable, unless any inquiry or material is found to prove the nexus of the directors involved in some kind of accommodation entry routing any unaccounted income of the assessee company. If these entities are separate corporate entities having separate legal identity and separately assessed to tax, then they have to be treated independently, unless there is any doubt regarding the source of credit or source of the source is colourable. In that case the same needs to be



examined by the Department in the case of the person who has given the money and if anything adverse is found regarding source; or source of the source then, onus shifts heavily upon the assessee. The Assessing Officer cannot presume the transaction to be bogus sans any inquiry or material. Doubt cannot be raised on the explanation backed by evidences without any adverse material coming before Assessing Officer. Here the genuineness of the transaction is proven from the fact that M/s. Aviskar Marketing Pvt. Ltd. has subscribed the shares on premium out of loan taken from NBFCs and has given the immediate source; and not only that, it has also given the documents and confirmations from the NBFC companies confirming the loan given to the subscribing company who in turn has subscribed the share of the assessee company. Under these circumstances and facts of the case and without there any material that any unaccounted money has been routed through various channels, then simply based on presumption and hypothesis deeming fiction cannot be invoked. If the assessee has proved the source as well as the source of the source of the fund then onus shifts upon the Assessing Officer to carry some prima facie inquiry to rebut the explanation given by the assessee. In absence of any such exercise, addition cannot be sustained simply based on certain hypothesis.”

34. For the reasons as aforesaid, we are therefore unable to find any fault in the conduct of the assessee, who had not only discharged its burden of substantiating the identity, genuineness and creditworthiness of the shareholders, but also the *source of source* of funds in accordance with proviso to Section 68 of the Act. Thereafter, it was for the Revenue to bring on record cogent/credible evidence to show that the evidences/material furnished by assessee in support of *nature & source* and even the *source of source* of funds of share subscribers were defective/colourable. We however note that the lower authorities failed to undertake any such exercise, except for casting aspirations’ by airing their suspicion based on conjectures and



surmises. Hence, as the *source of source*, is found to be flowing through regular banking channel from various remittances by corporate entities in the course of their business dealings, the additional burden laid upon the assessee/share-subscribers under the proviso to section 68 of the Act is held to have been discharged/satisfied in the facts and circumstances discussed (supra).

35. As far as the judgments relied upon by the lower authorities is concerned, they are found to be not applicable to the facts of the present case in hand. As discussed above, the assessee has discharged its burden of proving the existence of the fact in respect of credit entries by bringing evidence on record regarding the *nature & source* of the same. The assessee has brought on record the facts about the same by adducing documents in respect of entire share subscription monies received by the assessee company and we note that the shareholders have also discharged the burden of proving their *source* of money from which they had given credit/money to the assessee company. No independent material/evidence has been brought on record by the AO or Ld. CIT(A) to allay or rebut the evidences filed by the assessee company or by the shareholders. Thus, ratio of all these judgments will not apply in the present case because the facts in those cases were different.

36. For the above reasons, the action of the Ld. CIT(A) confirming the addition u/s 68 of the Act to the extent of Rs.6,22,05,000/- is held



to be unsustainable.

37. To sum up, we hold that share subscription monies of Rs.13,13,50,000/- received by the assessee during the year cannot be held to be non-genuine. Accordingly, the order of Ld. CIT(A) deleting addition to the extent of Rs.6,91,45,000/- is upheld and the remaining addition of Rs.6,22,05,000/- confirmed by the Ld. CIT(A) is directed to be deleted. Hence, Ground No. 1 of the Revenue stands dismissed and Ground Nos. 1(a), 2(a), 3 to 8 of the assessee stands allowed.

38. Ground No. 2 of the Revenue's appeal is against the Ld. CIT(A)'s action of deleting the protective addition of Rs.13,10,87,000/- made by the AO u/s 56(2)(viib) of the Act. It is noted that, apart from assessing the share subscription monies by way of unexplained cash credit u/s 68 of the Act, the AO was also of the view that the premium of Rs.49,900/- at which each share was issued by the assessee did not commensurate with the fair market value of the shares in terms of Section 56(2)(viib) of the Act. According to the AO however, the valuation methodology followed by the Chartered Accountant of the assessee in terms of Explanation (a)(ii) to Section 56(2)(viib) of the Act was unjustified. The AO instead re-computed the value of share by applying the book value method set out in Explanation (a)(i) to Section 56(2)(viib) read with Rule 11UA(2)(b) and thus arrived at NIL value. The AO accordingly held the entire share premium to be excessive and hence, protectively assessed it u/s 56(2)(viib) of the Act. On appeal, the Ld. CIT(A) deleted the said



protective addition. Aggrieved by the same, the Revenue is now in appeal before us.

39. Heard both the parties. For adjudicating this issue, we first deem it fit to look into the relevant provisions, which reads as under:

“where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

(i) by a venture capital undertaking from a venture capital company or a venture capital fund; or

(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Explanation.—For the purposes of this clause,—

(a) the fair market value of the shares shall be the value—

(i) as may be determined in accordance with such method as may be prescribed; or

(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

whichever is higher;



(b)"venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of 48b[Explanation] to clause (23FB) of section 10;" (emphasis given by us)

40. From the bare reading of the aforesaid provision of law it is noted that, it is the option of the assessee to choose from the valuation methodology set out in Explanation a(i) or a(ii) supra, or in case if both is applied, then the higher of the two, shall be considered for the purposes of Section 56(2)(viib) of the Act.

41. In the present case, the assessee had furnished a valuation report from a Chartered Accountant, as per which value per share was Rs.51,135/-. According to Ld. AR, since the premium of Rs.49,900/- was lower than the FMV, no addition was warranted u/s 56(2)(viib) of the Act. It was pointed out that, the Chartered Accountant, had valued the assets of the assessee at its fair market value on the date of issue of shares viz., the investments held in unlisted companies were valued at the Net Asset Value Method ('NAV Method') and the immovable properties were valued with reference to their prevailing market/circle rate rather than its historical cost. This method of valuation adopted by the Chartered Accountant is thus noted to be in compliance with Explanation (a)(ii) to Section 56(2)(viib) of the Act. The AO however rejected this valuation methodology and changed it to Explanation (a)(i), in terms of which, he re-computed the value per share at NIL, following the book value method *[as set out in Rule 11UA(2)(a)]*.



42. Now the question before us, is whether the AO could have legally rejected the valuation methodology followed by the assessee and changed it to some other method. In this regard, as noted above, the option to choose the valuation method is with the issuer company and there is no enabling provision empowering the AO to reject and change the valuation method adopted by a company. Having held so, it is necessary to clarify that the AO however can indeed verify the manner of application of the valuation method pursued by the issuer company, and point out any mistakes, errors or infirmities therein. In the present case at hand, the Ld. CIT-DR was unable to point out any mistake in the manner of application of valuation method followed by the Chartered Accountant. We thus countenance the action of the Ld. CIT(A) in disagreeing with the action of the AO and upholding the valuation method followed by the assessee and thereby deleting the protective addition made by the AO u/s 56(2)(viib) of the Act.

43. In support of the above, we may gainfully refer to the following judgments of the jurisdictional Hon'ble Bombay High Court as well as coordinate Benches of this Tribunal in which it has been consistently held where the assessee adopts a certain valuation methodology under the Act and rules thereunder, the AO cannot subsequently change the valuation method adopted by the assessee.

- (i) The Hon'ble jurisdictional Bombay High Court in **Vodafone M-Pesa Ltd. v. Principal Commissioner of Income Tax [2018] 92**



taxmann.com 73 held the following -

“9. We note that, the Commissioner of Income-Tax in the impugned order dated 23rd February, 2018 does not deal with the primary grievance of the petitioner. This, even after he concedes with the method of valuation namely, NAV Method or the DCF Method to determine the fair market value of shares has to be done/adopted at the Assessee's option. Nevertheless, he does not deal with the change in the method of valuation by the Assessing Officer which has resulted in the demand. There is certainly no immunity from scrutiny of the valuation report submitted by the Assessee. Therefore, the Assessing Officer is undoubtedly entitled to scrutinise the valuation report and determine a fresh valuation either by himself or by calling for a final determination from an independent valuer to confront the petitioner. However, the basis has to be the DCF Method and it is not open to him to change the method of valuation which has been opted for by the Assessee.”

(ii) The Mumbai Bench of this Tribunal in **DCIT-1(2)-2 V/s M/s. Ozoneland Agro Pvt.Ltd. [ITA No. 4854/Mum/2016]** held the following –

“5.1. In our opinion, the valuation has been left to the discretion of the assessee. In other words the AO cannot adopt a method of his choice. In the case under consideration the whole controversy has arisen because of the AO has rejected the method adopted by the assessee. We find that in the case of Medplus Health Services P.Ltd.(supra)similar issue was deliberated upon and decided.”

(iii)The Jaipur Bench of this Tribunal in **ITO v. Universal Polysack (India) (P.) Ltd. [IT Appeal No. 609 (JP) of 2017]** held that -

“16.Sub-Rule 2 of Rule 11UA is more specific for the purposes of determination of fair market value of unquoted equity shares under section 56(viib) and shall be applicable in the instant case. The latter provides an option to the assessee to determine the fair market value of the shares either as per the book Value or Discounted Free Cash Flow Method. The exercise of such an option by the assessee is not subject to fulfillment of any specified conditions and it is left to the sole discretion of the assessee as it deems fit to apply. In the instant case, the assessee company has exercised its option to value its shares as per DCF method and we find that the objection of the AO is primarily directed at not adopting the book value of determination of value of shares as against DCF adopted by the assessee



company. The exercise of such an option cannot therefore be challenged by the revenue once the same has been exercised at first place by the assessee.

17. Further, where the assessing officer is of the opinion that the methodology so adopted by the assessee and/or the underlying assumption while determining the share valuation as per DCF is not acceptable to him, **there is no discretion with the AO to discard the DCF method of valuation and adopt book value method....**”

(iv)The Jaipur Bench of this Tribunal in **Rameshwaram Strong Glass (P.) Ltd. v. Income-tax Officer, Ward-2(1), Ajmer [2018] 96 taxmann.com 542** held the following -

“4.5.From the facts thus, it is clear that the authorities below wanted to impose upon the method of valuation of their own choice, completely disregarding the legislative intent which has given an option to the assessee to choose any one of the two methods of valuation of his choice. When the law has specifically provided a method of valuation and the assessee exercised an option by choosing a particular method (DCF here), changing the method or adopting a different method would be beyond the powers of the revenue authorities. Permitting the revenue to do so will render the clause (b) of Rule. 11UA(2) as nugatory and purposeless. Thus, to this extent the action of the authorities below is not justified and it is held that the assessee has got all the right to choose a method which, cannot be changed by the AO. ”

44. In view of our reasoning given above, Ground No. 2 of the Revenue’s appeal stands dismissed.

45. Ground No. 3 of the Revenue and Ground Nos. 1(b), 2(b) & 9 of the assessee are in relation to the addition of Rs.21,86,50,000/- made by the AO in respect of advances/deposits received by the assessee. Briefly stated, the facts are that the assessee had received funds by way of advances/deposits aggregating to Rs.21,86,50,000/- from seven (7) group companies. Before the AO, the assessee had



furnished confirmation letters, financial statements, Income Tax Acknowledgment, bank statements of all these seven (7) creditors. The AO noted that these advances/deposits primarily comprised of security deposits received from group entities for use of table spaces in the premises owned by the assessee. Upon tabulating the details of advances/deposits *vis-à-vis* the rent paid by these companies, the AO observed that the rent charged by the assessee was very minimal when compared with the quantum of deposits. According to the AO, the enquiries made u/s 133(6) and 131(1)(d) revealed that these deposits/advances represented unaccounted monies of the assessee routed through shell companies and therefore added the same u/s 68 of the Act.

46. On appeal, the Ld. CIT(A) have followed the same line of reasoning which he adopted for adjudicating the addition made by the AO u/s 68 of the Act *qua* the share subscription monies. According to Ld. CIT(A), the assessee was required to substantiate the '*source of source*' of these deposits/advances as well, and therefore he enquired into their money trail and found that these deposits/advances could be divided into two parts viz., **(a)** whose source of source was payments received from RGIL and **(b)** whose source of source was payments from other bodies corporate (apart from RGIL). Upon undertaking this exercise, the Ld. CIT(A) held the deposits/advances of Rs.21,07,50,000/- to be genuine as the *source of source* originated



from the overdraft account of RGIL and therefore deleted the same. The remaining sum of Rs.79,00,000/- received from M/s Dhanlakshmi Tie-up Pvt Ltd, whose '*source of source*' was funds received from other bodies corporate, was held to be not proved, and thus the addition to that extent was confirmed. Aggrieved by the order of Ld. CIT(A), both the assessee and the AO are in appeal before us.

47. Heard both the parties. Before we advert to the facts of the case, it is necessary to recapitulate the provisions of Section 68 of the Act, which read as under:

“Where any sum is found credited in the books²⁴ 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 him is not, in the opinion of the 25[Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year :

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB)of section 10.

48. Bare reading of the provision makes it abundantly clear that the



additional burden laid down in the proviso to Section 68 of the Act *[made applicable from AY 2013-14]*, only applied to ‘**share application monies**’. Hence, any company, in which public is not substantially interested, is required to substantiate only the first source of receipt in relation to advance/loan/deposit and nothing more. In the case at hand therefore, the proviso to Section 68 is not applicable. Under the extant provision of Section 68 of the Act *[as it stood in AY 2013-14]*, the burden cast on the assessee is only to substantiate the source of receipt of the loan/deposit. Accordingly, the Ld. CIT(A)’s action of casting additional requirement on the assessee to justify the ‘*source of source*’ of funds is held to be without the mandate of law. Instead, in our considered view, the onus cast upon the assessee is only to establish three things necessary to obviate attracting Section 68 of the Act which are, (i) identity of the creditor; (ii) their creditworthiness and (iii) Genuineness of the transaction.

49. In view of the above position of law, let us now examine the facts of the case. In the present case, the deposits/advances were received from the following parties:

Sl No.	Name of Creditor (A)	Amount (B)
a.	Rika Global Impex Ltd	7,54,55,000



b.	Kingston Jewellery Pvt Ltd	1,79,00,000
c.	Nupur Vinimay Pvt Ltd	3,99,75,000
d.	Balajee Vinimay Pvt Ltd	3,13,00,000
e.	Sarwar Steel Pvt Ltd	60,75,000
f.	Dhalaxmi Tie Up Pvt Ltd	79,00,000
g.	Uma Vinimay Pvt Ltd	4,00,00,000
	TOTAL	21,86,50,000

50. We have already discussed the facts pertaining to the companies mentioned at Sl No. (a) to (f) above, in Para 15 earlier. These six (6) companies have been noted to be group entities of the assessee having common shareholders and Directors. Having perused their Income Tax Acknowledgment, financial statements, bank statements etc. [Paras 15 (ii), (v), (x), (xii), (xv) & (xvi)], it has already been held by us that the assessee has discharged its burden of substantiating the identity, genuineness and creditworthiness of these six entities under Section 68 of the Act. With regard to the seventh lender, M/s Uma Vinimay Pvt Ltd, it is noted that this company is also an associate of the assessee belonging to the same Rika Group. The assessee has placed on record the PAN details and Income Tax Acknowledgment of the said lender which is found placed at Page 387 of paper book. From the financial statements, which are found placed at Pages 371 to 386 of paper book, it is noted that the lender had own funds of Rs.726.82 lacs, which was sufficient to justify the advance of Rs.400 lacs. From the bank statement, which is available at Page 388-389 of paper-book, it is noted that the source of funds of M/s Uma



Vinimay Pvt Ltd was the refund of advance, which was earlier given to M/s Rika Impex Pvt Ltd, the flagship company of the group. Accordingly, the identity, genuineness and creditworthiness of M/s Uma Vinimay Pvt Ltd is found to have been substantiated by the assessee.

51. Apart from providing complete particulars of the lenders viz., their PAN, financial statements, bank statements, income-tax acknowledgments and source of making payments, it is noted that the Director of the assessee, Mr. Suresh Agarwal, who is also a common Director in these seven (7) lender companies had attended and complied with the summons issued by the AO u/s 131 of the Act. In that view of the matter, we are of the considered view that the assessee had discharged its onus of substantiating the identity, genuineness and creditworthiness of these seven (7) creditors.

52. The Ld. AR further brought to our attention that these advances/deposits were given by these group entities in the course of business based on commercial expediency. Referring to the lease/tenancy arrangements pursuant to which these deposits were placed by these depositor/creditors with the assessee, it was pointed out that neither did the AO disbelieve these rental agreements nor did the AO dispute the genuineness/correctness of the rental payments made pursuant thereto. We note that, the rent received by the assessee



from these bodies corporate was assessed as regular business receipts and not as unexplained cash credit by the AO. The AO is thus found to have accepted the bonafides of these agreements for use of table spaces. Having regard to this fact, we cannot countenance the action of the AO in doubting the genuineness of the transaction involving the receipt of loan/deposit from these seven (7) creditors.

53. As far as the impugned action of Ld. CIT(A) is concerned, it is noted that the Ld. CIT(A) had mis-directed himself, by treating the deposits from seven entities as if he was examining share application monies received from them and erroneously went ahead to verify the '*source of source*' of funds in terms of proviso to Section 68 of the Act. Upon conducting such verification/exercise, the Ld. CIT(A) was of the opinion that '*source of source*' to the extent of Rs.21,07,50,000/- was proved and only '*source of source*' of sum to the extent of Rs.79,00,000/- was not proved. As noted by us earlier, this additional burden to prove '*source of source*', which was fastened by the Ld. CIT(A) upon the assessee was not with the sanction of law and so his impugned action itself was not in accordance to law and so it cannot be sustained.

54. The facts available on record shows that, the first source of the entire deposits/advances had been established in as much as the identity of the lenders, their creditworthiness and genuineness of the



transaction was proved by the assessee as per the requirement of law as discussed. Hence, if the Ld. CIT(A) doubted the respective sources of these creditors [*i.e. to extent of Rs.79,00,000/-*], then the correct course of action was to proceed against the creditors rather than the assessee because the assessee has discharged the burden as required by law [section 68 of the Act] and the assessee cannot be expected to do more than what the law prescribed. In other words, the assessee was not required as per the law in force at that time, to explain the source of monies of the creditors. Consequently, the basis on which the addition was sustained partly u/s 68 of the Act by Ld. CIT(A) is held to be unsustainable. For this, we rely on the decision of the Hon'ble jurisdictional Bombay High Court rendered in the case of **Gaurav T Singh Vs ITO (121 taxmann.com 86)**. In the decided case the assessee had received unsecured loans from two individuals, whose details were submitted before the AO. The AO however doubted the creditworthiness of the individuals and took a view that the assessee had not established genuineness of the loan. On appeal, the Hon'ble High Court deleted the addition by observing as under:

“13. Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

14. In Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom), this court



has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.

17. Consequently, finding of the Tribunal to the above extent is set aside. The question framed is answered in favour of the assessee and against the Revenue.

55. We also rely on the decision of the Hon'ble Gujarat High Court in the case of **Dy. CIT v. Rohini Builders [2002] 256 ITR 360/[2003] 127 Taxman 523**, wherein the Court has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from



such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

56. The above judgment was followed by another coordinate Bench of the Hon'ble Gujarat High Court in the case of **CIT Vs Apex Therm Packaging (P) Ltd (42 taxmann.com 473)**. In the decided case also, in the course of assessment proceedings, the assessee had furnished complete details of loan creditors along with their PAN, financial statements, loan confirmations, bank statements etc,. The AO however added the entire loan received u/s 68 of the Act. On appeal the CIT(A) allowed the assessee's appeal which was also confirmed by ITAT. On appeal by the Department u/s 260A, the High



Court observed that when full particulars, inclusive of the confirmation with name, address, PAN, IT returns, balance sheet & profit and loss account in respect of all the lenders were furnished and that it has been found that the loans were received through cheques then the AO was not justified in making addition u/s 68 of the Act. Accordingly the High Court dismissed the appeal of the Department.

57. We may also gainfully refer to the judgment of the Hon'ble Delhi High Court in the case of **CIT Vs Shiv Dhooti Pearls & Investment Ltd (64 taxmann.com 329)**. In the decided case the assessee had received unsecured loans in the year in question. In the course of assessment, the AO requisitioned the details of the loans received by the assessee. From the details furnished by the assessee, it was observed that few loan creditors had returned loss and their source of advancing loans were other bodies corporate who had also returned miniscule taxable income in their income-tax returns. The AO therefore doubted the creditworthiness of the lenders. The AO accordingly made addition u/s 68 of the Act. On appeal the High Court held that the onus of the assessee is *'to the extent of his proving the source through which he has received the cash credit.'* The High Court held that the AO has ample *'freedom' to make inquiry 'not only into the source of the creditor, but also of its sub-creditors'*; but the assessee has indeed discharged its onus of proving the creditworthiness and genuineness of the lender by furnishing the



documents & details which it was required to maintain in the normal course and under law and therefore the addition made u/s 68 was deleted by the High Court.

58. We also rely on the decision of the Hon'ble Calcutta High Court in the case of **CIT Vs Dataware Pvt Ltd [GA No.2856 of 2011]** in which the Court had deleted similar addition made u/s 68 with reference to unsecured loan creditors. The relevant extracts of the decision is reproduced below:

“In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

59. In view of the above reasoning therefore, we are of the considered view that the addition of Rs.21,86,50,000/- made by the AO u/s 68 of the Act was untenable both in law and on facts. We accordingly uphold the Ld. CIT(A)'s order deleting the addition to the extent of Rs.21,07,05,000/- and also direct the AO to delete the balance amount of Rs.79,00,000/- confirmed by the Ld. CIT(A). Hence, Ground No. 3 of the Revenue stands dismissed and Ground



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Chemicon Engineering

Nos. 1(b), 2(b) & 9 of the assessee is allowed.

60. In the result, the appeal of the Revenue stands dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 17/06/2022.

Sd/-
(GAGAN GOYAL)

लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 17/06/2022.
Vijay Pal Singh, (Sr. PS)

Sd/-
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai