

IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH, NAGPUR
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI ARUN KHODPIA, AM

ITA No. 140/NAG/2017
Assessment Year: 2008-09

The DCIT Circle-2 Nagpur	Vs.	M/s. Saral Metallurgicals Pvt. Ltd. 31, 301, Sharda Manor, Cement Road Shivaji Nagar, Nagpur – 440 010
PAN No.:AAJCS 5019 H		
Appellant		Respondent

Revenue by :Shri Vitthal M Bhosale (JCIT-DR)

Assessee by: Shri Mahavir Atal, CA

Date of Hearing: 28/04/2022

Date of Pronouncement: 28 /06/2022

ORDER

PER: SANDEEP GOSAIN, J.M.

This is an appeal filed by the Department against the order of the Id. CIT(A)-2, Nagpur dated 12-10-2017 for the assessment year 2008-09 wherein the Department has raised the following grounds.

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition made by the AO on account of share application money received.

2. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in ignoring that the assessee had not discharged the onus of proving the identity of creditor, the capacity of the persons advancing the money and the genuineness of the transaction regarding share application money."

2.1 Brief facts of the case are that the assessee - respondent is a private limited company. The respondent has filed its return of Income on 1st October 2008 declaring a total income of Rs. 43,55,762/-. The case of respondent was selected for scrutiny and the assessment was completed under section 143(3) vide an order dated 28 March 2016. During the year under consideration the respondent received share capital plus premium of Rs 2,37,00,000/- from two Kolkata Based Investor Companies. The case was re-opened under section 147 on the basis of information received from the ITO (Inv.), Unit-2 Kolkata. The respondent has received share capital and premium from two Investors during the year under consideration, namely, M/s Sri Gurudham Sales Pvt. Ltd. ('SGSPL') and M/s Suvidha Suppliers Pvt. Ltd. ('SSPL'). The Assessee received a total of Rs. 2,37,00,000/- from the above mentioned 2 companies for issuance of 2,62,500 share of Rs. 10 each (face value) and Rs. 90 each premium. During the assessment proceedings the respondent was directed to submit the requisite details to substantiate identity, genuineness and creditworthiness of the investors. The respondent company during the assessment proceedings have submitted return of income, computation of income, audit report, bank statements, Annual return filed with ROC and share allotment letter. The AO issued 133(6) notices to the investor companies to confirm the investments. The

investor companies confirmed the transaction and submitted requisite documents. The sanctity and veracity of the documents were accepted by the AO. However, AO Still treated the transaction as unexplained cash credit as the respondent company's submission vis-à-vis source of source of investment of the investor companies, were found to be non satisfactory.

2.2 The First Appellate Authority, allowed respondent's appeal after finding all the documents as well as explanations submitted by the assessee to be satisfactory. The Id. CIT(A) also stated that for a period prior to the Amendment of Section 68 by Finance Act, 2012, the tax payers are not required to explain source of source of funds.

2.3 The Id DR took us through the Assessment Order. The Assessing Officer added an amount of Rs 2,37,00,000/- as unexplained credits. The reasons stated by the AO in the assessment order is as under'

- *" Thus, the very basis of loans, share application money stated to be taken by M/s Gurudham Sales Pvt Ltd and M/s Suvidha Supplier Pvt ltd is false since the companies from whom the alleged share application money received are **non-existent**"*
- The AO also stated that as per the enquiries the 17 companies were not found on the given address and they are mere paper companies.

On this premise he stated that the source of investment of the investor companies (M/s Gurudham Sales Pvt Ltd & M/s Suvodha Supplier Pvt Ltd) are from investor companies and it was alleged that it was the assessee companies own money.

- The AO further stated that the 17 companies who have invested in above companies have no source to invest in the two aforementioned companies and therefore question of these two companies investing in the assessee's company is impossible.

2.4 The Id. AR appearing for the respondent drew our attention to the relevant extract of the assessment order to highlight the fact that, the AO issued notices under section 133(6) to both the investor companies and both the companies have duly complied with the directions in the notice and confirmed the transaction. This undisputed fact is stated in para 5 of the assessment order;

"5 Confirmation of transactions were called for from the companies M/s Shri Gurudham Sales Pvt Ltd and M/s Suvodha Suppliers Pvt Ltd, Kolkata, u/s 133(6) of the Act. They confirmed the transactions of purchasing shares of M/s Saral Metallurgicals Pvt Ltd"

The said paragraph was also reproduced by the Id CIT(A) in para 5.1, page 24 of the order. Therefore, the fact that both the investor companies responded to 133(6) notice is undisputed. The relevant extract of the appellate order is reproduced below.

"Pursuant to the information received from the ITO (Inv.), Unit-2, Kolkata, the AO has issued notices u/s 133(6) to the both investor companies namely; M/s Sri Gurudham Sales Pvt. Ltd. and M/s Suvidha Suppliers Pvt. Ltd. Who have complied with the notices by confirming the transactions and a finding to this effect has been recorded by the Id. AO in para-5 of the assessment order wherein the Id. AO has categorically mentioned that "confirmation of transactions were called for from the companies M/s Sri Gurudham Sales Pvt. Ltd. and M/s Suvidha Suppliers Pvt. Ltd. u/s 133(6) of the Act. They confirmed the transactions of purchasing shares of M/s Saral Metallurgical Pvt. Ltd., Nagpur."

The Id. AR submitted that Vide para 5.2, page 25-26 of the CIT(A) order, the Id. CIT(A) has also discussed the fact that a common director of SGSPL and SSPL, Shri Anil Kumar Chaudhary, had appeared before the ITO (Inv.) and confirmed the transactions. His Statement was recorded on oath and he submitted all requisite books of account to substantiate the genuineness of the transaction and creditworthiness of the investor companies. The relevant portion of para 5.2 is as under:-

"5.2 The ITO (Inv.), Unit-2, Kolkata has received FIU-IND reference from the DDIT, Inv. Unit-2(1), Kolkata vide letter dated 23.03.2015. The reference included the name of Shri Hanuman Prasad Agrawal, one of the directors of M/s Sri Gurudham Sales Pvt. Ltd. and M/s Suvidha Suppliers Pvt. Ltd. The ITO (Inv.), Unit-2, Kolkata therefore summoned the principal officer of M/s Sri Gurudham Sales Pvt. Ltd. The ITO (Inv.), Kolkata in his report has recorded a finding that "M/s Sri Gurudham Sales Pvt. Ltd. Made the submission on 01.08.2014. Books of accounts furnished by M/s Sri Gurudham Sales Pvt. Ltd. Was examined wherein it is noticed

that the company has made investment in shares with M/s Saral Metallurgical Pvt. Ltd. For Rs. 1,87,00,000/-." The ITO (Inv.) in his report has further mentioned that "the books of accounts of M/s Suvridha Suppliers Pvt. Ltd. Were examined wherein it is noticed that the company has made investment in shares with M/s Saral Metallurgical Pvt. Ltd. for Rs. 50,00,000/-." The ITO (Inv.), Kolkata in his report has further mentioned that Shri Anil Kumar Chaudhary, one of the Directors of both the companies appeared and made necessary submissions and his deposition was recorded on oath. Shri Chaudhary in his deposition made has furnished a list of 17 companies in support of his claim as source of funds for investing in shares of M/s Saral Metallurgical Pvt. Ltd. The ITO (Inv.), Kolkata in his report has also mentioned that "Departmental Inspector Shri Parimal Kumar Modak was deputed to enquire the existence of the above concerns on test check basis. Shri Modak made the necessary enquiries. None of the concerns existed at their given address."

The Id. CIT(A) during the assessment proceedings has also called for assessment records as mentioned on page 27 of the CIT(A) order wherein, the Id. CIT(A) had observed the fact that all the relevant details with respect to the transaction such as bank statements, confirmations of the investor companies were forming part of the assessment records and were duly examined by the AO. The relevant portion of Id. CIT(A)'s observations are as under:-

"The AO vide letter dated 19.02.2016 written to these investor companies namely: M/s Sri Gurudham Sales Pvt. Ltd. and M/s Suvridha Suppliers Pvt. Ltd., Kolkata has called for the details of share application money and confirmation of transactions which were supplied to the AO directly by these concerns vide their letter dated 27.02.2016 which are annexed at page No. 201 and 254 of the assessment file respectively. The bank statements of both these

investor companies were also requisitioned by the AO directly from the bank branch which are enclosed with the letter dated 27.02.2016 assessment records. Thus all the relevant details pertaining to the investment in share capital of the appellant company by these two investor companies were examined by the AO without finding any infirmity with the same."

(Page 28-29 of the CIT(A) order)

"Both these confirmations were filed by the AR as well as the investor companies before the AO. Thus both these investor companies have confirmed their respective investments aggregating to the tune of Rs. 2,37,00,000 in the share capital of the appellant company. The said investor companies have also intimated the appellant company that no proceedings u/s 148 either have been taken up or pending in their cases."

(Page 30 of the CIT(A) order)

It is apparent from the assessment order that the AO has relied on the report of the inspector of the Investigation Wing Kolkata, wherein it was stated that these 17 investor companies are non-existent on given address. This is the only enquiry and observation on which the AO treated receipt of share capital and share premium as unexplained credits. Apart from these, no independent enquiry has been done by the AO to support his case of unexplained credit. During the hearing the Id. AR reiterated that they have submitted the financial statements and audit report of the investor companies. The Id. CIT(A) has observed the fact that the financial statements of the investor companies were perused by the AO and Investigation Wing, Kolkata; and the sanctity & veracity of same is accepted by the AO. The relevant extract of CIT(A) order is reproduced below.

"Further that the registrar of the Companies (ROC) records of both the investor companies filed by the appellant during the assessment as well as appellate proceedings reveal that both the investor companies have made investment with the appellant company. Therefore, the inference drawn by the Id. AO that since these 17 companies are non-existent, the two investor companies which have invested with the appellant company are also non-existence does not carry any substance in the absence of any corroborative adverse material in hand."
(Page 30 of the CIT(A) order)

The Investigation Wing, Kolkata has also examined the books of accounts of the two investor companies and has not found any infirmity. The fact finding to that effect has been culled out by the Id. CIT(A) in the Appellate order. The relevant extract of the order is reproduced below.

"5.3 The ITO (Inv.), Kolkata has examined the books of account of both the investor companies, namely; M/s Sri Gurudham Sales Pvt. Ltd. and M/s Suvidha Suppliers Pvt. Ltd. As is obvious from his impugned report itself, the relevant paras of which have been reproduced in para-5.2 above. The ITO (Inv.)-2, Kolkata has not pointed out any sort of the infirmity with the books of account of both these investor companies. The ITO (Inv.), Kolkata has also examined Shri Anil Kumar Choudhary on oath. Thus, the ITO (Inv.), Kolkata has drawn the inference of non-existence of these two investor companies, merely on the basis of report of Inspector, discarding the material evidences in the for of

books of account and Income-tax records of these two concerns."

(Page 31 of the CIT(A) order)

The Id. AR also highlighted the fact that the transactions were carried out through proper banking channels. The respondent has submitted bank statements of the investors companies and self to substantiate the same. The fact finding is again culled out by the Id CIT(A) in the appellate order. The relevant extract of the order is reproduced below.

"On perusal of the bank statements, it is seen that all the payments for purchase of shares by the two investor companies have been made by account payee cheques. The amounts are duly found reflected in the bank statements of investor companies as well as in the bank account of the appellant company. All these details are again filled by the appellant during the appellate proceedings which are available on assessment record as well. The appellant has also produced the audited books of account before the AO which were accepted by Id. AO without finding any discrepancy with the same. Thus, having accepted the books of account of the appellant company without pointing out any sort of infirmity, the Id. AO is not justified to draw adverse inference that the investment in share capital is not genuine; more particularly when these two investor companies have been filing their returns of income for the period AT 2008-09 till AY 2015-16, coupled with the fact that the books of account of these two investor companies were also examined by the ITO (Inv.)-2, Kolkata."

The Id. AR further submitted that they are statutorily not required to explain the source of the source. The respondent stated that they have explained the source of the money and the investor companies have confirmed the same and the respondents are not under obligation to substantiate the source of these investor companies. The said jurisprudence was also accepted by the Id. CIT(A). The relevant extract of the CIT(A) order is as under;

"The appellant has also agitated that he is required to prove the source of source which is not permissible under the law. Once the appellant company has explained the source of investment in its share capital, it should no more be required to explain the source of the source; when the investor companies have independently explained the same to the ITO (Inv.)-2, Kolkata as well as before the AO"

(Page 34 of the CIT(A) order)

2.5 We have heard both the parties and perused the materials available on record. In this case the undisputed fact is that all the investor companies have confirmed the transactions and even the key persons of the investor company have confirmed the transaction. The AO has accepted the genuineness, identity and creditworthiness of the investor but considered the transaction as unexplained since the assessee failed to explain source of source of investment. The impugned Assessment Year is A.Y. 2008-09 and it is related to the period

prior to the amendment made by the Finance Act, 2012 in section 68. For sake of completeness, the bare text of section 68 is reproduced below.

68. *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [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.]*

The First proviso to the section 68 was inserted by Finance Act, 2012, w.e.f from A.Y. 2013-14. Therefore, it was post amendment, the assessee is under obligation to explain source of source of income vis-à-vis share premium accepted by them. As per the Judgment of the Jurisdictional Bombay High Court in the case of, Gagandeep Infrastructure Pvt. Ltd. vs CIT-1 Appeal no. 1613 of 2014, it was held that the assessee is required to prove the following

- Identity of the creditor;
- Genuineness of the transaction; and
- Credit worthiness of the party.

In this case, the respondent has proved the identity of the investor companies by furnishing their PAN, return of income filed for the year under consideration. Further, the respondent proved the genuineness of the transactions by submitting bank statements, share allotment letter. With regards to the credit worthiness of the party, the respondent has submitted the books of accounts, return of income and audit report of the investor companies. Even, both the investor companies have also submitted the documents as required by the AO. Further, the director of the company has appeared before the AO and confirmed the transactions. The transaction took place through proper banking channels. The audited books of accounts of assessee and investor companies were

available with the assessee and the AO has not found any infirmity in the books. Therefore, it is quite apparent that the respondent has discharged his onus of substantiating the identity, genuineness and creditworthiness of the investors. At this juncture, it is worthwhile to refer to the judgment of the Jurisdictional Bombay High court's decision in case of Apeak Infotech vs PCIT 88 taxmann.com 695 (2017). In this case it was held by the Hon'ble Bombay High Court that the receipt of Share capital and share premium is capital receipt and cannot be considered as income in the hands of the assessee. The relevant para of the order is extracted below

“(a) We find that the impugned order of the Tribunal upheld the view of the Commissioner of Income-tax (Appeals) to hold that share premium is capital receipt and therefore, cannot be taxed as income. This conclusion was reached by the impugned order following the decision of this court in Vodafone India Services (P.) Ltd. (supra) and of the apex court in G. S. Homes and Hotel (P.) Ltd. (supra). In both the above cases the court has held that the amount received on issue of share capital including premium are on capital account and cannot be considered to be income.

(b) It is further pertinent to note that the definition of income as provided under section 2(24) of the Act at the relevant time did not define as income any consideration received for issue of share in excess of its fair market value.

This came into the statute only with effect from April 1, 2013 and thus, would have, no application to the share premium received by the respondent assessee in the previous year relevant to the assessment year 2012-13. Similarly, the amendment to section 68 of the Act by addition of proviso was made subsequent to previous year relevant to the subject assessment year 2012-13 and cannot be invoked. It may be pointed out that this court in CIT v. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 (Bom.) has while refusing to entertain a question with regard to section 68 of the Act has held that the proviso to section 68 of the Act introduced with effect from April 1, 2013 will not have retrospective effect and would be effective only from the assessment year 2013-14.

(c) In view of the above, question No. B as proposed also does not give rise to any substantial question of law as it is an issue concluded by the decision of this court in Vodafone India Services (P.) Ltd. (supra) and in the apex court in G. S. Homes and Hotels (P.) Ltd. (supra). Thus not entertained. Therefore, all the six appeals are dismissed. No order as to costs."

In the another important judgment of Jurisdictional Bombay High court's decision in case of Gagandeep Infrastructure Pvt. Ltd. vs CIT-1 Appeal no. 1613 of 2014. The Hon'ble Bombay High Court has decided in favor of the assessee that under

section 68 the assessee needs to prove three things viz. identity of the person, genuineness of the transaction and credit worthiness of the party. If the assessee has proved all three, and the revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income tax officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the revenue to add the same in the hands of the assessee. The relevant para of the order is reproduced.

" (e)In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the preamended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

(f) In the above circumstances and particularly in view of the concurrent finding of fact arrived at

by the CIT(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law. Thus not entertained."

With regard to the explanation of source of source the Jurisdictional Bombay High court in the case of Gaurav Triyugi Singh vs ITO-24(3)(1) Appeal no. 1750 of 2017 has decided in favor of the tax payer by stating that the tax payer is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. The relevant extract of the order is reproduced as under:-

"14.....In Principal Commissioner of Income Tax vs. Veedhata Tower Pvt. 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.

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....."

The AR also drew our attention to the Jurisdictional Nagpur ITAT's decision in case of DCIT Cir-4 vs M/s Leverage Fintrade Pvt. Ltd. ITANG 407/Nag/16. The Jurisdiction Nagpur ITAT has held that the Assessing Officer was not justified in making an addition under section 68 when the assessee has produced all the necessary documents.

".....We find that the assessee in this case has duly submitted all the necessary details of the share application received which included name, address, company incorporation details. share application details, balance sheets, PAN, bank statements, acknowledgement of income tax return filed and confirmation from the parties. The Assessing Officer has not found any fault in these submissions except that he wanted to verify the details by asking the assessee to produce the promoter/ director of these companies. As clearly emanating from the aforesaid case laws, the assessee has duly discharged his onus and no onus was cast on the assessee in the impugned assessment year to produce the persons or the books from the investment companies. The requirements of enquiry and obtaining explanation from the person making the investment in these circumstances have been brought into the statute books by amendment to section 68 of the Act. These have been clearly held in the above case laws to be prospective as they were effective only from 01.04.2013. Admittedly, the present assessment year being assessment year 2010-11, the Assessing Officer was not justified....."

The another important judgment is that of the Jurisdictional Bombay High court's decision in case of CIT vs Orchid Industries (P) Ltd IT appeal no. 1433 of

2015. The Jurisdictional Bombay High Court decided that where assessee had produced on record documents to establish genuineness of party such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, only because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68. The relevant para of the order is reproduced under;

"6. The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.

7. Considering the above, no substantial question of law arises. The appeal stands dismissed. However, there is no order as to costs."

The Id. AR submitted that in case of the assessee, the assessee has submitted all the requisite documents. Shri Ajay Chaudhary has appeared on behalf of the

investor companies who confirmed the transaction and submitted the documents directed by the AO. The Mumbai Tribunal in the case of Dy. CIT v. Rockwood Hotels & Resorts Ltd. (2018) 68 ITR (Trib.) 402. The Mumbai Tribunal has decided that where all the three ingredients of section 68 i.e., identity, genuineness and credit worthiness have been complied with, no addition is warranted under section 68. The relevant para of the order is reproduced herewith.

"The Commissioner (Appeals) has also given due justification for the premium charged on issue of shares by referring to the certificate filed by Nenawati and Associates, Chartered Accountant and valuation report of the property valuer M/s. Kamtech Associates (P) Ltd who had valued the land and building belonging to the assessee at Rs. 362.93 crores and determining the net worth of the company at Rs. 224.11 crores and ascertaining the net asset value (NAV) per share at Rs. 406.63 per share. Accordingly, it was found that share application money received by the assessee at Rs. 200 per share is fair price after referring to the various documents filed before the lower authorities. The Commissioner (Appeals) concluded that assessee has furnished adequate documents to prove the identity, genuineness and creditworthiness of the share applicants. After justifying the share premium charged by the assessee, the Commissioner (Appeals) observed that addition under section 68 cannot be made of share premium money since such is a receipt on capital account and is not of revenue nature. The detailed finding so recorded by the Commissioner (Appeals) are as per material on record. We further found that the provisions of section 56(2) (viib) inserted by the Finance Act, 2012 had been made applicable from the assessment year 2013-14 and does not apply to the year under consideration i.e., for the assessment year 2012-13. Our this view is supported by

the decision of Income Tax Appellate Tribunal in the cases of Gagandeep Infrastructure (P) Ltd. ITA No. 5784/Mum/2011 and Green Infra Ltd. v. ITO 38 Taxman 253 (Mum-ITAT) wherein it is held that it is the prerogative of the board of directors of the company to decide the share premium and it is the wisdom of the shareholders whether they want to subscribe to such heavy share premium.

12. We found that the Commissioner (Appeals) has dealt with the issue threadbare in respect of each share applicant and after applying various judicial pronouncements to the facts of the case and the documents placed on record reached to the conclusion that all the three ingredients of section 68 i.e., identity, genuineness and creditworthiness of share applicants are duly complied with, accordingly, no addition is warranted. The findings so recorded by the Commissioner (Appeals) are as per material on record which do not require any interference on our part.

During the appeal hearing the Id DR submitted a written submission and also submitted few judgments. In the written submission the Id. DR reiterated the observations of the Assessing Officer and relied on the below mentioned case laws.

- Navodaya Castle Pvt Ltd Vs CIT (2015) 56 taxmann.com 18 (SC)
- Royal Rich Developers Pvt Ltd Vs PCIT (2018) 108 taxmann.com 382 (Bom)(HC)
- CIT Vs Midas Golden Distilleries Pvt Ltd (2021) 130 taxmann.com (206)(Mad)

The facts of the above mentioned cases were compared on the touchstone of the facts of the present cases and the other judgments relied by the respondent. In the case of Navodaya Castle Pvt Ltd Vs CIT, the Supreme Court has dismissed SLP filed by the assessee in limine by stating that "*We do not see any merit in this special leave petition, which is hereby dismissed.*". The SLP before the Hon'ble Supreme Court was filed against the judgment of the Delhi High Court in the case of CIT Vs Navodya Castles Pvt Ltd (2014) 50 taxmann.com 110 (Del). The peculiar facts before Hon'ble Delhi High Court were as under;

- The assessee-company filed loss return which was processed under section 143(1).
- Subsequently, on the basis of a report submitted by the Investigation Wing that the assessee was a recipient of accommodation entries in form of share application money/share capital/share premium, the assessment was reopened under section 147 and assessee was asked to furnish details of shareholders who were allotted shares in the year under consideration, their confirmations, copy of the income tax returns, bank accounts, copy of share certificates issued, allotment letters, etc. The hearing of case remained unattended despite several adjournments and belatedly the assessee filed part information.
- The summons issued to the shareholders under section 131 had been received back unserved in five cases. In the meanwhile,

the Assessing Officer managed to get hold of the bank statements of the shareholders, who had allegedly made deposits by way of cheques and pay orders. It was found that huge cash deposits in lakhs were being regularly deposited in the said accounts and then pay orders/cheques were issued to the assessee. These companies were under control of one M and his group, who were operating various accounts. The Assessing Officer, accordingly, made addition under section 68.

In a case before Hon'ble Delhi High Court, the assessee was non compliant. The investor companies have not responded to the notices. There is a clear fact finding that in case of the investors cash was first deposited in the bank account and then the amounts were transferred to the assessee. However, in the case of the assessee company, it is undisputed fact that both the investor companies have confirmed the transactions. The statement of key persons were recorded and they also confirmed the transaction. The source of the investment is not doubted by the AO, but the source of source of investment was doubted. The respondent has submitted plethora of judgments of Jurisdictional Bombay High Court, where in it is held that prior to the insertion of Explanation to section 68 (i.e.) for period prior to A.Y. 2013-14, there was no requirement of explaining source of source of investment. Accordingly, the case of the assessee as rightly pleaded by the AR is squarely covered by the judgment of Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR

680 (Bom). The another judgment relied by the Id DR is that of Royal Rich Developers Vs PCIT (2019) 108 taxmann.com 382 (Bom). The peculiar facts of this case was that a search was conducted in the residential premises of one of the directors of the assessee company. During the search action against the Directors of the Company, the statement of Mr. Faria was recorded which showed that he was the main person actively involved in the Company. He admitted that the entire investment was bogus. Blank receipts were obtained from the share holders. Their signatures were obtained on blank transfer forms. There was no evidence to show that such share certificates were issued. He also admitted that the share subscription is nothing but the book entries obtained from various persons against cash payments. Such a statement was never retracted. Moreover, even during the original assessment as well as the remand proceedings, the assessee was given ample opportunities to produce the share investors which the assessee failed to do. The Assessing Officer thereupon issued the summons to the share purchasers calling upon them to supply necessary details and documents. Only some of them have responded to such notice. Even they did not or could not supply necessary details and documents to establish their genuine investment in the assessee company. Therefore, apparently in an above case, the director admitted of taking entries. Moreover, the investor companies do not confirm the transactions and did not submitted

requisite documents to substantiate genuineness of the transaction. In the assessee's case, facts are completely distinguished, as there is neither any admission by the directors nor non compliance from the investors. In fact both the investor companies have confirmed the transaction submitted requisite proof and even the key person of both the companies have given a statement, wherein he has accepted of investing in the companies. The another judgment submitted by the learned DR is that of the Madras High Court in the case of CIT Vs Midas Golden Distilleries Pvt Ltd (2021) 130 taxmann.com 206 (Mad). The peculiar facts of this case is that the assessee is a private limited company engaged in the business of manufacture of Indian Made Foreign Liquor (IMFL). A search was conducted under section 132 of the Act in the business premises and the factory and the residential premises of the directors of the assessee. The Assessing Officer held that the enquiry with the past and the present directors would show that there was no transparency in the control and administration and even about the ownership of the company; that the share capital has been introduced in the company through two intermediary companies, which operated with the same pseudonymous address and there was no business activity in those companies; that the directors of the intermediary companies pleaded ignorance about the decision regarding the investment in the assessee company; that the sources of the shareholders, who made their investment in the assessee company through

the intermediary companies were not properly explained; that the affairs of the two intermediary companies established the fact that those were only paper companies created with the sole intention to act as a conduit for facilitating transfer of funds; that the signatories to the agreement were between the assessee and another company, as per which, the shares of the assessee were to be allotted to the other company or its nominees in lieu of the alleged advance of Rs. 5.35 Crores, totally denied by stating that he did not have knowledge of such transaction and that transaction was not reflected by the erstwhile partnership firm M/s. Golden Distilleries; that the addresses of the share applicants namely M/s. D. Kumar Trading and Co., and M/s. Pooja Equitex and M/s. Pentium were not furnished. In the case of the assessee, neither search was conducted nor any statements of the directors were recorded. In the above case the addresses of the investor companies were not submitted, in the respondent's case, the respondent has duly submitted all requisite documents. Even the source of investment has been accepted, but what has been doubted is the source of the source of investment. Therefore, even this judgment is not applicable to the facts of the case. In view of the above discussion and the binding precedents of the Jurisdictional High Court and the other coordinate Bench, we do not find any infirmity in the order of the Id. CIT(A) which is sustained. Thus the appeal of the Department is dismissed.

3.0 In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on 28 /06 /2022

Sd/-

Sd/-

(ARUN KHODPIA)
ACCOUNTANT MEMBER

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Nagpur

DATED: 28/06/2022

***Mishra**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;
- (6) Guard file.

By Order

Assistant Registrar

ITAT, Nagpur