

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.876/Mum/2022  
(Assessment Year :2012-13)**

Jt. Commissioner of Income Tax (OSD) Central Circle 1(4) Mumbai, 9 <sup>th</sup> Floor, 902 Prathishtha Bhavan Old CGO Building (Annexe) M.K.Road, Mumbai-400 020	Vs.	M/s. Shreesai Printing Pvt. Ltd., B/307, Pravitha CHS Ltd., Om Complex Thakurwadi, Dindayal Cross Road, Dombivalie (W) Mumbai – 421 201
<b>PAN/GIR No. AAOCS6127P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Pooja Rander
Revenue by	Shri A.B.Koli
<b>Date of Hearing</b>	<b>23/08/2022</b>
<b>Date of Pronouncement</b>	<b>07/09/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.876/Mum/2022 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal No.CIT(A)-47, Mumbai/10281/2019-20 dated 22/02/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2019 by the Id. Dy. Commissioner of Income Tax, Central Circle-1(4), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made u/s 68 of the Act in respect of receipt of share application money received during the year by the assessee, in the facts and circumstances of the case.

3. The assessee company is engaged in the business of printing services . The assessee is one of the companies belonging to Podar Group and had filed its return of income for the A.Y. 2012-13 on 20.09.2012 declaring total income at Rs Nil. A search and seizure action u/s 132 of the Act and Survey action u/s 133A of the Act was carried out on Podar Education Group on 09.01.2018 . In the said search, the assessee was also covered. Consequent to search, the assessee was centralized with DCIT, CC-1(4), Mumbai. The Id. AO issued notice u/s 153C of the Act dated 21.09.2019 to the assessee and in response to the said notice, assessee filed its return declaring total income at Rs Nil. The assessee pleaded that during the course of search, no money, bullion , jewellery or other valuable article or thing or any books of accounts or documents belonging to the assessee were seized from the premises of Podar Group and hence the provisions of section 153C of the Act are not applicable to the facts of the assessee's case. In the assessment order, the Id AO relied on the following documents seized from the Podar Centre, Chamar Baug, Parel, Mumbai :-

- a) Page 8 of Annexure A-7
- b) Page 3 of Annexure A -11

3.1. Apart from the documents mentioned above, the Id. AO had placed reliance on the file named 'REP' retrieved from laptop of Shri Jayesh Zanani. It was submitted that the said file retrieved from the laptop of Shri Jayesh Zanani has not been provided to the assessee and thus the veracity of such file could not be ascertained by the assessee. Further in

the absence of assessee's comments/explanation regarding the said seized material, it cannot be said that it contained any data which is incriminating in nature and thus, no adverse inference could be drawn in respect of the assessee on the basis of such data. It was pointed out that the seized materials mentioned supra (i.e Annexure A-7 and Annexure A-11) contains rough workings, noting and jottings which are not in any manner connected or relating/ pertaining to the assessee. Infact, there is absolutely nothing to indicate or link the assessee with such noting. It does not even contain the name of the assessee to establish that the same pertains to the assessee in order to attract the provisions of section 153C of the Act.

3.2. The Id. AO observed that during the year under consideration, the assessee received a sum of Rs 2,50,00,000/- as share capital along with share premium from the following parties :-

Sr. No.	Name of the concern from whom share capital with premium is received	Face Value per Share	Share Premium Per share	Total
1.	Statford Textile Specialities Ltd.,	10	40	18,00,000
2	Nirvana Clothing Private Limited	10	40	25,00,000
3	Dipankar Steel Private Limited	10	40	27,00,000
4	Kurmi Developers Private Limited	10	40	15,00,000
5	Shree Pawan Exim Private Limited	10	40	15,00,000
6	Yamroosh Investments Private Limited	10	40	15,00,000
7	Arjit Securities P Ltd	10	40	15,00,000
8	Terry Towel Industries Ltd	10	40	15,00,000
9	Poorvi Realty P Ltd	10	40	15,00,000

10	Seatrans Dan Shipping P Ltd	10	40	15,00,000
11	Kings Merchants P Ltd	10	40	25,00,000
12	Parmatma Tours & Travels Ltd	10	40	15,00,000
13	Albatross Share Registry P. Ltd.	10	40	10,00,000
14.	Oshin Investment & Finance P. Ltd.	10	40	10,00,000
15	Zeme Realtech P. Ltd.	10	40	15,00,000
	Total			2,50,00,000

3.3. The Id. AO vide order sheet noting dated 03.10.2019 directed the assessee to submit following details / explanations:-

8. *In regard to share capital and premium received, the assessee was asked vide order sheet noting dated 03-10-2019 to submit following details/explanation:*

- a. Please submit share price per share (giving break-up of face value and share premium).*
- b. Please submit name and address of shareholder, PAN of persons to whom shares have been allotted, relationship if any, no. of shares allotted, face value, share premium, total amount. Please submit the copy of return filed with ROC for allotment of shares. Also please justify the rate of share premium charged and applicability of Section 56(2)(viib).*
- c. Please justify the sale consideration vis-à-vis the net worth/ profitability of the company.*
- d. Please submit details of utilization of Share Premium received.*
- e. Please submit the copy of ITR, Computation of Income, complete Balance Sheet set with Capital Account of said persons for relevant assessment year. Also please submit their relevant bank statements showing the source of payments in their hands. It may kindly be noted that you are in receipt of the share application money and therefore, onus is on you to prove the identity of the person, credit worthiness of the person and genuinity of the transaction. If any of the above conditions are not satisfied, entire share capital/ share premium may be treated as unexplained cash credit u/s 68 of the Income Tax Act, 1961.*

3.4. In response thereto, the assessee furnished the names of the shareholders, address of the shareholders, PAN of the shareholders, Company Identification Number of the shareholders issued by Registrar of Companies, Date of incorporation of shareholder companies, copy of ITR acknowledgement of their returns, application form for applying equity shares in assessee company, their acceptance letter, board resolution of shareholder companies for purchase of shares of assessee company, audited financial statements of shareholder companies for the year in which investments were made in assessee company , memorandum and articles of association of shareholder companies, confirmation from shareholder companies for having made investment in shares in assessee company, bank statements of shareholder companies highlighting the payment made to assessee company for purchase of shares together with the respective source of funds for shareholder companies. These documents are also enclosed in pages 25 to 887 of the paper book filed before us.

3.5. The Id. AO relied on statements recorded during survey proceedings u/s 133A of the Act on 11.01.2018 in the case of –

(i) Shri Kiritkumar Dharsibhai Suba, who has been working with Podar Group of Educational Institutions , from the year 1982 as Consultant Chartered Accountant and retainer for financial advisory and for statutory compliances , who had stated that he along with help of other key persons have been facilitating Podar Group in siphoning of funds from Podar Group of Charitable Trusts by making bogus donations to other trusts and taking back the same in cash, after allowing a small percentage of commission for providing such entries. This cash received back was routed through

various dubious companies and bogus transactions and then ploughed back into the companies of Podar Group through Investment Memorandum of Understanding (MOUs) with the bogus companies of Shirish Shah and also in the form of share capital and share premium into other companies of Podar Group including assessee company before us.

(ii) Shri Navin Nishar, a Chartered Accountant, had arranged for the cash to be picked up by his angadia and to be given to Shirish Shah and subsequently the same was introduced into the companies of Podar Group. There was a text message in whatsapp found, which was confirmed by Mr Suba that the said messages were between him and Shri Navin Nishar.

(iii) Shri Dhirubhai Thakkar, associated with Dhara Angadia Services, Ahmedabad , wherein he confirmed the message found in the mobile of Shri Navin Nishar with Dhara Angadiya Services and stated that the communication was between Delhi based branch of Dhara Angadia Services and Shri Navin Nishar for exchange of cash.

(iv) Shri Sureshbhai Thakkar, associated with Dhara Angadia Services, Ahmedabad , wherein he confirmed the message found in the mobile of Shri Navin Nishar with Dhara Angadiya Services and stated that the communication was between Delhi based branch of Dhara Angadia Services and Shri Navin Nishar for exchange of cash.

(v) Shri Shirish Shah, wherein he admitted that Shri Navin Nishar contacted him to acquire certain companies i.e M/s Southmint Real Estate Pvt Ltd , M/s Aansal Securities Services Pvt Ltd, M/s Lakeside Properties Pvt Ltd and M/s Amazing Suppliers Pvt Ltd.

3.6. Further during the course of search proceedings u/s 132 of the Act in the case of Podar Educational Institutions, statement of Shri Jayesh Zanani, Manager Accounts, was recorded u/s 132(4) of the Act on 11.01.2018 and 12.01.2018, wherein he had explained the actual business of the assessee company to be 'Share premium accommodation entry/ FD interest'.

3.7. The Id. AO also relied on the statement recorded from Shri Naresh Kumar Sodhani, Chartered Accountant on 12.01.2018 / 13.01.2018 during the course of survey proceedings at his office premises at Vasundhara Enclave, New Delhi, wherein he had confirmed and affirmed the modus operandi described by Shri Kiritkumar Suba supra.

3.8. The Id. AO thereafter proceeded to examine the veracity of the shareholder companies who had made investment in shares of assessee company. Accordingly, notices u/s 133(6) of the Act were issued to them which were returned unserved. Subsequently, show cause notice was issued to the assessee stating that the assessee company had not proved the three necessary ingredients of section 68 of the Act viz. identity of the shareholders, creditworthiness of shareholders and genuineness of transactions and accordingly why the amount received towards share capital and share premium should not be treated as unexplained cash credit u/s 68 of the Act in the hands of the assessee company.

3.9. In response thereto, the assessee submitted that no addition u/s 68 of the Act could be made in the hands of assessee company in respect of share capital and share premium received from the shareholder companies on the basis of following facts :-

a) All the documents that were pertaining to the shareholder companies as detailed supra have already been submitted before the Id. AO and accordingly, their identity, creditworthiness of shareholder companies and genuineness of transactions are duly proved within the meaning of section 68 of the Act. Further the assessee replied that certificate of incorporation and memorandum & articles of association of the shareholder companies together with their PAN and IT return acknowledgements duly prove the shareholder companies are in existence, thereby proving their identity. From the audited financial statements submitted already, it is evident that the shareholders are financially capable to make investment in assessee company , thereby proving their creditworthiness. From the application form for equity shares, confirmation from shareholder companies confirming purchase of shares, acceptance letter, board resolution of shareholder companies for purchase of shares of assessee company and bank statements of shareholder companies highlighting the payment for purchase of shares, genuineness of transactions are also proved. All the amounts were received through account payee cheques through normal banking channels and no cash transaction was involved at all.

b) The statements of various parties viz. Shri Jayesh Zanani , Shri Kirit Dharsibhai Suba, Shri Navin Nishar, Shri Naresh Kumar Sodhani , Shirish Shah etc have been retracted and the original statements have no evidentiary value in the eyes of law. The various retraction affidavits filed by parties are as under:-

(i) Shri Kirit Dharsibhai Suba on 03.04.2018

(ii) Shri Navin Nishar on 04.06.2018

(iii) Shri N K Sodhani on 30.08.2018

(iv) Shri Jayesh Zanani on 02.04.2018

c) Further assessee was allowed opportunity to cross examine Shri Kirit Dharsibhai Suba, Shri Navin Nishar and Shri N K Sodhani by the Id. AO in his presence and during the course of cross examination, all 3 persons relied on their retracted statements.

d) Statement of Shirish Shah which has been relied upon by the Id. AO was not provided to the assessee at all and hence he could not be cross examined by the assessee in the presence of the Id. AO.

e) Without prejudice to the above, it was submitted that search took place on 09.01.2018 and as on the date of search, the assessment for the Asst Year under consideration had attained finality vide order u/s 143(3) of the Act dated 10.03.2015 and no assessment or reassessment was pending that could be abated as per second proviso to section 153C(1) of the Act. Out of monies received from all the shareholder companies, no addition was made in the scrutiny assessment order framed u/s 143(3) of the Act dated 10.03.2015.

f) During the course of search, no incriminating material was found in relation to the assessee in respect of share application money, share capital or share premium received by the assessee. Reliance was placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Murli Agro Products in ITA No. 36 of 2009 and decisions of Mumbai Tribunal in the case of All Cargo Global Logistics Ltd vs DCIT reported in 137 ITD 287 (SB) (Mum) and ACIT vs Prathibha Industries Ltd reported in 141 ITD 151.

g) No credence could be placed on the statements of Shri Kirit Dharsibhai Suba which was recorded during survey proceedings which does not have any evidentiary value.

- h) Non-attendance of the parties cannot be a ground for treating a transaction as bogus as it is not attributable to the assessee.
- i) It was submitted that during the course of search proceedings in the case of Podar Group, neither any money, bullion, jewellery or other valuable articles or things were seized or requisitioned belonging to the assessee nor any books of accounts or documents, seized or requisitioned belonging to or pertaining to the assessee was found.
- j) In the show cause notice, the Id. AO had not referred to any incriminating material. Only statements of Shri Jayesh Zanani, Shri Kirit Dharsibhai Suba, Shri Navin Nishar , Shri N K Sodhani and Shri Shirish Shah, were relied upon, which stood subsequently retracted by 4 parties. As stated earlier, statement of Shri Shirish Shah was not even furnished to the assessee by the Id. AO. Accordingly, it was argued that statements alone, without any corroborative material on record, cannot form the incriminating material in order to make addition. It was stated that no addition could be made on the basis of statements of third parties.
- k) In para 3 of show cause notice , the Id. AO had relied on the statement of Shri Kirit Suba recorded on 12.01.2018 wherein, he admitted that the cash was introduced in the following companies in the form of share premium i.e M/s Anant Autotools Pvt Ltd ; M/s Goodluck Apparels Pvt Ltd; M/s Goodways Realtors Pvt Ltd ; M/s Parel Graphics Print Pvt Ltd and Shreesai Printing Pvt Ltd. In this regard, it was submitted that the statement of Shri Kirit D Suba recorded during the course of survey u/s 133A of the Act has no evidentiary value. Reliance was placed on the decision of Hon'ble Calcutta High Court in the cae of S P Agarwalla alias Sukhdeo Prasad Agarwalla vs ITO reported in 143 ITR 629 (Cal) and Hon'ble

Delhi High Court in the case of CIT vs Kamadhenu Steel & Alloys Ltd reported in 248 CTR 33 (Del). It was also pointed out that section 133A of the Act does not empower the Id. AO to examine any person on oath and such statement recorded u/s 133A of the Act does not bind the assessee. Moreover, the said statement has been subsequently retracted by Shri Kirit D Suba. Hence no reliance could be placed on the original statement given by him by the Id. AO.

l) It was further submitted that proviso to section 68 of the Act was amended by Finance Act, 2012 with effect from 1.4.2013, wherein any explanation regarding amount received by way of share capital including share premium shall be deemed to be not satisfactory unless the shareholder company also offers an explanation about the nature and source of amounts received. This amendment is prospective with effect from 1.4.2013 and cannot be made applicable for the year under consideration. In any case, the assessee had duly proved the creditworthiness of the shareholder companies together with their respective sources of funds in the instant case and have sufficient capabilities to make investment in shares in the assessee company at a premium.

3.10. The Id. AO however did not heed to the aforesaid contentions of the assessee. He observed that notices u/s 133(6) of the Act sent to the shareholder companies were returned unserved. Hence the identity of the parties are not proved. The assessee was further asked to produce the directors of these shareholder companies, which assessee had failed to do. The Id. AO also placed reliance on the summons u/s 131 of the Act issued by the Investigation wing to some of the parties who had invested in assessee company, for which no replies were received. The Id. AO

noted that he was informed that on carrying out verification of the addresses of said companies, they were found to be non-existing on their registered address. Accordingly, the Id. AO concluded that the transactions of receipt of share capital and share premium from these entities cannot be genuine. The primary onus on assessee to prove the identity, creditworthiness and genuineness had not been proved in the instant case. The Id. AO on verification of various financial statements of the shareholder companies tabulated the details as under:-

Sr.	Name of the party	Income and nature of income	Expenses and nature of expenses	Net Profit (Before Tax)	Issued Share Capital	Share Premium	Unsecured Loan	Investment	Loans and Advance
1	Statford Textile Specialities Ltd - FY 2009-10	34,53,704	33,53,265	1,01,439	41,50,000	3,28,50,000	-	2,65,00,000	90,74,838
2	Nirvana Clothing Private Limited - FY 2009-10	-	48,273	-48,273	61,00,000	5,40,00,000	-	6,00,00,000	-
3	Dipankar Steel Private Limited - FY 2009-10	-	47,509	-47,509	61,00,000	5,40,00,000	-	6,00,00,000	-
4	Kurmi Developers P.Ltd. - FY 2009-10	35,000	47,987	-12,987	61,00,000	5,40,00,000	40,00,000	6,00,00,000	NIL

5	Shree Pawan Exim P.Ltd. - FY 2009-10	36,46,923	35,65,516	81,407	34,00,020	2,97,00,000	-	2,80,00,000	21,00,000
6	Yamroosh Investment Pvt. Ltd. - FY 2009-10	36,20,778	34,04,323	2,16,455	71,10,000	6,30,90,000	4,07,82,000	9,84,00,000	1,31,68,452
7	Arjit Securities Pvt. Ltd. - FY 2009-10	38,47,661	32,95,769	5,51,892	99,00,000	4,30,00,000	6,78,69,650	8,27,10,000	3,76,35,880
8	Terry Towel Industries Ltd - FY 2009-10	36,08,986	33,76,058	2,32,928	1,00,00,000	8,60,00,000	2,52,71,000	6,35,00,000	5,37,54,597
9	Poorvi Realty P Ltd.- FY 2009-10	34,57,244	33,59,259	97,985	1,00,00,000	6,50,00,000	1,17,40,000	7,95,00,000	54,00,000
10	Seatrans Dan Shipping Pvt. Ltd. - FY 2009-10	38,78,265	37,13,080	1,65,185	1,00,00,000	4,50,00,000	98,11,000	4,93,00,000	1,44,68,650
11	Kings Merchants P Ltd. - FY 2009-10	29,96,455	29,33,166	63,289	82,90,000	7,11,00,000	1,96,57,000	6,87,00,000	3,14,09,000
12	Parmatma Tours & Travels Ltd - FY 2009-10	3,20,25,034	3,18,89,143	1,35,891	70,94,000	5,92,83,000	4,09,52,000	9,13,50,000	1,42,06,950
13	Albatross Share Registry P. Ltd. - FY 2011-12	6,83,700	1,98,982	4,84,718	48,33,800	20,74,56,200	-	12,35,53,500	-
14	Oshin Investment & Finance P. Ltd. - FY 2009-10	19,78,45,500	19,77,93,121	52,379	1,00,00,000	48,99,90,200	-	25,92,80,890	20,65,15,000
15	Zeme Realtech P. Ltd. - FY 2009-10	Details not available							

3.11. The Id. AO observed on perusal of various documents related to shareholder companies of all Podar Group of companies including assessee company, in which share capital / premium has been received, that following points are noteworthy:-

*14.3 On perusal of various documents related to shareholders of all Podar group of companies including assessee company, in which huge share capital/ premium has been received, following points are noteworthy:*

*(i) These alleged share applicants are having very meagre or nominal income.*

*(ii) No dividend income from investment in private limited companies has been shown by them.*

*(iii) Salary expenses of these companies are very nominal amount, which shows that not more than one or two employees must have been employed by these companies that too for clerical services.*

*(iv) The income and potential of these alleged share applicants do not justify the high amount of share premium appearing in their reserve and surplus account.*

*(v) The pattern of receipt of money and immediate payment of amount is identical in all the alleged share applicants.*

*(vi) As per information available on [www.MCA.gov.in](http://www.MCA.gov.in) website, the directors of one share applicant company are directors in other share applicant companies too i.e. one common person is director in two or three alleged share applicant companies. (vii) Most of the Investor-companies were struck off as per MCA website.*

*The status of these companies which have allegedly invested in shares of Podar Group companies and name of their directors as per MCA website is tabulated below:*

Name of Shareholder/ investor company	Status of company	Common Director
Nirvana Clothing Private Limited	Strike Off	Narendra Singh
Dipankar Steel Private Limited	Strike Off	Narendra Singh and Akhilesh Gupta
Zeme Real Tech Pvt Ltd	Strike Off	Akhilesh Gupta
Yamroosh Investments Private Limited	Strike Off	Anil Kumar Jain is also director in Parmatma Tours & Travels Ltd.
Seatrans Dan Shipping Pvt. Ltd.	Strike Off	Anshuman Kumavat and Laxmi Prajapat
Kings Merchants P.Ltd	Strike Off	Laxmi Prajapat
Arjit Securities P.Ltd.	Strike Off	Vipin Mehta and Dinesh Jain
Terry Towel Industries Ltd.	Strike Off	Vipin Mehta and Dinesh Jain
Poorvi Realty P Ltd.	under Process of Stike off	
Calculated Infrastructure P . Ltd.	Strike Off	
Shree pawan Exim P.Ltd.	Strike Off	
Statford Textile Specialities Ltd.	Strike Off	
Kurmi Developers P.Ltd.	Strike Off	
Shaksham Enterprises P.Ltd.	Strike Off	
Parmatma Tours & Travels Ltd		Laxmi Prajapat and Anil Jain
Thandeswar Finin Service P Ltd		Deepak Sen and Lakraj Jat
Kasare Fincap Services Pvt. Ltd.		Deepak Sen and Lakraj Jat
Khushi Industries Ltd		Deepak Sen and Lakraj Jat and Navnath Gothai
Shorey Infra Project P. Ltd		Deepak Sen and Lakraj Jat
Ronak Earthmover Ltd		Deepak Sen and Lakraj Jat and Navnath Gothai
Asan Investments & Financial SErVICES P.Ltd.		Navnath Gothai
Albatross Share Registry P. Ltd.		Kishore Patil and Amit Balmiki
Oshin Investment & Finance P. Ltd.		Kishore Patil and Amit Balmiki
Gromore Fund co. Ltd		Naba Kumar Pal and Omprakash Jha and Dhiraj Pathak
Bhaskar Fund Management Ltd.		Naba Kumar Pal and Omprakash Jha and Dhiraj Pathak
Rishi Automation P Ltd		Vikas Birawat
Crown Crops Science P Ltd		Vikas Birawat

(ix) There is a web of transactions in the financials of alleged shareholders to hide the actual transactions and the activity carried out by them.

(x) The applicant companies have invested in Assessee Company and they are still holding the shares of the Company without any benefit for 7-8 years. These companies do not seem to be so cash rich leads to situation where some persons have invested huge sum in the form of share capital at huge premium in the assessee company and simply vanished from the scene without any

*claim of any dividend or even the principal amount. It cannot be believed that a person who has invested such a huge sum in the assessee company, forgets the whole investment, closes its business and becomes untraceable. Now the question occurs whether any prudent businessman will do the same and if so what benefit has been derived to the investing companies. No Prudent Businessmen will invest such huge money without any benefit. It is also not known how these investors came into contact with the assessee company and why they became so generous to invest the fund with the assessee and thereafter went out of scene leaving the fund for the utilization of the assessee for any number of years to come. (xii) The Companies involved are basically bogus companies existing only on Paper and have no activity as such and practically have no Fixed Asset. All the Companies have filed their returns showing meager Income and the creditworthiness of the companies has not been proved. Further most of the investor companies claimed to have received Share Application Money at a huge Premium to its Face Value."*

3.12. The Id. AO further observed that individuals of Podar Group were allotted shares at face value of Rs 10 while other subscribers were allotted the shares at a face value of Rs 10 and premium of Rs 40 per share. When there are no underlying assets in the assessee company, the premium component remain unjustified.

3.13. The Id. AO observed that incriminating material is available which discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed 'accommodation entry providers', whose business is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription, share capital, unsecured loan etc. The involvement of the assessee in such modus operandi is clearly indicated by valid statements of several key persons along with incriminating materials found during search such as deleted excel file retrieved from computer of Mr Jayesh Zanani, Accountant of Podar Group, papers found and SMS chat within intermediaries. The existence of such material shows that the share subscriptions were collected as part of a pre-meditated plan.

3.14. With regard to the retraction affidavits filed by key persons, the Id. AO observed that these affidavits were filed for the first time in appellate proceedings before the Id. CIT(A) in the case of Podar Education Trust for AY 2011-12, Anandilal and Ganesh Podar Society for AY 2011-12 and Goodluck Apparels Pvt Ltd for AY 2011-12 and AY 2012-13. It is noted that retraction affidavit dated 06.09.2018 of Shri Kirit D Suba was not submitted during the reassessment proceedings completed in December 2018 for the reasons best known to the assessee. Similar was the case with other retraction affidavits filed by remaining people. The time lapse of 5 to 8 months in making retraction affidavits evidently exhibit that it is only a well-planned afterthought to suit their line of argument.

3.15. The Id. AO further during assessment proceedings re-examined Shri Kirit D Suba, Shri Navin Nishar and Shri N K Sodhani u/s 131 of the Act on various dates to clarify the doubts created by retraction affidavits. The Id. AO observed that in the re-examination statement, these parties had given general and vague replies and merely relied on the retraction affidavits filed by them while replying to specific questions. The Id. AO gave his detailed observations for rejecting the retraction affidavit filed by Shri Jayesh Zanani. Accordingly, the Id. AO concluded that the retraction affidavits filed by the above parties are not reliable and cannot be treated as evidence.

3.16. With the aforesaid observations, the Id. AO treated the receipt of share capital and share premium of Rs 2.50 crores during the year under consideration as unexplained cash credit u/s 68 of the Act.

4. Before the Id. CIT(A), the assessee apart from reiterating its submissions , met the allegations of the Id. AO. One of the main

submission made by the assessee before the Id. CIT(A) was that the Id. AO had merely extracted the messages found in the mobile of Shri Navin Nishar. It was submitted that there is nothing incriminating against the assessee in the said messages. The said digital evidence, being text messages are dated 29<sup>th</sup> and 30<sup>th</sup> June 2016. In the impugned assessment order, the Id. AO had failed to state as to how the said text messages are connected / related to the assessee company. As per the statement of Shri Navin Nishar, the said text messages are regarding unaccounted cash transactions between two angadias. It was accordingly submitted that it was not clear as to how the assessee could be implicated on the basis of the transactions between two third parties (angadias). Moreover, when the messages are dated 29<sup>th</sup> and 30<sup>th</sup> June 2016, how those messages written in coded form were decoded, who had decoded is not known and how it is relevant for making addition in the hands of the assessee company for the Asst Year 2012-13.

4.1. The assessee further submitted before the Id. CIT(A) that similar additions made in the hands of group company of assessee i.e Goodluck Apparels Pvt Ltd for Asst Years 2011-12 and 2012-13 were deleted by the Id. CIT(A). Accordingly, the Id. CIT(A) in the case of Goodluck Apparels Pvt Ltd deleted the addition made u/s 68 of the Act in the sum of Rs 1,46,70,000/- towards receipt of share capital and share premium. It was observed that same observations were made in the hands of the assessee company also by the Id. AO . Further, the assessee placed reliance on the order of the Id. CIT(A) in the case of yet another group company viz. Hemadri Machine Tools Pvt Ltd, wherein the same addition in respect of share application money was made by the Id. AO and Id. CIT(A) deleted the addition by following the order passed in the case of Goodluck Apparels Pvt Ltd referred to supra. Further the assessee also

placed on record the copy of tribunal order in the case of Hemadri Machine Tools Pvt Ltd in ITA No. 714/Mum/2020 dated 09.08.2021 before the Id. CIT(A) , wherein the revenue's appeal was dismissed by the tribunal. We find that the Id. CIT(A) by placing reliance on the said tribunal order dated 09.08.2021, deleted the addition made in the sum of Rs 2.50 crores in the hands of the assessee company herein. Aggrieved, the revenue is in appeal before us.

5. We have heard the rival submissions and perused the materials available on record. At the outset, we find that the assessee company had received share capital of Rs 2.50 crores at a premium of Rs 40 per share from 15 shareholder companies. The details of the same have already been stated hereinabove. We find that the Id. AO had alleged that the basic modus operandi followed by Podar Group for evading tax was that Trusts belonging to Podar Group gave bogus donations to other trusts. These other trusts in turn returned back cash to Podar Group after deducting their commission which was then introduced into various companies and into the individual accounts of Podar group by layering through a maze of dubious companies and bogus transactions, with the help of entry providers. This is the prime basis of the addition made by the Id. AO. Apart from this, the Id. AO also supported his suspicion with the statements recorded from Shri Kirit D Suba, Shri Navin Nishar and Shri N K Sodhani, who had given their respective statements at the time of survey proceedings u/s 133A of the Act. The law is very clear that the survey party is not empowered to record any statements during the course of survey proceedings u/s 133A of the Act or thereafter. In any case, any statements recorded during survey proceedings does not have any evidentiary value. The law is very well settled on this issue by the decision of Hon'ble Madras High Court in the case of CIT vs M/s Khader

Khan Son reported in 300 ITR 157 (Mad), which has been subsequently upheld by the Hon'ble Supreme Court in 352 ITR 480 (SC). Moreover, it is a fact on record that all these parties had subsequently retracted their statements by way of retraction affidavits filed after a gap of 4 to 8 months from the date of original statements. Similarly, we find that the Id. AO had vehemently relied on the statement recorded u/s 132(4) of the Act from Shri Jayesh Zanani (Manager Accounts) for framing an addition in the hands of the assessee. We find that Shri Jayesh Zanani also had retracted his statement subsequently. Hence a statement once retracted loses its value completely and no reliance could be placed on them. Moreover, when these parties were cross examined by the assessee during the course of assessment proceedings in the presence of the Id. AO, all these parties confirmed the contents stated in their retraction affidavits. Subsequently all these parties were again re-examined by the Id. AO before the completion of assessment. Even in that re-examination proceedings, all the parties reiterated the contents stated in the retraction affidavits. Hence we categorically hold that no addition could be made in the hands of the assessee company by placing reliance on the statements recorded from aforesaid parties, which stood subsequently retracted. With regard to statement of Shirish Shah relied upon by the Id. AO, it is a fact on record that the said statement was never furnished to the assessee for its rebuttal. Hence it has resulted in gross violation of principles of natural justice as it strikes the very foundation of the assessment. The statements of third parties i.e. two angadias relied upon by the Id. AO are totally unrelated to the assessee company and there is absolutely no linkage of the said parties with the assessee company. Hence we hold that no addition could be made in the hands of the assessee by placing reliance on the statements of third parties.

5.1. We find that the Id. CIT(A) had placed reliance on merits on the decision of this Tribunal in the case of Hemadri Machine Tools Pvt Ltd (group concern of the assessee before us) in ITA NO. 714/Mum/2020 dated 09.08.2021 . In the said case, this Tribunal had dealt elaborately the issue of addition made u/s 68 of the Act in respect of share capital and share premium on the very same set of facts. The relevant operative portion of the said judgement is reproduced hereunder:-

*9. As observed by us hereinabove, the primary reason that had weighed with the A.O for holding that the Share premium of Rs. 2.25 crore received by the assessee company was sourced out of the siphoned receipts of the charitable/educational institutions of Podar group, were the statements of certain persons viz. Shri. Kirit Kumar Dharishbhai Suba, Shri. Navin Nishar and Shri. Naresh Kumar Sodani who as observed by us at length hereinabove had in their respective statements recorded during the course of survey proceedings under Sec. 133A initially admitted that they had participated and facilitated the aforesaid nefarious arrangement of laundering of the funds of the aforesaid group. Our aforesaid conviction is all the more fortified from the fact that Shri. Kirit Kumar Dharishbhai Suba (supra) had in his statement recorded during the course of survey action conducted u/s 133A had categorically stated that unaccounted cash amounting to Rs. 2.25 crore was introduced as share premium in the books of the assessee company, viz. Hemadri Machine Tools Pvt. Ltd. However, we find that it remains as a matter of fact borne from the record all the aforementioned persons had thereafter on the basis of their respective „affidavits“ retracted from their earlier statements, viz. Shri. Kirit Kumar Dharishbhai Suba had retracted from the averments made in his statement recorded u/s 131 on 11.01.2018 and 12.01.2018 by filing an „affidavit“, dated 03.04.2018 on a non-judicial stamp paper duly affirmed before a notary; Shri. Navin Nishar retracted from his statement recorded u/s 131 on 11.01.2018 by filing an „affidavit“, dated 04.06.2018; and Shri. Naresh Kumar Sodani had retracted from his statement recorded u/s 131 on 11.01.2018 by filing an „affidavit“, dated 30.08.2018. Apart from that, all the aforementioned persons, viz. Shri. Kirit Kumar Dharishbhai, Shri. Navin Nishar and Shri. Naresh Kumar Sodani had in the course of their cross-examination that was facilitated to the assessee by the A.O at behest of the CIT(A) in the course of the remand proceedings, had once gain filed their duly notarized retraction affidavits dated 26.09.2019, 27.09.2019 & 27.09.2019, respectively, and had clearly stated that their earlier statements recorded u/s 131 of the Act during the course of the survey proceedings should not be relied upon. Although, the A.O had in his remand report, dated 06.11.2019 requested the CIT(A) not to admit the*

*retraction „affidavits“ of the aforementioned persons as additional evidence U/rule 46A, however, we find that the CIT(A) being of the view that the aforesaid „affidavits“ had a material bearing on the adjudication of the issues before him, as well as in all fairness taking cognizance of the fact that as it was only after the receipt of the assessment order that it had come to the knowledge of the assessee company that the A.O had relied upon the statements of Shri. Navin Nishar and Shri. N.K Sodani for making the additions u/s 68 of the Act, had rightly concluded that the retraction affidavits of the said persons were clearly admissible under Rule 46A(1)(c) and Rule 46A(1)(d) of the Income-tax Rules, 1962. Accordingly, we find that the aforementioned persons had clearly by way of their retraction „affidavits“ resiled from their averments made in their respective statements that were recorded u/s 131 of the Act in the course of the survey proceedings. Apart from that, the fact that the aforementioned persons had in the course of their cross-examination relied on their retraction „affidavits“ and had further supplemented the same by filing fresh „affidavits“ dated 26.09.2019, 27.09.2019 & 27.09.2019, proves to the hilt that their earlier averments made in their respective statements recorded u/s 131 of the Act did no more hold the ground any more and could not be acted upon in the absence of any corroborative evidence. At this stage, we may herein observe that the CIT(A) had rightly concluded that despite the retraction and the contradictory statements given by the aforementioned persons in the course of their cross-examination during the remand proceedings, the A.O except for harping on the fact that the said retraction and the contradictory statements of the said persons were a result of an afterthought, had however, neither re- examined the said persons qua their contradictory statements nor placed on record any material which would instill confidence as regards the incorrectness of the facts therein stated, as claimed by the A.O, on the basis of which such retractions were not to be considered. Be that as it may, we concur with the view taken by the CIT(A) that now when the statements of the aforementioned persons had been retracted, therefore, in was all the more onerous on the part of the A.O to substantiate on the basis of supporting/corroborative material that the averments made by the said persons in their respective statements recorded u/s 131 of the Act on 11/12.01.2018 revealed the correct state of affairs. We, thus, in the backdrop of our aforesaid observations are of the considered view that pursuant to the retraction of their respective statements by the aforementioned persons, it was obligatory on the part of the A.O to substantially corroborate the same by other independent and cogent evidence in support of the facts so claimed by him. Our aforesaid view is fortified by the following judicial pronouncements :*

*(i). Vinod Solanki Vs. Union of India (2008) (16) Scale 31*

*(ii). Kailashben Manharlal Chokshi Vs. CIT (2008) 174 Taxman 466 (Gujarat)*

*(iii). CIT, Ranchi Vs. Ravindra Kr. Jain (2011) 12 taxmann.com 257*

(iv). *M. Narayanan & Bros. Vs. ACIT (2011) 13 taxmann.com 49 (Mad)*

(v). *ACIT Vs. Jorawar Singh M. Rathod (2005) 148 taxman 35 (Ahd)(Mag)*

(vi). *Shree Chand Soni Vs. DCIT (2006) 101 TTJ (Jd) 1028*

(vii). *Basant Bansal Vs. ACIT, Jaipur [63 Taxmann.com 199]*

(viii). *ACIT Vs. Shri. Johari lal Sodhani [ITA 145/Jp/2013]*

(ix). *First Global Stockbroking Pvt. Ltd. [115 TTJ 173](Mum) In fact, we find that the CBDT in its Instruction F. No. 286/2/2003-IT (Inv-II), dated 10th March, 2003, had itself stated that during the course of search and survey proceedings the officials should abstain from laying undue emphasis on recording statements or obtaining confessions regarding undisclosed income, but focus should be on collection of evidence of undisclosed income. Further, the aforesaid directions were once again reiterated by the CBDT in its Circular F.No. 286/98/2013-IT, dated 18.12.2014. We, thus, in terms our aforesaid observations concur with the view taken by the CIT(A) that as the A.O pursuant to the retraction of their respective statements by the aforementioned persons, viz. Shri. Kirit Kumar Dharishbhai, Shri. Navin Nishar and Shri. Naresh Kumar Sodani, had failed to place on record any corroborative material which would substantiate that the averments made by them in their original statements recorded u/s 131 of the Act on 11/12.01.2018 i.e during the course of the survey proceedings revealed the correct facts, therefore, his hollow claim that the retraction of the aforementioned persons being a result of an afterthought be not admitted, does not merit acceptance. Alternatively, we also concur with the view taken by the CIT(A) that as the statements of the aforementioned persons, viz. Shri. Kirit Kumar Dharishbhai, Shri. Navin Nishar and Shri. Naresh Kumar Sodani were recorded in the course of the survey action conducted against them u/s 133A of the Act on 11/12.01.2018, therefore, as the A.O is not authorised to administer oath and record a sworn statement u/s 133A of the Act, hence, the said statements did not carry any evidentiary value. Our aforesaid views is fortified by the judgment of the Hon"ble High Court of Kerala in the case of Paul Mathews & Sons Vs. CIT (2003) 263 ITR 101 (Ker) and that of the Hon"ble Supreme Court in the case of CIT Vs. S. Khader Khan Son (2012) 25 taxmann.com 413 (SC).*

9. Apart from that, we also find ourselves in agreement with the view taken by the CIT(A) that no incriminating material had been placed on record by the department which would evidence that the funds of the charitable/educational institutions of Podar group were, inter alia, routed as Share premium in the books of accounts of the assessee company before us. As observed by us hereinabove, the CIT(A) while calling for a remand report from the A.O had specifically directed him to provide copies of the incriminating material, if any, found during the course of the search operation in relation to the additions made in the assessment order i.e

*incriminating material which would evidence siphoning off the trust funds and introduction of the same as share premium in the books of account of the assessee company., However, the A.O in his remand report had only placed reliance on the assessment order and no incriminating documents whatsoever were furnished by him. It was observed by the CIT(A) that the A.O while passing the assessment order as well as in his remand report had merely relied upon a so called digital evidence i.e a text message dated 29th & 30th June, 2016 between Shri. Navin Nishar and Shri. Kirit Kumar Dharishbhai Suba, which was clarified by Shri. Navin Nishar in his statement recorded u/s 131 on 11.01.2018 as a communication qua certain cash transactions between Shri. Sirish Shah's Angadia/cash handler and Angdia/cash handler of Shri. Kirit Kumar Dharishbhai Suba. Referring to the said so called digital evidence, it was observed by the CIT(A) that the same was not only by any means found to be related to the assessee company, but even otherwise the date borne on the same i.e 29th & 30th June, 2016 was relevant to A.Y 2017-18 and not the year under consideration. In the backdrop of the aforesaid facts, we concur with the observation of the CIT(A) that no incriminating material was found in the course of the search proceedings which would evidence that the receipts of Podar trusts were routed to the assessee company in the garb of share premium during the year under consideration. Although it is a matter of fact that no incriminating material had surfaced in the course of the search proceedings which would irrefutably evidence that the Share premium of Rs. 2.25 crore received by the assessee company during the year under consideration wassourced out of the receipts of charitable/educational institutions of Podar group, however, even otherwise as the so called „digital evidence“ i.e text message retrieved from the mobile phone of Shri. Navin Nishar dated 29th & 30th June, 2016, was not found from the possession of the assessee, therefore the presumption contemplated in Sec. 132(4A) and Sec. 292C could also by no means be invoked and used against the assessee for drawing of adverse inferences qua the transaction of receipt of share premium of Rs. 2.25 crore by the assessee from duly identified 19 share subscribers. We find that the CIT(A) had observed that the A.O while verifying the genuineness of the donations given by the charitable/educational trusts of Podar group to other charitable/educational trusts or institutions had received replies from all the donee trusts to whom notices were issued u/s 133(6) of the Act and there were no shortcomings in the documents submitted by them. Also, we find that it was observed by the CIT(A) that the A.O had failed to bring on record any such case where the exemption certificate of any of the donee trust was cancelled on the ground that it had acted as a facilitator for siphoning off the receipts of charitable/educational institutions of Podar group. On the contrary, we find that as observed by the CIT(A) that on the issue of siphoning of funds by the donee trusts there was no adverse observation by the A.O in his remand report. In the backdrop of the aforesaid facts, we are of a strong conviction, that now when the genesis of the controversy leading to the adverse inferences qua the genuineness of the share premium received by the assessee company i.e genuineness of the*

*donations received by the donee trusts/institutions/trusts have not been disproved by the department, therefore, the very story of siphoning of funds of charitable/educational institutions of Podar trusts falls to ground, and thus, no adverse inferences on the said ground could have validly been drawn on the said basis in the hands of the assessee company.*

*10. We shall now advert to the observation of the CIT(A) that the assessee had duly discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the shareholders and the genuineness of the transactions of receipt of share premium. As is discernible from the records, we find that the assessee had in the course of the proceedings before the lower authorities furnished documentary evidence to substantiate the authenticity of receipt of share premium from the 19 share subscribers, viz (i). statement showing the details of share capital and share premium received during the F.Y 2010-11 stating the names, address, PAN of the applicant of shares, amount of share capital, date of application for subscribing the shares, number of shares allotted, amount of share capital, amount of premium on the total amount received, details of share capital and share premium, copy of board resolution for allotment of 5,00,000 shares, copies of letters of the applicant companies seeking allotment of equity shares, copies of the letters confirming the allotment of equity shares to the applicant companies, copy of share valuation report issued by registered valuer, viz. D.N Shetty & Co, dated 22.04.2010 under DCF method, copy of bank statement evidencing that the application money was received from the share applicants through banking channel, copy of certificate of incorporation, certificate of commencement of business, copy of PAN card, memorandum of association, articles of association, resolution passed by applicants of shares in the board meeting, application for shares and confirmations from all the 19 share applicants. In the backdrop of the aforesaid facts, we concur with the view taken by the CIT(A) that as the assessee had placed on record substantial material evidencing the identity and creditworthiness of the share applicants, as well the genuineness of the transactions in question, therefore, the primary onus that was cast upon it was duly discharged and stood shifted upon the revenue. On a perusal of the records, we find that the A.O had at no stage doubted or dislodged the authenticity and veracity of the aforesaid documentary evidence that was filed by the assessee to substantiate the authenticity of the transaction of having received share capital and share premium from the aforementioned 19 parties. We find that though the A.O had accepted the receipt of share capital of Rs. 25 lac by the assessee company from the aforementioned share subscribers, however, he had without giving any justifiable reason drawn adverse inferences as regards the other part of the transaction i.e share premium of Rs. 2.25 crore and had added the same as an unexplained cash credit u/s 68 of the Act in the hands of the assessee. In our considered view, as observed by the CIT(A), and rightly so, there was no justification on the part of the A.O to hold the share capital received by the assessee from the 19 share applicants as genuine, while for at the same time adopt an inconsistent approach and*

*treat the share premium received from the same shareholders as bogus. Qua the share premium charged by the assessee company, we are in agreement with the observation of the CIT(A) that as the same was duly supported by the valuation report of a registered valuer, viz. D.N Shetty & Co., therefore, it could not have been summarily scrapped or discarded by the A.O. As observed by us hereinabove, not only the assessee had by placing on record clinching documentary evidence substantiated the identity and creditworthiness of the share subscribers and the genuineness of the transactions in question, the same as observed by us hereinabove had not been disproved or dislodged by the A.O. As a matter of fact, we find that the A.O had at no stage i.e in the course of the assessment proceedings or in the remand proceedings ever issued notices under Sec. 133(6) or summons u/s 131 of the Act to the share subscribers, despite the fact that their complete details were available with him. We, thus, are of the considered view, that not only the assessee had on the basis of irrefutable documentary evidences substantiated to the hilt the authenticity of the transaction of receipt of share premium, rather, the A.O by not carrying out any verifications can safely be held to have not carried any doubts as regards the genuineness and veracity of the documents filed by the assessee before him. Accordingly, in the backdrop of the aforesaid facts, we are of a strong conviction that as the assessee by placing on record substantial documentary evidence, viz. name, PAN, address, copies of share application forms, board resolution, acknowledgement of income-tax returns, Form No. 2 for allotment of equity shares, financial statements, form of allotment of shares etc. had duly discharged the onus that was cast upon it and proved the identity, genuineness and creditworthiness of the share applicants, which had not been dislodged or disproved by the A.O by carrying out any independent enquiries, therefore, the CIT(A) had rightly concluded that the A.O bypassing such clinching documentary evidences filed by the assessee could not have held the share premium of Rs. 2.25 crore as an unexplained cash credit within the meaning of Sec. 68 of the Act.*

*11. We shall now deal with the observation of the CIT(A) that as the „Proviso“ to Sec. 68 had been made available on the statute vide the [Finance Act, 2012](#) w.e.f 01.04.2013, which therein provides that in a case where any sum credited in the books of account of an assessee company consists of share application money, share capital, share premium or any such amount by whatever name called, it is obligatory for the person, being a resident in whose name such credit is recorded to offer an explanation to the satisfaction of the A.O about the nature and source of such sum so credited; is applicable prospectively i.e w.e.f A.Y 2013-14, therefore, it would not be applicable to the case of the present assessee for A.Y 2011-12. As observed by the ld. CIT(A), and rightly so, the „Proviso“ to Sec. 68 is applicable prospectively i.e w.e.f 01.04.2013, and thus, the same would not be applicable to the case of the assessee before us. Our aforesaid view is fortified by the judgment of the Hon“ble High Court of*

*Bombay in the case of CIT Vs. Gagandeep Infrastructure (P) Ltd. (2017) 394 ITR 680 (Bom), wherein it was observed as under :*

*"We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. 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 pre-amended 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."*

*Further, we concur with the view taken by the CIT(A) that now when the assessee had filed with the A.O the complete details of the 19 share subscribers, viz. names, address, PAN nos., confirmations etc., and still if the A.O was of the view that the share premium was received by the assessee from bogus shareholders, then, it was open for him to proceed against such share subscribers and could not have assessed the said amount as an unexplained cash credit in the hands of the assessee company. Our aforesaid view is supported by the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Export Pvt. Ltd. (2008) 216 CTR 195 (SC). Also a similar view qua the pre-amended Sec. 68 of the Act i.e the assessee can be asked to prove the source of credit in books, but cannot be asked to prove the source of the source has been taken in the following judicial pronouncements :*

- (i). Murlidhar Lahorimal Vs. CIT (2006) 280 ITR 512 (Guj)*
- (ii). Labh Chand Bohra Vs. ITO (2008) 219 CTR 571 (Raj)*
- (iii). CIT Vs. Dwarkadish Investment Pvt. Ltd. (2011) 330 ITR 298 (Del)*

- (iv). *Sarogi Credit Corporation Vs. CIT (1976) 103 ITR 344 (Pat)*
- (v). *Aravali Trading Co. Vs. ITO (2008) 220 CTR 622 (Raj)*
- (vi). *Nemi Chand Kothari Vs. CIT (2004) 3264 ITR 254 (Gau)*
- (vii). *CIT Vs. Vacmet Packaging (India) Pvt. Ltd. (2014) 367 ITR 217 (All)*
- (viii). *CIT Vs. Orissa Corporation P. Ltd. (1986) 159 ITR 78 (SC)*
- (ix). *CIT Vs. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Del)*
- (x). *CIT Vs. Creative World Telefilm Ltd. (2011) 333 ITR 100 (Bom)*
- (xi). *CIT Vs. Value Capital Services Ltd. (2008) 307 ITR 334 (Del)*
- (xii). *DCIT Vs. Rohini Builders (2002) 256 ITR 360 (Guj)*
- (xiii). *CIT Vs. Apex Therm Packaging Pvt. Ltd. (2014) 222 Taxman 125 (Guj)*
- (xiv). *Orient Trading Co. Ltd. Vs. CIT (1963) 49 ITR 723 (Bom)*
- (xv). *CIT Vs. Ranchhod Jivabhai Nakhava (2012) 208 Taxman 35 (Guj)*
- (xvi). *PCIT Vs. Paradise Inland Shipping Pvt. Ltd. 84 taxmann.com 58 (Bom)*
- (xvii). *CIT Vs. Sahibganj Electric Cables Pvt. Ltd. (1978) 115 ITR 0408 (Cal)*

*Accordingly, in the backdrop of the facts of the case r.w the settled position of law, we are of the considered view that as the assessee had beyond doubt on the basis of substantial material filed with the A.O proved the identity, creditworthiness and genuineness of the transactions in question, therefore, the share premium of Rs. 2.25 crore received by it from the aforementioned 19 share subscribers could not have held as an unexplained cash credit within the meaning of Sec. 68 of the Act. We, thus, finding no infirmity in the view taken by the CIT(A) who had rightly held that as the assessee had duly discharged the onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of transactions in question, therefore, the share premium of Rs. 2.25 crore received from the 19 share subscribers could not have been assessed as an unexplained cash credit u/s 68 of the Act, uphold his view.*

*12. We, thus, in the backdrop of our aforesaid deliberations, finding no infirmity in the very well reasoned order of the CIT(A), uphold the view taken by him that the share premium of Rs. 2.25 crore received by the assessee during the year under consideration could not be held as an unexplained cash credit within the meaning of Sec. 68 of the Act. Accordingly, finding no merit in the appeal of the revenue we dismiss the same.*

*13. Resultantly, the appeal of the revenue being devoid and bereft of any merit is dismissed.*

5.2. Respectfully following the aforesaid order, we do not find any infirmity in the order passed by the Id. CIT(A) and accordingly , the grounds raised by the revenue are dismissed.

**6. In the result, the appeal of the revenue is dismissed.**

Order pronounced on 07/09/2022 by way of proper mentioning  
in the notice board.

**Sd/-**  
**(AMIT SHUKLA)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 07/09/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai