

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1178/Del./2021
(ASSESSMENT YEAR : 2009-10)**

DCIT, CC – 15,
New Delhi.

vs.

BDR Builders & Developers P. Ltd.,
B-393, Zakir Nagar SO,
South East Delhi,
New Delhi – 110 025.

(PAN : AACCB3977G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Gupta, Advocate
Shri Somil Agarwal, Advocate
REVENUE BY : Shri Kanav Bali, Sr. DR

Date of Hearing : 11.10.2022

Date of Order : 21.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id.
CIT (Appeals)-26, New Delhi dated 05.01.2021 for the assessment year
2009-10.

2. The grounds of appeal taken by the Revenue read as under :-

“1. On facts and circumstances of the case and in law the Ld. CIT (A) has erred deleting the addition of Rs.2,25,00,000/- made by AO on account of unexplained source of source of Share Capital and Share Premium u/s 68 of the Income Tax Act, 1961.

2. (a) The Ld. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.”

3. This is second round of appeal before the ITAT. In the first round, the matter had already travelled before the ITAT and ITAT had remanded the matter to the file of AO with certain directions. Hence we find it gainful to refer to the facts of the case in the first round appreciated by the ITAT as under :-

“This appeal filed by the assessee is directed against the order dated 30.09.2013 of the CIT (A) –XII, New Delhi relating to A. Y. 2009-10.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of land. It filed its return of income on 24.07.2009 declaring total income of Rs.5,63,0003/-. During the course of assessment proceedings the Assessing Officer observed that the assessee company during the year has shown to have received share capital of Rs.2,25,00,000/- which included share premium of Rs.1,96,00,000/- on sale of 45,000 nos. of shares of the face value of Rs.10/- per share with premium of Rs. 490/- per share from the following companies / persons, the details of which are as under :-

S. No.	Company/ Persons name	No. of share	Face value per share	Premium per share	Total (Rs.)
1.	M/s. VIP Leasing and Finance co. (P) Ltd.,	10000/-	10/-	490/-	50,00,000/-
2.	M/s. Delhi Housing Development Ltd.	10000/-	10/-	490/-	50,00,000/-
3.	M/s. Euro Asia Mercantile (P) Ltd.	10000/-	10/	490/-	50,00,000/-
4.	Sh. Rohit Mathur	15000/-	10/	490/-	75,00,000/-
				Total	2,25,00,000/-

3. From the inquiries conducted in the case of above 3 companies, it was found that these 3 companies are not doing any real business and are engaged in the business of providing accommodation entries. There is negligible profit shown by these 3 companies though their balance sheets show huge share premium reserves on one side and investment in unquoted shares on the other sides. The Assessing Officer analyzed the summary details of the balance sheets of these 3 companies as on 31.03.2009 the summary of which is as under :-

Particulars	M/s. Euro Asia Mercantile (P) Ltd.	M/s. Delhi Housing Development	M/s. VIP Leasing and Finance Co.
As on			

31.03.2009		Ltd.,	(P) Ltd.
Issued subscribed and paid up capital	4,82,00,000/-	30,10,000/-	1,93,54,900/-
Share premium	43,29,00,000/-	26,91,32,000/ -	15,21,00,000/-
Profit / (Loss)	42,084/-	(10456/-)	(2357370/-)
Quoted shares	--	--	115000/-
Un- Quoted shares	46,40,27,500/-	7,99,00,000/-	1,66,00,000/-
Other Current Assets	1,69,02,156/-	1,92,23,65,54 4/-	29,09,911/-

3.1 Rohit Mathur was also summoned by the Assessing Officer for verification about the genuineness of this transaction. Although he did not appear before the Assessing Officer on the appointed date, however, a written letter was received from him confirming the purchase of these shares.

3.2 The Assessing Officer noted that the above companies from whom huge share premium was received have transferred their entire share holding to the companies connected with the assessee company and their confidants. The Assessing Officer asked the assessee to intimate whether shares allotted to the above persons still exist in their names or have been sold to someone else. From the details filed by the assessee he noted that the shares have been sold by the above 3 companies to the following transferees. The rate at which these shares were sold and the addresses of the transferees were, however, withheld.

Name of the transferor	Name of the Transferee	No. of shares
M/s. VIP Leasing and Finance co. (P) Ltd.	Gulab Buildtech (P) Ltd.	10000
M/s. Delhi Housing Development Lt.d	Verma Buildtech & Promoters (P) Ltd.	10000
M/s. Euro Asia Mercantile (P) Ltd.	Gulab Buildtech Ltd.	10000

4. The addresses of the transferee companies were located by the Assessing Officer from the ROC website and enquiries were got conducted through the ward inspector. From the said enquiry it transpired that M/s. Gulab Buildtech (P) Ltd. is a concern controlled by the assessee's family and also running from the premises no. 31, Jangpura Road, Bhogal, New Delhi which belongs to the family of the assessee. The other 2 companies namely Verma Buildtech & Promoters (P) Ltd and Gulab Buildtech (P) Ltd. though operating from a different address in Green Park, New Delhi are close confidantes of the assessee company. Though the inspector could contact the

Director of M/s. Verma Buildtech & Promoters (P) Ltd. at Green Park address but he was also evasive in intimating the rates at which the shares were purchased by them. He, therefore, was of the opinion that these companies are also in collusion with the assessee company. In view of the above, the Assessing Officer held that this is the money of the assessee which was rotated through the accounts of the above companies and these credits in the books of accounts of the assessee, in the shape of share capital / share premium are un-explained and accordingly liable to be added to total income of the assessee. Rejecting the various explanation given by the assessee and distinguishing the various decisions cited before him, the Assessing Officer invoked the provisions of section 68 of the IT Act and made addition of Rs. 2,25,00,000/- to the total income of the assessee on account of the share premium of Rs. 2,20,50,000/- and the share capital of Rs.4,50,000/-.

5. Before the Ld. CIT (A) it was submitted that the assessee, during the course of assessment proceedings, had furnished the names and addresses of the share holders and proved their identity, credit worthiness and genuineness of the transaction by filing the copies of their confirmations, bank statements from where the share application money had been received, copies of their balance sheets, acknowledgment of return of income to show that each of the share holder was assessed to tax with their PAN number etc. It was submitted that Euro Asian Mercantile Private Limited is an existing company which is assessed to income tax vide PAN Number AABCE 7522 P and that it was duly registered under the Companies Act, having CIN No.U 74999DL 2007 PTC 160643. It was further explained that copy of the share application form as well as the bank account of the investor company had already been filed before the Assessing Officer and that the share application money was received through banking channels through a pay order which was drawn on the same bank account. It was explained that the address given on the bank statement was also the same as was furnished to the Assessing Officer. The assessee company also filed a copy of the balance sheet of the investor company namely Euro Asia Mercantile Private Ltd. and drew the attention of the Ld. CIT (A) to schedule III of the Balance Sheet where the investment made by that company in the shares of the assessee company was duly shown. The assessee company also submitted a copy of Form No.2 which is the return of allotment filed before ROC and submitted that share certificate No.55 bearing distinctive Nos. 1795001 to 1805000 had been issued to the investor company.

6. As regards the individual shareholder Shri Rohit Mathur is concerned, it was submitted that this shareholder had also sent a letter dated 14.11.11 to the Assessing Officer confirming the investment in the assessee company and had also sent his bank account as well as copy of the physical share certificate and his income tax particulars to the Assessing Officer. The copy of the letter sent by Shri Rohit Mathur to the Assessing Officer which was obtained by the assessee from him was also filed before the Ld. CIT (A) to show that Shri Rohit Mathur had duly responded to the notice of the Assessing Officer.

7. As regards Delhi Housing Development Private Ltd. is concerned it was submitted that this shareholder had also directly replied to the A.O. vide his letter dated 28.11.11 confirming the investment in the assessee company and it was thus explained that this shareholder had also directly responded to the notice / summon of the Assessing Officer. The assessee also filed a copy of the balance sheet of this shareholder.

8. As regards VIP Leasing & Finance Private Ltd., the assessee furnished copy of current company master data of that company and submitted that this shareholder had shifted its office and the new address was submitted along with a copy of the audited balance sheet of that company filed by them in the ROC. It was also pointed out that the complete income tax particulars and bank statement of that company had already been submitted by the assessee to the learned Assessing Officer and was available on his record.

9. Various decisions were also cited before the CIT (A) to the proposition that when the assessee satisfactorily establishes the identity and credit worthiness of the share holder and the genuineness of the transaction by furnishing the full details alongwith the permanent account numbers of the share holders, copies of their bank accounts showing the credit worthiness and the genuineness of the transaction, then in that case the onus to disprove the same shifts to the revenue. It was accordingly argued that since the assessee has discharged the onus cast on it and nothing adverse was brought on record by the Assessing Officer, therefore, the addition made by the Assessing Officer has to be deleted.

10. Based on the arguments advanced by the assessee, the Ld. CIT (A) deleted the addition by observing as under :-

“I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant. The Assessing Officer has added Rs.2,25,00,000/- on account of unexplained credits to the income of the assessee holding that this is the money of the assessee rotated through the accounts of the said companies (as mentioned in the assessment order and submissions) and the credits in the books of accounts of the assessee, in the shape of share capital/share premium are unexplained and accordingly liable to be added to the total income of the assessee. Whereas the AR of the appellant has vehemently contended that the addition u/s 68 cannot be made in the hands of the appellant company for shares allotted to the outsiders once their identity is proved.”

All the shareholders were duly existing income tax payees and their identity and creditworthiness stood proved from the copies of the income tax return acknowledgements, PAN numbers, copies of bank statements and the genuineness of the transactions stood proved from the fact that each of them had duly confirmed the fact of having invested share capital in the assessee company and each of them had paid the share capital through normal banking channels. Further the Assessing Officer has not brought on record any material to prove that the transaction of issue of share capital to any of the four holders is an accommodation entry. It is evident that the appellant

company had duly discharged its onus to prove the receipt of share capital money. The appellant has duly proved that the share capital was received from identified and existing persons who have invested said amounts out of their own bank accounts and have confirmed the factum of such investment directly to the Assessing Officer and have also filed copies of their bank accounts and balance sheets to prove their creditworthiness and genuineness of the transactions.

The Hon'ble High Court of Delhi in the case of Fair Finvest Limited in ITA No. 232/2012 dated 22.11.2012 has decided the same issue in the favour of the appellant referring to the ratio of the decision of the Supreme Court in Lovely Exports. Facts of the case being the same this order of the Hon'ble High Court is applicable in the case of the appellant.

Further the Hon'ble Delhi High Court in the case of Gangeshwari Metal Private Limited in ITA No.597/2012 dated 21.01.2013 has allowed the same issue in favour of the appellant by relying upon the Hon'ble Supreme Court judgement in the case of Lovely Exports Private Limited. Facts of the case being the same this order of the Hon'ble High Court is applicable in the case of the appellant.

In view of the facts of the case and the legal position in the aforementioned cases I am of the opinion that the appellant has proved the creditworthiness and the genuineness of the transactions that the share capital was received from identified and existing persons who have invested said amounts out of their own bank accounts and have also filed copies of their bank accounts and balance sheets to prove their creditworthiness and genuineness of the transactions.

In view of this the addition of Rs.2,25,00,000/- made to the income of the appellant as unexplained credit is held as explained and genuine and accordingly the same is directed to be deleted. Grounds raised in appeal are allowed.”

4. Thereafter, ITAT noted the Revenue's grounds of appeal before it.

It further noted certain chronology of events as referred by the Id.

Counsel of the assessee as under :-

“13. The Ld. Counsel for the assessee on the other hand heavily relied on the order of the CIT (A). The Ld. Counsel for the assessee drew the attention of the bench to the following chronology of events :-

S. No.	DATE	PARTICULARS
1.	28.12.2011	Assessment concluded by DCIT CC 17 u/s 143 (3) making an addition u/s 68 of 2.25 Cr in respect of share capital received from 4 parties
2.	30.09.2013	Order of Hon'ble CIT (A)-XII, wherein relief was allowed against the entire addition.

3.	02.01.2014	Search proceedings u/s 132 of the I. T. Act conducted on the assessee company.
4.	11.03.2014	During the post search investigations notices issued to the 4 parties and the requisite compliance made by the shareholders No adverse inference drawn.
5.	Jan-Feb 2016	Notices issued to the 4 parties u/s 133 (6) of the I. T. Act during the course of the assessment proceeding u/s 153 A / 143 (3) by ACIT, CC-15
6.	31.03.2016	Order u/s 153 A/ 143 (3) passed by the ACIT, CC-15 accepting the returned income of the assessee company.

5. Thereafter, the ITAT referred to the submissions of the assessee and Revenue and held as under :-

“18. We have considered the rival arguments made by both the sides perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case made addition of Rs. 2.25 crores being share capital and share premium received by the assessee from the four parties the details of which are given at paragraph No.2 of this order. While doing so he invoked the provisions of section 68 of the IT Act on the ground that this is the money of the assessee which was routed through the accounts of the above companies and such share capital and share premium are unexplained. We find the Ld. CIT (A) deleted the addition, the reason for which has already been reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for the assessee that the assessee has discharged the onus cast on it and therefore, the Ld. CIT (A) was justified in deleting the addition. It is an admitted fact that the assessee, during the course of assessment proceedings, had filed the copies of the income tax returns, complete details of the names and addresses of the persons and the companies who have invested in the shares of the assessee company alongwith their bank statements and copies of balance sheet, income tax return acknowledgment, pan number etc. It is to be noted here that subsequent to the order passed by the CIT (A) a search u/s. 132 of the IT Act was conducted at the premises of the assessee. During the post search inquiries conducted by the investigation wing the four persons have filed the requisite details before the DDI (investigation) confirming investments made by them in the shares of the assessee company. Such details are filed at page No. 195 to 264 of the paper book. Further during the course of assessment proceedings u/s. 153 A / 143 (3), the four parties have filed the requisite details in response to notice u/s 133 (6) of the IT Act as called for by the Assessing Officer. We find the Assessing Officer in the order dated 31.03.2016 passed u/s 153 A / 143 (3) has accepted the returned income and not made any addition on account of such share capital and share premium by recording as under

“Original return in this case was filed on 24.07.2009 declaring income of Rs. 5,63,003/- which was processed u/s 143 (1) of the Act. Assessment u/s 143 (3) of the Act was completed in this case vide order dated 28.12.2011 at total income of Rs.2,30,63,003/- which was reduced to Rs.5,63,003/- as per order u/s 250/143(3) dated 13.11.2013. Subsequently, action u/s 132 of the Act was carried out in this case on 02/03.01.2014 and various books of accounts/ documents etc. were found and seized. Notice u/s 153 A of the Act was issued on 22.4.2015 requiring the assessee to file the return of its income within 15 days of the receipt of the said notice. In response to notice u/s 153 A of the Act the assessee filed the copy of the original return vide its letter dated 05.05.2015. Notice u/s 143 (2) was issued on 21.09.2015. Notice u/s 142(1) with questionnaire was also issued on 21.09.2015. In response to the statutory notices Shri S. P. Jain, CA and Shri Rajesh Gupta AR of the assessee attended the proceedings from time to time, filed the required details which were examined and placed on record. The case was discussed with them.

During the year the assessee company was engaged in the development and construction of residential properties.

After discussion with the ARs of the assessee company income already assessed at Rs.5,63,003/- u/s 250/143 (3) vide order dated 13.11.2003 is accepted u/s 153A/143(3) of I. T. Act.

Assessed u/s 153 A/ 143 (3) at Rs.5,63,003/-. Charged interest u/s 234A,B,C &D as applicable. Demand notice u/s 156 of the Act issued. Credit for prepaid taxes has been given.

The order passes with the approval of the Joint Commissioner of Income Tax, Central Range-IV, New Delhi as accorded by him vide letter F. No. JCIT/CR-4/2015-16/1687 dated 31.03.2016.”

19. From the above it is very clear that no adverse material was found during the course of search or post search inquiries to establish that the assessee has received any bogus share capital or share premium. However, these are all subsequent to the order passed by the CIT (A) and neither the Assessing Officer nor the CIT (A) had the benefit of all these details where in all the parties have responded to the inquiry conducted by the investigation wing as well as responded to the notice issued u/s 133 (6) by the Assessing Officer during the search assessment proceedings. Under these circumstances we deem it proper to restore the issue to the file of the Assessing Officer with the direction to go through the enquiries conducted by investigation wing of the department as well as the enquiry conducted by the Assessing Officer in the 153A proceedings in respect of the above 4 parties. In case nothing adverse has been found, the Assessing Officer shall delete the addition. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per law in the light of our above observations. The grounds raised by the revenue are accordingly allowed for statistical purposes.

20. In the result, the appeal filed by the revenue is allowed for statistical purposes.”

6. Consequent upon the aforesaid direction of the ITAT, AO took up the matter. AO noted that as per the direction of the ITAT, notice under section 142 (1) of the Income-tax Act, 1961 (for short 'the Act') was issued to the assessee on 22.08.2019 vide which opportunity of being heard and to represent its case was allowed to the assessee. AO noted that in response to this notice, the assessee has filed a letter dated 09.09.2019 along with various details which were examined by AO and placed on record. AO further noted that the details filed have been examined with reference to the investigation made during assessment proceedings u/s 143 (3) and the details filed by the assessee during search proceedings before the Investigation Wing. AO noted that so far as the replies filed by the assessee before the investigation wing, it is seen that these are the same replies which were filed by the assessee before the AO during the assessment proceedings u/s 143 (3) and, therefore, the investigation made by the AO during assessment proceedings u/s 143 (3) are relevant. Thereafter, he discussed the same. AO repeated the findings of the earlier AO and noted the submission that since additions made in the order u/s 143(3) on 28.12.2011 were sub-judice as the matter is pending before the ITAT during proceedings u/s 153A of the Act completed on 31.03.2016, no enquiries were made in respect of share

capital/premium, therefore, there is no question to consider the same as per the direction of the ITAT. Thereafter, AO concluded as under :-

“ In view of these facts the whole share capital/share premium amounting to Rs.2,25,00,000/- (Rs.2,20,50,000/- share premium and Rs.4,50,000/- share capital) is treated and will be added to the income of the assessee u/s 68 of the Income Tax Act, 1961. The fact is, as even Investigation Wing has already established in various cases of accommodation entries, it is evident process of layering and trailing of funds come to in the accounts above mentioned four closely, family linked persons/entities from assessee company has taken accommodation beneficiary entries total amounting to Rs.2,25,00,000/- in guise of share premium.”

7. Thereafter, ld. CIT (A) referred to the written submissions and paper book of the assessee. He noted that various details were provided and examined in post-search investigation and that none of these items were referred to by the AO. The order of ld. CIT (A) in this regard may be gainfully referred as under :-

“5.3 On perusal of the written submissions and paper book of the appellant, it is observed as under:

(i) In the copy (submitted by appellant) of questionnaire dated 21.9.2015 during the assessment proceedings u/s 153A, the AO had asked in Q No 4 as under:

"4. Please furnish the original copy of P & L A/c and balance sheet in the conventional form alongwith detailed schedules and tax audit reports with all annexures, as applicable."

(ii) As per the copy of reply (received in the office of ACIT, CC-15 on 28.10.2020) submitted by the appellant to the AO, the appellant had filed requisite details and submitted as under:

"The details of share capital for the year under consideration alongwith evidence in respect of additions made during the year are as under:-

.....

It is submitted that the assessment of the company for the A. Y. 2009-10 was framed by you predecessor u/s 143(3) of the Act vide order dated 28.12.2011. All the details giving the names,

addresses, PAN nos. of the shareholders alongwith their confirmations, affidavits, ITRs, Bank Statements etc were duly furnished before the Ld. AD but not being satisfied, the AD had added the aforesaid amount of Share Capital and Share premium aggregating at Rs. 2.25 crores to the income of the assessee company. Aggrieved by the said addition, the assessee company filed its first appeal and the Ld. CIT(A) has deleted the same vide order dated 30.09.2013. The department has preferred an appeal against the order of CIT(A) before the Ld. ITAT which is still pending adjudication. It is pertinent to mention here that during the course of present search, no material in respect of share capital or share premium has been found. In view of these submissions, therefore, no adverse inference is warranted on this issue. "

- (iii) The copy of reply had been made by M/s VIP leasing & Finance Pvt Limited on 21.4.2014 vide speed post- no ED413051015IN to DDIT(Inv.), Delhi in response to summons u/s 131 w.r.t these transactions.
- (iv) The Copy of letter received on 11.01.2016 in the office of ACIT (CC)-15 Delhi from M/s VIP leasing & Finance Pvt Limited, in response to notice dated 5.1.2016 issued u/s 133(6) by the AO during 153A proceedings, filing all details with evidences of the transactions with the appellant.
- (v) The copy of reply had been made by M/s Delhi Housing Development on 28.4.2014 vide speed post no ED413090853IN to DDIT(Inv.), Delhi in response to summons u/s 131 w.r.t these transactions.
- (vi) Copy of the notice u/s 133(6) dated 13.10.2015 issued by the AO vide letter F.No.-ACIT/CC15/2015-16/1000 to M/s Delhi Housing Development asking elaborate 15 details w.r.t these transactions. Copies of reply submitted by it vide speed post on 9.1.2016 with No ED971715725IN and subsequent reply dated 20.2.2016 as per letter received in the O/o ACIT (CC)-15, Delhi.
- (vi) Copy of summons issued u/s 131(1A) vide F. No ADIT(Inv.)/Unit V(2)/ASL/2013-14/599 dated 11.3.2014 to M/s Euro Asia Mercantile P Ltd. (EAMPL) asking for 12 details w.r.t these transactions. The reply of the M/s EAMPL sent vide speed post No ED413051024IN on 21.4.2014 to the DDIT(Inv), Delhi.
- (vii) Copy of the notices u/s 133(6) issued by the AO vide letters F.No.-ACIT/CC15/2015-16/1002 dated 13.10.2015 & 1818 dated 11.2.2016 to M/s Euro Asia Mercantile P Ltd. asking elaborate 15 details w.r.t these transactions. Copies of reply submitted by the appellant vide letters received in the O/o ACIT (CC)-15, Delhi on 16.11.2015 & 29.2.2016.

- (viii) The copy of reply made by Mr Rohit Mathur on 20.3.2014 vide speed post no ED747288306IN to DDIT(Inv.), Delhi in response to summons u/s 131 w.r.t these transactions.

5.3.1 In view of the above documents submitted by the appellant in the paperbook filed, it appears that the AO had incorrectly mentioned that no inquiries were made either in post search investigations or proceedings u/s 153A. 133(6) after receipt of first reply were also made by the AO. The AO had not referred to any of these inquiries made during the assessment proceedings u/s 153A. Further, in view of the evidences submitted by the appellant, the stand of the AO that no enquiries were conducted by the investigation wing on this issue also appears to be incorrect. There is no reference in the assessment order or in assessment records which points that the AO had made any efforts to verify the stand of the appellant as mentioned in 133(6) replies about the investigation made by the investigation wing w.r.t these transactions. Thus the AO had not followed the directions of the ITAT in letter & spirit, which he was bound to follow as per various judicial pronouncements quoted by the appellant. From the above observations, it can be safely concluded that investigations have been carried out by the investigation wing as well as the AO during the 153A proceedings w.r.t these transactions. Nothing adverse had been found in these investigations as well as during the search, thereby leading to no addition on this issue in the assessment order passed u/s 153A/143(3) on 31.03.2016. Therefore, following the directions of ITAT, the AO could have thoroughly verified the records and as nothing adverse had been found in these investigations as well as during the search, the AO ought to have deleted this addition in re-assessment. However, it appears to me that the AO had not stated the correct facts when it mentioned that *"no inquiries were made in respect of this share capital/premium and therefore, there is no question to consider the same as per the directions of Hon'ble ITAT"*. **In these facts and circumstances of the case, it is held that there were no adverse findings w.r.t. this share capital of Rs 2.25 Cr either during the search or during post search investigations by the DDIT(Inv.) or during the 133(6) enquiries made by the AO in 153A proceedings. Therefore following the directions of Hon'ble ITAT, as there is no adverse finding on this issue, the addition made by the AO is not sustainable.**

5.3.2 Without prejudice to it, this addition made in the earlier assessment order u/s 143(3) was deleted by my predecessor, after considering the evidences and facts in totality on the issue. The AO had just relied on the same facts in this order u/s 254/153A/143(3) dated 27.12.2019 as in the earlier assessment order u/s 143(3) dated 28.11.2012 and this addition of Rs.2.25Cr made in the order dated 28.11.2012 was deleted by my predecessor vide order dated 30.09.2013. There are no new evidence/facts brought by the AO in this assessment order which needs to be considered fresh in this appeal. Therefore, respectfully, following the order of my predecessor, the addition made by the AO in this assessment order dated 27.12.2019 on the same facts as in earlier assessment dated 28.11.2012, is not sustainable.

5.3.3 In view of the discussion made in above Para, the addition of Rs.2.25 Cr made by the AO, on account of share capital including share premium, u/s 68 is not sustainable and is hereby deleted."

8. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the record.

9. Ld. DR for the Revenue relied upon the order of the AO.

10. Per contra ld. Counsel of the assessee submitted that ITAT has thoroughly gone through the matter in the first round. It had not found it appropriate to reverse the order of ld. CIT (A). Instead ITAT has taken note of the fact that there has been subsequent search and seizure action on the assessee and another order u/s 153A has been passed in which no adverse inference was taken against the assessee. ITAT referred to the order passed u/s 153A of the Act and gave a categorical finding that there was no adverse material found during the course of search or post search inquiries to establish that the assessee has received any bogus share capital or share premium. However, ITAT in its wisdom thought it appropriate to remand the matter to the file of AO to examine the subsequent developments and to go through the enquiries conducted by Investigation Wing of the department as well as the enquiry conducted by the AO in the 153A proceedings in the above 4 parties. It was also doubted by ITAT that in case nothing adverse has been found, the AO shall delete the addition.

11. Now, we note that pursuant to the above remand, AO has duly noted that the reply of the assessee was the same as in the earlier round.

However, it is an admitted fact that after the earlier round, there was search and seizure activity and assessment order was framed u/s 153A and was already appreciated by the Tribunal that no adverse material was found during the course of search or post search inquiries to establish that the assessee has received any bogus share capital or share premium. The above said finding of the ITAT had not at all been challenged by the Revenue before the Hon'ble High Court. Hence, the same stands final. We note that subsequent to the ITAT's remand, AO has not found any fresh material to further support the case of the Revenue other than that which had already been considered in the first round and which was before the ITAT. Ld. CIT (A) has also given elaborate finding and noted that after the first round and subsequent to the remand by the ITAT and also post search investigation, several aspects were noted which did not throw any light to prove that assessee was guilty of acquiring bogus share capital or share premium. Hence, ITAT direction that in case nothing adverse is found subsequent to the remand, the addition shall be deleted, has been correctly appreciated by ld. CIT (A).

12. To recapitulate from the above, it is clear that ITAT in its order in the first round had come to a conclusion that there was no material found by the AO in the first round which can be said to be cogent enough to fasten the liability of bogus share capital or share premium upon the

assessee. Furthermore, subsequent to the first round of proceedings before the AO and CIT(A), there was a search and seizure activity. The provisions of the Act clearly provide that in such eventuality, all the assessment proceedings shall abate and fresh assessment will be done by the AO u/s 153A of the Act. As already noted by the ITAT, no adverse material was found during the course of search or post search that the assessee had received any bogus share capital or share premium. ITAT had only given Revenue a chance to go through the material and to link them with the assessee. As already noted, AO has not found any adverse material pursuant to the directions of the ITAT and Id. CIT (A) is correct in holding that pursuant to the remand of the ITAT, AO has not done anything but copy and paste its earlier order. In this view of the matter and in the background of the aforesaid discussion, we do not find any infirmity in the order of the Id. CIT (A) in complying with earlier ITAT direction that if nothing adverse is found subsequent to the remand the addition shall stand deleted. Accordingly, we uphold the same.

12. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on this 21st day of November, 2022.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 21st day of November, 2022/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-26, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.