

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.1252/Del/2020

[Assessment Year : 2010-11]

ACIT, Circle-16(2), New Delhi.	vs	Max Venture Investment Holdings Pvt.Ltd., Max House, 1 Dr. Jha Marg, Okhla Phase-3, New Delhi-110020. PAN-AAACD0213H
APPELLANT		RESPONDENT
Appellant by		Ms. Sarita Kumari, CIT DR
Respondent by		S/Shri Deepak Chopra, Adv., Rohan Khare, Adv. & Priyam Bhatnagar, Adv.
Date of Hearing		20.10.2022
Date of Pronouncement		30.11.2022

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue for the assessment year 2010-11 is directed against the order of Ld. CIT(A)-32, New Delhi dated 31.01.2020. The Revenue has raised following grounds of appeal:-

1. *"Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the addition of Rs. 87,00,00,000/- made by the AO u/s 68 of the Income Tax Act, ignoring the finding of the AO that the assessee failed to prove genuineness of the transaction viz. receipt of alleged share application money in view of the various discrepancies pointed out by her in the assessment order ?*
2. *Whether on the facts and circumstances of the case, the Ld.CIT(A) is legally justified in deleting the addition of Rs. 87,00,00,000/- made by the AO u/s 68 of the Income Tax Act, rejecting the remand report*

in which additional evidence and arguments of the assessee were rebutted by the AO with proper reasoning after detailed analysis?

3. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.”*

2. The only effective ground raised by the Revenue is against the deleting of addition of Rs.87,00,37,750/-.

BRIEF FACTS OF THE CASE

3. Facts giving rise to the present appeal are that the assessment of the assessee was re-opened u/s 147/143(3) of the Income Tax Act, 1961 (“the Act”). In response to the notice u/s 148 of the Act, the assessee filed return of income declaring total income of Rs.37,750/- on 24.04.2017. During the course of assessment proceedings, the Assessing Officer (“AO”) treated the share application money from its founder and promoter as not genuine and made addition of the same u/s 68 of the Act. Thus, the AO assessed income of the assessee at Rs.87,00,37,750/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, deleted the additions.

5. Now, the Revenue is in appeal before this Tribunal against the order of Ld.CIT(A).

6. Ld.CIT DR vehemently argued that Ld.CIT(A) was not justified in deleting the addition. She submitted that the AO has pointed out that the transaction was not genuine. Ld.CIT DR further submitted that the surroundings, circumstances and the evidences support the findings of the AO.

7. On the contrary, Ld. Counsel for the assessee opposed the submissions and supported the order of Ld.CIT(A). He further took us through the sequence of events. For the sake of clarity, sequence of events filed by the assessee is reproduced as under:-

<i>Date</i>	<i>Description</i>
06.01.2010	<i>Vide Board meeting dated 06.01.2010, the Board of Directors of the Respondent were informed that Max India Ltd. was proposing to issue certain compulsory convertible debentures to Xenok Ltd. (An affiliate of Goldman Sachs Group) of \$115 million and had also proposed to issue 20,00,000/- warrants at INR 867 per warrant to the Respondent totaling to a consideration of INR 173.40 crores. In the said meeting it was resolved by the board of the Respondent to subscribe to the said warrants.</i> <i>Further, to partly fund the said investment, it was decided that Mr. Analjit Singh being 50% shareholder of the Respondent, would invest INR 87 crore in Respondent and equity shares of worth INR 87 crores would be allotted to him. [Copy of the Minutes of Meeting - P. 56 - Paper Book - Vol. I]</i>
06.02.2010	<i>Pursuant to the Board Resolution dated 06.01.2010, Dynavest India Pvt. Ltd. (Now known as Max Venture Investment Holdings Pvt. Ltd./As.ses.see/ Respondent) received INR 87,00,00,000 from Mr. Analjit Singh, which as resolved vide meeting dated 06.01.2010 was invested in Max India Ltd. [Copy of the Bank Statement - P. 25 - Paper Book - Vol. I]</i>
06.02.2010	<i>Max India Ltd. vide their Board Resolution dated 06.02.2010 acknowledged the receipt of INR 86.70 crores from M/s Dynavest India Pvt. Ltd. towards allotment of 50% of the total warrants to be issued by at INR 867/- per warrant. [Copy of the Board Resolution of Max India Ltd. - P. 21 - Paper Book - Vol. I]</i>
20.04.2010	<i>Board of the Respondent acknowledged the receipt of INR 87 crores on 06.02.2010 from Mr. Analjit Singh for acquiring warrants of Max India Ltd. [Copy of the Minutes of Meeting - P. 38 - Paper Book - Vol. II]</i>
25.09.2010	<i>Respondent filed return of income declaring an income of INR 37,746 for Assessment Year 2010-11 ("AY") which was processed under section 143(1) of the Income Tax Act, 1961. ("Act")</i>
06.04.2011	<i>Mr. Analjit Singh vide gift deed gifted the allotment of equity shares of worth Rs. 87 crores of the Respondent company to the Neeman Family Foundation. [Copy of the Gift Deed - Page 74 - Paper Book - Vol. II]</i>
01.05.2015	<i>Name of the Respondent was changed from Dynavest India Pvt. Ltd. to Max Venture Investment Holding Pvt. Ltd.</i>
	<i>The Assessing Officer, during the scrutiny assessment for AY 2012-13 of the Respondent, added the share application money received from Mr. Analjit Singh of INR 87 crores under Section 69B of the Act as unexplained share application money.</i>
09.12.2016	<i>The CIT(A) deleted the addition whilst observing that the said share application money was received in Financial Year 2009-10 and hence, no addition could be made for the relevant assessment year i.e. AY 2012-13.</i>
28.03.2017	<i>On the basis of the order passed by CIT(A), the Assessing Officer initiated reassessment proceedings against the Respondent and issued notice under section 148 read with 147 of the Act for AY 2010-11. [Copy of the Notice - P. 40- Paper Book - Vol. II]</i>
27.03.2019	<i>The said notice was challenged by the Respondent before the Hon'ble Delhi High Court. However, the High Court dismissed the Writ Petition directing the</i>

	<i>AO to finalise the assessment within two weeks [Copy of the order of Hon'ble High Court - P. 43 - Paper Book - Vol. II]</i>
29.03.2019	<i>In pursuance to the direction of the Hon'ble High Court, notice under section 143(2) of the Act and questionnaire under section 142(1) of the Act were issued to the Respondent.</i>
10.04.2019	<i>The Assessment Order was passed under section 147 r/w 143(3) of the Act, whereby the share application money was added in the income of the Respondent being unexplained cash credit under section 68 of the Act. Vide the said order, the identity and creditworthiness of Mr. Analjit Singh was accepted, however, the addition was made on the premise that the "genuineness" of the transaction was not established.</i>
02.05.2019	<i>Respondent filed an appeal before the CIT(A) against the order of the Assessing Officer.</i>
07.11.2019	<i>Respondent filed an application for filing additional evidence under Rule 46A of the Act for establishing the genuineness of the transaction. [Copy of the Application - Page 1 - Paper Book - Vol. I]</i>
31.01.2020	<i>The CIT(A) post considering the various evidences, documentation and submissions of the Respondent and whilst accepting and appreciating the "object and purpose" for which the said money was raised from Mr. Analjit Singh, held the transaction to be "genuine" and deleted the addition as made by the Assessing Officer.</i>

8. Ld. Counsel for the assessee further contended that the AO made addition by invoking the provision of section 68 of the Act. He contended that the provision of section 68 of the Act can be invoked where the assessee failed to prove the identity of the creditor, capacity of the creditor to advance money and genuineness of the transaction. He submitted on these three counts, no addition can be made as the assessee duly proved the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. He contended that Shri Analjit Singh is a well-known person and he had creditworthiness of giving the gift. He contended that in the facts and circumstances of the present case, Ld.CIT(A) rightly deleted the addition.

9. We have heard the Ld. Authorized Representatives of the parties and perused the material available on record. We find that Ld.CIT(A) has decided the issue by observing as under:-

7.1.7. "Having considered the facts of the present case and the nature of documentation which is now sought to be adduced in terms of the Board

Resolution, the bank statements of the Appellant and financial statements to establish the genuineness of the transaction, it is a fit case for the additional evidence to be admitted and considered while deciding the issue on merits. Hence, in view of the above discussion, the additional evidence is being admitted as the necessary requisites of Rule 46A(l)(b) and (c) of the Rules stand duly satisfied since the Appellant was prevented by sufficient cause from producing such evidence before the Assessing Officer.

7.2 Now coming to the merits of the case, the factual matrix and the undisputed facts are that for AY 2012-13 an assessment was completed by the Assessing Officer on 26.03.2015 at a total income of Rs. 87,05,38,700 against a returned income of Rs. 36,200 by making addition on account of deemed income under Section 69B of the Act which included unexplained share application money of Rs. 87 crores. When the matter went up in appeal, the CIT(A) vide his order dated 09.12.2016 deleted the said addition while holding that since the share application money has been received on 09.02.2010, there was no question of application of Section 69B for AY 2012-13. Based on this finding of the CIT(A), reassessment proceedings were initiated under section 148 of the Act for the assessment year under consideration which ultimately culminated into an assessment order dated 10.04.2019 and the entire investment made by Mr. Analjit Singh was treated as cash credit under Section 68 of the Act.

7.2.1 While initiating the reassessment proceedings, the Assessing Officer (in para 4.2 onward on page 4 to 9 of his order) has noted the reasons as under:-

“3.1 The assessee during the course of stay proceedings for recovery of outstanding demand raised for AY 2012-13 filed certain documents as piece of evidence that share application money has been received from Sh. Analjit Singh during FY 2009-10. In support of its claim the assessee filed copies of extracts of the minutes of the meeting of the Board of Directors of M/s Max Ventures Investment

Holdings Pvt. Ltd. It was quite surprising that the meeting of board of director was held on 06.01.2010 and 20.04.2010 under the name of M/s Max Ventures Investment Holdings Pvt. Ltd. and Sh. Sanjiv Malik has signed the Board meeting. While on 06.01.2010 and 20.01.2010 neither M/s Max Ventures Investment Holdings Pvt. Ltd. was in existence nor Sh. Sanjiv Malik was the director of that company. The name of company was M/s Dynavast India Pvt. Ltd. and this name was subsequently changed to Max Ventures Investment Holdings Pvt. Ltd. Sh. Sanjiv Malik was appointed as director of the company on 28.12.2013. Which mean that the assessee has submitted the document which was created after the happening of events thus it does not support its theory of share application money provided by Sh. Analjit Singh.

3.2 It is observed that the authorized share capital of the assessee company was Rs.20 lakhs as on 31.03.2009 and issued capital was Rs.1,00,000/-. The balance capital to be issued was Rs.19 lakh. The assessee company is receiving Rs.87 crores as share application money against the pending share capital of Rs. 19 lakh meaning by that assessee is getting a premium of Rs.4568947/- on the face value of share of Rs.10 i.e. 457 times the face value. While the financials of the assessee company does not support such high valuation.

4.1 The claim of the assessee was that an amount of Rs.87 crore was received from Sh. Analjit Singh in FY 2009-10 while documentary evidences does not support the claim of the assessee for the reasons discussed below:

i. The submission of the assessee that it has received share application money was not backed by any evidence as these facts were never intimated to the department during the course of assessment proceedings for AY 2012- 13. The assessee merely relied upon its submission that it has not received any share application money during the relevant year i.e. 2012-13.

ii. *The assessee failed to submit any evidence that Sh. Analjit Singh has provided any share application money during 2009-10, 2010-11 & 2011-12. Contrary to this the evidences submitted, by the assessee to support its claim of share application money provided by Sh. Analjit Singh does not stand the scrutiny of the law;*

iii. *During the course of recovery proceeding, it has been observed that the assessee has submitted documents in support of its claim that money has been provided by Sh. Analjit Singh in 2009. But these evidences cannot be relied upon for the following reasons:*

(a) *The assessee submitted the copies of extract of minutes of meeting of Board of Directors of M/s Max Ventures Investment Holdings Pvt. Ltd. From examination of the copies of extracts of the minutes of the meeting of the Board of Directors it was observed that the meeting of board of director was held on 06.01.2010 and 24.04.2010 under the name of M/s Max Venture Investment Holdings Pvt. Ltd. and Sh. Sanjiv Malik has signed the Board meeting. While on 06.01.2010 and 20.04.2010 neither M/s Max Ventures Investment Holdings Pvt. Ltd. was in existence nor Sh. Sanjeev Malik was the director of that company. The name of company was M/s Dynavast India Pvt. Ltd. and this name was subsequently changed to Max Ventures Investment Holdings Pvt. Ltd. and Sh. Sanjiv Malik was appointed as director of the company on 28.12.2011.*

(b) *The above fact means that the assessee has submitted the document which was created after the happening of events. Thus it does not support its theory of share application money provided by Sh. Analjit Singh.*

iv. *Further, the contradictory submission of the assessee and M/s Neeman Family Foundation further strengthens the view that the credits of Rs.87 crore were not genuine. As per the submission filed by the assessee dated 13.7.2016 "Sh. Analjit Singh had vide*

gift deed dated 6.4.2011 conveyed the rights to allotment of shares against the aforesaid application money to Neeman Family Foundation without consideration. As per assessee's version Sh. Analjit Singh has given gift to M/s Neeman Family Foundation, while M/s Neeman Family Foundation vide its reply dated 9.12.2014 has submitted the copy of balance sheet as on 31.03.2012 and income and expenditure account for the year ended on 31.03.2012. As per this balance sheet Neeman Family Foundation has submitted that Donation received till 31.3.2012 was Rs.89.16 crores. M/s Neeman Family Foundation has never, stated that it has received gift. Hence M/s Neeman Family Foundation in its return of income provided receipt of donation and no gift was declared by it. This clearly indicates that there is contradiction between, the submission of the assessee and documents submitted before the income tax department.

4.2 The assessee failed to prove that whether that share application money has ever been returned by the assessee or not to Sh. Analjit Singh.”

4.3 Further, notice u/s 142(1) of the Income Tax Act, 1961 was issued on 29.03.2019 to the assessee. In response to the same, the assessee filed reply dated 08.04.2019. The assessee was also show caused vide order sheet entry dated 08.04.2019 as to why addition u/s 68 on the genuineness of the transaction and also why addition u/s 56(2)(viib) of the Income Tax Act, 1961 should not be made. In response to the show caused, the assessee vide letter dated 10.04.2019 submitted reply. The reply of the assessee is being reproduced below:-

“In connection of our submissions vide Point 5 of our letter dated 04.04.2019, it is submitted that mere non issuance of shares, after receipt of Shares Application Money doesn't tantamount that the transaction is not genuine, especially

when identity and creditworthiness of the person giving share application money are not doubted.

In the present case, share application money of Rs.87 crores has been given by Sh. Analjit Singh (PAN-ABLPS7514D), who is assessed to Income Tax under the jurisdiction of your honor. For the AY 2010-11, Sh. Analjit Singh filed his Income Tax Return on 27.09.2010, declaring Gross Total Income at Rs. 487,72,84,726/- Please note that major source of income of Sh. Analjit Singh for the AY 2010-11 was from sale of equity shares of Scorpio Beverages Pvt. Ltd. on 17.12.2009 for consideration of Rs. 533.33 crores, and ultimately this money was utilized for payment of aforesaid Share Application Money to the assessee company. Confirmation, bank statement and ITR of Sh. Analjit Singh have already been filed vide our letter dated 04.04.2019 and placed on record.

Subsequently, Sh. Analjit Singh, vide gift deed dated 06.04.2011, conveyed the right to allotment of shares against the aforesaid share application money to Neeman Family Foundation without any consideration. The object behind such gift was smooth succession and inheritance of inter alia shareholding in various companies held by Sh. Analjit Singh to his children through the Family trust, created by the name of Neeman Family Foundation, and the fact was also duly disclosed in the application filed before the SEBI for seeking exemption from the requirement of public offer/announcement for allotment of shares against pending share application money.

SEBI vide its order dated 03.10.2016 granted its approval for Max Financial Services Limited (formerly known as Max India Limited). However, the assessee company, as on date could not allot the shares for the reason, that the vide order dated 14.12.2015 passed by Hon'ble High Court of Punjab & Haryana, Max India Limited split into 3 entities namely (a) Max Financial Services Limited (formerly known as Max India Limited); (b) Max India

Limited and (c) Max Ventures & Industries Limited, and the SEBI has only granted permission for Max Financial Services Limited. Accordingly, Neeman Family Foundation filed application dated 06.03.2017 & 27.07.2018 for seeking permission from the requirement of public offer/ announcement for the other two companies i.e. Max India Limited; and Max Ventures & Industries Limited. SEBI vide its order dated 10.07.2018 and letter dated 31.08.2018 rejected the applications filed by Neeman Family Foundation for the reason that Neeman Family Foundation does not meet with the stipulated mandate of disclosure as a 'promotor' for these years prior to the proposed acquisition. Accordingly, application will have to be filed again before SEBI after the completion of above mentioned three years."

*7.2.2 A perusal of such reasons would show that the Assessing Officer relied on the documents filed by the Appellant in the proceedings for AY 2012-13, being extracts of the minutes of meetings of Board of Directors of the Appellant. It was further noted by the Assessing Officer that the minutes of the meeting of the Board of Directors held on 06.01.2010 and 20.04.2010 was under the name of Max Venture Investment Holdings (P) Ltd., and Mr. Sanjeev Malik had signed the minutes when on such date the company Max Venture Investment Holdings (P) Ltd., was not in existence and neither Mr. Sanjeev Malik was a Director. It has been brought to my attention that the above recording of the facts by the Assessing Officer was patently incorrect because when these documents were filed in support of a Stay Application for AY 2012-13, these were certified copies of the **"extracts"** of the minutes of the meeting and had been counter signed by Mr. Sanjeev Malik being Director of the Company who had been appointed as Director on 28.12.2013 i.e. when the documents were submitted in support of the Stay Application for AY 2012-13. It has been further submitted that the entire understanding of the Assessing Officer was factually incorrect. On direction from this office the Appellant was required to produce the original Minutes Book evidencing*

the Board Meetings, which was duly complied with on 10.01.2020 and also self attested copies of the same were submitted. The original Minutes Book evidences the meetings of the Board of Directors on 06.01.2010 and 20.04.2010 (under the name of Dynavest, the erstwhile name of the Appellant) and which duly records the requirement for funds and the necessity and purpose for such funds. This has not been controverted on merits by the Assessing Officer. Thus, the premise on which the Assessing Officer proceeded to entertain the suspicion that the assessee had submitted documents which were created after the happening of the events and did not support the theory of share application money brought by Mr. Analjit Singh, is found to be factually incorrect.

7.2.3 It was further submitted before me that by virtue of the Board Meeting held on 06.01.2010, the Board of Directors of the Appellant were informed that Max India Limited was proposing to issue certain convertible debentures to Xenok Limited for Rupees equivalent to USD 115,000,000 and 2,00,000 warrants at Rs. 867 per warrant to the Appellant Company for an aggregate consideration of Rs. 173.40 crores. It has been submitted before me that Xenok Limited was a wholly owned subsidiary of GS Capital Partners VI Fund LLP and certain affiliated funds which were controlled by Goldman Sachs Group Inc. It is also submitted that this was a strategic investment by Xenok Limited. The investment agreement was deliberated by the Board of Directors of Appellant who decided to subscribe to 2,00,000 warrants issued by Max India Limited at Rs. 867 per share for an aggregate consideration of Rs. 173.40 crores. The Board of Directors of the Appellant were also informed in the meeting held on 06.01.2010 that the Appellant Company intended to raise funds amounting to Rs. 87 crores by offering shares to the Promoter/Director Mr. Analjit Singh.

5.2.4. It has been further submitted before me that in the meeting held on 20.04.2010 the minutes of the Board Meeting held on 06.01.2010 were approved and confirmed. In the meeting held on 24.04.2010 the Board was also duly informed that the Company had received a sum of Rs. 87

crores on 06.02.2010 from Mr. Analjit Singh. The Appellant has further submitted that a perusal of the audited balance sheet of the Appellant, Schedule 4 and 5 (Pg. 31 of the Written Submission Paper Book) duly reflects the share application money received amounting to Rs. 87 crores and immediate utilization of share application money amounting to Rs. 86.70 crores. This payment of Rs. 86.70 crores was to Max India Limited qua the warrants to which the Appellant had sought subscription. My attention is drawn to the communication dated 06.02.2010 by the Company Secretary of Max India Limited addressed to the Board of Directors of Max India Limited. This communication records the receipt of money from the Appellant (then M/s Dynavest India (P) Ltd.). This communication also evidences receipt of money amounting to Rs.86.70 crores in the bank account and also confirms in principle approval taken by Max India Limited from the Stock Exchanges in terms of the applicable regulations. It is in this communication the Board as requested to approve the allotment of 2,00,000 warrants to Dynavest India Pvt. Ltd. All the above documents were filed before me and the communication dated 06.02.2010 forms part of Rule 46A Application (Pg. 21 to 23) for additional evidence which has been admitted by me in terms of the foregoing paragraphs. The Assessing Officer in his remand report has brushed aside all these documents by stating that the subsequent utilization of the funds had no bearing on the issue of "genuineness" of the transaction. However, the AO has not brought on record any evidence or material to show that these documents were not genuine or that the business consideration for receiving such money was in anyway contrary to what has been evidenced in these documents.

7.2.5 The Appellant also submitted documents to substantiate the transfer of money by Mr. Analjit Singh to the Appellant and the further transfer of money by the Appellant to Max India Limited. As stated above, the Assessing Officer in his Remand Report has not controverted these documents and has merely stated that these should not be admitted since the same were not produced by the Appellant during the course of the

reassessment proceedings. The Assessing Officer, without prejudice has also submitted in his Remand Report that the need and utilisation of such funds is not a relevant criteria for the purposes of Section 68 of the Act.

7.2.6 As has been submitted by the Appellant, the Assessing Officer has gone on extraneous considerations while referring to the subsequent transactions conducted by Mr. Analjit Singh where under Gift Deed dated 06.04.2011, Mr. Singh conveyed the rights of the share application money to Neeman Family Foundation. The Assessing Officer has also stated that the Appellant has not issued shares even till date and the reasons stated by the assessee is that prior approval was required from SEBI for issuing shares to the Trust. From all these, the Assessing Officer came to conclusion that the transaction of the investment made by Mr. Analjit Singh pertaining to the credit of Rs. 87 crores was not genuine. The Appellant has produced the balance sheet of Neeman Family Foundation as on 31.03.2012, which was filed before the Assessing Officer by way of a letter dated 04.04.2019. A bare perusal of the balance sheet shows the corpus funds (page 79 of the written submissions paper book filed before me) duly reflects the share application money of Dynavest transferred from Mr. Analjit Singh's account as gift. Thus, these documents conclusively prove that the Assessing Officer has proceeded on fundamentally incorrect basis and has been guided by extraneous factors while not even appreciating the evidence on record.

5.2.7 In this regard reference to the provisions of Section 68 of the Act may be made, which are reproduced as under:

“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year: Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists

of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.”*

*7.2.8 A bare perusal of the section mandates that where any sum is found credited in the books of an assessee and the recipient of such funds offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory, the sum so credited may be charged to income tax as income of the assessee for that year. **The Hon’ble Apex Court in the case of CIT vs. P. Mohanakala & Ors. (291 ITR 278)** has held that for the purpose of attracting Section 68, a credit in the context of the assessment can be treated as income only if the assessee offers no explanation about the nature and source of such credit or the explanation offered by the assessee is not found to be satisfactory by the Assessing Officer. The Hon’ble Supreme Court has held that “it is true that the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory as required based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be found patently with the material available on record and application of mind is sine qua non forming such opinion.” It has been submitted before me that the Appellant has offered a proper explanation with supporting documentation on the basis of which the AO has himself concluded that the “identity” and “creditworthiness” of Mr. Singh was not being disputed. It is only on the issue of “genuineness”*

and given the shortage of time that the Appellant was not able to produce all the necessary documents. Thus, it was submitted that the requisites of Section 68 of the Act were not attracted to the facts of the present case.

7.2.9 The Appellant has also relied on the jurisdictional High Court's decision in the case of N.R. Portfolio (supra) which while dealing with Section 68 of the Act, held the object and purpose for which the investment was made as one of the relevant factors for examining the genuineness of the transaction. On the facts of the present case the identity of Mr. Analjit Singh and his creditworthiness is beyond all iota of doubt and has also been admitted by the Assessing Officer. However, based on incorrect understanding of the facts and not appreciating the documents on record, the Assessing Officer wrongly doubted the genuineness of the transaction. The Appellant has submitted that the Courts while laying down the test under Section 68 have put the onus on the assessee to establish the identity, creditworthiness and the genuineness of the transaction. The Appellant has submitted that these three conditions have to be satisfied by applying the same parameters and cannot be independently applied by the Assessing Officer to invoke the provisions of Section 68 of the Act. Since there are no specific guard rails laid down by the Hon'ble Courts, the genuineness of a transaction could also be determined by examining the objective and purpose for which the payment/investment was received by the assessee. This position is supported by the jurisdictional High Court in the case of N.R. Portfolio (supra).

7.2.10. The facts and the material before me evidence beyond a shadow of doubt, the genuineness of the transaction and the object and purpose for which such investment was made by Mr. Analjit Singh in the Appellant Company. The commercial rationale for making such investment and the utilisation of such funds by the Appellant in Max India Limited for subscribing to the share warrants also establishes the objects and purpose for which such investment was made in the Appellant Company. The Appellant has produced the original Minutes Book before me for verification and it is found that the Board of Directors of the Appellant had

duly approved this transaction of investing in Max India Limited by raising funds from Mr. Analjit Singh. No contrary evidence was brought on record by the Assessing Officer to disapprove the claim of the Appellant. On facts it is also found, although not necessary for the purpose of Section 68 of the Act that even the subsequent gift made by Mr. Analjit Singh to Neeman Family Foundation was duly reflected in the balance sheet of the Trust. Given the above it could not be said that the transaction of the investment in the Appellant by Mr. Analjit Singh was not a genuine transaction.

7.2.11. That apart, the Assessing Officer had also raised the issue of shares of face value of Rs.10/- each at premium of Rs.4568.95 i.e. a premium of 457%. The Appellant has submitted that firstly this was only an assumption of the Assessing Officer since the Appellant was not issuing any shares at premium to Mr. Analjit Singh. This fact is also evidenced that subsequently the share capital of the Appellant had been increased to issue shares worth Rs.87 crores in FY 2015-16. Hence, this allegation of the Assessing Officer is found to be factually incorrect.

7.2.12. To further substantiate the genuineness of the transaction, the Appellant submitted that the original investment by the Appellant in Max India Limited was proposed at Rs. 173.40 crores and in the current year Rs. 86.70 being 50% of the investment had been paid. Further investment was made in AY 2012-13 and the same was funded by the Appellant by procuring a loan of Rs.85 crores from financial institutions. This averment has been substantiated by producing balance sheet for the remaining years of the Appellant company.

7.2.13. I have considered the above facts of the case, the assessment order, the Remand Report, the rejoinder as well as the Rule 46A application along with the written submissions filed by the Appellant. Having considered the entire gamut of facts and case laws cited by the Appellant, I have no hesitation in concluding that the transaction of investment of Rs. 87 crores by Mr. Analjit Singh in the Appellant Company as share application money was a genuine transaction for the purpose of Section 68 of the Act. The Appellant has been able to substantiate the

*object and purpose for which such investment was made and the utilisation of such funds by the Appellant to make the investment in Max India Ltd. In terms of the principles laid down by the Hon'ble Delhi High Court in the case of N.R. Portfolio (supra) that to determine the genuineness of the transaction, the purpose and object of such investment is of critical importance, I have no hesitation to hold that the Assessing Officer erred in invoking the provisions of Section 68 of the Act and making the addition of Rs. 87 crores to the total income of the Appellant. In view of the above, the addition under section 68 is deleted and the **grounds of appeal are allowed.**”*

10. We find that there is no dispute with regard to the fact that the AO has invoked the provision of section 68 of the Act. Section 68 of the Act can be invoked where any sum is found credited in the books of assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or explanation offered by him, is not in the opinion of the AO, is satisfactory. Ld.CIT(A) has elaborately examined this issue and has given a finding on fact that the transaction of investment of Rs.87,00,00,000/- by Sh. Analjit Singh in the assessee's company as a share application money, was a genuine transaction for the purpose of section 68 of the Act. During the course of hearing, Ld. Counsel for the assessee demonstrated the creditworthiness of Sh. Analjit Singh. Hence, there is no dispute with regard to the identity and creditworthiness of the creditor. In respect of genuineness, the Revenue has not brought any material to contradict the finding of Ld.CIT(A). In the absence of any rebuttal by the Revenue with supporting evidence, we do not see any reason to disturb the well-reasoned finding of Ld.CIT(A). In the light of binding precedents, the same is hereby affirmed. Thus, grounds raised

by the Revenue against the addition of Rs.87,00,00,000/- lacks merit, are dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30th November, 2022.

Sd/-

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI