

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri K.Narasimha Chary, Judicial Member**

ITA No.937/Hyd/2014		
Assessment Year: 2009-10		
Farmax India Limited 4 th Floor, Alluri Trade Centre Bhagayanagar Colony Opp.KPHB Colony Kukatpally Hyderabad-500 072 PAN : AADCB1600R	Vs.	DCIT,Circle-1(3) I.T.Towers, A.C.Guards Masab Tank Hyderabad

ITA No.655/Hyd/2015		
Assessment Year: 2010-11		
ACIT,Circle-17(1) 9 th floor, Signature Tower, Kothaguda, Kondapur Hyderabad	Vs	Farmax India Limited 4 th Floor Alluri Trade Centre Bhagayanagar Colony Opp.KPHB Colony Kukatpally Hyderabad-500 072 PAN : AADCB1600R
(Appellant)		(Respondent)
Assessee by:		None
Revenue by:		Shri Jeevan Lal Lavidiya, CIT-DR
Date of hearing:		10.01.2023
Date of pronouncement:		16.01.2023

ORDER

Per Shri Rama Kanta Panda (A.M.):

ITA No.937/Hyd/2014 filed by the assessee is directed against the order dated 03.02.2014 of the Learned Commissioner of Income Tax (Appeals)-2, Hyderabad relating to AY 2009-10. ITA

No.655/Hyd/2015 filed by the revenue is directed against the order dated 13.01.2015 of the Learned Commissioner of Income Tax (Appeals)-5, Hyderabad relating to AY 2010-11. Both these appeals were heard together and are being disposed-of by this common order for the sake of convenience.

2. No one appeared on behalf of the assessee at the time of hearing. It was seen from the order sheet entries that no one is attending the hearings since last two years despite service of notice. Finally, the notices were served through the Revenue through affixture as there was nobody available at the given address as per Form No.36. Under these circumstances, we have no other option but to adjudicate the appeals on the basis of material available on record and after hearing the ld. DR.

ITA No.937/HYD/2014 for AY 2009-10 (By Assessee)

3. Facts of the case, in brief, are that the assessee is a company engaged in manufacture and sale of FMCG. It filed its return of income on 17.11.2009 declaring total income at Rs.85,23,300/-. A survey u/s. 133A was conducted on 31.01.2011 during which it was noticed that the assessee company has infused an amount of Rs.3.21 crores towards share capital/share premium during the year 2008-09 relevant to AY 2009-10. During the survey, Shri M.Srinivas Reddy, Managing Director of the assessee company could not properly explain about the veracity of investments by subscribers. The AO, therefore, after recording reasons, reopened the assessment and issued notice u/s. 148 of the I.T.Act. In response to the statutory notices issued u/s. 143(2) & 142(1), Shri M.Srinivasa Reddy, the Managing Director of the assessee company appeared before the AO from time to time and filed certain details.

4. During the course of assessment proceedings, the AO noted that assessee has made payment in cash exceeding Rs.20,000/- totaling to Rs.3,78,642/-. He, therefore asked the assessee to explain as to why the provisions of section 40A(3) should not be invoked. In absence of any satisfactory explanation given by the assessee, the AO made addition of Rs.3,78,642/- being disallowances u/s. 40A(3). Similarly, the AO noted that assessee has claimed an expenditure of Rs.2,76,270/- which included Rs.2,75,000/- being subscription towards increase in share capital. This being a capital expenditure, the AO disallowed the amount of Rs. 2,75,000/-.

5. The AO further noted that the assessee company during the impugned AY has allotted 6,43,000 shares of Rs.10 each at a premium of Rs.40 to 13 persons. The AO asked the assessee to furnish the details of subscribers to share capital. The assessee company furnished the details such as names and addresses of the investors, amount invested etc. The AO, thereafter issued notice u/s. 133(6) on 18.03.2011 to all the investors on the basis of addresses given by the assessee asking them to furnish the details such as I.T. assessment particulars, sources of their income, details of investment and copies of bank statement etc. While some of the notices were returned unserved, in some other cases, there was no response from the investors. The AO, therefore, confronted the same to the assessee and asked the assessee either to furnish the correct postal address of the persons or in the alternative produce the subscribers for his examination. After prolonged delay, the assessee produced three persons namely Shri Shaik Khader Ali Khan, Shri Alluri Vijaya Rama Raju and Sommula Gangadhar Reddy who were examined by the AO on oath. The AO reproduced the outcome of the examination which is as under:-

4.3 Shaik Khader Ali Khan: In the statement recorded on 28.12.11, this person confirmed to have subscribed Rs.30 lakh towards share capital. The source of investment was stated to be partly sale proceeds of his tyre retreading shop, past savings and borrowals from friends and relatives. He could neither furnish any documentary evidence to prove his identity nor for the sources of his income such as copies of income tax returns/ bank statement etc for accumulation of past savings for investment. Therefore, the genuineness of the claim of investment is not proven.

4.4 Alluri Vijaya Rama Raju: In the statement recorded on 28.12.11, this person confirmed to have subscribed Rs,10 lakh towards share capital. The source of investment was stated to be out of his past savings and borrowals from friends and relatives. He could neither furnish any documentary evidence to prove his identity nor for the sources of his income such as copies of income tax returns/bank statements etc for accumulation of past savings for investment. Therefore, the genuineness of the claim of investment is not proven,

4.5 Sommula Gangadhar Reddy: In the statement recorded on 28.12,11, this person confirmed to have subscribed Rs,30 lakh towards share capital, The source of investment was stated to be out of his past savings and borrowals from friends and relatives, He could not identify himself and also did not produce any evidence in support of the sources,acumulation of past savings or income. Therefore, his claim of subscription to share capital is not accepted,

6. Since the assessee failed to produce the remaining 10 persons for his examination and observing that the parties who were produced could not prove their identity and creditworthiness, the AO made addition of Rs.3,21,50,000/- to the total income of the assessee as its unaccounted income. Thus, the AO completed the assessment and total income of Rs.4,13,26,942/-.

7. Before the Id.CIT(A), the assessee filed certain additional evidences on the basis of which the Id.CIT(A) called for a remand report from the AO. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id.CIT(A) sustained the additions made by the AO and dismissed the appeal filed by the assessee. So far as the addition u/s.40A(3) is concerned, the Id.CIT(A) rejected the claim of the assessee that such expenditure was incurred in cash for purchase of Furnace oil in absence of any satisfactory evidence as to why the payments

were made in cash which are not falling under the exceptional circumstances. Similarly, he upheld the addition of Rs.2,75,000/- in absence of any explanation given by the assessee as to how such expenditure falls u/s. 35D of the I.T.Act. So far as the addition of Rs.3,21,50,000/- is concerned, the Id.CIT(A) upheld the action of the AO by observing as under:-

8. The information on record is carefully considered. The appellant company has registered office at Farmax House, 4th Floor, Alluri Trade Centre, Bhagyanagar Colony, Opp. KPHB Colony, Kukatpally, Hyderabad- 500 072. It has two units -one at one at Borampet Village, Qutubullapur Mandal, R.R. District and the other one at Plot No.78, IDA Bollaram, Jinnaram Mandal, Medak District, Andhra Pradesh. The company was incorporated in the year on 08.11.1995. As on date the company is in the business of manufacturing and marketing of Vermicelli, Atta and other food products. It did not pay any dividends since incorporation.

8.1 During the relevant financial year 2008-09, the company has introduced share capital of Rs.3,21,50,000/-. As mentioned in earlier paras there was survey u/s.133A of I.T. Act on 31.01.2011. During the survey operation the Managing Director of the company could not properly explain the sources for share capital. Overall, there were 13 shareholders who had subscribed towards share capital. These share holders have issued cheques to company towards share capital. None of them are assessed to income-tax. All of them have in turn borrowed from others. All borrowals were made from agriculturists. All these agriculturists are again not assessed to income -tax None of them have any income from taxable sources. None of them have any bank account. All these agriculturists have paid the money in cash. Further, some of them have put their left thumb impression on the confirmation letters. But the confirmations are written in English. How the illiterate/semi-literate persons could understand and file confirmation letter in English could not be explained by the appellant. What is surprising is that all the agriculturists were contributing money in lakhs, none of them have used banking channels to lend the money to the shareholders. Even in written submissions, the AR is not clear, whether the farmers invested the money in company through shareholders or they have lent the money to shareholders. The submissions of the AR are inconsistent. However, the statement of shareholders clearly tell, that sources were either loans given by friends / relatives or from their own source. There was utter failure on the part of the appellant to produce the shareholders for examination by the AO either during assessment proceedings or during remand proceedings. The appellant's plan of action is to lead the ultimate source to the agriculturists who are not taxable. This clearly proves that the transaction is not transparent and genuine. It is not the case where shareholders took part of the money from the agriculturists and took part of the money from non-agriculturists (who are taxable). The appellant

deliberately resorted to the sources which are unverifiable. Though the appellant provided confirmations and pattadar pass books of the agriculturists, purpose of these transactions is quite evident to any prudent person. The entire exercise is only to convert black money into white. Further, there is no evidence on record to suggest whether all the shareholders have repaid the money back to the agriculturists or paid any interest on the loans taken.

8.2 further, the Hon'ble Delhi High Court in the case of CIT vs. Titan Securities Ltd.(2013) 84 CCH 184 held that where the company which has subscribed to share capital is found to be hawala company providing accommodation entries, the Hon'ble Delhi High Court held, mere furnishing of income-tax returns, balance sheet, statement of affairs and bank statements without any explanation for deposits in its accounts may not meet the requirements of section 68. It was further held that it is necessary to note that the business activities of share subscribers in order to ascertain whether they are financially sound and are able to purchase the shares for substantial amount. The decision of the Hon'ble Supreme Court in the case of M/s. Lovely Exports Pvt.Ltd. was also considered by the Hon'ble Delhi High Court. In the instant case, the appellant neither produced the shareholders nor their lenders for examination by the Assessing Officer, neither the identity is proved nor the creditworthiness of the shareholders is proved. Therefore, action of the Assessing Officer in making the addition of Rs.3,21,50,000/- as unaccounted income is sustained, therefore, this ground of appeal is dismissed.

8. Aggrieved with such order of the ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

- 1. The order of the Hon'ble CIT(A) is erroneous in law as well as on facts.*
- 2. In the facts and circumstances of the case, the Hon'ble CIT(A) ought to have deleted the addition of Rs.3,78,642/-made by the assessing officer by invoking provisions of section 40A(3) of the I.T Act.*
- 3 . The Hon'ble CIT(A) erred in dismissing the alternative claim with regard to allowing of 1/5th of the expenditure of Rs.2,75,000/- in the light of provisions of section 35D of the IT Act.*
- 4. The Hon'ble CIT(A) ought to have deleted the addition made by the assessing officer treating the share capital of Rs.3,21,50,000/- as unexplained investment.*
- 5. In the facts and circumstances of the case, the Hon'ble CIT(A) ought to have observed that the requirements mentioned u/s.6B of the IT Act were satisfied and therefore there was no scope to treat the amount of Rs.3,21,50,000- as unexplained investment in the hands of the assessee company in which public are substantially interested.*

6. *The Hon'ble CIT(A) erred in upholding the determination of the total income at Rs. 4,13,26,942/- as against the income admitted of Rs.85,23,300/- and therefore the additions are liable for deletion.*

7. *Any other ground will be raised at the time of hearing.*

9. The assessee has also raised following additional grounds.

1. *The reasons recorded for issue of notice u/s 148 of the 1T Act, 1961 have no nexus with income escaping assessment. Therefore the issue of notice u/s 148 of the 1T Act, 1961 and the assessment made thereon is invalid, bad in law, and therefore must be quashed.*

2. *The reasons recorded as stated in the assessment order passed on Section 143(3) r.w.s 147 of the 1T Act, 1961 dated 29.12.2011 states the reasons as under:*

"The veracity of the investments by the subscribers requires examination, hence income chargeable to tax has escaped assessment and notice u/s 148 was issued."

Thus the reasons recorded have no nexus with the income escaping assessment and the quantum of income escaping assessment not having been specified, the entire notice issued u/s 148 of the 1T Act, 1961 is illegal, void, bad in law, and therefore the assessment made thereon must be quashed.

3, *The appellant contests the reopening of assessment on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment, and therefore the issue of notice u/s 148 of the 1T Act, 1961 is totally contrary to establish judicial principles. Therefore the issue of notice is bad in law and the assessment must be quashed.*

9.1 However, in absence of anybody to explain the admission of the additional grounds raised before the Tribunal, such additional grounds are dismissed.

10. Now coming to the grounds raised by the assessee are concerned, we find grounds of appeal No. 1 and 7 are general in nature and therefore, the same are dismissed.

11. Ground appeal No.2 by the assessee relates to the order of the ld.CIT(A) in confirming the addition of Rs.3,78,642/- made by the AO u/s. 40A(3) of the I.T.Act.

11.1 As mentioned earlier, the assessee could not substantiate as to how the payments made in violation of provisions of section 40A(3) of the I.T.Act fall under exceptional circumstances allowing payment of cash in excess of Rs.20,000/- as specified in Rule 6DD of the I.T.Act. Since the assessee has failed before the AO as well as the ld.CIT(A) to substantiate the same and there is nothing before us to take a contrary view then the view taken by the AO and ld.CIT(A) on this issue, therefore, the ground raised by the assessee is dismissed.

12. In ground of appeal no.3, the assessee has challenged the order of the ld.CIT(A) in sustaining the addition of Rs.2,75,000/- by not allowing 1/5th of the same u/s. 35D of the I.T.Act.

12.1 After hearing the ld.DR and on perusal of the record, we find the AO disallowed the amount as this was incurred towards subscription fee for increasing share capital which is capital in nature. We find the ld.CIT(A) rejected the claim of the assessee to allow the same u/s.35D of the I.T.Act by observing as under:-

6.4 Such expenditure can be allowed at the rate of 1/5th for 5 consecutive years starting from the year of production. The AR has not submitted any details or evidence in support of his claim that the expenditure incurred falls under any of the categories mentioned above. Further, the AR explained that this amount was paid to Company Law Board as a fee to enhance the share capital. He was requested to produce the receipt given by the Company Law Board, however, the same was not submitted. Therefore, this ground of appeal is dismissed.

13. We do not find any infirmity in the order of the ld.CIT(A) on this issue in absence of furnishing of any details or evidence in support of the claim that the expenditure falls under any of the

categories mentioned in provisions of section 35D(2) of the I.T.Act. We, therefore, do not find any infirmity in the order of the Id.CIT(A) on this issue and accordingly, the same is upheld. The grounds raised by the assessee is accordingly dismissed.

14. Grounds of appeal No. 4 and 5 relate to the order of the Id.CIT(A) in sustaining the addition of Rs.3,21,50,000/- u/s. 68 of the I.T.Act.

14.1 After hearing the Id.DR and on perusal of the record, we find the AO made the addition of Rs.3,21,50,000/- u/s.68 of the I.T.Act on the ground that assessee could not substantiate with evidence to his satisfaction regarding the identity and creditworthiness of the 13 investors who have invested in the share capital of the assessee company and the genuineness of the transaction. We find the Id.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the Id.CIT(A) on this issue. Admittedly out of the 13 investors, the assessee was able to produce only 3 investors and the remaining 10 investors neither responded to the notice issued u/s. 133(6) nor were produced by the assessee before the AO. Even in the case of the remaining three investors, the AO had given the reasons for not accepting the creditworthiness of the said persons after recording the outcome of their examination. We find during the remand proceeding, the assessee had given the list of the 13 shareholders with their source. However, it is seen from the source of investment that the investors themselves received loan from others to invest in the shares of the assessee company. It is also important to note that none of the shareholders are assessed to tax and all of them have borrowed money from others, who are again agriculturists and the agriculturists are again not assessed to tax. Further, none of the agriculturists from whom the so

called investors have borrowed money are maintaining any bank account. While some of the agriculturists have put their thumb impression, however, the confirmations are in English. Under these circumstances and in view of the detailed reasoning given by the Id.CIT(A) while sustaining the addition made by the AO u/s. 68 of the I.T.Act at Rs.3,21,50,000/-, we do not find any infirmity in the same. Accordingly, the order of the Id.CIT(A) on this issue is upheld and the grounds raised by the assessee on this issue are dismissed.

15. Ground of appeal No.6 being general in nature is dismissed.

16. In the result, the appeal filed by the assessee is dismissed.

ITA No.655/HYD/2015 for AY 2010-11 (By Revenue)

17. Facts of the case, in brief, are that the assessee filed its return of income on 12.10.2010 declaring total income of Rs. 2,62,15,827/-. The return was processed u/s. 143(1) of the Act. Subsequently, the case was converted to scrutiny and statutory notices u/s. 143(2) and 142(1) were issued. In response to the same, the AR of the assessee appeared before the AO from time to time and filed the requisite details. The AO completed the assessment u/s. 143(3) on 22.03.2013 determining the total income at Rs.9,49,89,417/- wherein he made the following additions.

A - Disallowance of Rs.27,56,900/- being fee paid to ROC for increase in share capital

B - Addition of Rs.4,00,00,000/- as unexplained share capital u/s. 68 of the I.T.Act

C - Addition of Rs.2,32,58,123/- on account of bogus raw materials

D - Rs.20,46,634/- on account of bogus packing material and E. Rs.7,11,933/- being disallowance u/s.40(a)(ia)

18. In appeal, the Id.CIT(A) sustained the addition of Rs.7,11,933/- and Rs.27,56,900/- respectively. So far as the remaining three additions are concerned, he deleted the additions. However, the revenue has challenged the order of the Id.CIT(A) in deleting the addition of Rs.4 crores u/s. 68 of the I.T.Act only and therefore, we are concerned with the deletion of Rs. 4 crores by the Id.CIT(A) as per the grounds of appeal by the revenue.

19. So far as the facts leading to the addition of Rs.4 crores by the AO is concerned, we find during the course of assessment proceedings, the AO observed that there is an increase in paid-up share capital by an amount of Rs. 1,60,00,000/- and share premium of Rs.2,40,00,000/-. He, therefore asked the assessee to prove the identity and creditworthiness of the subscribers and genuineness of the transactions along with the details of the sources in the hands of the subscribers, bank statements and I.T. returns of the subscribers for the FY 2009-10. In response to the same the assessee filed the share allotment details along with the list of allottees which are as under:-

S.No	Name & Occupation of Allottee	Address of Allottee	Nationality of the allottee	Number of shares allotted	Total amount paid including Premium(Rs)	Total amount to be paid on calls (including premium) outstanding (Rs)
1	Shri a.Venkata Raghava Raju, Occupation:Business	H.No.16-2-13/31: S.S.Colony, Kukatpally, Hyderabad-500 072	Indian	5,34,000	66,75,000	0
2	Shri M.Malla Reddy, Occupation:Business	H.No.EWS.No. 1-5-581: KPHB Colony, Kukatpally, Hyderabad 500 072	Indian	5,34,000	66,75,000	0

3	<i>Srhi D.Ranga Raju,</i> <i>Occupation:Busine</i> <i>ss</i>	<i>H.No.19/158</i> <i>/1: MES</i> <i>Colony,</i> <i>Tirumalgiri,</i> <i>Hyderabad-</i> <i>500 025</i>	<i>Indian</i>	<i>5,34,000</i>	<i>66,75,000</i>	<i>0</i>
4	<i>Shri V.Srinu,</i> <i>Occupation:Busine</i> <i>ss</i>	<i>H.No.1-55(B)-</i> <i>1, Potha-</i> <i>varam,</i> <i>Khambpadu</i> <i>village, Podili</i> <i>Mandal,</i> <i>Praksam Dist-</i> <i>523 240</i>	<i>Indian</i>	<i>5,34,000</i>	<i>66,75,000</i>	<i>0</i>
5	<i>Amt.A.madhavailat</i> <i>ha,</i> <i>Occupation:Buisnes</i> <i>s</i>	<i>H.No.2-22-</i> <i>1/105, Shanti</i> <i>Apts, Bhagya</i> <i>Nagar colony,</i> <i>Kukatpally,</i> <i>Hyderabad-</i> <i>500 072</i>	<i>Indian</i>	<i>5,34,000</i>	<i>66,75,000</i>	<i>0</i>
6	<i>Smt.S.Bharathi,</i> <i>Occupation:Busine</i> <i>ss</i>	<i>H.No.EWS.No.</i> <i>1-5-29-581:</i> <i>KPHB Colony,</i> <i>Kukatpally,</i> <i>Hyderabad-</i> <i>500 072</i>	<i>Indian</i>	<i>5,30,000</i>	<i>66,25,000</i>	<i>0</i>
		<i>Total</i>		<i>32,00,000</i>	<i>4,00,00,00</i> <i>0</i>	<i>0</i>

20. Since the assessee did not furnish the confirmation letters, income-tax returns, bank statements of the share subscribers etc., the AO held that the assessee failed to discharge his initial onus of proving the identity and creditworthiness of the investors and the genuineness of the transactions. Since the assessee requested for not treating the share application money as income u/s. 68 of the I.T.Act by relying on various decisions instead of furnishing details as called for, the AO issued summons u/s. 131 of the I.T.Act to the above six parties asking them to furnish the following details.

1.All the movable and immovable properties owned by the above persons and their family members during the F.Y. 2009-10.

2.Income tax returns of the above persons for the A.Ys. 2007-08, 2008-09,2009-10 and 2010-11.

3. All the bank statements of the above persons from 01-04-2009 to 31-03-2010 highlighting the transactions regarding transfers made to M/s.

Farmax India Ltd and also explaining the sources for deposits/credit transfers in their bank account.

21. However, out of the six subscribers five subscribers did not respond and one Mr. D.Ranga Raju who is stated to have invested Rs.66,75,000/- informed that he is an ex-serviceman and did not invest in M/s. Farmax India Ltd. He further stated that he did not have any contact with M/s. Farmax India Ltd. In view of the above, the AO relying on the decision of Hon'ble Delhi High court in the case of NR Portfolio vs CIT held that if the share subscribers did not respond to the notices issued by the AO then the amounts received from the share subscribers can be treated as income u/s. 68 of the I.T.Act. He accordingly made addition of the same to the total income of the assessee.

22. Before the Id.CIT(A), the assessee filed certain evidences in shape of additional evidence such as confirmation letter and bank statements. The Id.CIT(A) forwarded the details to the AO and called for a remand report. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id.CIT(A) deleted the addition by observing as under:-

6.4 The information brought on record is considered. There was an increase in paid up share capital of Rs.4,00,00,000/- during the relevant previous year. This amount was contributed by six persons. The Assessing Officer asked the assessee to prove the identity, creditworthiness of share subscribers and genuineness of transactions and also desired the assessee to produce the details of sources in the hands of subscribers along with bank statement and copies of income-tax returns. such details were not produced during the assessment proceedings. However, during appeal proceedings the appellant submitted confirmation letters and bank statement of share subscriber's, which were sent to the assessing officer for verification and the assessing officer reported that the identity of subscriber and the genuineness of such transactions were proved and further reported that as none of them were assessed to tax, information pertaining to investment was being forwarded to the jurisdictional Assessing Officer. In this background, it may be reasonable to hold that, where the appellant has submitted the names, addresses, PAN numbers and confirmation letters from the subscribers, indicating the identity of the creditors and the genuineness of transactions, the ratio of the decision

of the Hon'ble Supreme Court in the case of Lovely Exports 216 CTR 195, can be applied and it may be further reasonable to hold that no addition can be made as undisclosed income in the hands of the company. However, the Assessing Officer is directed to communicate the details regarding investment made by the subscriber to the respective Assessing Officers having jurisdiction over them. With these remarks, the addition of Rs.4,00,00,000/- u/s. 68 of I.T.Act is held to be unsustainable. Therefore, ground no.2 is treated as Allowed.

23. Aggrieved with such order of the Id.CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds

1. The order of the Ld CIT(A) is contrary to law and facts of the case.

2. The Ld. CIT(A) ought to have upheld the order of the Assessing Officer as the assessee has completely failed to prove the credit worthiness of the subscribers of share capital and that his onus has not been fully discharged.

3. The Ld. CIT(A) ought to have relied on the decision of the Hon'ble Delhi High Court in the case of Nipon Builders and Developers Private Limited (07/01/2013) in which the Hon'ble Court has categorically stated that u/s. 68, the onus is upon the assessee to prove the three necessary ingredients of identity, credit worthiness and genuineness of transaction.

4. Whether on the facts and in the circumstances of the case, the CIT(A) is justified in deleting the addition made on account of share capital and directing the Assessing Officer to take up the case with the Assessing Officer's of the individual subscribers without appreciating the fact that the assessee has not discharged his onus of proving the creditworthiness of the subscribers.

5. The Ld. CIT(A) ought to have upheld the order of the AO in view of the jurisdictional Andhra Pradesh High Court decision in the case of R.B. Mittal Vs. CIT reported in 246 ITR 283 wherein it was held that the assessee, in order to discharge the onus cast on him u/s. 68, has to establish not only the identity of his creditors and confirmation of the credits but also the capacity of the creditors to advance money as well as the genuineness of the transactions.

6. Any other ground that may be urged at the time of hearing. of

24. The Id. DR strongly challenged the order of the Id.CIT(A) in deleting the addition made by the AO. He filed a detailed written submission according to which despite summons issued u/s.131 of the Act, none of the persons appeared before the AO along with the details of immovable properties, I.T.returns and bank

statements. One Mr. D.Ranga Raju filed a reply according to which he is an ex-serviceman and did not invest in M/s. Farmax India Ltd. and he further stated that he did not have any contact with M/s. Farmax India Ltd. He submitted that the Id.CIT(A) did not go through the remand report properly where the AO had specifically pointed out in the remand report that the creditworthiness of the persons investing in the share capital has not been proved. He submitted that the decision of the Hon'ble Delhi High Court in the case of Lovely Exports Pvt.Ltd. 216 CTR 195 by the Id.CIT(A) is totally misplaced, since in the said case the AO did not investigate the matter in detail for which the appeal of the assessee was allowed. However, in the instant case neither the assessee nor the subscribers to the share capital furnished information before the Assessing Officer. The Assessing Officer issued summons to the subscribers and out of 6 subscribers, 5 of them did not respond and the remaining one denied having made any transaction with the assessee. Thus, the Assessing Officer had made the addition us.68 on the basis of his investigation and the evidence on record. Thus, the ratio of Lovely Exports (P) Limited is not applicable here. Secondly, even in the remand report, the Assessing Officer after investigating the additional evidence furnished before the Ld CIT(A), categorically stated that the subscribers have not filed any return of income and that their creditworthiness is not established. Thus again, the Assessing Officer did give findings after proper investigation. He submitted that the Id.CIT(A) ignored the investigation and findings of the AO in both the instances and blindly relied upon the decision in the case of Lovely Exports Pvt.Ltd.(supra) which is not correct.

25. The Id. DR further submitted that merely routing the money through banking channels does not establish the genuineness of the transaction or the creditworthiness of the subscriber. Further

without even having a look at the bank statements of the subscribers the ld.CIT(A) deleted the addition. The ld.DR specifically referred to the following portion of his written submission

On perusal of paper book filed by the assessee on 03-10-2016 at page 43 to 54, it is observed that Sri A.Venkat Raju supposedly invested Rs.66.75 lakhs. Looking at his bank statement at Page No.45, for every payment to the appellant, there has been a corresponding deposit of the same amount before the payment is made. The entire trail of the source of such deposits should have been investigated by the ld. CIT(A) before accepting it as a concluding evidence.

Further, going to the page 48 to 54, it is seen that the net profit of the subscriber from his business over the span of 4 years preceding this line is hardly Rs.7 lakhs, as against the amount investment of Rs.66.75 lakhs. Even if we look at his total capital as on 31-03-2009 and 31-03-2010 its only Rs.33 lakhs and Rs.46 lakhs. Hence, the source of funds invested is not explained. It is unlikely that he would invest in the assessee company which is not providing any dividend or return on capital.

On perusal of paper book filed by the assessee on 03-10-2016 at page 55, it is observed that Mr. Venkata Narasimha Raju Datla, no bank statement nor filed any income tax returns provided.

Similarly at page No.56 of the paper book, Mr. D.Ranga Raju, in response to the summons issued by the AO, he had denied any transactions with the appellant vide his letter dated 20-03-2013. It is observed that in bank account, first money has been deposited, then paid out to the appellant. Only ledger account is provided also share capital given in form of cash.

Similarly at page No.62-63, in respect of Sri Malla Reddy, the same trend was followed i.e., cash deposited of same amount before payment to appellant. Further. the assessee is non filer.

On perusal of page No.66 to 82, in respect of Sri V.Srinu, the previous year profit earned is hardly Rs.10 lakhs as against subscribed Rs.10 lakhs. Further, cash deposits in his bank account. just before transfer to appellant. The amount of cash deposits in account are incommensurate with the gross receipts of the business which is only Rs.28.42,153/- during the financial year 2009-10.

On perusal of page No.84 in respect of smt. Bharathi, same deposit immediately transferred to M/s. Farmax Pvt.Ltd. No income tax returns /BOA etc.

On perusal of page No.93 in respect of smt.Madhavi Latha, subscriptions in cash and deposit before the transfer.

26. The Id. DR relied on the following decisions and submitted that the order of the Id.CIT(A) is not in conformity with law and therefore, the same should be reversed and that of the order of the AO be restored.

i.CIT vs.M/s. Jansampark Advertising and Marketing (P) Ltd.in ITA 525/2014 (Del.HC)

ii.CIT vs. Focus Expors Limited in ITA 2018/2012 (Del.HC)

iii. CIT vs. titan Securities Limited (2013) 84 CCH 184 (Delhi.HC)

27. We have considered the arguments advanced by the Id.DR and perused the record. It is an admitted fact that the assessee during the course of assessment proceedings failed to furnish the complete details as called for by the AO. We find the assessee in the instant case has received share capital and share premium of Rs.4 crores from six investors, the details of which are given at para no. 19 of this order. We find during the course of assessment proceedings, the assessee did not furnish the confirmation letters, income tax returns and bank statements of the shareholders for which the AO issued summons u/s. 131 of the I.T.Act to all the six investors by calling for certain details from them. However, out of the six investors five investors did not respond and the sixth investor Shri D.Ranga Raju who is alleged to have invested of Rs.66,75,000/- towards share capital and share premium, has denied to have invested any amount in the assessee company. He further stated that he has no contact with the assessee company. We find before the Id.CIT(A), the assessee furnished certain details in shape of additional evidences which were forwarded to the AO for his comment and despite the AO's remarks in the remand report that the investors could not substantiate their creditworthiness, the Id.CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph.

27.1 In our opinion, the order of the Id.CIT(A) cannot be accepted as correct under the facts and circumstances of the case. It is the settled proposition of law that for accepting any cash credit as genuine, the onus is always on the assessee to substantiate with evidence to the satisfaction of the AO regarding the identity and creditworthiness of the loan creditors/investors and the genuineness of the transaction. In the instant case, it is noted that none of the investors are tax payers and even one of the investor has completely denied to have invested in the assessee company and has stated that he has no contact with the assessee company. In our opinion, merely routing the money through banking channels does not establish the creditworthiness of the subscriber. Further, it is also noted from the written submission filed by the Id. DR that some of the investors have immediately deposited money just before issuing cheque to the assessee company, Further, Mr. Venkata Narasimha Raju Datla has not filed any bank statement. Under these circumstances, the decision relied on by the Id.CIT(A) that where the assessee has submitted the name, address, PAN number and confirmation letters from the subscribers indicating the identity of the creditors and genuineness of the transaction, it can reasonably be held that no addition can be made, in our opinion is incorrect.

28. Further, as per the various decisions, the powers of the Id.CIT(A) are coterminous with that of the powers of the AO. The Id.CIT(A) can do which the AO has failed to do. However, in the instant case despite the report of the AO that none of the investors has established his/her creditworthiness, the Id.CIT(A), without going through the remand report of the AO properly has deleted the addition which, in our opinion, is not correct. We find the Hon'ble Delhi High Court in the case of CIT vs. Titan Securities Pvt.Ltd. reported in 84 CCH 184, after considering the decision of Hon'ble Supreme Court in the case of M/s. Lovely

Exports Pvt.Ltd. (supra) has held that where the company, which has subscribed to share capital is found to be hawala company providing accommodation entries, mere furnishing of income tax returns, balance sheet, statement of affairs and bank statement without any explanation for deposits in accounts may not meet the requirements of section 68 of the I.T.Act. It was further held that it is necessary to note the business activities of share subscribers in order to ascertain whether they are financially sound and are able to purchase the shares for substantial amount. However, in the instant case, as mentioned earlier, none of the investors has filed his/her return of income which would have alerted the Id.CIT(A) before taking the decision by deleting the addition made by the AO u/s. 68 of the I.T.Act.

29. In view of the reasoning given above, we are unable to uphold the order of the Id.CIT(A) deleting the addition made by the AO u/s. 68 of the I.T.Act amounting to Rs.4 crores. Accordingly, the order of the Id.CIT(A) on this issue is reversed and that of the AO is restored. The grounds raised by the revenue are accordingly allowed.

30. In the result, the appeal filed by the assessee is dismissed and the appeal filed by the revenue is allowed.

Order pronounced in the Open Court on 16th January, 2023.

Sd/- (K.NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 16th January, 2023.

PVV/Thirumalesh/sps

Copy to:

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3	CIT(A)-2, Hyderabad
4	CIT(A)-5, Hyderabad
5	Pr.CIT(A)-2, Hyderabad
6	Pr.CIT(A)-5, Hyderabad
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order