

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 14/Kol/2021
Assessment Year: 2014-15

Income Tax Officer, Ward - 11(1), Kolkata	Vs	M/s. Gemini Commerce Pvt. Ltd. 8A, Brown Field Row Kolkata - 700027 [PAN : AADCG0842J]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury, Advocate
Revenue by :	Shri Ranu Biswas, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 01/02/2023
घोषणा की तारीख /Date of Pronouncement: 15/03/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is the appeal preferred by the revenue against the order of the Learned Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter referred to as the Ld. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 21/09/2022 for the Assessment Year 2014-15.

2. The Registry has pointed out that there is a delay of six (6) days in filing of this appeal in time before the Tribunal. The assessee has filed a petition for condonation of delay stating the reasons of delay. After perusing the same, we find that the assessee was prevented by sufficient cause from filing the appeal in time before the Tribunal. Hence, the delay is condoned and the appeal is admitted.

3. The revenue has filed the following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs.5,61,00,000/- made by the Assessing Officer on account of sale of unquoted shares in the course of

assessment in absence of identity, genuineness and creditworthiness of the purchaser/buyer companies.

2. *Whether on the facts and in the circumstances of the case, Ld. CIT[A] was justified in deleting the addition of Rs. 5,61,00,000/- without taking into cognizance of the Remand Report sent by the Assessing Officer wherein it had been categorically stated regarding lack of genuineness and creditworthiness of the transactions in question.*

3. *Whether on the facts and in the circumstances of the case, Ld. CIT[A] was justified in deleting the addition of Rs.5,61,00,000/- whereas the Assessing Officer raised suspicion in the Remand Report regarding sources and sources of funds raised by the investing companies. That the Ld. CIT(A) had erred in holding that the sale of unquoted shares are not a Sham transactions even though this shares are illiquid assets and the assessee has introduced his unaccounted money in the form of sale of unquoted shares.*

4. *Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 5,61,00,000/- made by the Assessing Officer where no personal attendance was made by any Purchaser/Buyer companies during the course of assessment proceedings and as such identity, creditworthiness of the Purchaser Company and genuineness of transactions could not be verified.*

5. *The principle which has been laid down by the Hon"ble Supreme Court in the case of Pr.CIT [Central]-1, Kol. Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161] also is duty bound to suggests that the Assessing Officer investigate the creditworthiness of the subscriber, verify the identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name lenders. In the facts of the case, in spite of best efforts made by the assessing officer, he could not verify the same as there was no response from the companies from whom money received. Thus, the decision of the Ld. CIT(A) is erroneous.*

6. *On the facts of the present case, clearly the assessee company failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified adding back the amounts to the income of the assessee and the Ld. CIT[A] has erred in allowing relief to the assessee.*

7. *That the appellant craves to add, alter, amend, delete or modify any of the grounds and/or take additional grounds before or at any time of hearing of this appeal."*

4. Brief facts are that the assessee is a Private Limited Company engaged in the business of trading. Nil income declared in the return filed for

Assessment Year 2014-15 on 16/06/2015. Based on AIR information, case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings, ld. Assessing Officer noticed that there are sundry creditors amounting to Rs.5,61,00,000/-. It was stated by the assessee that it had sold the shares held as investment and has received the alleged sum. Due to some reason, transactions could not materialize during the year and, therefore, the alleged sum has been show as sundry creditors. Ld. Assessing Officer, thereafter called for the information from the alleged creditors out of which most of the creditors replied and in few cases, the letters were duly served but reply not received. All the other details in order to explain the alleged sum were filed by the assessee, however, the ld. Assessing Officer was not satisfied and he concluded the assessment making addition u/s 68 of the Act of Rs.5,61,00,000/- and assessed the income of the assessee at Rs.5,60,98,160/-.

5. Aggrieved the assessee preferred appeal before the ld. CIT(A) and filed various other details to explain the amount received from loan creditors against sale of investment. The ld. CIT(A) called for a remand report and the same was received on 19/09/2019. Thereafter, the ld. CIT(A) examined the details filed by the assessee in order to prove the identity, creditworthiness of the loan creditors and genuineness of the transactions, including sale bills issued by the assessee company to these parties, confirmation and copies of PAN cards. Thereafter, the ld. CIT(A) relied on the various judicial pronouncements and came to the conclusion that the alleged transaction was towards sale of equity shares and the assessee has successfully explained the source of the said sum and, therefore, no addition is called for.

6. Aggrieved the revenue is in appeal before us.

7. The ld. D/R vehemently argued referring to the finding of the ld. Assessing Officer and further submitted that companies from whom the alleged sum has been received are paper/shell companies.

8. The ld. Counsel for the assessee firstly referred to the detailed submissions filed by the ld. CIT(A), copies of which are placed in the paper book. Reference was also made to various documents of the sundry creditors which mainly included the financial statements and the bills of sale. Further reliance was placed on the following decisions:-

- *Adbhut Vinimay Pvt. Ltd. vs. ITO in ITA No. 2404/Kol/2017; order dt. 24/10/2018*
- *ITO vs. M/s. Srishti Fincap Pvt. Ltd. ITA No. 2264/Del/2013; order dt. 07/10/2015*
- *ITO vs. Jatin Investment Pvt. Ltd. in ITA Nos. 4325 & 4326/Del/2009; order dt. 27/05/2015*
- *CIT vs. M/s. Vishal Holding & Capital Pvt. Ltd. reported in 200 Taxmann P-186; Hon'ble Delhi High Court; judgment dt. 09/08/2010*
- *ITO vs. Goodwill Cresce Pvt. Ltd. in ITA No. 4151/Del/2010; order dt. 25/01/2012*

9. We have heard rival contentions and perused the record placed before us. The sole grievance of the revenue is that the ld. CIT(A) has erred in deleting the addition made by the ld. Assessing Officer for unexplained sundry creditors amounting to Rs.5.61 Crores. It is not in dispute that the assessee held investments in equity shares in the preceding year and as on 01/04/2013, there was an opening balance of investment in equity shares for a sum of Rs.14,20,92,000/- and it comprised of nine companies. Out of

these investments, a part of equity shares were sold during the year and copies of bills for sale of the said equity shares and confirmations form part of the paper book placed before us. Genuineness of the purchases of the equity shares held as investment has not been disputed by the revenue authorities. The only dispute is that the buyers of these equity shares have not been able to prove the source of payments made by them to the assessee in the form of sale consideration. The assessee before the lower authorities and before us filed various details of the alleged loan creditors to prove the identity and creditworthiness of these creditors as well as genuineness of the transactions of sale of equity shares. The relevant part of the index of the paper book containing details filed by the assessee is reproduced below:-

<i>Amarjyoti Commercial Pvt. Ltd.</i>	<ul style="list-style-type: none"> (i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.
<i>Chin Purni Agencies Pvt. Ltd.</i>	<ul style="list-style-type: none"> (i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.
<i>Chandra Ghanta Bargain Pvt. Ltd.</i>	<ul style="list-style-type: none"> (i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14

	<i>(vii) Bill for sale of Investment.</i>
<i>Katyani Sales Pvt. Ltd.</i>	<i>(i) Acknowledgement of Return of Income</i> <i>(ii) Source of Funds</i> <i>(iii) bank statements</i> <i>(iv) PAN card</i> <i>(v) Computation of income & tax.</i> <i>(vi) Audited Financial Accounts for F.Y. 2013-14</i> <i>(vii) Bill for sale of Investment.</i>
<i>Palanhar Merchants Pvt. Ltd.</i>	<i>(i) Bill for sale of Investment.</i>
<i>Peal Tree Dealmark Pvt. Ltd.</i>	<i>(i) Bill for sale of Investment.</i>
<i>Santosh Investment Pvt. Ltd.</i> <i>Capricon Iron and Steel Traders Pvt. Ltd.</i>	<i>(i) Bill for sale of Investment.</i> <i>(i) Acknowledgement of Return of Income</i> <i>(ii) Source of Funds</i> <i>(iii) bank statements</i> <i>(iv) PAN card</i> <i>(v) Computation of income & tax.</i> <i>(vi) Audited Financial Accounts for F.Y. 2013-14</i> <i>(vii) Bill for sale of Investment.</i>
<i>Chandra Ghanta Commerce Pvt. Ltd.</i>	<i>(i) Acknowledgement of Return of Income</i> <i>(ii) Source of Funds</i> <i>(iii) bank statements</i> <i>(iv) PAN card</i> <i>(v) Computation of income & tax.</i> <i>(vi) Audited Financial Accounts for F.Y. 2013-14</i> <i>(vii) Bill for sale of investment</i>
<i>Eastern Design Advisory Pvt. Ltd.</i>	<i>(i) Acknowledgement of Return of Income</i> <i>(ii) Source of Funds</i> <i>(iii) bank statements</i> <i>(iv) PAN card</i> <i>(v) Computation of income & tax.</i>

	<p>(vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Gajanand Advisory Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Jasdeep Agencies Pvt. Ltd.	<p>(i) Bill for sale of Investment.</p>
Kapileshwar Commosales Pvt. Ltd.	<p>(i) Bill for sale of Investment.</p>
Khandelwal Investment Consultant Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Original Tradelink Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Audited Financial Accounts for F.Y. 2013-14 (iii) Bill for sale of Investment.</p>
Rajshree Solutions Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Bill for sale of Investment</p>
Shivrashi Distributors Pvt. Ltd.	<p>(i) Bill for sale of Investment</p>
Jeen Mata Dealers Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income</p>

	<p>(ii) Source of Funds (iii) bank statements (iv) Computation of income & tax. (v) Audited Financial Accounts for F.Y. 2013-14 (vi) Bill for sale of Investment.</p>
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10. Further we notice that information called for by the Id. Assessing Officer u/s 133(6) of the Act were duly served upon all the creditors and even in the remand proceedings, most of the loan creditors have again confirmed the transaction and only in some cases, creditworthiness has been doubted by the Id. Assessing Officer based on the small amount of bank balance standing at the opening of the year. Assessee has filed the following details in the case of the alleged sundry creditors:-

- a) Identity of these parties
- b) Bank statement of these parties showing the transactions undertaken by the assessee with them
- c) Annual report of all these parties
- d) Copy of ITR filed by these parties with the Income Tax Department
- e) Computation of income filed by these parties
- f) Sale bill issued by the assessee company to these parties evidencing the sale of shares
- g) Confirmation from these parties sent by them to the AO directly
- h) PAN cards

11. Further, we notice that nowhere in the course of assessment proceedings, any dispute has been raised about the transactions relating to purchase of equity shares made by the assessee during the preceding year. Neither the sale transaction has been disputed and only the consideration received against such sale of equity shares held as investment in current year has been disputed by the Id. Assessing Officer. Since all the details

necessary to prove the identity and creditworthiness of the sundry creditors and genuineness of the transactions for sale of equity shares stands filed, assessee has discharged the primary onus casted upon it and their correctness remains unrebutted by the Id. D/R. We fail to find any infirmity in the finding of fact given by the Id. CIT(A). Our view is further supported by the decision of this Tribunal in the case of *Abdhut Vinimay Pvt. Ltd.* (*supra*) dealing with similar issue where investments were brought forward from the preceding year and were sold during the year and provisions of Section 68 was invoked by the Assessing Officer this Tribunal decided in favour of the assessee observing as follows:-

"3. After hearing rival contentions, considering the papers on record and orders of the authorities below and case laws cited we hold as follows :-

The assessee during the year sold its investments i.e. shares purchased by it in the earlier years and disclosed by it as its assets/investment in the Balance Sheet, to three companies. The details are as under :-

S.No.	Name	Address	PAN	Total Amount
1.	<i>Kritmaan Tie Up Pvt. Ltd.</i>	<i>P-22, Swallow Lane, Ground Floor, Kolkata-700001.</i>	<i>AADCK7798K</i>	<i>10,00,000</i>
2.	<i>Grade Suppliers Pvt. Ltd.</i>	<i>14/2, Old China Bazar Street, 2nd Floor, Room No.1391A, Kolkata-700001.</i>	<i>AAECG0150E</i>	<i>32,50,000</i>
3.	<i>Jhankar Dealers Pvt. Ltd.</i>	<i>P-22, Swallow Lane, Ground Floor, Kolkata-700001.</i>	<i>AACCJ2416N</i>	<i>20,00,000</i>
			<i>Total</i>	<i>62,50,000</i>

4. In response to the notice issued u/s 142(1) of the Act the assessee furnished the details of "sale of investments" to the AO. In response to the notice u/s 131 of the Act issued by the AO, to the purchasers companies, the following

documents/evidence was filed before the AO by all the three companies which purchased the shares of the company.

(a) Copy of Income Tax Return

(b) Copy of Certificate of incorporation

(c) Copy of Audited Accounts

(d) Copy of Share sale Invoice

(e) Copy of the bank account of the share purchaser company The AO wanted the personal appearance of the directors of the purchaser companies. As there was no compliance this addition u/s 68 is made. In our view this is against the proposition of law laid down by the Hon'ble Supreme Court in the case of [CIT vs Orissa Corporation\(P\)Ltd](#) (1986)159 ITR 78 (SC). We find that the share purchasers are all income tax assesses and they have filed return of income and the payments were made through account payee cheques and the share purchasers have confirmed purchase of the shares. There is no evidence with the revenue that the sale in question is a bogus sale. Under the circumstances the issue is whether addition can be made u/s 68 of the Act. We are of the opinion that no addition can be made u/s 68 of the Act on the facts and circumstances of this case. The assessee has discharged the burden of proof that is on it. There is no contrary evidence brought on records by the AO to disprove the claim of the assessee. Addition has been made on suspicion and surmises.

5. The Delhi 'G ' Bench of the Tribunal in ITA NO.2264/Del/2013 in the case of [ITO vs M/s Srishti Fincap Pvt. Ltd. Order](#) dated 07.10.2015 held as follows :

"9. From the facts and circumstances of the case, submissions made by the parties and case law cited in this case, we are of the considered view that no ground is made out to interfere into the order passed by Ld. CIT(A) for the following reasons:

i) that in the instant case, A.O. has merely acted upon information supplied by DIT (Inv.) and has not preferred to analyze the previous returns filed by the assessee to make out if he has already disclosed the purchase of shares in question.

ii) that from the perusal of copies of assessment proceedings initiated u/s 147 read with section 143(3) of the Act, pertaining to Assessment Year 2003-04 lying at pages 45-46 of the ledger book, in ledger account showing purchase of shares qua the Assessment Year 2003-04 lying at page 34 which have never been disputed by the A.O., it is abundantly clear that the assessee had purchased the shares in Assessment Year 2003-04.

iii) that when the assessee has sold the shares for Rs.25,10,000/- undisputedly purchased by him in Assessment Year 2003-04, no adverse inference can be drawn against him.

iv) that when purchased shares now sold by the assessee in Assessment Year 2003- 04 has been accepted in the preceding Assessment Year, the assessee cannot be put to such a situation to prove the source of buyer in the subsequent Assessment Year. Moreover, the seller can make sale of shares in cash u/s 40A(3) of the Act.

v) that when assessee has shown an amount of Rs.25,10,000/- as sale proceeds of shares as income, there is no ground for making the same as addition in the income which would amount to double addition.

vi) that the books of account maintained by assessee have never been disputed by the A.O. nor he has held that the purchase of shares was bogus transaction or the shares sold by the assessee were bogus one.

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vii) In I.T.O. Vs Jatin Investment Pvt. Ltd. (supra), it is held that when the assessee purchased the shares in earlier year which were shown as investment in the books of account and reflected in the balance sheet then the assessee sold certain investments and accounted for the profit or loss, the provisions of [Section 68](#) of the Act were not applicable.

viii) Similarly, Hon'ble Jurisdictional High Court in the case cited as CIT Vs Vishal Holding and Capital Pvt. Ltd. vide order dated 9th August, 2010 upheld the order dated 30.07.2009 of the ITAT in I.T.A. No. 1788/Del/2007 for the Assessment Year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under:-

"We are of the view that the assessee had produced copies) of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet. In our opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

ix) that the issue in controversy is squarely covered by the judgements: Vishal Holding and Capital Pvt. Ltd. and Jatin Investment Pvt. Ltd. (supra) as the assessee in the instant case has purchased the shares to the tune of Rs.25,10,000/- in the Assessment Year 2003-04 and then credited the receipt on account of sale of shares to the tune of Rs.25,10,000/- to its P & L account, which has already been declared and considered as its income by the appellant / assessee. So Ld. CIT(A) has legally and rightly deleted the addition of Rs.25,10,000/- vide impugned order.

11. As a sequel to the discussion made in the preceding paragraphs and in view of the ratio of judgement in the case of Vishal Holding and Capital Pvt. Ltd. (supra), we are of the opinion that when the assessee has proved to have

purchased the shares of Rs.25,10,000/- in the preceding assessment year duly shown in the balance sheet and then sold the same and shown an amount of Rs.25,10,000/- as sale proceeds of the share as income, the provisions contained in [Section 68](#) of the Act are not attracted and holding the same as income would tantamount to double taxation which is not permissible under law and as such, the Ld. CIT(A) has rightly deleted the addition made by the A.O. Consequently, no ground to interfere in the impugned order, the appeal of Revenue is hereby dismissed.

6. *The Hon'ble Delhi Bench of the Tribunal in the case of [ITO vs Jatin Investment Pvt. Ltd. In ITA No.4325 & 4326/Kol/2009](#) order dated 27.05.2015 held as follows:-*

"11. In his rival submissions, the Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the ITA No.2404/Kol/2017 Adbhut Vinimay Pvt. Ltd. A.Y.2012-13 5 assessee was having investment in shares etc. which were duly shown on the asset side of the balance sheet, out of those investments some were sold and few new were purchased and if there was any gain on the sale the same was offered for taxation. It was further submitted that in earlier year 13 4325 & 4326/ Del/2009 under similar circumstances, the case was reopened u/s 147 of the Act and the addition made by the AO was deleted by the I.T.A.T. It was further submitted that the assessee sold the shares which were earlier purchased in different years and duly shown in the balance sheet of the respective years and that the assessee had shown the sale proceeds in the books of accounts, the investments were reduced after making the sales. It was contended that there was no obligation under the law that the assessee was required to prove the source of payee. It was further contended that the AO had not rejected the books of accounts and the purchases were duly accepted so there was no reason to doubt the sales. It was submitted that the case of the assessee is squarely covered by the decision of this bench of the Tribunal in the case of [ITO vs. M/s Vishal Holding and Capital Pvt. Ltd.](#) in ITA no. 1788/Del/2009 order dated 17.07.2009 which has been upheld by the Hon'ble Jurisdictional High Court as reported in (2011) 200 Taxman 186 (Delhi). It was further, submitted that the issue is also covered by the order of the ITAT, Delhi Bench in the case of [ITO vs. Goodwill Cresec Pvt. Ltd.](#) in ITA No. 4151/Del./2010 order dated 25.01.2012. Reliance was also placed on the following cases laws :-

14 4325 & 4326/ Del/2009 "1. CIT vs. Sh. Udit Narain Aggarwal, ITA No. 560 of 2009, dt. 12.12.2012

2. CIT vs. Sudeep Goenka, ITA No. 468 of 2009, dt. 3.01.2013.

3. [CIT vs. Anirudh Narain Aggarwal, ITA No. 195 of 2010, dt. 16.01.2013.](#)"

It was pointed out that the same issue has been decided by the I.T.A.T. in assessee's own case in I.T.A.T. No. 1584/Del./2009 for the A.Y. 2002-03 vide order dated 13.11.2009, in assessee's favour (copy of the order was furnished which is placed on record)

12. We have considered the submissions of both the parties and gone through the material available on the record. In the present case, it is noticed that the assessee purchased the shares in earlier years which were shown as investment in the books of accounts and reflected in the "Asset Side" of the "Balance Sheet", out of those investments (copy which is placed at page no. 23 and 24 of the assessee's paper book), the assessee sold certain investments and accounted for the profit / loss and offered the same for taxation. In the present case, the amount in question was neither a loan or the deposit, it was also not on account of share application money, the said amount was on account of sale of investment therefore the provisions of [Section 68](#) of the Act were not applicable and the AO was not justified in making the addition. In our opinion, the Ld. CIT(A) rightly deleted the addition made by the AO.

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13. On a similar issue the Hon'ble Jurisdictional High Court in the case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) vide order dated 9th August, 2010 upheld the order dated 30.7.2009 of the ITAT in ITA no. 1788/Del/2007 for the assessment year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under :-

"We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet's. In our opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of 16 4325 & 4326/ Del/2009 assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05.

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of 16 4325 & 4326/ Del/2009 assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05."

7. The Hon'ble Delhi High Court in the case of [Principal C.I.T. vs Jatin Investment Pvt. Ltd.](#) [2017] TMI 342 (Delhi) held as follows :-

"4. The ITAT agreed with the conclusions of the CIT (A) upon its independent examination of the record. It also discounted the Revenue's submissions that the investment shown in the book of accounts and reflected as assets in the side of the balance sheet, should have been properly treated and that in the absence of such treatment .Section 68 applies. The ITAT rejected this contention and held - based upon the principles enunciated in [CIT v. Vishaf Holding & Capital Pvt. Ltd.](#) (order of this Court dated 9.8.2010) that the invocation of Section'68 in the circumstances is unwarranted.

5. Learned counsel for the Revenue reiterated the grounds cited in some of the contentions made before the ITAT. Learned counsel especially emphasized on the ITA No.2404/Kol/2017 Adbhut Vinimay Pvt. Ltd. A.Y.2012-13 7 submission that the incorrect reflection of the receipts in the balance sheet belied the true nature of the receipts as a justification for the application of [Section 68](#) .

6. The ITAT in our opinion quite correctly appreciated the law and its application by the first appellate authority, i.e., CIT (A). Having regard to the facts and the nature of the analysis based upon the decisions of this Court, as well as the reliance on various decisions with respect to the true nature of [Section 68](#), we are of the opinion that no question of law arises; the appeals are accordingly dismissed"

8. Applying the proposition of law laid down in the case law to the facts of the case, we delete the addition made u/s 68 of the Act for the reasons cited above."

12. Under identical circumstances, similar view was taken by this Tribunal in the case of *ITO vs. Goodwill Cresce Pvt Ltd.* (*supra*), wherein it was held as under:-

"14. We have carefully considered the rival submissions in the light of the material placed before us. In the present case, the assessee had submitted ample evidence

which has already been discussed in the above part of this order to contend that the share transaction entered into by it with MKM Finsec Pvt. Ltd. was a genuine transaction. The shares which were subject matter of sale were standing in the balance sheet of the assessee which were subject matter of sale. The party to whom the sales have been made have confirmed the transactions and the transaction was supported by documentary evidence. It is also the case of the assessee that no material has been brought on record by the revenue that the share transaction of the assessee was not genuine. The addition has been made on the basis of information received by the Assessing Officer from the Investigation Wing. It is found that in respect of the very same party an addition of ` 49,55,300/- was made in the case of [ITO vs. Vishal Holding and Capital Pvt. Ltd.](#) (supra) and learned CIT (A) had deleted the addition and the said deletion was contested by the revenue before the Tribunal and it was decided by the Tribunal vide order dated 17th July, 2009 in ITA No.1788/Del/2009 and the order of the CIT (A) was upheld with the following observations:-

"5. We have considered rival contentions and gone through the records. In our view the order of the CIT(A) does not require any interference. First of all the assessee has produced all details in respect of its transactions. Copies of the contract notes and bills, that were issued to it, were all made available. The Assessing Officer has not verified these details and in respect of the material, which has been relied upon by him, he has not provided any findings of the investigation to the assessee. Therefore, in these circumstances, the addition made by the Assessing Officer cannot be said to be on the basis C.O. No.16/Del/2011 of some evidence that was put to the assessee in the course of assessment proceedings. The learned CIT(A) has correctly deleted the addition and we decline to interfere. Accordingly, order of CIT(A) on the issue in question is upheld.
6. In the result, revenue 's appeal is dismissed.

15. The aforementioned order of the Tribunal was considered by Hon'ble jurisdictional High Court in the aforementioned case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) which is now reported at 200 Taxman 186 and the order of the Tribunal was upheld by the Hon'ble High Court with the following observations:-

"6. We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd. and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet/s. In our opinion, the AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the AO cannot be sustained.

7. In any event, the factual findings of the final fact finding authority are neither perverse nor contrary to record. Accordingly, we find that no substantial question of law arises in the present appeal which, being bereft of merit, is dismissed in limine but with no order as to costs."

16. In this view of the situation, we find that so far as it relates to issue on merits, the case of the assessee is covered by the aforementioned decision of the Tribunal which has been confirmed by Hon'ble High Court. Therefore, we decline to interfere in the deletion made by the learned CIT (A) and the appeal filed by the revenue is dismissed."

13. We, therefore, under the given facts and circumstances of the case and respectfully following the decision of this Tribunal referred hereinabove, which is squarely applicable on the issue raised before us, find no infirmity in the order of the Id. CIT(A) and uphold the same. Accordingly all the grounds raised by the revenue are dismissed.

14. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 15th March, 2023 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 15/03/2023

**Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata