

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI G D PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.59/RPR/2020

CO No. 03/RPR/2020

निर्धारण वर्ष / Assessment Year : 2015-16

The Income Tax Officer-1(1),
Bhilai (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Avni Colonizers Pvt. Ltd.
B-29, Mahesh Colony, Pulgaon,
Durg (C.G.)
PAN : AAKCS2168E

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.R Rao, Advocate
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.02.2023

घोषणा की तारीख / Date of Pronouncement : 28.03.2023

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the revenue is directed against the order passed by the CIT(Appeal)-II, Raipur, dated 16.01.2020, which in turn arises from the order passed by the A.O u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 08.12.2017 for A.Y. 2015-16. Also the assessee is before us as a cross-objector for the aforementioned year. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. Whether in law and on facts & circumstances of the case, the CIT(A) was justified in deleting the addition of Rs.1,88,03,400/- made by the A.O on account of unexplained cash credit u/s.68 of the I.T Act, 1961 for the failure to substantiate the creditworthiness of share holders and also genuineness of transaction.
2. The order of Ld. CIT(A) is erroneous both in law and on fact.
3. Any other ground that may be adduced at the time of hearing.”

On the other hand the assessee as a cross-objector has raised the following grounds:

- “1. On the facts and in the circumstances of the case, the ld. Commissioner of Income Tax (Appeals) is justified in deleting the addition of Rs.1,88,03,400/- made by the ld. Assessing Officer on account of unexplained cash credit u/s.68 of the Income-tax Act, 1961.
2. The order of the ld. Commissioner of Income-tax (Appeals) is correct both in law and on fact.”

2. Succinctly stated, the assessee company which is engaged in the business of construction of residential apartments had e-filed its return of income for A.Y.2015-16 on 30.09.2017, declaring an income of Rs.12,22,740/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

3. During the course of assessment proceedings, it was observed by the A.O that the assessee company had allotted 22,85,000 shares at a face value of Rs.10/- a/w. premium of Rs.2.95/- per share. The A.O called upon the assessee company to prove the identity and creditworthiness of shareholders as well as the genuineness of the transactions in question. As the assessee company failed to comply with the directions, therefore, the A.O issued notices u/s.133(6) of the Act on 15.05.2017 to all the shareholders. In reply, the aforesaid shareholders responded to the notices issued u/s.133(6) of the Act. As there were certain discrepancies in the replies filed by the shareholders, therefore, the A.O confronted the same to the assessee company and called for an explanation as regards the same. In reply, the assessee company justified the increase in the share capital during the year under consideration. It was claimed by the assessee company that investment of 295.90 lac towards share capital/premium was sourced out of repayment of old unsecured loans of Rs.348.40 lac by the assessee company to the investor companies during the year under

consideration. In sum and substance, it was the claim of the assessee that the investment received towards share capital/premium were sourced out of the repayment of the loans made to the investors during the year under consideration. In support of its aforesaid contention the assessee company filed photocopies of copy of returns for A.Y.2015-16 a/w. bank statements of some of the shareholders. However, the aforesaid explanation of the assessee company did not find favour with the A.O who rejected the same by recording his observations as regards the respective investors, as under:

“(1) Shri Anand Tawari: Notice u/s. 133(6) of I.T. Act. 1961 was issued on 15-05-2017. The share holder was allotted 97,000 share by the company against share application money of Rs.12,56,150/- out of this Rs.9,70,000/- was adjusted against share allotment and Rs.2,88,150/- was adjusted towards premium i.e. premium of Rs.2.95/- on each share. The share holder has failed to response to notice u/s 133(6) of IT Act, 1961 as such there was no way to verify the genuineness and creditworthiness of the shareholder. The assessee company vide his reply dt.01- 12-2017 furnished copy of IT returns. and copy of bank statement. From the copy of bank statement it has come to notice that on 23-01-2015 the share holder deposited a cheque for Rs.11,53,994/-. On 23-01-2015 again there is an entry relating to deposit of cheque for Rs.2,50,697/-. The share holder in turn issued cheque for Rs.12,56,150/- in favour of the assessee company. As per the rejoinder submitted by the assessee, the share holder is a contractor having turnover of Rs.32 Lakh. He is filing returns since more than 15 Years. In this regard, the copy of the return of the share holder filed by the assessee has been perused. It is seen that the share holder is returning income under section 44AD. The share holder has specifically asked to file capital account and/or balance sheet. However, neither the share holder nor the assessee has filed the same. In absence of the same the creditworthiness of the share holder is not proved. Therefore, the share application money and share premium amount Rs. 12,56,150/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(2) Shri Dilip Bhutda : Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder was allotted 45,000 shares by the company against share application money of Rs.5,82,750/-. Out of this Rs.4,50,000/- was adjusted against share allotment and Rs.1,32,750/- was adjusted towards Rs.2.95/- on each share. The share holder has failed to response to notice u/s 133(6) of IT Act, 1961 as such there was no way to verify the genuineness and creditworthiness of the share holder. However, the assessee company has furnished copy of IT return for the AY 2014-15 and 2015-16. A copy of loan account has been furnished. As per copy the assessee company has returned loan amounting to Rs.5,78,347/-. In the absence of copy of bank statement of the share holder it is not possible to verify the submissions made by the assessee company. In this regard, the assessee company has stated that there is no fresh credit during the year. If the submissions of the assessee is believed, the company has a loan from the share holder which has been re-paid and the share holder has invested in the company during the year. Thus, the credit entry in the form of share application money is fresh credit and thereby the submission of the assessee is not correct. The transaction though bank channel is not sacrosanct. The source of deposit, creditworthiness of creditor and genuineness of transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Further, the return filed by the share holder has been examined. It is noticed that the share holder is returning income of Rs.2,67,080 only. Therefore the share application money and share premium amount Rs.5,82,750/- credited in the books of account as unproved credit and added to total income as income of the previous year u/s 68 of Income tax Act. 1961.

(3) Shri Laxmikant Tawari HUF. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 1,13,000 shares by the company against share application money of Rs.14,63,500/- out of this Rs.11,30,000/- was adjusted against share allotment and Rs.3,33,350/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was

noticed that as on 01-04-2014 the share holder has given loan to assessee company at Rs.8,93,393/-. The share holder further advanced loan of Rs.5,00,000/- to the assessee company and assessee company allotted shares against the loan of Rs.14,53,753/-. It is seen from the bank account of the share holder that immediately prior to extending Rs.5,00,000/- to the company. there is a cash deposit of Rs.5,00,000/- in the account of the share holder. Further. the share holder has failed to furnish copy of balance sheet, capital account. source of deposit of Rs.5,00,000/- in bank account on 19-05-2015. In the absence of balance sheet and capital account and source of deposit of Rs.5,00,000/-(in cash) it is not possible to claim made by the share holder that share application money and share premium was adjusted against loan. It cannot be said that a transaction. which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. The return filed by the share holder has also been seen. The share holder has filed for the A.YR.2014-15 returning income of Rs.200500/-. Copy of return for the A.Yr.2015- 16 has not been filed. Thus. the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore. the share application money and share premium amount Rs.14,53,500/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(4) Shrii Mohd. Anis Khan. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In his reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close friends and therefore investment has been made at FMV of shares. The share holder was allotted 1,54,000 shares by the company against share application money of Rs.19,94,300/- out of this Rs.15,40,000/- was adjusted against share allotment and Rs.4,54,300/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it has come to the notice that on 19-2-2015 the assessee company has issued a cheque in favour of the share holder who in turn issued cheque in favour of the company. However. share holder has failed to furnish copy of balance sheet. capital account. source of deposit of

Rs.10,10,100/- & Rs.9,81,126/- in bank account on 18-02-2015 & 19-05-2015. In the absence of balance sheet and capital account and source of deposit of Rs.19,91,225/-. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain source, creditworthiness of creditor and genuineness. The transaction has to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Perusal of the return filed by the share holder for the A.Yr.2015-16 reveals that the share holder has returned income of Rs.421810/-. Thus, the creditworthiness of the share holder to the extent of Rs.19,91,225/- is not proved, especially when the balance sheet and/or capital account is not furnished. Thus, the genuineness and creditworthiness of share holder remained to be proved. Therefore, the share application money and share premium amount Rs.19,19,225/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(5) Shri Omprakash Tawari (Omu) Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In his reply the share holder has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close friends and therefore investment has been made at FMV of shares. The share holder was allotted 41,000 shares by the company against share application money of Rs.5,30,950/- out of this Rs.4,10,000/- was adjusted against share allotment and Rs.1,30,950/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. However, share holder has failed to furnish copy of balance sheet and capital account, source of deposit of Rs.5,25,631/- in bank account on 30-11-2014. Neither the assessee nor the share holder has filed any copy of ITR even after specifically asking for the same. However, the assessee has stated that the share holder is filing returns since long. In the absence of balance sheet and capital account and ITR It cannot be said that a transaction, which took place by way of cheque, is invariably sacrosanct. The transaction though bank account cannot be said not sacrosanct, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to

furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved. Therefore, the share application money and share premium amount Rs.5,30,950/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s. 68 of Income tax Act, 1961.

(6) Shri Abhishek Bhutda. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In his reply the share holder has furnished copy of IT return for AY 2015-16 alongwith computation of income, furnished copy of bank statement and has stated that the Directors of the company are close friends and therefore investment has been made at FMV of shares. The share holder was allotted 78,000 shares by the company against share application money of Rs.10,10,100/- out of this Rs.7,80,000/- was adjusted against share allotment and Rs.2,30,100/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder the following entries have been observed :

Date	Particulars	Dr.	Cr.
10/12/2014	By voucher transfer		4,00,000
17/12/2014	Batch credit		4,50,000
17/12/2014	Remitted to Avani	8,50,000	
17/12/2014	Cash credit		1,50,000
17/12/2014	Remitted to Avani	1,50,012	
30/01/2015	By transfer voucher : Avani		1009543
31/01/2015	Remitted to Avani	1010160	

Thus, it has come to the notice that on 30-01-2015 the share holder has deposited cheques in bank account and issued cheque in favour of the company. However, share holder has failed to furnish copy of balance sheet, capital account, source of deposit of Rs.10,00,000 /- in bank account on 10-12-2014 & 17-12-2014 (Rs.4,00,000/- +4,50,000/-+1,50,000/- In the absence of balance sheet and capital account and source of deposit of Rs.10,10,100/- it cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to

produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Further, the return filed by the share holder for the A.Yr.2015-16 has been perused. It is seen that the share holder has returned income of Rs.279560/- only. Thus, there is no creditworthiness of the share holder to extent loan/invest in share to the tune of Rs.10,10,100/- in a year. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amount Rs.10,10,100/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(7) Smt. Chaya Tawari.. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In her reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and has stated that the Directors of the company are close friends and therefore investment has been made at FMV of shares. The share holder was allotted 41,000 shares by the company against share application money of Rs.5,30,950/- out of this Rs.4,10,000/- was adjusted against share allotment and Rs.1,20,950/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it has come to the notice that on 30-01-2015 the share holder has deposited a cheque in bank account and issued cheque in favour of the company. However. share holder has failed to furnish copy of balance sheet. capital account. source of deposit of Rs.5,25,410 /- in bank account on 30-01-2015 In the absence of balance sheet and capital account and source of deposit of Rs.5,25,410/- and ITR it cannot be said that a transaction, which took place by way of cheque. is invariably sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet. capital account and the authenticity of transactions which the shareholder has failed to furnish. The share holder has also failed to furnish her return of income to prove her creditworthiness. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amount Rs.5,30,250/- credited in the books of

account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(8) Shri Santosh Kumar Kaushal. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In his reply the share holder has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close friends and therefore investment has been made at FMV of shares. The share holder was allotted 40,000 shares by the company against share application money of Rs. 5,18,000/- out of this Rs.4,00,000/- was adjusted against share allotment and Rs.1,18,000/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it has come to the notice that on 16-02-2015 the share holder has deposited cheque for Rs.5,13,864/- in bank account issued by the company and issued cheque in favour of the company. However, share holder has failed to furnish copy of balance sheet. capital account . In the absence of balance sheet and capital account and source of deposit of Rs.5,18,000/- and purpose for which assessee company has issued cheque. It is not possible to verify the genuineness of the bank transaction. It cannot be said that a transaction. which takes place by way of cheque, is invariably not sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet. capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. As per the computation of income, the share holder has prepared profit and loss account for his business. It is, deemed that the share holder can prepare the balance sheet and/or capital account. However. the share holder has not filed any. Therefore, the share application money and share premium amount Rs.5,18,000/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act. 1961.

(9) Shri Laxmikant Vishvakarma : Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice on 14-09-2017. In his reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close friends and therefore investment

has been made at FMV of shares. The share holder was allotted 78,000 shares by the company against share application money of Rs.10,10,100/- out of this Rs.7,80,000/- was adjusted against share allotment and Rs.23,10,000/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share.. From the bank statement and confirmation account furnished by the share holder it has come to the notice that on 27-10-2014 the share holder has deposited cash of Rs.2,00,000/- in his bank account and on the same day issued cheque in favour of the company. Again on 06-12-2014 the share holder received a cheque from the assessee company which was deposited in bank account on 06-12-2014 and withdraw the cash of Rs.2,00,000/- from the bank account. It is further noticed that assessee has company issued cheque in favour of the assessee on 23-01-2015 for Rs. 10,05,250/-. There is no corresponding entry in bank account of deposit of cheque for Rs.10,05,222/- . As per bank share holder's account furnished by the assessee company the share holder has deposited cheque of Rs.10,10,100/- for allotment of shares but there is no corresponding entry on 31-03-2015 to this effect. Thus from the details furnished relating to loan account and share allotment account it appears that the same is not based on the factual position. Thus, the account filed by the assessee and confirmed by the share holder is not correct. Further, the share holder has failed to furnish copy of balance sheet. capital account . Further. the absence of balance sheet and capital account and source of deposit of Rs.10,10,100/- remains to be proved beyond doubt.. It cannot be said that a transaction. which takes place by way of cheque. is invariably not sacrosanct. The transaction though bank account is not enough to explain money , creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet. capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore. the share application money and share premium amount Rs.10,10,100/- credited in the books of account as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(10) Smt. Rupa Rathi. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 2,03,000

shares by the company against share application money of Rs.26,28,850/- out of this Rs.20,30,000/- was adjusted against share allotment and Rs.5,98,850/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 28-01-2015 company has issued a cheque for Rs.26,27,174/- in favour of the share holder the same was deposited in bank account , however, the bank shows credit of Rs.26,28,906/- an amount higher than the cheque issued by the assessee company and share holder in turn issued cheque in favour of assessee company. However. the share holder has failed to furnish copy of balance sheet. capital account. source of loan of Rs.24,61,053/-. In the absence of balance sheet and capital account and source of loan of Rs.24,61,053/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction. which takes place by way of cheque. is invariably sacrosanct. The transaction though bank account is not enough to explain money creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.26,28,850/- credited in the books of account of the assessee company unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

(11) Smt. Sonal Tawri. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply the she has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 1,89,000 shares by the company against share application money of Rs.24,47,550/- out of this Rs.18,90,000/- was adjusted against share allotment and Rs.5,57,550/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 28-01-2015 company has issued a cheque for Rs.14 41,555/- in favour of the share holder the same was deposited in bank account, and share holder in turn issued cheque in favour of assessee company for Rs.24,47,550/. However, the share holder has failed to furnish copy of balance sheet, capital account. source of

loan of Rs.24,47,550/- . In the absence of balance sheet and capital account and source of loan of Rs.24,61,053/- it is not possible verify the genuineness of loan and source of share application money.. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. The share holder has filed a copy of the return for the A.Yr.2015-16 in which she has returned income of Rs.366860/- only. Out of this, Rs.100880/- is shown as interest from the assessee company. If the interest income of Rs.100880/- is not considered, the other income is only Rs.265980/-. A person with income of Rs.265980/- only cannot extend loan/invest in shares to the tune of Rs.24 lakh. It is especially, not believable when the share holder has not furnished any capital account or balance sheet. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.24,47,550/- credited in the books of account of the assessee company unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

12. Mohani Tawari. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In her reply the she has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 41,000 shares by the company against share application money of Rs.5,30,950./- out of this Rs.4,10,000/- was adjusted against share allotment and Rs.1,20,950/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 02-02-2015 company has issued a cheque for Rs.5,24,213/- in favour of the share holder the same was deposited in bank account and share holder in turn issued cheque for Rs.5,30,950/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet, capital account, source of loan of Rs.5,24,213/-. In the absence of balance sheet and capital account and source of loan of Rs.5,24,213/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction

though bank account is not enough to explain money creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus. the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore. the share application money and share premium amounting to Rs.5,30,950/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

13. Smt. Priti Tawari.. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 41,000 shares by the company against share application money of Rs.11,00,750./- out of this Rs.8,50,000/- was adjusted against share allotment and Rs.2,50,750/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 02-02-2015 company has issued a cheque for Rs. 5,65,096/- in favour of the share holder the same was deposited in bank account share holder's bank account further show credit of Rs.5,30,000/- from Krishna trading co. share holder in turn issued cheque for Rs.11,00,750/- in favour of assessee company. However. the share holder has failed to furnish copy of balance sheet. capital account. source of loan of Rs.5,65,096/- and Rs.5,30,000/-. In the absence of balance sheet and capital account and source of loan of Rs.5,65,096/- and Rs.5,30,000/- it is not possible verify the genuineness of loan and source share application money. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money\creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Further, the return of income furnished by the share holder has been perused. It

is seen that the share holder has returned income of Rs.261480/- only. It is not possible for any person with income of Rs.261480/- only to extend loan or invest in shares to the tune of Rs.11 lakhs. Further, to prove the creditworthiness of the share holder, she also not filed balance sheet or the capital account to shown the accumulated income. Therefore. I have no alternative but to treat the share application money and share premium amounting to Rs.11,00,750/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961 of the assessee company.

14. Shri Lucky Tawari. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply he has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 28,000 shares by the company against share application money of Rs.3,62,600/- out of this Rs.2,80,000/- was adjusted against share allotment and Rs.82,600/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share.. From the bank statement and confirmation account furnished by the share holder it was noticed that on 29-01-2015 assessee company has issued a cheque for Rs.3,54,363/- in favour of the share holder the same was deposited in bank account and share holder in turn issued cheque for Rs.3,62,628/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet, capital account and source of loan of Rs.3,62,628/-. In the absence of balance sheet and capital account and source of loan of Rs.3,62,628/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus. the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.3,62,628/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

15. Smt. Usha Tawari. Notice u/s. 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In her reply the assessee has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 20,000 shares by the company against share application money of Rs.2,59,600./- out of this Rs.2,00,000/- was adjusted against share allotment and Rs.89,000/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 23-01-2015 assessee deposited a cheque for Rs.2,50,697/- in received from the assessee company as loan repayment, the same was deposited in bank account and share holder in turn issued cheque for Rs.2,59,000/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet, capital account, source of Rs.2,50,697/-. In the absence of balance sheet and capital account and source loan of Rs.2,50,697/- it is not possible verify the genuineness of loan and source of share application money.. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though t bank account is not enough to explain money , creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness f share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.2,59,000/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s. 68 of Income tax Act, 1961.

16. Smt. Sarla Bhutda : Notice u/s. 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In her reply the assessee has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 27,000 shares by the company against share application money of Rs.3,49,650./- out of this Rs.2,70,000/- was adjusted against share allotment and Rs.79,650/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and

confirmation account furnished by the share holder it was noticed that on 30-01-2015 assessee deposited a cheque for Rs.3,47,674/- in received from the assessee company as loan repayment, the same was deposited in bank account and share holder in turn issued cheque for Rs.3,47,635/- in favour of assessee company. However. the share holder has failed to furnish copy of balance sheet. capital account, source of Rs.4,47,674/-. In the absence of balance sheet and capital account and source loan of Rs.3,47,674/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.3,47,674/-/- credited in the books of account of the assessee company as unproved credit and therefore. added to total income as income of the previous year u/s 68 of Income tax Act. 1961.

17. Smt. Chanda Tawari. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In her reply the assessee has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 98,000 shares by the company against share application money of Rs.12,69,100/- out of this Rs.8,90,000/- was adjusted against share allotment and Rs.2,89,100/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 28-01-2015 assessee deposited a cheque for Rs.12,61,952/- in bank account received from the assessee company as loan repayment. share holder in turn issued cheque for Rs.12,69,156/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet. capital account. source of Rs.12,61,925/-. In the absence of balance sheet and capital account and source loan of Rs.12,61,952/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction, which takes place by way of cheque. is invariably sacrosanct. The transaction though bank

account is not enough to explain money creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet. capital account and the authenticity of transactions which the shareholder has failed to furnish. It is also noticed from the return furnished by the share holder that she has returning income of Rs.348550/- only. Therefore, in absence of balance sheet and /or capital account. the creditworthiness of the share holder is not proved. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.12,69,100/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act. 1961.

18. Shri Omprakash Tawari.. Notice u/s 133(6) of IT Act. 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In his reply he has furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 27,000 shares by the company against share application money of Rs.3,49,650/- out of this Rs.2,70,000/- was adjusted against share allotment and Rs.79,650/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 23-01-2015 assessee deposited a cheque for Rs.3,49,191/- in received from the assessee company as loan repayment, the same was deposited in bank account and share holder in turn issued cheque for Rs.3,49,650/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet. capital account, source of Rs.3,49,191/-. In the absence of balance sheet and capital account and source loan of Rs.3,49,191/- it is not possible verify the genuineness of loan and source of share application money. It cannot be said that a transaction. which takes place by way of cheque. is invariably sacrosanct. The transaction though bank account is not enough to explain money, creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet. capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond

doubt. Therefore, the share application money and share premium amounting to Rs.3,49,650/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.

19. Smt. Sumita Tawari. Notice u/s 133(6) of IT Act, 1961 was issued on 15-05-2017. The share holder has made compliance to this notice. In her reply the share holder has given furnished copy of IT return for AY 2015-16 alongwith computation of income furnished copy of bank statement and stated that the Directors of the company are close relatives and therefore investment has been made at FMV of shares. The share holder was allotted 47,000 shares by the company against share application money of Rs.6,08,650./- out of this Rs.4,70,000/- was adjusted against share allotment and Rs.1,38,650/- was adjusted towards premium i.e. premium @ Rs.2.95/- on each share. From the bank statement and confirmation account furnished by the share holder it was noticed that on 24-01-2015 assessee deposited a cheque for Rs.6,08,555/- in received from the assessee company as loan repayment, the same was deposited in bank account and share holder in turn issued cheque for Rs.6,08,650/- in favour of assessee company. However, the share holder has failed to furnish copy of balance sheet, capital account, source of Rs.6,08,555/-. In the absence of balance sheet and capital account and source loan of Rs.6,08,555/- it is not possible verify the genuineness of loan and source of share application money.. It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. The transaction though bank account is not enough to explain money , creditworthiness of creditor and genuineness the transaction is to be examined by the AO. The depositor has to produce documentary evidence before the Assessing Officer to prove the source of deposit in banks duly supported by corroborative evidence such as balance sheet, capital account and the authenticity of transactions which the shareholder has failed to furnish. Thus, the genuineness and creditworthiness of share holder remained to be proved beyond doubt. Therefore, the share application money and share premium amounting to Rs.6,08,650/- credited in the books of account of the assessee company as unproved credit and therefore added to total income as income of the previous year u/s 68 of Income tax Act, 1961.”

4. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). After deliberating on the issue, the CIT(Appeals) finding substance in the claim of the assessee was of the view that now when the respective investments towards share capital/premium were made out of the repayment of old unsecured loans by the assessee company to the aforementioned investors during the year under consideration, therefore, there was no justification for the A.O to have drawn any adverse inferences as regards the authenticity of the said transactions. Apart from that it was observed by the CIT(Appeals) that notices u/s.133(6) of the Act that were issued by the A.O to all the share subscribers except for in case of two persons, viz. (i) Shri Anand Tawari ; and (ii) Shri Dilip Bhutda, were duly replied a/w. requisite details by the respective share subscribers. It was further observed by him that except for in three cases, viz. Shri Anand Tawari, Sonal Tawari and Priti Tawari, in all other cases investments towards share capital/premium was sourced from the repayment of old unsecured loans by the assessee company to the share subscribers either on the same date or in the nearby dates.

4.1 Apropos the investments of the aforementioned three persons, viz. (i) Shri Anand Tawari; (ii) Shri Sonal Tawari and (iii) Priti Tawari it was observed by the CIT(Appeals), as under:

Sr.	Name of share subscriber	Amount of loan	Sources
1.	Shri Anand Tawari	Rs.12,56,150/-	i) Out of repayment of old unsecured by the assessee company : Rs.2,50,697/-; & (ii) balance amount was out of cheque received by the share subscriber from Municipal Corporation against contract works :Rs.11,53,994/-
2.	Smt. Sonal Tawari	Rs.24,47,550/-	(i) Out of repayment of old unsecured by the assessee company : Rs.14,41,555/-; & (ii) out of amount received by the share subscriber from Shri Deepak Kumar Tawari : Rs.10 lacs
3.	Priti Tawari	Rs.11,00,750/-	(i) Out of repayment of old unsecured by the assessee company : Rs.5,65,096/-; & (ii) out of amount received from M/s. Krishna Trading Co. : Rs.5,30,000/-

4.2 Apropos the remaining 16 parties it was observed by the CIT(Appeals) that the same were fully sourced out of the repayment of loans by the assessee company to the said respective share subscribers. The CIT(Appeals) considering the aforesaid facts was of the view that there was no justification for the A.O to have drawn any adverse inferences as regards the creditworthiness of the share subscribers. For the sake of

clarity the relevant observations of the CIT(Appeals) are culled out as under:

“3. I have gone through the submission of the appellant and also perused the assessment order. As per the above facts, the Ld AO did not believe the documents submitted by the appellant in support of genuineness of loans and has treated the share capital from 19 individual persons and HUFs as assessee's own unexplained income. AO has made enquiries in which no adverse facts were brought on record to suspect the genuineness of capital.

On going through the submission of the assessee and the copies of loan confirmations and banks statements of subscribers, the facts coming out are that the amounts received in share capital is not fresh but the assessee had earlier taken loan from these persons which has been converted into share capital as per new Rules. As per assessee, the increased share capital is also useful for obtaining loan etc. The loans are old loans and have been accepted by the Department over several years. When the loan taken by the assessee has been accepted as genuine the capital cannot be doubted which has come from the same loan. The AO has issue notices u/s. 133(6) to all subscribers. Except two persons namely Shri Anand Tawari and Shri Dilip Bhutda all the other persons have replied to the notice and furnished copy Of Income tax return, computation of income and bank statement. These persons are either the relatives of the directions or acquaintances. Therefore, there is no doubt about the identity and genuineness of transaction. The AO has doubted about the creditworthiness of creditors. As has been mentioned in the chart prepared by the assessee and has been produced in para 2.2 above, except in three cases of Anand Tawari, Sonal Tawari and Priti Tawari in all other cases, the share application money in the hands of the subscribers has come from repayment of old loan by the assessee to the subscriber on the same date or immediate earlier date. Anand Tawari has paid Rs.12,56,150/- to the assessee the source of which is Rs 2,50,697/- repayment of old unsecured loan by the assessee and Rs.11,53,994/- cheque received from Municipal Corporation against contract works and credited in his bank account. Sonal Tawari has paid Rs 24,47,550/- the source of which Rs.14,41,555/- from repayment of old unsecured loan and Rs.10,00,000/- from Shri Deepak Kumar Tawari. Priti Tawari has paid Rs 11,00,750/- which has been source from Rs 5,65,096/- from repayment of old unsecured loan by appellant company and Rs.5,30,000/- received through cheque from Krishna Trading Co in her bank account.

In all other cases the shares have been financed out of loan which has been accepted in earlier years the creditworthiness cannot be doubted. For example in respect of Md Anish Khan an amount of Rs.19,94,300/- had been received. He had opening balance of loan which was converted to shares. Facts are similar in respect of other persons. Although two persons Shri Anand Tawari and Dilip Bhutda did not reply to the notices since as per the assessee they did not receive the notice. However, similar documents have been filed by the assessee in respect of these persons also. On these facts, the share capital is explained and therefore, the addition made by the A.O is hereby deleted.”

5. The Revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

6. At the very outset of the hearing of the appeal the Ld. Authorized Representative (for short 'AR') for the assessee took us through the order of the CIT(Appeals). It was submitted by the Ld. AR that now when the respective investments made by the share subscribers was found to be out of their duly disclosed sources, therefore, there was no justification for the A.O to have held any part of the same as an unexplained cash credit u/s.68 of the Act. Our attention was drawn by the Ld. AR to the relevant pages of the assessee's paper book (APB) wherein the respective details as regards the source of investments made by the share subscribers a/w. supporting documentary evidences were placed on record.

7. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the assessment order. Adverting to the observation of the CIT(Appeals), it was submitted by the Ld. DR that the CIT(Appeals) had

grossly erred in law and facts of the case in admitting the additional evidences filed by the assessee, viz. (i) copies of capital account; and (ii) balance sheets of some of the share applicants without confronting the same to the A.O as required under Rule 46A of the Income Tax Rules, 1962 (for short 'the Rules'). Our attention was drawn by the Ld. DR to the relevant observations of the CIT(Appeals). It was submitted by the Ld. DR that the CIT(Appeals) had contravened Rule 46A and had admitted the additional evidence without giving any opportunity to the A.O to object to the admission of the same.

8. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

9. Admittedly, it is a matter of fact borne from record that the assessee company had filed additional evidences with the CIT(Appeals) under Rule 46A, i.e., copies of capital account and balance sheets of some of the share applicants. Observation of the CIT(Appeals) to the said effect can safely be gathered from Page 5 Para 2.2 of his order which reads as under:

“.....In the course of assessment proceedings, the appellant made requisite compliances, Copies of Capital Account and Balance Sheets obtained from some of the share applicants, which could not be submitted earlier are submitted herewith with prayer that the same may be admitted as additional evidence under Rule 46A of the Income-tax Rules, 1962, as the same were not available at that point of time.”

On a careful perusal of the aforesaid order of the first appellate authority, it transpires that as stated by the Ld. AR and, rightly so, the CIT(Appeals) while admitting the additional evidences filed by the assessee company, had failed to confront the same to the A.O. We are of the considered view that there is a clear violation of Rule 46A of the Income Tax Rules, 1962 which contemplates the procedure that has to be scrupulously followed by the CIT(Appeals) while admitting additional evidence. For the sake of clarity Rule 46A of the Income Tax Rules 1962 is culled out, as under:

"46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

- (a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or
- (c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or
- (d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] nor, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the '[Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271."

10. As per sub-rule (3) of Rule 46A the CIT(Appeals) before taking into account any additional evidence is obligated to allow reasonable opportunity to the A.O to examine the additional documentary evidence; and to produce any evidence or document in rebuttal of the same. As the CIT(Appeals) at the stage of admitting the additional evidence filed by the assessee company before him had failed to comply with the methodology contemplated in Rule 46A of the Income Tax Rules, 1962, therefore, we are of the considered view that the matter in all fairness requires to be revisited by him. We, thus, in terms of our aforesaid observations restore the matter to the file of the CIT(Appeals) with a direction to re-adjudicate the same after confronting to the A.O the additional evidences that were filed by the assessee before him as per the mandate of Rule 46A of the Income Tax Rules, 1962. Needless to say, the CIT(Appeals) shall in the

course of set-aside proceedings afford a reasonable opportunity of being heard to the assessee company.

11. As we have restored the matter to the file of the CIT(Appeals) for fresh adjudication in terms of our aforesaid observations, therefore, we refrain from adverting to the other contentions that have been raised by the appellant/cross-objector before us.

12. In the result, appeal filed by the revenue and cross-objection filed by the assessee are disposed off in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
G D PADMAHSHALI
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 28th March, 2023

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G.)
4. The Pr. CIT-II, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.