

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA Nos.10 & 11/RPR/2020

(निर्धारण वर्ष / Assessment Year :2013-2014 & 2014-2015)

Agrawal Infrabuild Private Limited, 1 st Floor, V.R.Plaza, Bilaspur	Vs	ACIT, Central Circle-II, Raipur
PAN No. :AAFCA 6636 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Sumit Nema & Gagan Tiwari, Advs. & Shri Bikram Jain, CA
राजस्व की ओर से /Revenue by	:	Shri Debashish Lahiri, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	06/01/2023
घोषणा की तारीख/Date of Pronouncement	:	30/03/2023

आदेश / O R D E R

Per Arun Khodpia, AM :

These two appeals have been filed by the assessee against the order passed by the CIT(A)-3, Bhopal, both dated 27.11.2019 for the assessment year 2013-2014 & 2014-2015.

2. The assessee in its appeal for A.Y.2013-2014 has raised the following grounds: -

1. *On facts and circumstances of the case, the CIT(A) has erred in passing the order in the case of appellant wherein the addition has been made on protective basis and the case where in the substantive addition has been made is still pending before 1st Appellate Authority. Thus, the order passed by the CIT-A is unjustified, unwarranted and uncalled for.*

2. *Without prejudice to above:*

On facts and circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O. wherein the addition made in this assessment by the A.O. is beyond the scope of second proviso to section 153A(1) and therefore bad in law.

3. *Without prejudice to above:*

On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the A.O.

has erred in using the reports of investigation conducted behind the back of the assessee by not providing the same during the course of assessment proceeding which is against the principle of natural justice. Any order passed in violation of principle of natural justice is void ab-initio.

4. *On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the A.O. has erred in making the addition on account of share capital received by using the statement of third person who are not at all related to the assessee company or shareholder of the asses se company. Thus the addition made by the A.O. and sustained the same by the CIT-A, on the basis of statement of non related parties is unjustified, unwarranted and uncalled for.*
 5. *On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the A.O. has erred in not providing the opportunity of cross examination of the persons whose statement was relied upon. By not providing the opportunity of cross examination, the A.O. has violated the principle of natural justice and any order passed in violation of principle of natural justice is void ab-initio.*
 6. *On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O. wherein the Ld. Assessing Officer has erred in making addition of Rs.1,55,22,000/- on account of share application money u/s 68. The addition made by the A.O. and sustained he same by CIT-A, is unjustified, unwarranted and uncalled for.*
 7. *On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the Ld. Assessing Officer has erred in making addition of Rs.7,761/- as commission paid on accommodation entry. The addition made by the A.O. and sustained the same by CIT-A is unjustified, unwarranted and uncalled for*
 8. *The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.*
3. The assessee in the appeal for A.Y.2014-2015 has raised the following grounds:-
1. *On facts and circumstances of the case, the CIT(A) has erred in passing the order in the case of appellant wherein the addition has been made on protective basis and the case where in the substantive addition has been made is still pending before 1st Appellate Authority. Thus the order passed by the CIT-A is unjustified, unwarranted and uncalled for.*
 2. *Without prejudice to above:*

On facts and circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O. wherein the addition made in this assessment by the A.O. is beyond the scope of second proviso to section 153A(1) and therefore bad in law.

3. *Without prejudice to above:*

On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the IA.O. has erred in using the reports of investigation conducted behind the back of the assessee by not providing the same during the course of assessment proceeding which is against the principle of natural justice. Any order passed in violation of principle of natural justice is void ab-initio.

4. *On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the A.O. has erred in making the addition on account of share capital received by using the statement of third person who are not at all related to the assessee company or shareholder of the asses se company. Thus the addition made by the A.O. and sustained the same by the CIT-A, on the basis of statement of non related parties is unjustified, unwarranted and uncalled for.*

5. *On the fact and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the A.O. has erred in not providing the opportunity of cross examination of the persons whose statement was relied upon. By not providing the opportunity of cross examination, the A.O. has violated the principle of natural justice and any order passed in violation of principle of natural justice is void ab-initio.*

6. *On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O. wherein the Ld. Assessing Officer has erred in making addition of Rs.6,40,50,000/- on account of share application money u/s 68. The addition made by the A.O. and sustained he same by CIT-A, is unjustified, unwarranted and uncalled for.*

7. *On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the order of the A.O., wherein the Ld. Assessing Officer has erred in making addition of Rs.32,025/- as commission paid on accommodation entry. The addition made by the A.O. and sustained the same by CIT-A is unjustified, unwarranted and uncalled for*

8. *The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.*

4. The brief facts of the case are that the assessee is a company, derives income from business and profession. In this case a search and seizure operations was carried out on 08.02.2017. Consequently, notice U/S 153A of the Act was issued on 21.02.2018 for AYs 2011-12 to 2016-17. The assessee in reply on 30.04.2018 filed returns of income for AYs 2011-12 to 2016-17. The brief details of returns of income filed for AY 2013-14 & 2014-15 are as under:-

A.Y.	Date of filing of return u/s.139(1)	Total income (in Rs)	Date of filing of return u/s 153A	Total income declared u/s 153A(In Rs)	Additional income offered (In Rs.)
2013-14	28.09.2013	46880610	30.04.2018	90788810	43908200
2014-15	25.11.2014	23920030	30.04.2018	50757060	26837030

5. The AO made addition of Rs. 155,22,000/- in AY 2013-14 & Rs.6,40,50,000/- in AY 2014-15 on account of bogus share capital/premium from shell companies. Another addition was made on account of commission paid for acquiring bogus share capital/premium of Rs. 7,761/- in AY 2013-14 and Rs. 32,025/- in AY 2014-15.

6. Against the assessment order, the assessee preferred appeal before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee.

7. Now, the assessee is in further appeal against order of CIT(A).

8. At the outset, Ld. AR submitted that, Ld CIT(A) has erred in sustaining the order of the A.O. wherein the Ld. Assessing Officer has made the addition of Rs.1,55,22,000/- and Rs.6,40,50,000/- respectively for AY 2013-14 and Ay 2014-15 on account of bogus share application money u/s 68. The

addition made by the A.O. and confirmed by by Ld CIT-A, were unjustified, unwarranted and uncalled for.

9. In continuation, Ld AR further drew our attention to the submission of the assessee before the Ld AO during the post search assessment proceedings submitted on 13.11.2018, the same is extracted as under:-

TO,

The Assistant Commissioner of Income Tax,
Central Circle- 11, Raipur (C.G.)

12.11.2018

Dear Madam,

Reg : Name: Agrawal Infrabuild Pvt. Ltd.

Address: 1st Floor, V.R. Plaza, Link Road, Bilaspur
PAN: AAFC6636C

Ref: Notice u/s 142(1) r.w.s. 153A/143(2) dated 23.01.2017 for A.Y. 2011-12 to 2017-18.

Sub: Written Submission.

In continuation to our earlier written submissions and in response to the queries raised in Part B query letter dated 11.10.2018, the assessee submits as under for your kind consideration:-

1. The assessee company has disclosed income of Rs. 17.26 Crores for the A.Y. 2011-12 to 2016-17 in a statement dated 12.02.2017 rendered u/s 132(4) of Income Tax Act 1961, during the course of search. The assessee has voluntarily estimated his net total income from business at the rate of 10% of turnover for A.Y. 2011-12 to 2016-17. For A.Y. 2017-18, since the financial year was not ended, the assessee has agreed to pay the tax at the rate of 10% on turnover. Detail of additional income offered for A.Y. 2011-12 to 2016-17 is as under:-

A.Y.	Total Income u/s.139	Total Income u/s.153A	Additional income offered	Income voluntarily disclosed u/s.132(4) i.e. 10% of Turn Over	Difference
			C=B-A	D	E=C-D
2011-12	32110960	58707300	26596340	26596340	0
2012-13	39603200	88827580	49224392	49224392	0
2013-14	46880610	90788810	43908200	43908200	0
2014-15	23920030	50757060	26837030	26837030	0
2015-16	30643480	50239500	19596020	19596020	0
2016-17	32901140	39405810	6504670	6504670	0
			17,26,66,652/-	17,26,66,652/-	

Note:- For A.Y. 2017-18 the assessee has under taken to disclose profit @10% of the total turnover which comes to Rs.8,03,10,167/- whereas

assessee has offered total income for taxation Rs.8,03,99,570/- which included additional income offered of Rs.1.60 crore.

It is further to submit before your honor that the said estimation of income at 10% is to cover up all the possible leakages and discrepancies. Further, it is also to bring in notice of your honor that a search & seizure operation was conducted on the assessee in F.Y.2009-10 and the profit at the rate of 8% on the same line of business in assessee's own case from A.Y. 2004-05 to 2010-11 was estimated by the Hon'ble Settlement Commission, Kolkata to which the assessee as well as revenue department has also accepted and the assessee has duly paid the tax. whereas for the years under consideration i.e. A.Y.2011-12 to A.Y.2017-18 the assessee has offered and has paid tax at the rate of 10% of turnover which is sufficient to cover up all discrepancies found in the loose papers found during the course of search.

2. Detail explanation with respect to the LPS found during the course of search from the business premises of the assessee is enclosed herewith. A-1

3. That the labour expenses, expenses for salary & wages, material purchase expenses and expense of payment to petty contractors are necessarily the business expenditures of the assessee company and all the expenses are duly been recorded in the books of the assessee in respective years. However, in order to cover up all the possible leakages & discrepancies, the assessee company has decided to Voluntarily offer the lump sum profit on contract receipts at the rate of 10% in all the years and accordingly the assessee has paid the taxes on the income voluntarily offered during the course of search. Further, it is again to bring in notice of your honor that a search & seizure operation was conducted on the assessee in F.Y.2009-10 and the profit at the rate of 8% on the same line of business in assessee's own case from A.Y. 2004-05 to 2010-11 was estimated by the Hon'ble Settlement Commtsston, Kolkata to which the assessee as well as revenue department has also accepted whereas in years under consideration the assessee has offered the profit rate of 10% as against 8% duly accepted by department in earlier years.

4. That in the query letter your honor has mentioned that the assessee company has received share capital & premium of Rs.1,55,22,000/- in A.Y.2013-14 & Rs.6,40,50,000/- in A.Y.2014-15. In this regard it is to submit before your honor that the said fact is an incorrect fact. The assessee company has not received share capital from Artline Fiscal Services in A.Y.2013-14 & 2014-15.

4.1 The correct fact is that in A.V. 2015-16 the assessee company has issued 4,18,800 shares for Rs.7,95,72,000/- to Artline Fiscal Services (P) Ltd against the closing balance of unsecured loans of Rs.11,46,83,241/- as on 31st March 2014. The assessee company has received unsecured loan from Artline Fiscal Services (P) Ltd in A.Y.2012-13 of Rs.1,30,50,000/- in A.Y.2013-14 of Rs.4,25,00,000/-, in A.Y.2014-15 of Rs.6,40,50,000/-. 'Out of the said unsecured loan the assessee has issued share of Rs.7,95,72,000/- (including premium) in A.Y.2015-16 and the remaining balance of unsecured loans were duly paid of in A.Y.2015-16 along with the interest. Further, in order to establish the identity of Artline Fiscal Services (P) Ltd and to prove the creditworthiness & genuineness of the transactions made with the Artline Fiscal Services (P) Ltd the assessee has duly furnished the Ledger account copy of ITR & Computation of total

income, Audited Financial Statement, copy of bank statement of relevant period along with share certificate issued along with our written submission dated 2.11.2018. Kindly refer submission in response to query no. 26 of the said written submission.

4.2 Further, your honor have mentioned in the query letter that a statement was recorded on oath during the course of survey u/s 133A of one Mr. Binod Kumar Agrawal, wherein he has stated that Artline Fiscal Services (P) Ltd was among the 77 companies in which he was director and has stated that in F.Y.2010-11 the said company was purchased by Satva Group. Further, again a statement on oath was recorded u/s 131 of the IT.Act, 1961 on 8.02.2017 wherein he had stated that It he is director of Artline Fiscal Services (P) Ltd till 12.05.2008. This company is wholly controlled and managed by Satya Group and has been used for providing accommodation entries". On the basis of the above information your honor has asked the assessee to substantiate the transactions made with Artline Fiscal Services (P) Ltd. Your honor has also asked as to why the share capital so received should not be treated as unaccounted money and accordingly should be added to the total income of the assessee. "

4.3 In this regard it is to submit before your honor that on perusal of the query raised by your honor it is given to understand that the whole allegation on the assessee of being received the share capital through shell company namely Artline Fiscal Services (P) Ltd is solely based on the statement recorded on oath during survey u/s 133A of Mr. Binod Kumar Agrawal on 2.02.2015 and subsequently on 8.02.2017. It is important to notice here that the statement recorded on 2.02.2015 was during the survey u/s 133A conducted on Gitabali Merchants (P) Ltd and Glorious Holdings (P) Ltd. Neither the assessee nor Artline Fiscal Services (P) Ltd is connected with those companies. NOW, it is important to mention here that the statements recorded during the course of survey proceedings cannot be Used as evidence since section 133A does not empower any IT authority to examine any person on oath. In this connection we also rely in the case CIT Vs. S. Khader Khan Son reported in 352 ITR 480 where the Hon'ble Supreme Court has held that:

"Section 133A does not empower any IT authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition".

4.4 Without prejudice to above, it is further to submit before your honor that Mr. Binod Kumar Agrawal is having no connection in any capacity with Artlirte Fiscal Services (P) Ltd. Mr.Pawan Agrawal & Mr. Shikhar Agrawal is the directors of the company since A.Y.2012-13. Both the above named persons are resident of Bilaspur and are subject to post search assessment before your honor. Further, the shares of Artline Fiscal Services {P} Ltd are held by Ganpati Plaza {PI Ltd, Shikhar Agrawal, Pawan Agrawal & Mayank Agrawal. Again all these persons except Ganpati Plaza (P) Ltd are Subject to post search assessment before your honor. It is a matter of record that the assessee company has received unsecured loans from Artiline Fiscal Services (P) Ltd during A.Y.2012-13, 2013-14 & 2014-15 and in all these years Mr .Binod Kumar Agrawal is not connected with the Artline Fiscal Services (P) ltd in any capacity. In such circumstances, in what capacity he has given statement to the revenue department recorded on 2.02.2015 & 8.02.2017 against the business affairs of Artline Fiscal Services (P) Ltd in which he is not

having any interest and therefore his statements cannot be used as evidence against the assessee.

4.5 Further, as desired by your honor it is to submit that Artline Fiscal Services (p) Ltd. is a related company of the assessee. The directors of Artline Fiscal Services (P) Ltd are directors of the assessee company or are relatives of the assessee company. Further, both the director is subject to post search assessment before your honor. Artline Fiscal Services (P) Ltd is engaged in investment business and has duly filed the Income Tax Returns, ROC return for all the years. Copy of ITR's along with audited financial statement and bank statements has already been furnished before your honor. The same may kindly be referred to. Further, the investment has been made in the assessee company for business expansion.

4.6 Since the assessee has duly discharged its onus of proving the identity of the investor, has proved the creditworthiness & genuineness of the transaction with Artline Fiscal Services (P) Ltd. by furnishing various documents such as ITR, Audited Financial Statement, Relevant Bank Statements etc, the transactions made with Artline Fiscal Services (P) Ltd may kindly be accepted.

4.7 Without prejudice to above, it is further to bring in notice of your honor that Artline Fiscal Services (P) Ltd has raised share capital of Rs.14.67 Crore in A.Y.2007-08 & of Rs. 7 Crore in A.Y.2009-10. In the assessment proceedings of Artline Fiscal Services (P) Ltd the share capital received in the respective years has been added back to the total income of Artline Fiscal Services (P) Ltd by treating it as the income of Artline Capital Services (P) Ltd. copy of assessment order for both the years is enclosed herewith. A-2. Once the source has been taxed in the hands of the investors and the same capital has been utilized in making the investment in the assessee company, addition cannot be made in the hands of the assessee otherwise it will tantamount to double taxation which is against the principle of natural justice.

4.8 Further, even otherwise also, the statements of the so called person namely Mr. Binod Kumar Agrawal recorded in Kolkata cannot be used against the assessee since it has been recorded behind the back of the assessee. It is therefore requested to your honor to provide the copy of full statement of Mr. Binod Kumar Agrawal, on which your honor is relying and it is also requested to your honor to provide us the opportunity to cross examine Mr. Binod Kumar Agrawal.

4.9 It is also to submit before your honor that the assessment years from A.Y. 2011-12 to A.Y. 2015-16 has not abated and therefore the total income is required to be assessed after taking into consideration the material found during the course of search or any other material available with the AO. It is also a matter of record that the assessment proceeding was completed by order u/s 143(3) for A.Y.2012-13 & 2013-14 wherein the transactions made with Artline Fiscal Services (P) Ltd has duly been accepted. In present case since no incriminating material were gathered relating to the transactions made with Artline Fiscal Services (P) Ltd, therefore no addition can be made on this account.

5. Details of immovable properties purchased and sold by the assessee company has duly been furnished in our earlier written submission. The same may kindly be referred to.

6. The compliance in response to query no.7 has already been made in response to query no.3, the same may kindly be referred to.

7. The cash of Rs.18,720/- found during the course of search was out of available cash balance and therefore the same may kindly be accepted.

8. Books of accounts along with all the bills & vouchers are produced herewith for verification.

The assessee is ready to furnish further details if your honor so desire.

It is prayed accordingly.

Thanking you.

Yours faithfully,
Sd/-
CA Bikram Jain
(Counsel for the Assessee)

10. To advance its contentions further on merits, Ld AR submitted that, the addition made by the Ld AO u/s 68 of the Income Tax act were bad in law and unjustified on the basis of following arguments: -

1. The assessee has duly discharged its onus to prove the Identity and creditworthiness of the investor as well as the genuineness of the transaction by furnishing all the details of the investor M/s Artline Fiscal Services (P) Ltd. (AFSPL). The details provided were ITR, computation of income, Audited Financial Statement, Copy of Bank Statement and copy of share certificate along with the written submission made on 02.11.2018.
2. The facts on the basis of which Ld AO has made the additions were itself incorrect, since no share capital was issued by the assessee company to AFSPL during the AY 2013-14 and 2014-15. In fact, the share capital of 4,18,800 shares amounting to Rs. 7,95,72,000/- was issued to AFSPL during the AY 2015-16. It is pertinent that, the assessee company has received unsecured loan for Rs. 1,30,50,000/-, Rs. 4,25,00,000/- and Rs. 6,40,50,000/- from AFSPL in AY 2012-13, 2013-14 and 2014-15 respectively, in total the unsecured received loan was for Rs. 11,96,00,000/-. The share capital issued in AY 2014-15 for Rs. 7,95,72,000/- was by utilising the said unsecured loans received from AFSPL in earlier 3 AY's, remaining unsecured loan was repaid by the assessee company to AFSPL. From the records it is also evident that interest on loan was

paid and TDS was duly deducted by the assessee company. Interest income was duly declared by the AFSPL in its ITR for the relevant years and the benefit of the TDS have been claimed.

3. The addition was made on the basis of statement of Mr. Binod Kumar Agarwal, recorded on oath during survey u/s 133A on 02.02.2015 and 08.02.2017. It is to be noted that the survey u/s 133A was conducted on Gitabali Marchents (P) Ltd. and Glorious Holdings (P) Ltd. were not connected with either assessee company or Artline Fiscal Services (P) Ltd., moreover, proceedings under survey u/s 133A cannot be used as evidence since section 133A does not empower the IT authority to examine any person on oath. On this aspect, Ld AR made a reference to judgment of Hon'ble Supreme Court in the case of CIT Vs. S Khader Khan Son reported in 352 ITR 480.
4. The assessee had voluntarily offered a lump sum profit of 10% in all the years reopened/assessed u/s 153A and has shown an income higher than the estimate of 8% as approved by Settlement Commission, Kolkata duly accepted by the revenue department, on same line of business in the assessee's own case for AY 2004-05 to 2010-11. Accordingly, assessee has already shown a higher income of 2% for all the years i.e. AY 2011-12 to 2016-17 assessed u/s 153A, which was sufficient to cover up all discrepancies found.

11. Alternatively, without prejudice to above, it is the submission of Ld AR that, the Artline Fiscal Services (P) Ltd. has raised share capital of Rs.14.70 crores in the assessment year 2007-2008 and Rs.7 crores in the assessment year 2009-2010. In the assessment proceedings of those assessment years, the share capital received by the Artline Fiscal Services (P) Ltd has been added back to the total income of Artline Fiscal Services (P) Ltd., copy of the assessment orders for both these years were also produced before the Id. AO.

For both the said years, Artline Fiscal Services (P) Ltd has offered their income under Vivavd Se Vishwas Scheme, 2020 (in short VSVS, 2020) and paid due taxes thereon. Once the source has been taxed in the hands of the investor and the funds raised by the issue of same capital has been remitted to the assessee company as unsecured loans, additions cannot be made in the hands of the assessee, otherwise the same will tantamount to double taxation, which is against the principle of natural justice. In this regard, a chart showing flow of funds by way of receipt of share capital in AFSP and its utilisation for providing unsecured loan and thereafter converting the same as investment in equity share capital of the assessee company was furnished by the assessee, which reads as under :-

ARTLINE FISCAL SERVICES PRIVATE LIMITED					
Detail of Share Investment as on	31.03.2011	31.03.2012	31.03.2013	31.03.2014	31.03.2015
Agrawal Infrabuild Pvt. Ltd.	-	-	-	-	7,95,72,000
Satya Power and Ispat Ltd.	-	-	-	-	3,15,00,000
Indus Udyog & Infrastructure Pvt. Ltd.	-	-	-	-	2,50,00,000
Alankar Jems & Jewellery Pvt Ltd	15,00,000	15,00,000	-	-	-
Analasys Software Pvt. Ltd.	9,00,000	9,00,000	9,00,000	-	-
Arambh Builders Pvt. Ltd	50,00,000	50,00,000	-	-	-
Bengal India Global Infrastructure Ltd	3,60,00,000	3,60,00,000	3,60,00,000	1,91,40,000	1,36,40,000
Bijay Venbture Pvt. Ltd	5,00,000	5,00,000	-	-	-
Calcutta Realty Limited	15,00,000	15,00,000	-	-	-
Carter Container Co Pvt Ltd	5,00,000	5,00,000	-	-	-
Delight Management Pvt Ltd	78,50,000	78,50,000	-	-	-
Dynamic Engineers Infratrack Pvt. Ltd.	25,00,000	25,00,000	-	-	-
Efficient Commodities Pvt. Ltd.	4,50,000	4,50,000	-	-	-
Essdee Distributors Pvt. Ltd.	40,00,000	40,00,000	-	-	-
Exclusive Dealers Pvt. Ltd.	50,00,000	50,00,000	-	-	-
Fine Wood Products Pvt Ltd	12,00,000	12,00,000	12,00,000	-	-
Ganga Carriers Pvt. Ltd.	10,00,000	10,00,000	-	-	-
Git Textile Manufacturing Limited	25,00,000	25,00,000	25,00,000	-	-
Glamdorf Trade & Agency Pvt. Ltd.	5,00,000	5,00,000	-	-	-
Govind Hotels & Inns Pvt. Ltdl	8,00,000	8,00,000	-	-	-
Harrison Trexim Pvt. Ltd.	15,00,000	15,00,000	-	-	-
Highlight Managment Pvt. Ltd.	50,00,000	50,00,000	-	-	-
JDS Apperals Pvt. Ltd.	35,00,000	35,00,000	35,00,000	-	-
Kalakriti Art Pvt. Ltd.	70,00,000	70,00,000	10,00,000	-	-
Kalakriti Creative Arts Pvt. Ltd.	15,00,000	15,00,000	-	-	-
Kiran Multitrade Pvt. Ltd.	10,00,000	10,00,000	-	-	-
Mahalaxmi Enamels Pvt. Ltd.	15,00,000	15,00,000	15,00,000	-	-
Megha Bidyut Pvt.Ltd.	10,00,000	10,00,000	-	-	-
M P Mica Enterprises Pvt. Ltd.	9,00,000	9,00,000	9,00,000	-	-
Nirjhar Financial Advisory Pvt. Ltd.	92,50,000	92,50,000	5,00,000	-	-
Parasnath Trading Pvt. Ltd.	5,00,000	5,00,000	5,00,000	-	-
Raj Laxmi Multitrade Pvt.Ltd.	5,00,000	5,00,000	-	-	-
Resonance Marketing Pvt.Ltd.	10,00,000	10,00,000	-	-	-
Sankalp Commodities Pvt.Ltd.	3,90,000	3,90,000	40,000	-	-
Sanwaria Construction Pvt.Ltd.	7,50,000	7,50,000	-	-	-
Shivsukh Dealcomn Pvt. Ltd.	30,00,000	30,00,000	30,00,000	-	-
Shree Vishnu Vuishal paper Mills Pvt. Ltd.	8,50,000	50,000	-	-	-
Singhi Finlease Pvt Ltd	6,25,00,000	4,97,00,000	4,97,00,000	-	-
Snehafin Investments Pvt. Ltd.	3,00,00,000	3,00,00,000	3,00,00,000	-	-
S S Triupati Enterprises Pvt. Ltd.	10,00,000	10,00,000	-	-	-
S S Tracom Pvt. Ltd.	35,00,000	35,00,000	35,00,000	-	-
USG Automobiles Pvt. Ltd.	10,00,000	10,00,000	-	-	-

Variform Pvt. Ltd.	5,00,000	5,00,000	5,00,000	-	-
Span Commercial Pvt Ltd.	-	2,05,00,000	2,05,00,000	-	-
Shiv Khori Mercantile Pvt. Ltd.	-	69,00,000	69,00,000	-	-
Visa Investment Ltd.	2,25,00,000	-	-	-	-
Visa Minimetals Limited	50,00,000	-	-	-	-
Vishal Sponge Pvt. Ltd.	25,00,000	25,00,000	25,00,000	-	-
Yatrik Distributors Pvt. Ltd.	31,00,000	32,00,000	32,00,000	-	-
Total	24,24,40,000	22,88,40,000	16,83,40,000	1,91,40,000	14,97,12,000
Page no in PB Book-2	43	43	52	61	71
Realisation of Investment		1,36,00,000	6,05,00,000	14,92,00,000	
Loan Given to Agrawal Infrabuild Pvt. Ltd		1,30,50,000	4,25,00,000	6,40,50,000	
Page no in PB Book-1		55	59	70	
YEAR WISE SHARE CAPITAL AND SHARE PREMIUM DETAIL OF ARTLINE FISCAL SERVICES PRIVATE LIMITED					
	F.Y.	Particular	Capital	Premium	Total
		Opening Share Capital 2005-06 (7,45,500 Share of 10 Rs. Each)	74,55,000	6,61,95,000	7,36,50,000
Add:	2006-07	Issued 1467500 Shares of 10 Rs. Each (Refer page no 27 Of PB Book-2)	1,46,75,000	13,20,75,000	14,67,50,000
Add:		Balance as on 31.03.2007	2,21,30,000	19,82,70,000	22,04,00,000
Add:	2007-08	Nil (Refer page no 32 Of PB Book-2)			
Add:		Balance as on 31.03.2008	2,21,30,000	19,82,70,000	22,04,00,000
Add:	2008-09	Issued 701000 Shares of 10 Rs. Each (Refer page no 37 Of PB Book-2)	70,10,000	6,30,90,000	7,01,00,000
Add:		Balance as on 31.03.2009	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2009-10	Nil (Refer page no 41 Of PB Book-2)			
Add:		Balance as on 31.03.2010	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2010-11	Nil (Refer page no 41 Of PB Book-2)			
Add:		Balance as on 31.03.2011	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2011-12	Nil (Refer page no 45-46 Of PB Book-2)			
Add:		Balance as on 31.03.2012	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2012-13	Nil (Refer page no 54-55 Of PB Book-2)			
Add:		Balance as on 31.03.2013	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2013-14	Nil (Refer page no 63-64 Of PB Book-2)			
Add:		Balance as on 31.03.2014	2,91,40,000	26,13,60,000	29,05,00,000
Add:	2014-15	Nil (Refer page no 73-74 Of PB Book-2)			
Add:		Balance as on 31.03.2015	2,91,40,000	26,13,60,000	29,05,00,000

12. Ld. AR also submitted that the statement of Mr. Vinod Kumar Agrawal, recorded in Kolkata, who was not connected with the assessee's company cannot be used against the assessee since the same were recorded behind the back of the assessee and even after the request made to the AO by the assessee to provide the opportunity to cross examine Mr. Vinod Kumar Agrawal, the same was not provided with. Thus, the addition imposed was against the principle of natural justice.

13. It is also submitted that the assessment years 2011-2012 to 2015-2016 are unabated assessments and any addition made for those years could be made only on the basis of any incriminating material unearthed during the search and seizure proceedings u/s.132 of the Act. Since no incriminating

material were impounded relating to the transaction with Artline Fiscal Services (P) Ltd, therefore, no addition can be made on this account.

14. With the aforesaid arguments, Id. AR of the assessee prayed that the addition made by the Id. AR and sustained by the Id. CIT(A) are unjustified, unwarranted, uncalledfor, the same deserves to be deleted and the assessments for both the years under consideration be set aside.

15. On the other hand, Id. Sr. DR submitted that the Id. AO has rightly made the addition based on the material available which was found during the search and seizure proceedings u/s.132 of the Act. Id. Sr. DR drew our attention to page 17 of the assessment order wherein question No.9 and its answer by Mr. Vinod Agrawal, which was the basis for reassessment proceedings u/s 153A, was as under :-

Q.9 Please state how are you associated with M/s Artline Fiscal Services Pvt. Ltd. M/s Ganpati Plaza Pvt. Ltd., M/s Platinum Vanijya Pvt. Ltd., m/s Prolific Equities Pvt. Ltd., M/s Radiant Marketing Pvt. Ltd. and M/s V.V.Tradecom Pvt. Ltd.

Ans. Regarding M/s Ganpati Plaza Pvt. Ltd., M/s Platinum Vanijya Pvt. Ltd., m/s Prolific Equities Pvt. Ltd., M/s Radiant Marketing Pvt. Ltd. and M/s V.V.Tradecom Pvt. Ltd., it is being stated that I am in nowhere is connected directly or indirectly with these above companies. I have remained director of M/s Artline Fiscal Services Pvt. Ltd. as name lender till 12/05/2008. These companies are presently wholly controlled and managed by Satya group and have been used for providing accommodation entries. The capital in these companies was raised before its transfer as on 12/05/2008 was a paper capital and I was not paid any remuneration for directorship till date.

16. According to the statement of Mr. Vinod Kumar Agrawal, he was the Director of the Artline Fiscal Services (P) Ltd till 12.05.2008 and, thus, his statements are substantial, have the evidentiary value to be relied upon and the additions made were therefore justified. Id. CIT(A) has also deliberated the matter at length and rightly sustained the addition with his observations as under:-

4.2.3 I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. From the perusal of the details/document filed by the appellant, it is clear that the lender was not having any business activity. It was having meagre income from which it is clear that it was paper/shell companies of meagre means and engaged in giving accommodation entries to the beneficiaries in the garb of share capital including share premium.

4.2.4 Onus was on the appellant to prove genuineness of the transactions shown by them but they failed to do so. The above-mentioned company was not doing any business activities and these were engaged in giving accommodation entries. In this regard, judgments of Hon'ble Delhi High Court in the cases of CIT Vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del) and CIT Vs. N.R. portfolio Pvt. Ltd. (2014) 264 CTR 258 (Del) are relied upon. Further, the judgment of Hon'ble Kolkata High Court in the case of Rajmandir Estate Pvt. Ltd. (2016) reported in 70 Taxmann.com 124 (Cal) and the judgment of IT AT, 'D' Bench, Mumbai in ITA no.1835/Mum/2014 dated 24.8.2016 in the case of Royal Rich Developers Pvt. Ltd. are also relied upon. In view of above facts, I am of the considered view that this is not sufficient to discharge the onus cast on the appellant as contemplated u/s.68 of the Act just giving addresses and PAN of the companies concerned when the AO has doubted the credit worthiness/capacity of the company having meager means and known sources of income to have invested huge amount in lending. The genuineness of the transactions were also doubted by the AO wherein the lenders did not have any business/project in hand and is merely a persons of meager means, as it is brought on record that these lenders are persons of meager means declaring nominal income and his Balance Sheet/statement of affairs revealed that he have otherwise insignificant assets other than investment in the appellant. Section 68 of the Act cast onus on the appellant to satisfy the ingredients of Section 68 to establish the identity and creditworthiness of the creditors and to establish the genuineness of the transactions. Once appellant filed the basic details such as name and address of creditor, PAN, income tax return, confirmation and bank statement, the initial onus gets discharged but since, the AO has doubted the creditworthiness of the lender and genuineness of the transaction as per the reasons cited and set out above, the onus shifts back to the appellant company to offer an explanation to the satisfaction of the AO as contemplated u/s 68 of the Act which could have been discharged by producing the lenders before the AO so that truth behind the smokescreen could have been unraveled by the AO by interrogating them. The burden/onus is cast on the appellant and the appellant is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. The fact remains that the appellant is private limited company, for which the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the lenders and genuineness of the transaction. In view of the above discussion, I am of the considered view that merely submission of the name and address of the lender, income tax returns, Balance Sheet/statement of affairs of the lender and bank statement is not as well as to the genuineness of the transaction entered into. The alleged lender was not found to be in existence and thus, the onus shifts back to the appellant to produce the lenders before the AO and if the appellant falters, the additions can be made u/s 68 of the Act. Section 68 of the Act

has been amended by Finance Act, 2012 w.e.f. 01-04-2013 whereby the onus is cast upon the appellant to justify the source of loan, to explain the source of the source of raising the loan which has been held to be clarificatory in nature. In the present case, the appellant could not prove the identity and credit worthiness of the alleged lender and the genuineness of the lender. Being company, it was therefore, viable and proper and duty on the part of the appellant to prove genuineness of the transaction but the fact remains that the appellant could not prove the same. The lender was having nominal income. This company is having very insignificant amount of income for the period under consideration and hence their creditworthiness is also not established. The M.P. High Court held in the case of CIT v. Rathi Finlease Ltd wherein considering the judgment of Hon'ble Supreme Court in the case of CIT v Steller Investment and the judgment of Hon'ble Supreme Court in the case of Lovely Export Ltd., Hon'ble High Court has held that each and every transaction of share application money involving application of provisions of section 68 in matter of contribution of share application/share capital and whether this onus on the assessee has 'peen discharged or not has to be appreciated on totality of evidences available on record and surrounding facts and circumstances of the case.

The creditworthiness or genuineness of transactions depends on whether the parties are related or known to each manner or mode by which parties purpose for which payment/investment was made, etc. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The lender does not having creditworthiness to invest to the tune of Rs.7,95,72,000/-. The lender company is hardly earning any income to invest such an amount as loan to the appellant. Therefore, it is held that transaction is not genuine. This company had no creditworthiness, financial worth or regular resources to justify, short term borrowings. The appellant has not discharged the genuineness of the transaction. The appellant has not established the ingredients of section 68 of the IT. Act. Therefore, the credit is not acceptable. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to ensure that the subscriber had made genuine investment. In the following cases ITAT, Indore bench and other Judicial Authority held as under:-

1. Assessee has to establish identity of lender and prove their creditworthiness and genuineness of transaction; furnishing of income-tax file numbers may not be sufficient to discharge the burden - CIT v. Nivedan Vanijya Niyojan Ltd. [2003J 130 Taxman 153 (Cal.).

2. Unsecured loan/Share Application Money - Addition is called for- Assessee obtained loan and also received share application money - AO doubted the identity, genuineness and creditworthiness of these credits - AO made addition for same u/s. 68 - CIT(A) held that the ingredients of section 68 are not satisfied. However, in one of the cases, CIT(A) held that addition, shall be made substantively in the hands of assessee and protectively in the hands of alleged investors in terms of ITAT Judgement in Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 TTJ 202 (Trib.-Indore) – HELD - Assessee has not established the ingredients of section 68; credits cannot be accepted - Also, in Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore), it was found that additions has already been made in the hands of investor - In the present case, assessee is

unable to establish the ingredients of section 68 - Addition is called for. *Pramila Investment and Finance Ltd. v. ITO (2013) 22 ITJ 149 (Trib. =Indore).*

3. *CIT vs Bikram Singh (Delhi High Court): P Mohankala 291 ITR 278 (SC): Diza Holdings 255 ITR 573 (Ker): CIT vs Precision Finance 208 ITR 265 (Cal~ wherein it has been held that if the lenders do not have the financial strength to lend such huge sum and if there is no explanation as to their relationship with the assessee, no collateral security and no agreement the transactions have to be treated as bogus unexplained credits ..*

4. *Share Capital and Loan - Assessee not able to establish identity of investor - Merely filing PAN, IT returns, Certificate of incorporation, Balance Sheet etc. do not establish the identity - Share Capital and Loan - "HCL" and "OTIL" had subscribed in shares of assessee company - In some cases, "HCL" and "OTIL" had given loans to assessee company - AO required assessee to prove transaction - Assessee furnished various documents to prove the transaction - On inquiry, the companies were found to be non-existent - Noticed issued to them were returned unserved - HELD - Assessee is not able to establish identity of investors - Merely filing PAN, IT returns, Certification of incorporation, Balance Sheet etc. do not establish the identity of subscribers or produce them - Addition u/s. 68 shall be made. *Agrawal Coal Corporation P. Ltd. v. Addl. :CIT (2011) 18ITJ 717 (Trib. - Indore) : (2012) 135 ITD 270: (2011)142 TTJ 409: (2012) 13ITR(T) 531 .**

5. *The facts of the case will hold more strength with the decision of Hon'ble Calcutta High Court in the case of CIT vs United Commercial & Industrial Co (P) Ltd (1991) 187 ITR 596 (Cal) wherein it has been held that the mere circumstances that loans are taken through cheques does not establish neither genuineness of the loans nor the credit worthiness of the creditors.*

Following the decision of above Judicial Authorities, it is held that the lender company is a paper company without any means.

The appellant company was obliged to prove:-

- (a) The identity of the alleged lender.*
- (b) The credit worthiness of the lender.*
- (c) The genuineness of the transactions.*

But it is clear from the facts as discussed above that the appellant could not prove the same, therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the transactions of bogus share capital/premium as claimed by the appellant are not genuine. Further, in various case across India it has been observed that commission is also paid for acquiring bogus share capital and premium. The AO is justified in adopting commission of share premium @ 0.05%. Therefore, the AO was fully justified in making addition on account of unexplained cash credit U/S 68 of the Act. Thus, addition made by the AO amounting to Rs. 1,55,29,7611- (Rs. 1,55,22,000/- + Rs. 7,7611-) in AY 2013-14 and Rs. 6,40,82,025/- (Rs. 6,40,50,000/- + Rs. 32,025/-) in AY 2014-15 are Confirmed. Therefore, appeal on these grounds is Dismissed.

17. Thus, the Id. Sr. DR vehemently supported the orders of authorities below and requested to sustain the additions made therein.

18. We have considered the rival submissions and perused the relevant material available on records. Admittedly, the onus cast upon the assessee to prove the identity, creditworthiness of the investor as well as the genuineness of the transaction was discharged by the assessee, however, the Id. AO has taken the stand based on modus operandi of various companies for which special investigation team has issued a report. It is also an admitted fact that the investor company has offered its unexplained receipts from share capital under VSVS for the assessment year 2007-2008 and 2009-2010 for which copies of compliance documents submitted under VSVS with the department were furnished in the assessee's paper book. On perusal of year wise capital and share premium details as submitted by the assessee referred herein above, it is discernible that Artline Fiscal Services (P) Ltd has opening share capital including share premium of Rs.7,36,50,000/-, further during financial year 2006-2007, they have raised a share capital of Rs.14,67,50,000/- and again during financial year 2008-2009 have raised a share capital of Rs.7,01,00,000/-. In aggregate the share capital of the Artline Fiscal Services (P) Ltd becomes Rs.29.05 lakhs and this amount of share capital thereafter remains at the same level till assessment year 2014-2015. On perusal of page 76 of the paper book (2nd) of assessee company which is the schedule of investment in the final audited accounts of Artline Fiscal Services (P) Ltd, showing an investment in share capital of the assessee

company for Rs.7,95,72,000/- during the financial year 2014-2015 relevant to assessment year 2015-2016, this substantiate the fact which the Ld AR is harping on that the share capital was issued in AY 2015-16, since, the figure of share capital issued by the assessee company to Artline Fiscal Services (P) Ltd. for AY 2014-15 (FY 2013-14) against the amount of Share Capital was blank. On perusal of assessee's paper book dated 28.07.2022 in assessment year 2013-2014, wherein at page No.55, audited financial statement of Artline Fiscal Services (P) Ltd was furnished, under which in the statement of significant accounting policies and notes on accounts at item No.4.13 which is "related partly disclosure" showing a loan given to assessee's company for Rs.3,82,00,000/-. Similarly for assessment year 2014-2015 the loan given was Rs.6,08,50,000/-. On perusal of ITR of Artline Fiscal Services (P) Ltd, the gross taxable income offered for Ay 2013-14 and AY 2014-15 was Rs.31,53,831/- and Rs.5,15,309/- respectively. From the computation of the total income for the impugned years enclosed with the ITR TDS deducted by Agrawal Infra Pvt. Ltd. was also reflected. Under such the factual matrix of the present case, it is explicitly clear that the assessee has received funds from Artline Fiscal Services (P) Ltd as interest bearing unsecured loan during the assessment years under consideration and part of those unsecured loan were converted into equity shares in the assessment year 2015-2016. The interest was also paid on the unsecured loan and TDS on the interest were also duly deducted. Identity was proved by the assessee by providing all the required details like ITR,

computation of total income, copy of assessment orders, bank statements, forms filed under VSVS. Since the tax on the disclosed income under VSVS were also duly paid by the investor, the creditworthiness of the investor and genuineness of the transaction cannot be disbelieved.

19. Our aforesaid view is further fortified by the judgment in the case of CIT Vs. Lovely Exports (P) Ltd reported in (2008) 216 CTR 0195 (SC), where in Hon'ble Apex Court has held that:

"If the share application money is received by the Assessee company from alleged bogus shareholders, whose name are given to the AO, then department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee."

20. In the present case since assessee had provided all the required information regarding the creditor /investor /shareholder, who has already disclosed its income under VSVS and had paid the required taxes thus no further action can be taken against the assessee.

21. We do also find a relevance of the judgment in the case of PCIT Vs Sree Leathers (2022) 114 CCH 0180 (Cal.HC), Hon'ble Kolkata High Court in this case has dealt with an addition u/s 68 and has quoted a decision of Hon'ble Supreme Court in the case of CIT Vs. Daulatram Rawat Mull, (1973) 87 ITR 349 (SC), where in it has been concluded that:

"It is not enough for the assessing officer to brushed aside the explanation offered by the assessee but he should record reasons in writing as to why documents which were filed by the assessee along with the reply does not got to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender."

22. Hon'ble Jurisdictional High Court of Chhattisgarh in the case of ACIT vs. Venkateshwar Ispat (P) Ltd. reported in 319 ITR 393(Chhatisgarh), which was referred by the coordinate bench of ITAT, Raipur in the case of Shree Radhey Infralogistics India Pvt. Ltd in ITA 51, 52 & 56/Raipur/2017 dated 16.04.2018 also, held that *"in respect of Share application money, department is free to proceed to reopen shareholder's individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company. The Hon'ble High Court further found that in subsequent year, the shareholders investment was confirmed during the assessment proceedings."*

23. In backdrop of the aforesaid facts and observations, respectfully following the judicial pronouncements, , since the support factors based on which the applicability of Section 68 of the Act could stand have disowned by the assessee having discharging its onus providing requisite information and details, therefore, addition made u/s.68 of the Act cannot be sustained. Alternatively, even if the source of source is to be taken into consideration, since the investor was already taxed on the funds which was raised by them and provided to the assessee company as unsecured loan converted into share capital along with the share premium subsequently, on this count also, the addition made by the AO and confirmed by the Id. CIT(A) in both the years under consideration are liable to be deleted in terms of observations herein above

24. Consequently, we set aside the orders of the Id. CIT(A) and Id. AO and direct the AO to delete the addition made in both the years under consideration.

25. Since, we have set aside the orders of authorities below in terms of aforesaid discussion and the additions made thereby were deleted, thus, other grounds or contentions raised by the assessee became academic and thus not adjudicated upon.

26. In the result, both appeals of the assessee are allowed.

Order pronounced in pursuance to the Rule 34(4) of ITAT Rules,1963 on 30/03/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 30/03/2023

Prakash Kumar Mishra, Sr.P.S.

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur