

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य

एवं

डॉ. मनीष बोराड, लेखा सदस्य

के समक्ष

Before

**SRI SANJAY GARG, JUDICIAL MEMBER**

&

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 39/KOL/2021**

**Assessment Year: 2009-10**

***ITO, Ward-9(1), Kolkata.....Appellant***

***Vs.***

***M/s. Target Dealers Pvt. Ltd.....Respondent  
[PAN: AADCT 0040 K]***

**Appearances by:**

*Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.*

*Sh. G.H. Sema, CIT (D/R), appeared on behalf of the Revenue.*

Date of concluding the hearing : January 25<sup>th</sup>, 2023

Date of pronouncing the order : April 18<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2009-10 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)- 7, Kolkata [in

short ld. "CIT(A)"] dated 08.09.2020 arising out of the assessment order framed u/s 143(3)/263/147 of the Act dated 29.03.2014.

2. Registry has informed that the appeal filed by the Revenue is time barred by 32 days. The Revenue vide application dated 04.03.2021 stated that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the Revenue falls during this period, the same deserves to be extended. We, therefore, condone the delay and admit the appeal for adjudication

3. The Revenue has raised the following grounds of appeal:

*"1. "That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is justified to allow the appeal against the assessment order in respect of deleting the addition made by A.O. on introduction of share capital including share premium to the tune of Rs. 14,61,00,000/-?"*

*2. "That on the fact and circumstances of the case, as to whether Ld. CIT(A) was justified in deleting the addition of Rs.14,61,00,000/- made by Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings and as such identity & creditworthiness of the creditors and genuineness of transactions could not be verified?"*

*3. "That on the facts and the circumstances of the case, whether the Ld CIT(A) Kol is justified in overlooking the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt Ltd (412 ITR 161), which suggests that the assessee is under a legal obligation to prove the receipt of share capital / premium to the satisfaction of the A.O.,*

*failure of which, would justify addition of the said amount to the income of the assessee?"*

4. *"That on the facts and the circumstances of the case, whether the Ld CIT(A) Kol is justified in ignoring the principle which has been laid down by the Hon'ble Supreme court in the case of Pr. CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), which also suggests that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name lenders? In the facts of the case, in spite of best efforts made by the assessing officer, he could not verify the same as there was no response from companies to whom shares were allotted on private placement basis Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital including share premium was not the assessee's own income?"*

5. *"That on the facts and the circumstances of the case, whether the Ld CIT(A) Kol is justified in ignoring the aspect of Section 68 of the Act and giving relief to the assessee? The principle which has been laid down by the Hon'ble Supreme court in the case of Pr. CIT(Central)-1 Delhi Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), also suggests that if the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transactions would not be established In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act., In the facts of the case, the Ld. CIT(A) completely ignored this aspect, thus he has erred in giving relief to the assessee."*

6. *"That on the fact and circumstances of the case, whether the Ld CIT(A) was justified in deleting the addition of Rs.14,61,00,000/- made u/s 68 wherein the identity, genuineness and creditworthiness of investor companies remained unsubstantiated, as they failed to appear before the A.O. against summons issued u/s 131 ignoring the decision of Hon'ble Supreme court in the case of Pr. CIT(Central)-1, Delhi Vs NRA Iron & Steel Pvt. Ltd (412 ITR 161)?"*

7. *"That on the fact and circumstances of the case, whether the Ld CIT(A) was correct in granting relief whereas the assessee failed to discharge its legal obligation to prove the receipt of share capital and share premium money to the satisfaction of the A.O.?"*

8. *“That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is justified in allowing the appeal-without considering the fact that the sources of share application money including share premium which were not properly explained by the assessee and it lacked any real profit-making business credence?”*

9. *“That on the fact and circumstances of the case, as to whether the Ld CIT(A) Kol is justified in considering the facts that the creditworthiness of the subscribing companies were not established before the A.O. during the course of the assessment proceedings though the onus of providing the identity of the creditor vests solely with the assessee?”*

10. *“That on the fact and circumstances of the case, as to whether the Ld CIT(A) Kol is justified in not considering the facts that the real intention of the assessee company for introducing such huge amount in the form of share capital and share premium in its business only to introduce its unaccounted money in the form of fresh share capital?”*

11. *“That the Department craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or during hearing of this appeal.”*

4. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in share trading and investment. Total loss of Rs. 2,591/- declared in the return for AY 2009-10 filed on 31.08.2009. The said return was processed u/s 143(1) of the Act. Subsequently, reassessment proceedings were carried out by issuance of notice u/s 148 of the Act and assessment u/s 147 r.w.s. 143(3) of the Act framed on 31.12.2010 and the same was the subject matter of the revisionary proceedings u/s 263 of the Act for which the order was framed on 01.02.2013 on the ground that requisite enquiries were not done regarding the identity and creditworthiness of the shareholders through which share capital of Rs. 14.61 Cr was introduced. Thereafter, in compliance to the directions given u/s 263 of the Act

assessment proceedings were again carried out. During the course of these proceedings carried out u/s 143(3) r.w.s. 263 of the Act, ld. AO called for various details through notice issued u/s 142(1) of the Act dated 24.07.2013 to which certain details were filed by the director on 27.01.2014. Thereafter, on few occasions the assessee failed to appear. Accordingly, ld. AO after considering the details and placing reliance on various judicial pronouncements completed the assessment making addition u/s 68 of the Act for unexplained share capital of Rs. 14.61 Cr coupled with making addition towards share trading income of Rs. 49,150/- and assessed the income at Rs. 14,61,46,559/-.

5. Aggrieved, the assessee preferred appeal before ld. CIT(A) challenging the addition u/s 68 of the Act at Rs. 14.61 Cr and again filed the complete details and also relied on plethora of judgments including that of Hon'ble Supreme Court of India in the case of *CIT vs. Orissa Corpn, (P.) Ltd.* reported in [1986] 159 ITR 78 (SC), *Lovely Export (P) Ltd.* reported in 319 ITR (St.) 5 (SC) and also in the case of *CIT vs. Bharat Engineering & Construction Co.* reported in [1972] 83 ITR 187 (SC). Ld. CIT(A) after considering the submissions filed by the assessee and also examining the financials of the cash creditors deleted the addition made u/s 68 of the Act.

6. Aggrieved, the Revenue is now in appeal before this Tribunal. Ld. D/R vehemently argued supporting the order of ld. AO and further, stated that all the alleged share subscribers are accommodation entry providers and *jama-kharchi* companies and

it is assessee's own unaccounted money which has been brought in its books in the garb of share capital and share premium.

7. On the other hand, ld. Counsel for the assessee reiterated the submissions filed before ld. CIT(A), relied heavily on the finding of ld. CIT(A), referred to the various documents filed in the paperbook regarding the share applicants. It was also submitted that most of the alleged share applicants have passed through the scrutiny proceedings u/s 143(3) of the Act, all are regularly assessed to tax and they all are live companies duly registered with the Registrar of Companies and are in active mode. Reliance was placed on the following decisions:

Sl. No.	Decisions	Before	Reference
1	Commissioner Of Income- Tax, Bihar And Orissa Versus Maharaja Pratapsingh Bahadur Of Gidhaur	Supreme Court	1960 (11) TMI 19 Dated: -29-11-1960
2	K.K. Agarwal And Sons Huf Versus Income Tax Officer, Ward No. 30 (1), Kolkata & Ors.	Calcutta High Court	WPA 25770 OF 2022 Dated: - 14-12-2022
3	Yum! Restaurants Asia Pte. Ltd. Versus Deputy Director Of Income Tax And Ors.	Delhi High Court	W.P. (C) 1353/2013 Dated: - 31-8-2017
4	Dr. Shashi Kant Garg Versus Commissioner Of Income-Tax And Others.	Allahabad High Court	2005 (8) TMI 81 Dated: - 10-8-2005
5	Commissioner Of Income Tax Versus Qatalys Software Technologies Ltd.	Madras High Court	1026, 1027 of 2008 &M.P. No.1 of 2008 in 1027 of Dated: - 29-7-2008
6	Commissioner Of Income- Tax Versus Km Pachayappan	Madras High Court	870 of 2007 Dated: - 4-7-2007
7	ITO, Ward-12(1), Kolkata Vs Trinetr Merchants (P) Ltd	ITAT Kolkata	LT. A No.570/Kol/2021 dated 03/11/2022
8	Khushi Infraprojects Pvt. Ltd Vs ITO, Ward-4(4), Kolkata	ITAT Kolkata	I.T.A No.195/Kol/2022 dated 31/10/2022
9	M/S. Roy & Co. Versus I.T.O., Ward-28 (2), Kolkata	Itat Kolkata	ITA No.166/Kol/2013 Dated: -5-9-2014

8. We have heard rival contentions and perused the records placed before us. Addition u/s 68 of the Act at Rs. 14.60 Cr made by ld. AO u/s 68 of the Act alleging it to be unexplained by the

assessee and thereafter, deleted by Id. CIT(A) is now in challenge before us by the Revenue. It is noteworthy that the assessee has passed through reassessment proceedings u/s 147 r.w.s. 143(3) of the Act in the first round making no addition u/s 68 of the Act and thereafter, in compliance to the directions u/s 263 of the Act again the issue has been examined. The alleged sum of Rs. 14.60 Cr has been received from the following 10 companies which are stated to be active/live companies on the portal of Ministry of Corporate Affairs and details of the share capital Reserve and Surplus, net worth and the investment made in the assessee company are provided in the details reproduced below:

Sl. No.	Name of Share Applicants	Share Capital 1	Reserves & Surplus 2	Mise. Expenditures 3	Accumulate Loss 4
1	M/s. Aswini Commotrade (P) Ltd.	1148000	103752000	29250	-723.04
2	M/s. Convent Tradelink'(P) Ltd.	1510000	139590000	36450	-1153.87
3	M/s. Debdaru Suppliers (P) Ltd.	1500000	138600000	35550	-1469.05
4	M/s. Debrai Dealers (P) Ltd.	1460000	134640000	35550	-139.16
5	M/s. Dikson Trading & Finance Co. Ltd.	5188250	137256750	0	-128441.11
6	M/s. Highlight Commotrade (P) Ltd.	1420000	130680000	35550	-5336.05
7	M/s. Highlight Suppliers (P) Ltd.	1520000	140580000	36450	-760
8	M/s. Landscape Vinimav (P) Ltd.	2500000	237600000	53550	-1150.88
9	M/s. Omega Retails (P) Ltd.	1360000	124740000	33750	-4210.01
10	M/s. Trinetra Vmcom (P) Ltd.	1430000	131670000	35550	-1406.64

Sl. No.	Name of Share Applicants	Net Worth 5 (1+2+3+4)	Amount Invested in Assesses Company 6	investment (6) to Net Worth (5) 7 (%)
1	M/s. Aswini Commotrade (P) Ltd.	104928527	60,00,000	5.72
2	M/s. Convent Tradelink'(P) Ltd.	141135296.1	1,00,00,000	7.09

3	M/s. Debbaru Suppliers (P) Ltd.	140134081	1,70,00,000	12.13
4	M/s. Debrai Dealers (P) Ltd.	136135410.8	2,20,00,000	16.16
5	M/s. Dikson Trading & Finance Co. Ltd.	142316558.9	70,00,000	4.92
6	M/s. Highlight Commotrade (P) Ltd.	132130214	2,00,00,000	15.14
7	M/s. Highlight Suppliers (P) Ltd.	142135690	2,20,00,000	15.48
8	M/s. Landscape Vinimav (P) Ltd.	240152399.1	1,00,00,000	4.16
9	M/s. Omega Retails (P) Ltd.	126129540	1,20,00,000	9.51
10	M/s. Trinetra Vmcom (P) Ltd.	133134143.4	2,00,00,000	15.02
	TOTAL		14,60,00,000	

9. Further, we notice that the assessee has filed complete details of all the cash creditors which includes the proof of their identity, audited financial statements, bank statement, income tax return, share application and share allotment forms, copy of assessment orders framed u/s 143(3) of the Act in the case of the most of the share applicants. We, further note that ld. CIT(A) after examining the facts of the case in details has deleted the alleged sum observing as follows:

*“4.2. I have considered the issue in the assessment order framed by the AO in light of the arguments made by the appellant. The short issue for my consideration is that whether the “share application monies” in the sum of Rs. 14,61,00,000/- disclosed by the appellant invite the mischief of the provisions of s. 68 of the Act or not. The provisions of s. 68 of the Act deals with cash credit which reads as under:*

*“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”*

*According to this section, if identity, creditworthiness of the creditor and genuineness of the transaction is not proved and the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as income of the assessee of that previous year. It was argued by the AR of the appellant that the AO pointed out any defect in any of the explanations or evidences filed either by the appellant or by the share applicants and hence the AO was predetermined to make addition of the entire amount of share capital along with share premium amounting to Rs. 14,61,00,000/-.*

*4.3. It was argued by the AR that the addition was made with the predetermined mindset that share application monies received by the appellant is not genuine as identity and creditworthiness of the shareholders were bogus in nature as they did not exist and the transactions were an eyewash only for converting its black money into white without paying any tax to the revenue. For better appreciation of facts, it is relevant to consider that during the previous year 2008-09 relevant to the assessment year under appeal, the appellant had raised share capital in the aggregate sum of Rs. 14,61,00,000/- by issuing 1,00,000 equity shares at par to the subscriber of the Memorandum and 14,60,000 equity shares of the face value of Rs. 1/-each at a premium of Rs. 99/- per share. It is found that 10 corporate shareholders subscribed to the aforesaid share capital raised by the appellant and all payments were made by each of them through a/c payee cheques drawn on their respective bankers. Each of the subscriber companies is regularly assessed to income tax and copies of scrutiny assessment orders have been filed before me in many cases; and the investments made by each of them are duly and fully reflected in their audited books of accounts as well as their income tax return. The appellant filed its return of total income u/s 139 of the Act in respect of the assessment year 2009-10 on 31.08.2009 declaring a loss of Rs. 2,591. The said return was accepted and processed by the AO u/s 143(1) of the said Act. Subsequently, the AO issued a notice u/s. 148 of the Income Tax Act, 1961 requiring the appellant to file a fresh return of its total income for the assessment year under appeal, on the ground that the income assessable to tax of the appellant, for the said year, had escaped assessment within the meaning of sec. 147 of the said Act. In compliance with such notice, the appellant wrote a letter requesting the AO to treat the return originally filed on 31.08.2009 as having*

*been filed in response to the said notice issued u/s. 148 of the Act. In the course of the said proceedings u/s 147 of the Act, the appellant in response to the requisitions made by the AO, from time to time, produced its audited books of accounts, filed copies of its audited annual accounts including various details and other documents as desired by the AO. The details and documents so produced and filed with the AO included, inter alia, full details of each of the 9 share applicant companies, which had subscribed to the aggregate share capital in the sum of Rs. 14,61,00,000/- raised by the appellant during the assessment year under appeal. The AO on receipt of the aforesaid details from the appellant, issued notices u/s 133(6) of the Act to the share subscribers on test check basis, who had subscribed to the share capital raised by the appellant; and on being satisfied with the replies received in response thereto by him from such share applicants, he had accepted the genuineness of the said share capital and accordingly, the AO framed the assessment order u/s 143(3)/147 of the Act on 31.12.2010 and computed the total income of the appellant in the sum of Rs. 49,760/- in respect of the assessment year under appeal. Subsequently, the Ld. C.I.T., Kolkata-II, Kolkata was of the opinion that the assessment so framed u/s 143(3)/147 of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of the revenue and an order dated 22.03.2013 was passed u/s 263 of the Act setting aside the said assessment order dated 31.12.2010 with the direction as follows:*

*“i) Examine the genuineness and source of share capital, not on a test check basis, but in respect of each and every shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period should be examined in the course of verification to find out the money trail of the share capital.*

*ii) Further the A. O. should examine the directors as well as examine the circumstances which necessitated the change in directorship if applicable. He should examine them on oath to verify their credentials as director and reach a logical conclusion regarding the controlling interest.*

*iii) The A.O. is directed examine the source of realization from the liquidation of assets shown in the balance sheet after the change of Directors, if any.”*

*The AO in the impugned assessment proceedings took steps to frame the fresh assessment order in respect of the assessment year under*

*appeal. It is observed that that the AO had issued notices u/s 133(6) of the Act, to each of the share subscribers again. Such notices were duly served upon the respective share applicants at their respective addresses on the records of the appellant. Service of such notices u/s 133(6) of the Act to each of the share applicants at their respective known addresses proves their respective identities. It is observed that each of the share applicants are registered under the Companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India. In fact, each of the share applicants has responded to the statutory notices issued to them u/s 133(6) of the Act. In their respective replies, the share applicants had disclosed, inter alia, their Permanent Account Numbers along with the acknowledgment of their return of income and furnished audit report and financial statements which in my opinion proves their identities to the hilt. It is also observed that each of the share applicants maintained bank accounts; and copies of their respective bank accounts from which they made payments to the appellant for subscribing to the shares issued to them, was filed by each of them before the AO. Further, each of the share applicants accepted the fact that they had subscribed to the shares issued by the appellant; and that such transactions were duly reflected in their respective books of accounts, as well as in their audited Balance Sheets. These facts, in my opinion, clearly prove the genuineness of the transactions.*

*4.4. It is also observed that each of the share applicants explained the source of funds, from which they made payments to the appellant for subscribing to the share capital. It is imperative to consider the replies sent of the share applicants filed before the AO in seriatim as under:*

*a. In the case of Aswini Commotrade P. Ltd. regarding the source of money mentioned at point number (1) it was stated that:*

*“The Source of fund was the amount of money received as Share application money from M/s Debraj Dealers (P) Ltd of 10, Clive Row, Kolkata-700 001 having PAN No. AACCD9342D.”*

*b. In the case of Convent Tradelink P. Ltd. regarding the source of money mentioned at point number (2) it was stated that:*

*"The source of investment was amount received as share application money from M/s Faithful Commodities (P) Ltd of 138, Canning Street, Kolkata-700 001 (PAN No. AABCF2532N)"*

*c. In the case of Debdaru Suppliers P. Ltd. regarding the source of money mentioned at point number (3) it was stated that:*

*"The Source of fund received by the co. was from M/s Convent Tradelink P Ltd of 22, Canning Street, Kolkata-700 001 & PAN No. AADCC4456A and M/s Debraj Dealers (P) Ltd of 10, Clive Row, Kolkata-700 001 & PAN No. AACCD9342D."*

*d. In the case of Debraj Dealers P. Ltd. regarding the source of money mentioned at point number (B) it was stated that:*

*"The share application money was the amount of money received from M/s Srijan Commotrade (P) Ltd of 23/24, Radha Bazar, Kolkata-700 001 with PAN No AAMCS2510E."*

*e. In the case of Dikson Trading & Finance Company Ltd. regarding the source of money mentioned at point number (C) it was stated that:*

*"The source of investment was the fund received by the company towards share application money from Basukinath Design (P) Ltd of 1A, Grant Lane, Kolkata PAN No AACCB6449H."*

*f. In the case of Omega Retails P. Ltd. regarding the source of money mentioned at point number (3) it was stated that:*

*"We have invested the amount from fund received by the company as share application money from M/s Mainak Suppliers (P) Ltd of 9, Clive Row, Kolkata-700 001 and the PAN No is AAFCM6497F"*

*g. In the case of Highlight Commotrade P. Ltd. regarding the source of money mentioned at point number (1) it was stated that:*

*"The Source of investment was the fund received by the co as share application money from M/s Minerva Commodities (P) Ltd of 31, Brabourne Road, Kolkata-1 and the PAN No. is AAFCM6498L."*

*h. In the case of Landscape Vinimay (P) Ltd. regarding the source of money mentioned at point number (C) it was stated that:*

*"The source of investment in M/s Target Dealers (P) Ltd is amount received by the company as share application money from M/s*

*Viewpoint Dealers (P) Ltd of 10, Clive Row, Kolkata-700 001. And there PAN Number is AACCV8006E"*

*i. In the case of Trinetra Vincom (P) Ltd regarding source of capital mentioned at point number (4) it was stated that:*

*"Fund received from Debdaru Suppliers (P) Ltd od 10, Clive Row, Kolkata-700 001 (PAN No. AACCD9341A) was the source of investment made in Target Dealers Private Limited."*

*j. In the case of Highlight Suppliers (P) Ltd regarding source of capital mentioned at point number (C) it was stated that:*

*"The Source of Investment was fund credited towards share application money received from M/s Viewpoint Dealers (P) Ltd (PAN No. AACCV8006E) of 10, Clive Row, Kolkata-700 001."*

*These facts borne on record by the share applicants, in my opinion, clearly prove their source of funds, and their capacity for making such payments and accordingly, the criteria of their creditworthiness is proved. The AO has not found any defect and/or deficiency in the source of funds explained by the share applicants through their replies to the statutory notices issued u/s. 133(6) of the Act to them. It is also observed that every share applicant in their respective replies to the statutory notices issued u/s. 133(6) of the Act, furnished copies of their income tax acknowledgments evidencing filing of income tax returns by each of them, copies of their audited accounts including Balance Sheets wherein such investments made by each of them in the subscription of share capital issued by the appellant are duly reflected as also copies of their bank statements for the relevant period from which such subscription monies were paid by them respectively and copy of the allotment advise received by them from the appellant in respect of shares allotted to them. The return of allotment as well as the annual return for the relevant year filed by the appellant with the Registrar of Companies, Ministry of Corporate Affairs, further proves the fact of allotment of shares to the share applicants. It is further observed that the net worth of the each of the share applicants, as disclosed in their audited Balance Sheets, far exceeded the amount of investments made by them in the shares of the appellant. It is observed that funds held on account of shareholders disclosed in the balance sheets of Aswini Commotrade Pvt. Ltd. is in a sum of Rs. 10,48,99,276/- as on the 31.03.2009 and only a sum of Rs. 60,00,000/- was invested as share application*

money with the appellant, Convent Tradelink Pvt. Ltd. is in a sum of Rs. 14,10,98,846/- as on the 31.03.2009 and only a sum of Rs. 1,00,00,000/- was invested as share application money with the appellant, Debdaru Suppliers Pvt. Ltd. is in a sum of Rs. 14,00,98,530/- as on the 31.03.2009 and only a sum of Rs. 1,70,00,000/- was invested as share application money with the appellant, Debraj Dealers Pvt. Ltd. is in a sum of Rs. 13,60,99,860/- as on the 31.03.2009 and only a sum of Rs. 2,20,00,000/- was invested as share application money with the appellant, Dikson Trading & Finance Company Ltd is in a sum of Rs. 14,27,08,877/- as on the 31.03.2009 and only a sum of Rs. 70,00,000/- was invested as share application money with the appellant, Omega Retails Pvt. Ltd. is in a sum of Rs. 12,60,95,789/- as on the 31.03.2009 and only a sum of Rs. 1,20,00,000/- was invested as share application money with the appellant, Highlight Commotrade Pvt. Ltd. is in a sum of Rs. 13,20,94,665/- as on the 31.03.2009 and only a sum of Rs. 2,00,00,000/- was invested as share application money with the appellant, Landscape Vinimay Pvt. Ltd. is in a sum of Rs. 24,00,98,849/- as on the 31.03.2009 and only a sum of Rs. 1,00,00,000/- was invested as share application money with the appellant, Trinetra Vincom (P) Ltd is in a sum of Rs. 13,30,98,593/- as on 31.03.2009 and only a sum of Rs. 2,00,00,000/- was invested as share application money with the appellant, Highlight Suppliers (P) Ltd is in a sum of Rs. 14,20,99,240/- as on 31.03.2009 and only a sum of Rs. 2,20,00,000/- was invested as share application money with the appellant. It is accordingly observed that these facts adequately prove their credit worthiness to make investment in the share capital of the appellant company. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their capacity and source of funds of the share applicants, as well as the genuineness of the transactions in relation to the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant, in the impugned previous year relevant to the assessment year under appeal, as clearly evident not only from their respective books of accounts, but also from their audited accounts filed with the income tax authorities in relation to their own income tax assessments, and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record

*but acted on her whims and fancies. It is observed that the burden which lay on the appellant, in relation to s. 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue.*

*4.5. In this respect it is relevant to refer to the decision of the jurisdictional High Court in the case of CIT vs. Sagun Commercial P. Ltd. [ITA NO. 54 of 2001 dated 17.02.2011] wherein it was held as under:*

*“After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion.*

*We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income-tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed.”*

*Further, the Hon’ble jurisdictional High Court in the case of CIT vs. Gayatri Portfolio Fund (P) Ltd [ITA No. 664 of 2004 dated 26.08.2014], it was observed as under:*

*“We find that the learned Tribunal has confirmed the order passed by the CIT who had overturned the order of the Assessing Officer by making the following observation:*

*“...We find that the identity of the 5 parties investing in the share capital is not in doubt. They are body corporates and their complete addressees are on record. This is the very first assessment in the life of the assessee company. The amounts were deposited by these 5 corporates per account payee cheques. These parties were not shareholders of the assessee company at the time when the case was reopened under section 147 or when the summons were issued to*

*them. We find that the assessee has filed before the A.O. copies of share application forms duly signed along with the complete addresses of the investors along with their I. T. file numbers, account payee cheque numbers and the assessee's bank statements disclosing the deposits of these amounts. In these facts we find that the assessee has discharged its initial onus to prove the identity of the investors as well as their creditworthiness. It is not the case of the Revenue that the investor parties did not exist or that the money was not invested by them through banking channels.”*

*Having found such, the Tribunal had relied on the judgement in Hindusthan Tea Trading Co. Ltd. v. CIT (Cal): 263ITR 289 (Cal) to uphold the order of the CIT.*

*In view of the findings above noted, no substantial question of law arises and therefore, the appeal and the application are dismissed.”*

*Again, the Hon'ble Jurisdictional High Court in the case of CIT vs. Sanchati Projects (P.) Ltd. [ITAT 140 of 2011 dated 08.06.2011] it was observed as under:*

*“It appears from record that the assessee company during the relevant assessment year under appeal raised its share capital by way of receiving share application money against 1,64,000 equity shares aggregating to Rs. 82,00,000/- from 8 different parties. The Assessing Officer, however, treated the share application money of Rs.45,00,000/- received from five different persons as unexplained cash credit in the hands of the assessee.*

*According to the Assessing Officer, those parties had the same addresses as that of the assessee and they had no fixed assets and utilised their capitals in share application of the assessee company. The Assessing Officer, therefore, was of the view that the money ultimately went to the beneficiary through these companies and there was no advertisement even published by the assessee company inviting share application and no Registrar was engaged for such raising of share capital.*

*Being dissatisfied the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), however, set aside the said order of assessment and came to the conclusion that all the share applicant/companies were assessed to the tax and their PAN and acknowledgement of I. T.*

*returns along with their audited balance sheets, bank statements showing transactions etc. were made available to the Assessing Officer. It was pointed out that there was no legal bar of more than one company being registered at the same address and, thus, according to the Commissioner of Income-tax (Appeals), the doubt raised by the Assessing Officer about all those companies at the same address did not hold good.*

*Being dissatisfied, the Revenue preferred an appeal before the Tribunal below and by the order impugned herein, the said Tribunal has affirmed the order passed by the Commissioner of Income-tax (Appeals).*

*After hearing Mr. Nizamuddin, learned advocate appearing on behalf of the appellant and after going through the aforesaid materials, we agree with the Tribunal below that the Assessing Officer failed to establish that the share applicants did not have the means to make investment and that such investment actually emanated from the coffers of the assessee company. The receipt of share capital money had been duly recorded in the books of the assessee company and the payment of share application money was also duly recorded in the audited account of each of the share applicants.*

*We, thus, find that both the authorities below on the basis of the aforesaid materials on record were quite justified in deleting the aforesaid addition of Rs.45,00,000/- done by the Assessing Officer. We are of the view that the order impugned does not suffer from any defect whatsoever and no question of substantial error of law arises justifying our interference.*

*The appeal is, thus, summarily dismissed.”*

*There is no evidence on record to show that the identities of the share applicants are not proved and/or that the introduction of share capital by them was not genuine and/or the source of investment was not fully explained to the satisfaction of the AO. Further, the Hon'ble Jurisdictional High Court in the case of CIT vs. Dataware Private Ltd. [ITAT No. 263 of 2011 dated 21.09.2011] wherein while examining the issue of addition of share application money received by the assessee company therein u/s. 68 of the Act, the Hon'ble Jurisdictional High Court held that after getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing Officer should enquire from the Assessing Officer of the*

creditor as to the genuineness of the transaction and whether such transaction has been accepted by the assessing officer of the creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. The Hon'ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. In the present case also, no evidence was adduced on record that the investments made with the appellant in the shape of share application monies disclosed in the returns of the share applicants were rejected by their respective Assessing Authorities and accordingly, the issue is set to rest by the decision of the jurisdictional High Court on the issue.

5. In this respect, the AR relied on plethora of decisions of various High Courts (1) CIT vs. Kamdhenu Steel and Alloys Ltd. (2014) 361 ITR 220 (Del); (2) CIT vs. Gangeshwari Metal P. Ltd. (2014) 361 ITR 10 (Del); (3) CIT vs. Aradhana Textiles P. Ltd. (2011) 333 ITR 116 (Kar); (4) CIT vs. Oasis Hospitalities P. Ltd. (2011) 333 ITR 119 (Del); which were rendered on the facts and circumstances identical to those of the appellant in the instant appeal. AR placed reliance upon the decisions of Jurisdictional Tribunal in the case of Baba Bhootnath Trade & Commerce Ltd bearing ITA No.1494/Kol/2017 dated 05/04/2019, Savitri Share & Securities Pvt Ltd bearing ITA No. 1703/Kol/2016 dated 01/05/2019 and Panchsheel Commotrade Pvt Ltd bearing ITA No.1182/Kol/2015 dated 01/02/2019. For better appreciation, the relevant observation of the Hon'ble Karnataka High Court in the case of CIT vs. STL Extrusion P. Ltd. (2011) 333 ITR 269 (Kar) is reproduced as under:

*"The assessee having duly furnished the names, age, address, date of filing the application of share, number of shares of each subscriber there was no justification for the Assessing Officer for making the impugned addition because once the existence of the investors/ share subscribers was proved, onus shift to the revenue to establish that either the share applicants were bogus or the impugned money belonged to the assessee itself."*

5.1. The instant case is also supported by the decision of Hon'ble Madras High Court in the case of CIT vs. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Bom), wherein their Lordship have held as under:

*"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."*

5.2. The instant case is supported by the decision of Hon'ble Madras High Court in the case of CIT vs. Pranav Foundations Ltd. (2015) 229 TAXMAN 58 (Mad), wherein their Lordship have held as under:

*"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."*

5.3. The instant case is further supported by the decision of Hon'ble Allahabad High Court in the case of CIT vs. Vacmet Packaging (India) (P.) Ltd (2014) 367 ITR 217 (All), wherein their Lordship have held as under:

*"That apart, as regards genuineness of the transaction, the view which has been taken by the Tribunal is at least a possible view to take on the basis of the material on the record. The assessee undoubtedly had to discharge the onus of establishing the identity and creditworthiness of the applicant companies and of the*

*genuineness of the transaction. In this regard, both the Commissioner (Appeals) and the Tribunal had noted that the assessee had established all the three aspects by producing, during the course of the assessment, necessary documentary material such as the share application forms, copies of bank accounts, income tax returns and balance sheets. The view which was taken by the Commissioner (Appeals) and which was sustained by the Tribunal would thus have to be regarded as being, at least, a possible view to take in the circumstances of the case.*

*In the present case the assessee had discharged the onus of establishing the identity, creditworthiness and genuineness of the transactions which had formed the basis of the addition that was made under section 68. Ultimately, whether the documentary materials which had been produced by the assessee were sufficient to displace the onus is a matter to be decided upon the facts of each case. Both the Commissioner (Appeals) and the Tribunal having held that the assessee had duly discharged the onus, no substantial question of law would arise."*

*5.4. The instant case is further supported by the decision of Hon'ble Gujarat High Court in the case of CIT vs. Namastey Chemicals (P.) Ltd. (2013) 217 TAXMAN 25 (Guj), wherein their Lordship have held as under:*

*"Where in respect of share application money received by assessee, it was apparent from records that large number of subscribers had responded to letters issued by Assessing Officer and submitted their affidavits, Tribunal was justified in deleting impugned addition made in respect of said amount."*

*6. The doubts expressed in the reasoning of the AO in the instant case is based on the premise of "non appearance by the Directors" of the appellant in response to summons issued u/s. 131 of the said Act. In this respect, it is observed that there is no ground to draw any adverse inference against the appellant, in relation to the provisions contained in sec. 68 of the said Act since the appellant had adduced all possible evidence in support of the share capital raised by it and there was nothing more for the directors to state in that respect.*

*6.1. It is also a fact that during the previous year relevant to the assessment year 2009-10, the appellant had received share application monies from 7 share applicants. In course of assessment*

*proceedings, all the share applicants provided evidence by proving their identity and creditworthiness and also the genuineness of the transactions and accordingly, the same was accepted by the AO in the assessment order framed u/s. 147 of the Act dated 31.12.2010. Therefore, following the rule of consistency as enunciated in the case of Radhasoami Satsang vs. CIT [Supra] the appellant is liable to succeed.*

*7. Therefore, considering the totality of the facts and circumstances of the case, I find substance in the argument of the AR that the appellant has made its case that the identity of the share applicants are established beyond doubt and on enquiries made by the AO there is no adverse finding reached in this aspect. The fact that all the share applicants are existing tax assessees and some of them were subject to scrutiny assessment during the same period establish the identity and authenticity of the share applicants. About the genuineness of the transactions there is neither any adverse finding in the assessment order nor which is subversive to the facts brought on record by the appellant during the course of assessment proceeding. The creditworthiness of the share applicants as regards their subscription to the share capital is proved by submission of their return, audited annual accounts, their bank statement and replies to notice u/s 133(6) of the Act as depicted hereinabove. The net worth of such subscribers are in excess of the amount invested by each of them as explained hereinabove. The addition made by AO is based on extraneous parameters not germane for deciding the issue. The AO had not dealt with the issue judiciously and consistently with the evidence adduced during the course of the assessment proceedings by the appellant and the replies of the share applicants in respect of the share capital to warrant the inference that such share application monies received is unaccounted cash credit. The main premise of AO is that the appellant has failed to comply to summons issued u/s 131 of the Act. The AR has*

*submitted several judicial pronouncements to the effect that mere non-appearance of the share applicant is no basis for invoking provisions of Sec. 68 which includes the decision of the Supreme Court in the case of CIT vs. Orissa Corporation (P) Ltd. [1986] 159 ITR 78 (SC) wherein it was held as under:*

*“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said*

*creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.*

*The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”*

*7.1. Basically the law requires documentary evidences on record in dealing with the issue of authenticity. It is not the case of the AO that necessary documentary evidences are not on record but the only major reliance placed on his action is based on non-attendance of the directors of the appellant company along with directors of subscriber companies before him u/s 131 of the Act. It is no longer res Integra that such non-attendance should be considered as a factor which should be used by the AO in coming to an adverse conclusion against the appellant. On an overall analysis of the issue, I find that the AO has not made out his case with cogent material on record that the appellant could come under the purview of section 68 of the Act with regard to share capital as reflected in the balance sheet when there is no finding with any cogent material evidence that the same was actually bogus in nature. It is accordingly observed that creditworthiness of the share subscribers to make investment in the share capital of the appellant company cannot be a disputed matter as per material facts on record. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their creditworthiness and source of funds, as well as the genuineness of the transactions being investments in the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant during the year under consideration as clearly evident not only from their respective books of accounts but also from their audited accounts*

*filed with the income tax authorities in relation to their own income tax assessments and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record but acted on his whims and fancies. It is observed that the burden which lay on the appellant, in relation to section 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue. Hence, I am inclined to accept the arguments tendered by the AR of the appellant in this respect. In view of the above, I have no hesitation to hold that the impugned addition made by invoking the provisions of s. 68 by the AO is not justified in the circumstances and accordingly, direct him to delete such addition of Rs. 14,61,00,000/- made on this account. Thus, these grounds of the appeal are allowed.”*

10. The above finding of ld. CIT(A) remains uncontroverted by ld. D/R by placing any other cogent material in favour of the Revenue. The identity of the share subscribers are undisputed. The details of the accumulated reserve, surplus and share capital as on the date of making investments are more than sufficient to explain the investment made in the share capital of the assessee company and on going through the details we notice that the total investments in the assessee company is ranging from 5% to 16% of the total funds available with the share subscriber companies in the form of reserve & surplus and share capital. It is not the case of ld. AO that the cash has been deposited in the bank account of alleged share subscribers before the date of transferring the amount to the assessee's bank account. Ld. AO has also not indicated any defect in these financial statements which are duly audited. Merely for not complying to the notice u/s 133(6) of the Act such additions cannot be made and the same has been held in plethora of decisions including that of the Hon'ble Supreme Court of India in

the case of *Orissa Corpn, (P.) Ltd. (supra)* wherein Hon'ble Court has held that “*where the assessee has discharged its onus of proving the identity and creditworthiness of the creditor as well as the genuineness of the transaction, no addition is called for on the ground that nobody has appeared in response to summons issued u/s 131 of the Act.*”

11. We, further, notice that under the similar facts and circumstances of the case except the change of the company name this Tribunal in the case of *ITO vs. Trinetra Merchants (P) Ltd.* in *ITA No. 570/Kol/2021* order dated 03.11.2022 dismissed the Revenue's appeal observing as follows:

“8. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred and relied by both the parties. The only issue in dispute is regarding the deletion of addition made by the Assessing Officer for unexplained cash credit totalling to Rs.5,29,00,000/- received by the assessee which comprised of the share capital of Rs.52,900/- and share premium of Rs.5,28,47,100/-. We observe that the alleged sum was received by the assessee company from following shareholders:

SL	Name & PAN	Address	No. of shares	Total Share capital (including premium)
1	Chintamani Roadways Pvt. Ltd. PAN: AABCC8739N	4A, Ganpat Bagla Road, Kolkata - 700007.	50	5,00,000/-
2	Dhankuber Vintrade Pvt. Ltd. PAN: AADCD9266B	66, Nalini Seth Road, Gr Floor, Kolkata-700007	1,735	1,73,50,000/-
3	Dolphin Tradecomm Pvt. Ltd. PAN: AADCD0325P	23/1, Maharshi Devendra Road, Gr Floor, Kolkata-700007.	200	20,00,000/-
4	Pushpakala Vanijya Pvt. Ltd. PAN: AAGCP0980KK	66,Nalini Seth Road, Gr Floor, Kolkata-700007	695	69,50,000/-
5	Saurav Tradecom Pvt Ltd. PAN: AAMCS5700L	23/1, Maharshi Devendra Road, Gr Floor, Kolkata-700007.	200	20,00,000/-

6	Shrestha Commfeed Pvt. Ltd. PAN:	33/1, N.S. Road, Room No-771, Kolkata-700001	250	25,00,000/-
7	Subhmangal Commfeed Pvt. Ltd. PAN: AAQCS1098D	233/1, Maharshi Devendra Road, 1 <sup>st</sup> Floor, Kolkata- 700007.	1,340	1,34,00,000
8	Topflow Suppliers Pvt. Ltd. PAN: AAECT1303Q	66, Nalini Seth Road, 5 <sup>th</sup> Floor, Kolkata- 700007	820	82,00,000/-
TOTAL			5,290	5,29,00,000/-

9. Further, the assessee has filed various details including PAN & address of share allottee company. Name and address of directors of allottee company, share application form, entire bank statement, source of fund, audited financial statement and IT acknowledgement, scrutiny assessment orders u/s 143(3) wherever available in respect of the above-stated eight shareholders. Further, it is brought to our notice by the ld. counsel for the assessee that all the alleged shareholders had sufficient base of share capital and reserve and surplus to justify and explain the share application money paid by these companies. The same is depicted below in the form of a chart:

Name of Share holder Companies	Share Capital, Reserves & Surplus	Application Money	Percentage
Chintamani Roadways Pvt. Ltd.	38,95,130/-	5,00,000/-	12.83
Dhankuber Vintrade Pvt. Ltd.	14,30,01,750	1,73,50,000/-	12.13
Dolphin Tradecomm Pvt. Ltd.	2,34,04,084/-	20,00,000/-	8.54
Pushpkala Vanijya Pvt. Ltd.	10,69,01,817/-	69,50,000/-	6.50
Saurav Tradecom Pvt. Ltd.	56,34,10,099/-	20,00,000/-	0.35
Shrestha Commfeed Pvt. Ltd.	50,01,320/-	25,00,000/-	50%
Subhmangal Commodeal Pvt. Ltd.	15,16,51,795/-	1,34,00,000/-	8.83
Topflow Suppliers Pvt. Ltd.	4,69,51,118/-	82,00,000/-	17.46
		5,29,00,000/-	

10. Further, we notice that in all the above referred documents pertaining to the eight shareholders filed before ld. Assessing Officer but he without pointing out any defect in these details only insisted for the physical appearance of the directors of the share applicant companies and since they failed to appear, just for this reason, the ld. Assessing Officer came to conclusion that the transaction of receiving

*share capital and share premium is not genuine and the assessee has failed to explain the same which calls for an addition u/s 68 of the Act. However, when the issue travelled before Id. CIT(A), he after examining the correctness of the documents filed by the assessee and judicial precedents decided in favour of the assessee and deleted the impugned addition observing as follows:*

*“4.2. I have considered the submission of the AR of the appellant in the backdrop of the assessment order in deciding the issue at hand. I have taken note of the various pertinent points as put forth by the AR in support of his stand that the Assessing Officer had not considered the factual matrix of the issue at hand and proceeded to make an addition not commensurate by any standard of judicious judgment but by only extraneous elements not germane to the issue at hand. I have also considered the various judicial decisions referred to by the AO as well as the AR of the appellant in support of their respective stands in the matter. I have also considered the relevant materials on record in deciding the matter. The brief facts as stated in assessment order in this issue are that the AO treated the entire share capital along with share premium raised by the appellant to the extent of Rs.5,29,00,000/- to be assessable u/s 68 of the Act. The main premise of AO is that the appellant has failed to comply to Summons issued u/s 131 of the Act and it also failed to explain any basis for huge share premium. On the other hand the AR of the appellant contested that the action of the AO to make addition under section 68 was not applicable in the appellant's case for the year under consideration for the following reasons: (a) that identities of the share subscribers stood proven as per documentary evidences (supra) (b) that creditworthiness of the share subscribers stood proven (supra) (c) that the genuineness of the transactions stood proven (supra) and (d) that the share applicants have been regularly assessed to tax by the respective AOs who have not made any adverse comments on their investments made in appellant company in order issued u/s 143(3) of the Act. In such view of the matter, I find the A.O cannot abruptly come to the conclusion that section 68 of the Act was applicable in the appellant's case just for the alleged shortcomings as stated by the AO. On perusal of paper book I find that all relevant documentary evidences were before the AO who could have decided the case on merit but however this did not happen. The evidences in respect of all the share applicants appear from Page 39 of the paper book submitted by the appellant. Since in the instant case, the share*

*applicants in response to the notices issued upon them had filed their written submission and no defect whatsoever was found therein, there was no reason for drawing any adverse inference merely for the reason of non-appearance of the directors of the appellant company. The appellant has submitted several judicial pronouncements to the effect that mere non-appearance of the share applicant is no basis for invoking provisions of Sec. 68 which includes the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corpn. (P) Ltd. [1986] 159 ITR 78 (SC) wherein the Hon'ble Supreme Court held as under:*

*“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.*

*The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”*

*In view of the foregoing discussion as well as the judicial precedents pertinent to the issue at hand (supra), I do not find any premise to endorse the action of the Assessing Officer in making the impugned addition of Rs.5,29,00,000/- as unexplained cash credit u/s 68 of the Act merely on the basis of non-compliance to section 131 of the Act. I also find that the AO himself did not impose any penalty upon the appellant for non-compliance to summons u/s 131 of the Act.*

*4.3 With regard to the issue of charging high premium on the shares issued by the appellant company, I find that fixing of share premium was a commercial decision and therefore the same cannot be interfered with by the AO particularly when share premium was not chargeable to tax during the relevant assessment year. I find that*

indeed Share Premium is a capital receipt, and in the absence of any statutory provisions, share premium cannot be assessed as income during this assessment year. The matter is decided by various High Courts and by various ITAT decisions as mentioned in the written submission of the AR (supra). The AO has drawn adverse inference on account of high share premium charged by the appellant but I find that the appellant has also made investments during the year in other private limited Companies with same high premium and those investments have been accepted as genuine by the AO. Thus to treat the share premium as unexplained cash credit by AO was not justified in any manner. It has been held in a plethora of case decisions that once the identities and creditworthiness of the share subscribers and genuineness of the transactions are established, Sec. 68 cannot be invoked on the ground of high share premium. This issue has been decided by the courts as follows:

1. PCIT vs. Chain House International (P) Ltd. [2018] 98 taxmann.com 47 (Madhya Pradesh). Once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium (SLP against the order has been dismissed by the Hon'ble Supreme Court.

2 Principal Commissioner of Income Tax vs. Rohtak Chain Co. (P) Ltd. [2019] 110 taxmann.com 59 (SC). In this case also the SLP filed by revenue against High Court ruling that once genuineness, creditworthiness and identity of investors were established, no addition could be made as cash credit on ground that shares were issued at excess premium has been dismissed.

3. Principal Commissioner of Income-tax vs. Bharat Securities (P) Ltd. [2020] 113 taxmann.com 32 (SC) In this case also the SLP of the revenue against High Court ruling that once genuineness, creditworthiness and identity of investors are established, no addition could be made as cash credit on ground that shares were issued at excess premium has been dismissed.

4.4 I find that in order to satisfy the nature and source of money received by the appellant, the identity of shareholders, creditworthiness of shareholders and the genuineness of the entire transaction has to be established. I find that all the eight shareholders are bodies corporate with separate identification number allotted by Registrar of Companies, they have PAN and assessed to tax by the

income tax department. The assessment orders passed u/s 143(3) in 6 cases and intimation order passed u/s 143(1) in remaining two cases have been filed by the appellant. Further the share subscribers have confirmed the transaction. Thus in view of these documentary evidences, I have no hesitation to hold that identities of all the shareholders are established beyond doubt.

4.5 Further to explain the creditworthiness of shareholders, I have examined the net worth of each of them and I find the share subscribers have sufficient net worth of their own to make investments as elucidated below:

<u>Name of Share holder Companies</u>	<u>Share Capital, Reserves &amp; Surplus</u>	<u>Application Money</u>	<u>Percentage (%)</u>
Chintamani Roadways Pvt. Ltd.	38,95,130/-	5,00,000/-	12.83
Dhankuber Vintrade Pvt. Ltd.	14,30,01,750/-	1,73,50,000/-	12.13
Dolphin Tradecomm Pvt. Ltd.	2,34,04,084/-	20,00,000/-	8.54
Pushpkala Vanijya Pvt. Ltd.	10,69,01,817/-	69,50,000/-	6.50
Saurav Tradecom Pvt. Ltd.	56,34,10,099/-	20,00,000/-	0.35
Shrestha Commfeed Pvt. Ltd.	50,01,320/-	25,00,000/-	50
Subhmangal Commodeal Pvt. Ltd.	15,16,51,795/-	1,34,00,000/-	8.83
Topflow Suppliers Pvt. Ltd.	4,69,51,118/-	82,00,000/-	17.46

I also find from relevant bank statements that all the shareholders had sufficient available balance before making payment to the appellant company and hence in the light of the above fund position & bank statement, the creditworthiness of shareholders cannot be doubted.

4.6 That, as evident from the 8 (eight) share subscriber's information on record, all of them were either subjected to assessment u/s 147/143(3) of the Act or the returns accepted by the AO. That the profiles of the assessment status of each of the

1. Chintamani- Roadways Pvt. Ltd.: The Share applicant was assessed under the jurisdiction of ITO, Ward-1 (2), Kolkata and the Return was duly processed u/s 143(1) of the I T Act, 1961 and the amount of Rs.5,00,000/- invested in shares of the appellant company was accepted.

2. Dhankuber Vintrade Pvt. Ltd.: Assessment order was passed by the jurisdictional AO [ITO, Ward-5(1), Kolkata] u/s 143(3) of the Act for the AY 2012-13 vide order dated 13.06.2014 and as such identity

of the share applicant is established beyond doubt and the amount of Rs.1,73,50,000/- invested in shares of the appellant company was accepted.

3. Dolphin Tradecom Pvt. Ltd.: The Share applicant was assessed under the jurisdiction of ITO, Ward-1 (4), Kolkata and the Return was duly processed u/s 143(1) of the I T Act, 1961 and the amount of Rs.20,00,000/- invested in shares of the appellant company was accepted.

4. Pushpkala Vanijya Pvt. Ltd.: Assessment order was passed by the jurisdictional AO [ITO, Ward-9(3), Kolkata] u/s 143(3) of the Act for the AY 2012-13 vide order dated 05.09.2014 and as such identity of the share applicant is established beyond doubt and the amount of Rs.69,50,000/- invested in shares of the appellant company was accepted.

5. Saurav Tradecom Pvt. Ltd.: Assessment order was passed by the jurisdictional AO [ITO, Ward-9(4), Kolkata] u/s 143(3) of the Act for the AY 2012-13 vide order dated 12.03.2015 and as such identity of the share applicant is established beyond doubt and the amount of Rs.20,00,000/- invested in shares of the appellant company was accepted.

6. Shrestha Commfeed Pvt. Ltd.: The Share applicant was assessed under the jurisdiction of ITO, Ward-4(3), Kolkata and the Return was duly processed u/s 143(1) of the I.T. Act, 1961 and the amount of Rs.25,00,000/- invested in shares of the appellant company was accepted.

7. Subhmanqal Commedeal Pvt. Ltd.: Assessment order was passed by the jurisdictional AO [ITO, Ward-9(4), Kolkata] u/s 143(3) of the Act for the AY 2012-13 vide order dated 20.03.2015 and as such identity of the share applicant is established beyond doubt and the amount of Rs.1,34,00,00,000/- invested in shares of the appellant company was accepted.

8. Topflow Suppliers Pvt. Ltd.: Assessment order was passed by the jurisdictional AO [ITO, Ward-90), Kolkata] u/s 143(3) of the Act for the AY 2012-13 vide order dated 11.09.2014 and as such identity of the share applicant is established beyond doubt and the amount of Rs.82,00,000/- invested in shares of the appellant company was accepted.

*As far as genuineness of the transactions is concerned, I find that the shareholders have made investment in appellant company by way of banking channels. No cash has been deposited before making any payment to appellant. The investments are duly reflected in respective audited accounts of shareholders and the appellant. The shareholders have confirmed their investments and also explained the source of their investments. In such view of the matter, the genuineness of transactions is also established beyond doubt.*

*4.7. On the ground of High Share Premium, the AO in his order has relied upon the decision in the case of CIT vs. Durga Prasad More 82 ITR 540 (SC) and Sumati Dayal vs. CIT 214 ITR 801 (SC) and has invoked the test of human probabilities. I have gone through the decision in the case of Green Infra Ltd. vs. ITO [2013] 38 taxmann.com 253 (Mumbai) and ITO vs. Trident Shelters Ltd. ITA No. 1160/Hyd/2012 dated 22.01.2014 that fixing of issue price is a commercial decision and in the absence of any provision under the Act, the same cannot be interfered with. Even section 56(2)(vii)(b) does not permit the AO to question the share premium charged by the assessee. It merely provides for charging share premium to tax in the circumstances and to the extent provided therein. Reference in this regard is made to the decision of the Hon'ble jurisdictional ITAT in the case of Subhlakshmi Vanijya Pvt. Ltd. vs. CIT [2015] 60 taxmann.com 60 (Kolkata-Trib.) wherein the Hon'ble ITAT held as under:*

*"13.aj. We are in full agreement with the Id. AR that the judgment in the case of Vodafone India Services (P) Ltd. {supra} is an authority for the proposition that share capital/premium are capital receipts and cannot be charged to tax. We also fully endorse the argument about the introduction of section 56(2)(vii)(b) w.e.f. assessment year 2013-14 which provides for charging share premium to tax in the circumstances and to the extent provided therein....."*

*The issue of invoking the test of human probabilities on account of high share premium is directly in favour of the appellant by the decision of the Hon'ble ITAT Bangalore in the case of Janani Infrastructure Pvt. Ltd. v ACIT in ITA No. 698- 699/Bangalore/2018 decided on 02.08.2019 wherein it was held as under:-*

*"61. We noticed that the Ld CIT(A) has applied the theory of Human Probabilities. We also noticed that the Hyderabad bench of Tribunal has observed in the case of Bharati Cement Corporation (supra) that*

*the test of human probabilities cannot be applied to business transactions, as they are based on cogent materials. In any case, the Ld D.R has agreed that the receipt of share premium has to be tested u/s 68 of the Act. Hence the theory of human probabilities cannot be applied in this case.”*

*Therefore the AO has erred in invoking the test of human probabilities.*

*4 8. The AO has further relied upon the decision in the case of M/s Bisakha Sales Pvt. Ltd. vs. CIT [2014] 52 taxmann.com 305 (Kolkata-Trib.). In this case, it was held that where assessee-company received share application money with huge and unjustified share premium from corporate entities, merely because said amount was received through banking channel, Assessing Officer was not justified in accepting said transactions as genuine without making proper enquiries. Apparently, he AO \* has not properly appreciated that decision of the Hon'ble ITAT. The Hon'ble ITAT has never held that share capital and share premium can be assessed as unexplained cash credit merely for high share premium even though the identities and creditworthiness of the share applicant and genuineness of the transactions have been established. What is held by the Hon'ble ITAT is that revision proceedings u/s 263 are valid where the transactions have been accepted as genuine without making proper enquiries.*

*4.9. Basically the law requires documentary evidences on record in dealing with the issue of authenticity. It is not the case of the AO that necessary documentary evidences are not on record but the only major reliance placed on his action is based on non-attendance of the directors of the appellant company along with directors of subscriber companies before him u/s 131 of the Act. It is no longer res integra that such non-attendance should be considered as a factor which should be used by the AO in coming to an adverse conclusion against the appellant. On an overall analysis of the issue, I find that the AO has not made out his case with cogent material on record that the appellant could come under the purview of section 68 of the Act with regard to share capital as reflected in the balance sheet when there is no finding with any cogent material evidence that the same was actually bogus in nature. It is accordingly observed that creditworthiness of the share subscribers to make investment in the share capital of the appellant company cannot be a disputed matter as per material facts on record. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their*

*creditworthiness and source of funds, as well as the genuineness of the transactions being investments in the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant during the year under consideration as clearly evident not only from their respective books of accounts but also from their audited accounts filed with the income tax authorities in relation to their own income tax assessments and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record but acted on his whims and fancies. It is observed that the burden which lay on the appellant, in relation to section 68 of the Act, has been duly discharged by it and nothing further remains to <sup>1</sup> be proved by it on the issue. Since the conditions precedent for discharging of burden of proof under the provisions of section 68 of the Act is met with adequate evidences, the addition made under such pretext deserves to be deleted. In this respect it is imperative to refer to the decision of the jurisdictional High Court in the case of CIT vs. Sagun Commercial (P) Ltd. [ITA No. 54 of 2001 dated 17.02.2011] wherein it was held as under:*

*“After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion. We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed.”*

*4.10. Further, the Hon'ble jurisdictional High Court in the case of CIT vs. Gayatri Portfolio Fund (P) Ltd [ITA No. 664 of 2004 dated 26.08.2014], it was observed as under:*

*“We find that the learned Tribunal has confirmed the order passed by the CIT who had overturned the order of the Assessing Officer by making the following observation:*

*“...We find that the identity of the 5 parties investing in the share capital is not in doubt. They are body corporates and their complete addressees are on record. This is the very first assessment in the life of the assessee company. The amounts were deposited by these 5 corporates per account payee cheques. These parties were not shareholders of the assessee company at the time when the case was reopened under section 147 or when the summons were issued to them. We find that the assessee has filed before the A.O. copies of share application forms duly signed along with the complete addresses of the investors along with their I. T. file numbers, account payee cheque numbers and the assessee's bank statements disclosing the deposits of these amounts. In these facts we find that the assessee has discharged its initial onus to prove the identity of the investors as well as their creditworthiness. It is not the case of the Revenue that the investor parties did not exist or that the money was not invested by them through banking channels.” Having found such, the Tribunal had relied on the judgement in Hindusthan Tea Trading Co. Ltd. v. CIT (Cal): 263 ITR 289 (Cal) to uphold the order of the CIT. In view of the findings above noted, no substantial question of law arises and therefore, the appeal and the application are dismissed.”*

*4.11. Again, the Hon’ble Jurisdictional High Court in the case of CIT vs. Sanchati Projects (P.) Ltd. [ITAT 140 of 2011 dated 08.06.2011] has observed as under:*

*“It appears from record that the assessee company during the relevant assessment year under appeal raised its share capital by way of receiving share application money against 1,64,000 equity shares aggregating to 82,00,000/- from 8 different parties. The Assessing Officer, however, treated the share application money of t.45,00,000/- received from five different persons as unexplained cash credit in the hands of the assessee.*

*According to the Assessing Officer, those parties had the same addresses as that of the assessee and they had no fixed assets and utilised their capitals in share application of the assessee company. The Assessing Officer, therefore, was of the view that the money ultimately went to the beneficiary through these companies and there was no advertisement even published by the assessee company*

*inviting share application and no Registrar was engaged for such raising of share capital.*

*Being dissatisfied the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), however, set aside the said order of assessment and came to the conclusion that all the share applicant/companies were assessed to the tax and their PAN and acknowledgement of I.T. returns along with their audited balance sheets, bank statements showing transactions etc. were made available to the Assessing Officer. It was pointed out that there was no legal bar of more than one company being registered at the same address and, thus, according to the Commissioner of Income-tax (Appeals), the doubt raised by the Assessing Officer about all those companies at the same address did not hold good.*

*Being dissatisfied, the Revenue preferred an appeal before the Tribunal below and by the order impugned herein, the said Tribunal has affirmed the order passed by the Commissioner of Income-tax (Appeals).*

*After hearing Mr. Nizamuddin, learned advocate appearing on behalf of the appellant and after going through the aforesaid materials, we agree with the Tribunal below that the Assessing Officer failed to establish that the share applicants did not have the means to make investment and that such investment actually emanated from the coffers of the assessee company. The receipt of share capital money had been duly recorded in the books of the assessee company and the payment of share application money was also duly recorded in the audited account of each of the share applicants.*

*We, thus, find that both the authorities below on the basis of the aforesaid materials on record were quite justified in deleting the aforesaid addition of Rs. 45,00,000/- done by the Assessing Officer. We are of the view that the order impugned does not suffer from any defect whatsoever and no question of substantial error of law arises justifying our interference. The appeal is thus summarily dismissed.”*

*4.12 There is no evidence adduced on record to show by the A.O that the identities of the share applicants are not proved and/or that the subscription made by them to the share capital of the appellant was not genuine and/or the source of investment was not fully explained to the satisfaction of the AO. Further, the Jurisdictional High Court in*

*the case of CIT vs. Dataware Private Ltd. [ITAT No. 263 of 2011 dated 21.09.2011] wherein while examining the issue of addition of share application money received by the assessee therein u/s 68 of the Act, it was held that after getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing Officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing Officer of the Creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. The Hon'ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. In the present case also, no evidence was adduced on record to show that the investments made with the appellant in the shape of share application monies disclosed in the returns of the share applicants were rejected by their respective Assessing Authorities and accordingly, the issue is set at rest by the decision of the jurisdictional High Court on the issue which is applicable in the present context. In view of the foregoing, the AO is directed to delete the impugned addition of Rs.5,29,00,000/- made u/s 68 of the Act. These grounds are allowed.*

*11. Further, we notice that Ld. Departmental Representative has heavily relied on the judgment of the Hon'ble Supreme Court in the case of NRA Iron and Steel (P) Ltd. (supra), we find that the Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:*

*“8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.*

*The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):*

*Proof of Identity of the creditors;*

*Capacity of creditors to advance money; and*

*Genuineness of transaction*

*This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”*

*Further, in para 9 of the said decision, the hon’ble Supreme Court has observed as under:*

*“9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.*

*In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness. “*

*Thereafter the Hon’ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:*

*“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*

*i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*

*ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the*

subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound conduct to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, the aforesaid decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., in our humble view, is not applicable to the facts and circumstances of the case in hand.

12. Now, after going through the detailed findings of the ld. CIT(A) and also documents placed before us, we find that assessee has successfully discharged his primary onus casted upon him to explain the source of alleged share capital and share premium. The Assessing Officer did not find any fault or any shortcoming in the compliances made by the appellant company. It is also an evident fact that the only basis for making the alleged addition by the Assessing Officer was non-appearance of the directors of the share allotted company but as claimed by ld. Counsel for the assessee, the time allowed for compliance was too short and the assessee filed all the confirmations in respect of such share subscribers which were not doubted by the Assessing Officer. Facts are brought to our notice out of the eight

shareholders five have been assessed for the same assessment year u/s 143(3) of the Act and complete details of their financials and bank transactions have been examined by the Assessing Officer in the scrutiny proceedings. This is also an admitted fact that each of the shareholders were duly served notice u/s 133(6) of the Act which is sufficient to prove the identity of such shareholders. As far as the genuineness of the transaction is concerned, the same have taken place through banking channel which is traceable from the origin to the destination of such payments and further confirmed from the documents furnished before us. All these transactions are duly recorded in the respective balance sheets of the shareholder companies. Creditworthiness of the transaction was also proved from the fact that all the shareholder companies were having more than sufficient share capital and reserve and surplus fund for giving share application money. Even otherwise the Assessing Officer has not made the addition for charging of higher share premium and has made the addition of unexplained cash credit but still charging of share premium is a commercial decision and the same can be challenged only with sufficient documentary evidence.

13. We also observe that as per the proviso inserted in section 68 of the Act by Finance Act 2012 that the assessee company receiving share capital and share premium are required to prove the source of source to the satisfaction of the Assessing Officer has been inserted w.e.f. 01.04.2013 and the same is not applicable in the case of assessee for assessment year 2012-13 and since the assessee has filed sufficient details to our satisfaction to prove the identity, genuineness and creditworthiness of the transaction, we fail to find any infirmity in the findings of the ld. CIT(A) deleting the said alleged addition. Our view is further supported by judicial pronouncements:

i) CIT vs. Gagandeep Infrastructure (P) Ltd. 80 taxmann.com 272 (Bombay) wherein it was held by High Court that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced

states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso.

ii) *PCIT vs. Chain House International (P) Ltd.* 98 taxmann.com 47 wherein Madhya Pradesh High Court held that "The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe to shares at such a premium or not and moreover the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants which same has been discharged by the respondent authority and the HIGH COURT OF M.P. BENCH AT INDORE Pg. No.--58-- (ITA No.112/2018 & Other connected matters) same has been accepted by the appellate authorities thus, the same cannot be reconsidered in these appeals as it is a pure question of fact." SLP preferred by revenue was dismissed by Hon'ble Supreme Court and the same is reported in 103 taxmann.com 435(SC).

iii) *CIT vs. Kamdhenu Steel & Alloys Limited [ITA No.972 of 2009]* dated 23.12.2011 wherein the Delhi High Court in a batch of 11 appeals was required to adjudicate on the very issue of addition made by the A.O u/s 68 in respect of share application monies received by the assessee as alleged unexplained cash credit. In all these cases, the Department had alleged that the share application monies were received from persons who were 'entry operators' and the monies received by way of share application was nothing but was routing of unaccounted money of assessee in the form of subscription to share capital. However, in the assessments made the A.Os had not brought on record any material or evidence to substantiate such finding. Accordingly, on appeal the appellate authorities had deleted the additions made u/s 68 of the Act.

iv) *DCIT vs. Rohini Builders* 127 Taxman 523 observed that the assessee had discharged its onus of proving the identity of creditors by giving their complete addresses, permanent accounts number and copies of assessment orders. It was further observed that the

*assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques. The High Court held that only on the ground that some of the creditors could not be served with notice u/s 131 or they failed to appear before Assessing Officer the loans could not be treated as non-genuine and therefore upheld the order of the Tribunal deleting the addition u/s 68 of the I.T. Act 1961.*

*v) CIT vs. Orissa Corpn (P) Ltd. 159 ITR 78 where the Court held that "In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.*

*14. We, therefore, respectfully following the ratio laid down by the Hon'ble Court referred hereinabove and, in the facts, and circumstances of the case, hold that the assessee has successfully discharged its onus by proving the identity and creditworthiness of the share applicants and genuineness of the transaction, therefore no interference is called for in the findings of the ld. CIT(A). Thus all the grounds raised by the Revenue are dismissed.*

*15. In the result, the appeal of the Revenue is dismissed."*

12. Ld. D/R placed reliance on the judgment of the Hon'ble Supreme Court in the case of *PCIT, (Central)-1, Kolkata vs. NRA Iron & Steel Pvt. Ltd.* reported in 412 ITR 161. We find that the Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:

*“8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.*

*The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):*

*Proof of Identity of the creditors;*

*Capacity of creditors to advance money; and*

*Genuineness of transaction*

*This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”*

12.1. Further, in para 9 of the said decision, the hon'ble Supreme Court has observed as under:

*“9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.*

*In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness.”*

12.2. Thereafter the Hon'ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:

*“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*

*i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*

*ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*

*iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

*In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”*

13. The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, ld. AO in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before ld. AO and ld. AO has not pointed out any discrepancy or insufficiency in the said

evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon ld. AO to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, the aforesaid decision of the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra)*, in our humble view, is not applicable to the facts and circumstances of the case in hand.

14. Respectfully following the ratio laid down by the Hon'ble Court in the judgment referred herein above deciding in favour of the assessee(s) and on considering the facts of the instant case, we are inclined to hold that except for non-attendance of the directors of the assessee company as well as the subscriber company all the necessary documentary evidences have been placed on record which are sufficient enough to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction and the assessee has successfully discharged its onus of explaining the source of alleged sum in the first round of reassessment proceedings and again in the second round of assessment proceedings carried out with regard to the directions given in the order u/s 263 of the Act. Thus, we fail to find any infirmity in the finding of ld. CIT(A) deleting the impugned addition

made u/s 68 of the Act and thus, dismiss all the grounds of appeal raised by the Revenue.

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

**Kolkata, the 18<sup>th</sup> April, 2023**

Sd/-  
[Sanjay Garg]  
Judicial Member

Sd/-  
[Manish Borad]  
Accountant Member

Dated: 18.04.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **ITO, Ward-9(1), Kolkata.**
2. **M/s. Target Dealers Pvt. Ltd., 69, Jamunalal Bajaj Street, Kolkata-700 007.**
3. CIT(A)-7, Kolkata.
4. CIT-
5. CIT(D/R), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata