

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.988/Ind/2019
Assessment Year: 2009-10

ITO-3(1) Indore	बनम/ Vs.	K.K. Patel Finance Ltd. 44, Jiwaji Ganj, Gandhi Aushdhalaya Road, Morena
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AABCK 4282 G		
Revenue by	Shri P.K. Mishra, CIT-DR	
Respondent by	None	
Date of Hearing	15.12.2022 / 16.03.2023	
Date of Pronouncement	28.04.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 27.03.2017 passed by learned Commissioner of Income-Tax (Appeals)-10, Kolkata [**Ld. CIT(A)**], which in turn arises out of assessment-order dated 30.12.2011 passed by learned ACIT, Circle-5(1), Indore [**Ld. AO**] u/s 143(3) of Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2009-10, the revenue has filed this appeal on following grounds:

“1. Whether on the facts and in circumstances of the case, the CIT(A) erred in deleting addition of Rs. 20,19,50,000/- received by the assessee as share

capital and premium thereupon from shareholders whose existence could not be established by the assessee.

2. Whether on the facts and in circumstances of the case, the CIT(A) erred in deleting addition of Rs. 20,19,50,000/- received by the assessee as share capital and premium thereupon only on the basis of the fact that transactions were through banking channels, while the Hon'ble Apex Court have categorically held repeatedly that notwithstanding such transactions identity and creditworthiness of the alleged investors and genuineness of transactions are to be established to the satisfaction of the AO.”

2. When the case was called, none appeared on behalf of assessee nor any adjournment application filed. On perusal of case-records, it is found that the appeal relates to AY 2009-10 and the case has been fixed for hearing on multiple occasions but there is no representation from assessee. Ld. DR pointed out that it's a departmental-appeal and it can be decided on the basis of material held on record and after hearing him. Accordingly, the hearing is proceeded and the case is being disposed of by this order.

3. Ld. DR appearing for the revenue very humbly submits that the present appeal is delayed by 2 years, 6 months and 21 days. He submits that the revenue has filed an application for condonation of delay supported by an affidavit. The affidavit explaining the reason of delay is scanned below:

BEFORE THE HONOURABLE INCOME TAX APPELLATE TRIBUNAL, INDORE

AFFIDAVIT

I, Bhupendra Singh Jhala, son of Shri Vinayak Singh Jhala, presently working as Income Tax Officer-2(1), Indore do solemnly affirm as under:

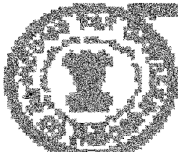
1. I am the assessing officer, having jurisdiction over the case of M/s K.K. Patel Finance Ltd, Indore
2. It is seen from this office records that the last date for filing the Income Tax Appeal in the above case for the Assessment year 2009-10 expired on 26.05.2017 There is a *दिलेगी-2(1) पत्र, थाना, 21 सप्टे.*

A. The case record was received from DCIT-Circle11(1), Kolkata vide letter dated 18.11.2016 and the matter appeal before the ITAT was on 14.11.2016. As the case record transferred from Kolkata hence reason for delay were called for from DCIT-Circle11(1), Kolkata office. The reasons for delay in filing of appeal before Hon'ble ITAT as received from DCIT-Circle11(1), Kolkata are as under-
"This is to state that the undersigned took the charge of DCIT-Circle11(1) on 11.04.2016. As charge handover/transfer report there was no mention of this case. The matter came into light after receiving the letter from the office of DCIT-Circle11, Indore. The assessment records in this case have already been transferred to ITO-2(1), Indore vide letter dated 18.12.2016.

As per the information gathered from the previous assessing Officer's holding the charge of DCIT-Circle11(1), Kolkata, it has been gathered that as per the repeat scrutiny report, appeal before the ITAT was suggested but no office copy for filing the appeal before ITAT was found in the record. Authorisation from CIT for filing the appeal was also not available on record. From the appeal registered maintained in this charge nothing was mentioned regarding whether appeal before ITAT was filed or not, however, from the office of erstwhile PCET-4, Kolkata it was ascertained that the erstwhile PCET-4, Kolkata had assumed authorisation for filing appeal.

Later departmental inspector was deputed to the office of the Registrar, ITAT, Kolkata to ascertain whether the department had filed appeal against CIT(A)'s order in the case of M/s KK Patel Finance Ltd for the AY 2009-10 but no record was found in the office of registrar ITAT Kolkata regarding the above appeal.

Since the undersigned was not in charge during the period of limitation for filing the second appeal and no such information was conveyed during handing/taking over, the reason for not filing appeal could not be ascertained. It appears that information by the appeal could not be filed before the Honourable ITAT. This is a case of non-act and



circumstances have never occurred in the past and will never occur in future. It is humbly requested to kindly condone the delay in filing of this appeal.
In view of the aforesaid reasons, it is prayed to Hon'ble ITAT, Indore Bench to kindly condone the delay in filing the appeal.



DEFENDENT
[Signature]
[Name of the Assessee]
District Tax Office-5(1), Indore

Date: 26/02/2021
Place: Indore

Ld. DR submits that the precise reason causing delay in filing appeal, as averred in the affidavit, is the change of officers in the department and the transfer of records in-between Kolkata office and Indore office. However, as soon as the matter came to the knowledge, adequate steps were taken for filing of appeal. Referring to last para of affidavit, Ld. DR also prays that this is the only case where such situation has occurred but otherwise it has never occurred. Ld. DR made a humble prayer to accept this scenario as a reasonable cause. Ld. DR very humbly submits that there is no deliberate lethargy, negligence or mala fide intention in making delay; it is purely due to the reasons explained in the affidavit. He prayed to take a judicious view and condone the delay. We have considered the explanation of revenue and observe that the original assessment-order was passed by ACIT, Circle-5(1), Indore; the first-appeal was filed by assessee to CIT(A)-10, Kolkata; and the present-appeal is filed by assessee to ITAT, Indore. Thus, the things have moved from one location to another on the part of assessee and furthermore

there are changes in the officers of department too; hence the delay has occurred. In absence of any contrary fact or material on record to negate the explanation given by revenue, we agree that the revenue has a reasonable cause for delay in filing appeal. Placing reliance on the decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with this appeal.

5. The sole controversy involved in the present-appeal is the addition of Rs. 20,19,50,000/- made by AO u/s 68 in respect of share application money received by assessee.

6. During assessment-proceeding, Ld. AO found that the assessee-company has received share-application money of Rs. 3,88,00,000/- from M/s Trimurti Finvest Ltd, Rs. 11,56,50,000/- from M/s Purvi Finvest Ltd. and Rs. 4,75,00,000/- from M/s East West Finvest Ltd [all three companies shall hereafter be to as **"Investor companies"**]; thus aggregating to Rs. 20,19,50,000/-. When the AO confronted the assessee to prove the ingredients of section 68, the assessee made submissions with documentary evidences. But on verification of same, the AO was not convinced. Hence, the AO treated the share-application money as ingenuine and made addition. The observations made by AO in this regard are extracted below:

"4. Addition u/s 68 of the IT Act. :-

4.1 It is also seen that during the year under consideration, the assessee has taken share application money from various applicants. The assessee was asked to explain the genuineness of share application money. The assessee furnished explanation about the genuineness of share application money and took support of the decision of Apex Court in the case of Lovely Exports. In support of its contentions about share application money, the company filed affidavits of the directors of M/s Trimurthi Finvest, Purvi Finvest and East West Finvest Ltd.

2.2 So far as the matter of share application money is concerned, it is seen that the assessee has received share application money from following companies during the year:

1. Trimuthi Finvest Ltd.
2. Purvi Finvest Ltd.
3. East West Finvest Ltd.

From the copy of Bank statement of Trimuthi Finvest Ltd., Purvi Finvest Ltd. and East West Finvest Ltd., it is noticed that there are so many transactions with the assessee company for giving amount and receiving back the amount in respect of which no application has been furnished. Some example are that the assessee has received Rs. 9,00,000/- on 23.06.2008 and Rs. 15,00,000/- on 25.06.2008 from M/s Trimurti Finvest Ltd. The same has not been reflected in the books of M/s K.K. Patel Finance Ltd. in share application money account. Further, even as per share applications, the assessee has received application for premium of Rs. 495/- and in some other cases for Rs. 90/- but no share has been allotted to the applicant company and the money received in the form of share application money has been returned back to that company in next year. There is no reason for such treatment of the alleged share application money. The details of share application money and allotment is as under :-

	Opening share application money	Share application money received during the year	Share allotted
M/s. Trimurti Finvest Ltd.	NIL	3,88,00,000/-	NIL
M/s. Purvi Finvest Ltd.	2,11,00,000/-	11,56,50,000/-	NIL
M/s. East West Finvest Ltd.	NIL	4,75,00,000/-	NIL

In view of above table it is clear that there was opening balance of share application money amounting to Rs. 2,11,00,000/- in the case of M/s Purvi Finvest and further amount of Rs. 11,56,50,000/- was received during the year but no shares has been allotted. The same is the position in respect of other two companies.

It is, therefore, clear from the above facts that the assessee has company has taken money of these three companies for its own use in the garb of share application money which is as good as a cash credit and the assessee is under obligation to discharge the onus cast u/s 68 on it in respect of each credit in the account. The share application money account in respect of all the applicant companies is a simple loan account and the assessee cannot take shelter of the Apex court's decision in the case M/s Lovely Exports, which speaks of actual share allotments, and not merely deposit and refund of sham share application money. It is further claimed that once the aforesaid three facts viz. identity of the creditor, his capacity to advance loan and genuineness of the transaction are established then the onus shifts on the department. It has been prayed that the explanation of the assessee be accepted and addition may not be made to the assessee's income u/s 68. The assessee in its contentions has more than once stated that the assessee has discharged its onus prima-facie by proving identity of lender, capacity of the lender and the genuineness of the transactions with the documents submitted

along with the written reply and is entitled to the benefits of various decisions quoted by it in its support. But the facts available on record do not support the contentions of the assessee in full. It is a fact that the assessee has taken loans from above three companies connected with Lunkad group. All the three creditor companies were found entangled in financial irregularities along with Lunkad Group of companies during survey findings of Lunkad Group. The assessee has not been able to prove that its loan transactions in the garb of share application money with the creditor companies involved in financial irregularities in connivance with the Lunkad Group of companies, are "genuine". In The Law Lexicon, 1989 Vol.1, the word "genuine" has been defined as "not spurious or counterfeit" or as explained in the dictionary "belonging to, derived from or descended from the original source or stock authentic, typical: pure"- Beharilal v Jagannath, AIR 1959 Pat. 490 at 495. Ordinarily counterfeiting involves the idea of an exact imitation; but for the purpose of the Indian Penal Code there can be counterfeiting even though the imitation is not exact and there are differences in detail between the original and the imitation so long as the resemblance is so close that deception may thereby be practiced. The assessee company has tried to give colour of genuine share application activities to counterfeiting loan activities of creditor companies having close proximity with the clandestine financial activities of Lunkad Group of companies, as revealed during survey operations of the latter. The assessee has not brought anything on record to rebut the survey findings in the case of Lunkad group and its close proximity with the creditor group of companies.

Obviously, money has been introduced in the books of the assessee company in the shape of loan. Hence it is the duty of the assessee to discharge its part of onus cast u/s 68 of the IT Act by cumulatively establishing:

- (i) the identity of the depositor,
- (ii) the capacity of the depositor to make deposit and
- (iii) the genuineness of the transaction.

It is only then that the assessee can be said to have discharged his part of onus cast u/s.68, as has been held in the time-tested judgment in the case of Shankar Industries v Addl. CIT (1978) 114 ITR 689 (Cal.).

Though, the assessee company has made an attempt to discharge his part of onus with the help of copies of affidavits, share application forms etc. of creditors, still all the above three ingredients of a genuine cash credit are not fulfilled. The type of documents furnished by the assessee are self serving and can be made by any one. The Apex Court judgment in the case of CIT v Durgaprasad More, [1971] 82 ITR 540 at 545(SC),(supra) deserves appreciation in this behalf.

The receipt of share application money in the case of the assessee is not genuine it is rather artificial and accordingly the assessee cannot escape from the application of Mc Dowel & Co. doctrine. Such transactions have no financial or economic propriety either. In the result, the Apex Court judgments in the cases of CWT v Arvind Narottamdas (1988) 173 ITR 479 (SC) and Union of India v Playworld Electronics Pvt Ltd (1990) 184 ITR 308 (SC) do not help

the assessee's case as it has no propriety except tax-evasion. Further, all the three companies have not given the schedules of Balance Sheets, therefore it is not clear whether these amounts are appearing in their balance sheet as share application in assets side. All these companies are showing huge losses and have no capacity to make such huge payments from their own sources to the assessee company.

The credits appearing in respective share application money accounts of all the three applicant companies are as under:

<i>Name of applicant</i>	<i>Share application money received during the year</i>
<i>M/s. Trimurti Finvest Ltd.</i>	<i>3,88,00,000/-</i>
<i>M/s. Purvi Finvest Ltd.</i>	<i>11,56,50,000/-</i>
<i>M/s East West Finvest Ltd.</i>	<i>4,75,00,000/-</i>
<i>Total</i>	<i>20,19,50,000/-</i>

As such the credit of Rs.20,19,50,000/- are added to the total income of the assessee as income from other sources and penalty proceedings are initiated for furnishing in particulars of income.”

7. During first-appeal, the assessee again made a detailed submission to CIT(A), which is re-produced by Ld. CIT(A) in Para No. 8 of the appeal-order. The Ld. CIT(A), after considering such submission and the evidences filed by assessee, deleted the addition by observing and holding thus:

“09. Decision:

1. I have carefully considered the action of the Ld. AO in making the impugned addition of Rs.20,19,50,000/-, which has been challenged in this ground. This ground of appeal is against the issue that whether the sum of Rs.20,19,50,000/- received by the assessee towards share capital towards share premium can be considered unexplained cash credit u/s 68 of the Act.

2. The Ld. AO observed that during the relevant Assessment Year, the appellant-company has received share capital from three private limited companies. The assessee has received the share application money from M/s. Purvi Finvest Pvt Ltd of Rs.11,56,50,000 and from M/s. East West Finvest Ltd of Rs.4,75,00,000/-. There has been no share allotment and no such

treatment as share application money. In the case of M/s. Trimurthi Finvest Ltd there is a receipt of Rs.3,88,00,000/- by the assessee company but nothing reflects in the books of account of the assessee-company in share application money account. Further, the Ld. AO has observed that the assessee has received application for premium of Rs.495/- and in some other cases for Rs.90/- but no share has been allotted to the applicant-company and the money received in the form of share application money has been returned back in the next year. There is no reason for the treatment of the share application money.

3. The Ld. AO has concluded that the assessee had taken money of these three companies for its own use in the garb of share application and that the same tantamounts to be treated as cash credit u/s 68 of the Act. The share application account in respect of all the applicant companies is a simple loan account. The Ld. AO observed that assessee has not been able to prove that its loan transactions in the garb of share application money with the creditor companies involved in financial irregularities in connivance with the Lunkad Group of Companies are "genuine". In the assessment order, the Ld. AO has concluded that though the assessee has made an attempt to discharge the necessary burden or onus with the help of affidavits, share application forms etc. of the creditors, nevertheless the three requisite ingredients for cash credit to be genuine are not fulfilled. Relying on the judgment of the Apex Court in Mcdowel & Co and various other judgments, the Ld. AO concluded that all the credits totaling Rs.20,19,50,000/- require to be added back to the total income of the assessee as "Income from other sources. The Ld. AO has also initiated penalty proceedings simultaneously.

4. During the appellate proceedings, the assessee-company has submitted as under:

a. In this ground the Appellant Company has challenged the addition of Rs. 20,19,50,000 made by the AO under section 68 of the Income Tax Act,1961 in respect of various sums of money received by Appellant on account of share application money. The Appellant Company received the following sums of money from the following three corporate assessees.

M/s Trimurthi Finvest Ltd. Rs. 3,88,00,000/-

M/s Purvi Finvest Ltd. Rs. 4,75,00,000/-

M/s East West Finvest Ltd. Rs. 20,19,50,000/-

Total Rs. 11,56,50,000/-

b. The aforesaid share application money was paid by the aforesaid corporate assessees to the Assessee Company by account payee cheques for allotment of shares of the face value of Rs.10 each at a premium of Rs.495/- and in some other cases for Rs.90/- each. Further, no share has been allotted to the applicant company and the money received in the form of share application money has been returned back to the company in the next year.

c. The Appellant Company discharged its initial onus of proving the identity of the shareholder, genuineness of the transaction and the creditworthiness of these share applicant companies by furnishing the names and complete addresses of each of the shareholders, PAN details, bank account details of the Appellant Company and also the shareholder companies. The details and documents furnished of all three share applicant companies are as follows:

i. Share Application Forms

ii. Copy of Bank accounts

iii. Affidavit of Shareholder company

iv. Form No. 32 filed by share Applicant Co.

v. Certificate of Incorporation of Business

vi. ITR acknowledgments for A. Y. 2009-10

vii. Relevant portion of audited Balance Sheet

viii. Ledger account of shareholder in the books of Appellant Co.

ix. IT assessment order of the shareholder companies u/s 143(3) for AY 2009-10

d. The Appellant Company submits that the aforesaid documents were more than enough to prove the identity of the shareholder companies. The genuineness of the transaction is proved as the entire share application money is received by account payee cheques and that the shareholder companies have furnished the Affidavits swearing in all the transactions relating to payment of share application to the Appellant Company were made by each of them by account payee cheques. The creditworthiness, although not required to be proved by the Appellant Company, yet from the audited accounts of the companies it would be found that they had huge turnover and huge capital and reserves. On the contrary, the assessments of three of these shareholder companies were made under section 143(3) of the Act and the investments made in the appellant company was not rejected by the Assessing Officer of these investee companies. Here we refer to the judgment of Hon'ble Calcutta High Court in the case of CIT vs. Dataware Pvt. Ltd. in ITAT No. 263 of 2011. A copy of the said judgment is enclosed for ready reference. In this case the Hon'ble Jurisdictional High Court held and observed as under:

In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an Income tax assessee. 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. So long it is not established that the return submitted by the creditor 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.

e. The Appellant Company submits that in the instant case also there is nothing on record to show that the returns of the shareholder companies of the Appellant Company were rejected by the Assessing Officer of the said shareholder companies. On the other hand the assessment orders in respect of the all the three companies were completed under section 143(3) of the Act accepting their transactions of Investment in the Appellant Company. Therefore the AO was not justified in adding the aforesaid sum of money received by the Appellant Company on issue of shares at a premium of Rs.90 and Rs. 495 each. The addition of Rs. 20,19,50,000/- was made by the AO in disregard of the judgments of Apex Court in the case of Lovely Exports P. Ltd and also that of Calcutta High Court in the case of Dataware P. Ltd. The Appellant Company would like to add that the insertion of the Proviso to sec. 68 were made applicable with effect from the assessment year 2013-14 and does not apply to the present case before your Honour."

5. I have considered the issue raised in the assessment order in the light of the arguments made on behalf of the assessee. The issue involved is whether the share application money can be treated as cash credit u/s 68 of the Act or not. The Ld. AO's only contention is that the money has been introduced in the books of the assessee company in the shape of loan and is not share application money. I hereunder reproduce the relevant section as follows:

"68. Where any sum is found credited in the book 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."

6. According to this section, if Identity, creditworthiness of the creditor and genuineness of the transaction is not proved or 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. In the instant case, the appellant had disclosed receipt of share application money from three share applicants. The said receipts towards the share application money along with share premium amount had been considered as not genuine as identity and creditworthiness of the share were not genuine and the money of the share applicants is brought for its own use in the grab of share application money.

7. In the course of assessment proceedings, the appellant in response to the requisitions made by the Ld. AO, from time to time, produced its audited books of accounts, filed copies of its audited accounts including various details and other documents as required. The detail documents as filed by the Ld. AO

included, inter alia, full details of each of the share applicants, who had subscribed to the share capital during the year under appeal. The Ld. AO has not disputed or raised any question on the money received from all the three share applicants and has accepted that these monies were given by the said three companies to the assessee company.

8. It is observed that the Ld. AO in his order has stated that assessee company has taken money of these three companies for its own use in the garb of the share application money which is as good as a cash credit and the assessee is under the obligation to discharge the onus cast u/s 68 on it in respect of each credit in the account. The Ld. AO has further opined that the share application money account in respect of all the applicant companies is a simple loan account and the assessee cannot take shelter of the Hon'ble Apex Court's decision in the case of Lovely Exports, which speaks of actual share allotments, and not merely deposit and refund of sham share application money. It is further claimed that once the aforesaid three facts viz identity of the creditor, his capacity to advance loan and genuineness of the transaction are established then the onus shifts on the department. It has been prayed that the explanation of the assessee be accepted and addition may not be made to the assessee's Income u/s 68. The Ld. AO stated that the assessee has not been able to prove that its loan transactions in the garb of share application money with the creditor companies involved in financial irregularities in connivance with the Lunkad Group of companies, are "genuine". The AO has not disputed the fact that the money is received from the share applicant companies but has raised question as to whether it is in the form of loan or not. In my considered view of the matter, the undisputed fact emerges that the money has undisputedly been received from the three share applicants and thus, it cannot be treated as undisclosed income of the assessee.

9. It is further observed that the assessee has received the share application money from M/s. Purvi Finvest Pvt Ltd, M/s. Trimurthi Finvest Ltd and M/s. East West Finvest Ltd but no treatment has been shown in the share application money account. The Ld. AO has overlooked the portion of money returned by the assessee-company during the relevant Assessment Year and has rather made an addition of the total amount of the share application money received. Therefore, it appears that the Ld. AO did not act judiciously and discriminate while making the impugned addition. It is observed that the corporate share applicants are registered under the Companies Act, 1956 and are in the records of the Registrar of the Companies functioning under Ministry of Corporate Affairs, Government of India and the individuals are having Permanent Account Numbers along with the acknowledgment of submissions of their return of income and furnished audited balance sheet and financial statements of the three share applicant companies which is my humble opinion proven their identity without any doubt. It is observed that each of the share applicants maintained bank accounts and copies of their bank accounts from which they made payments to the appellant for subscribing to the shares issued to them. The share applicants has not denied to have subscribed to the shares of the assessee company and that such transactions were duly recorded in their books of accounts as well as their audited balance sheet. These facts in my opinion clearly prove the genuineness of the transactions. It

is further observed that the sources of the funds of the share applicants are explained as well as their sources were also explained. The facts furnished on record by the assessee company, clearly proves their sources 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 sources of fund explained by the share applicants. It is also observed that the return of allotment as well as the annual return of the three share applicant companies for the A.Y. 2009-10 filed by the Appellant with the Registrar of the Companies, Ministry of Corporate Affairs, further categorically proves the fact of allotment of shares. The Assessee in its response has filed the Assessment order of all the three share applicant companies for the A.Y. 2009-10 completed under section 143(3) of the Act and there is no addition in regard to share application.

10. 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. 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 capitals 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. Since the conditions precedent for discharging of burden under the provisions 68 of the Act are met with adequate evidence, the addition made under such pretext, in my considered view is not sustainable.

11. Further the Hon'ble Supreme Court in CIT vs. Lovely Exports Ltd (2008) 216 CTR 195 (SC) wherein has held as under

"2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee company from alleged bogus share holders whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law."

In other words, it is observed by the Hon'ble apex Court that if share application money is received by an assessee from subscribers, whose names are given to the AO, are allegedly bogus, then the Revenue is free to proceed to reopen their Individual assessments in accordance with law. The facts of the present are on a better footing to the one as decided above. In the Instant case, all the share applicants had confirmed their investment with the appellant and as such, there was no basis for the AO to come to any adverse conclusion and accordingly the entire amount received by the appellant on account of share application as well as share premium monies cannot be regarded as undisclosed income u/s.68 of Act.

12. Therefore, considering the totality of the facts and circumstances of the case I find substance in the argument of the Ld. A.R that the appellant has made its case that the identity of the share applicants is established beyond

doubt and on enquiries made by the AO there is no adverse finding reached on this aspect.

Admittedly all the share applicants are existing assesses under the act which establish the Identity and authenticity of the share applicants, about the genuineness of the transactions there is no any adverse finding in the assessment order which is distinct 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 as depicted hereinabove. The net worth of such subscribers is in excess of the amount invested by each of them as explained hereinabove. The Assessment orders passed during the assessment of the share applicants under section 143(3) of the Act has mentioned above. The undisputed fact, that the money is received from the share applicants. The addition made by AO is based on extraneous parameters not germane for deciding the issue. The Ld. AO had not dealt with the issue with the required judiciousness and consistency in relation to the documentary 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, On these grounds, it is my considered view that no adverse inference that such share applications monies received is unaccounted cash credit was called for. Therefore, I am inclined to accept the arguments tendered by the Ld. A.R of the appellant in this respect.

13. The Ld. AO in considering the entire share capital of 20,19,50,000/- as unexplained cash credit u/s 68 has relied upon the decision of the Hon'ble Apex Court in the case of Mcdowell which was duly been summed up by the decisions of Supreme Court in the case of CWT v. Arvind Narottarh (Individual), Union of India and Ors. v. Playworld Electronics (P) Ltd. and Anr (1990) 184 ITR 306 (SC), Gujarat High Court in the case of Banyan & Berry v. CIT. In Banyan & Berry vs CIT (131 ITR 127) (Guj) (222 ITR 831) (SC), it was held as under:

"The Court (In Mcdowell) nowhere said that every action or inaction on the part of tax payer which results in reduction in tax liability to which he may (be subjected in future, is to be viewed with suspicion and treated as device for avoidance of tax irrespective of the legitimacy or genuineness of the Act. The principal enunciated in the above case has not affected the freedom of the citizen to act in a manner according to his requirements, his wishes in the matter of doing any trade, activity or planning his affairs with circumstances, within the framework of law, unless the same falls in the category of colorable device"

14. However, these decisions are distinguishable and are not relevant to the facts of the Instant case. This is so as the case laws relied upon by the Ld. AO interprets that the assessee brought its own money back in the garb of share application but in the instant case, the Ld. AO has accepted that the share application money received was of share applicants. Moreover, the scrutiny of records and assessment order do not show that any enquiry was caused by Ld. A.O to find out any real Intention, as against the apparent one, behind the

share allotment transaction between the appellant-company and share subscribing companies. It is well settled principles of law that assessment should be based on proper evaluation of materials brought on record. Any assessment made on pure guesswork would militate against itself and render the same unsustainable in law. In view of the foregoing, I find that the impugned additions made by the Ld. AO by invoking the provisions of Section 68 are not sustainable or justified in the circumstances and accordingly, direct The Ld. AO to delete such addition of Rs.20,19,50,000/- made on this account. Thus, this ground is allowed.”

8. During hearing before us, the Ld. DR representing the revenue vehemently supported the assessment-order and opposed the order passed by CIT(A). Firstly, he submitted that the assessee has not filed any evidence before AO in support of share application moneys. Then, he supported the AO's findings, namely the assessee has taken mere loans in the garb of share application money; that the investor-companies were involved in financial irregularities in connivance with the Lunkad Group of companies; that the investor-companies have not filed schedules of Balance-Sheets to show whether the application-moneys paid to assessee were appearing in their assets side or not; that the investor-companies have shown huge losses and do not have capacity to make payments to assessee from own sources. Ld. DR argued that the AO has given a detailed finding in the assessment-order to establish that the share application money claimed to have been received from investor-companies is nothing but the assessee's own money and thereafter made addition; which is quite justified and must be upheld.

9. We have considered the submissions of Ld. DR and perused the orders of lower-authorities. Firstly, we observe from Para No. 9.4.c / Page No. 39 of the order of Ld. CIT(A) that the assessee has claimed to have filed following documents to Ld. AO during assessment-proceeding:

- i. Share Application Forms*
- ii. Copy of Bank accounts*
- iii. Affidavit of Shareholder company*
- iv. Form No. 32 filed by share Applicant Co.*

- v. Certificate of Incorporation of Business
- vi. ITR acknowledgments for A.Y. 2009-10
- vii. Relevant portion of audited Balance Sheet
- viii. Ledger account of shareholder in the books of Appellant Co.
- ix. IT assessment order of the shareholder companies u/s 143(3) for AY 2009-10

We find that the revenue has not raised any ground to negate or contradict this fact claimed by assessee and also accepted by Ld. CIT(A). On a careful reading of assessment-order, we find that the AO has also talked at least about these documents having been filed by assessee, namely (i) affidavits of the directors of investor-companies; (ii) bank statements of the investor-companies; (iii) share application forms, etc. In fact, at one place the AO has made a heightened remark also "*The type of documents furnished by assessee are self-serving and can be made by anyone*". This shows that the assessee has filed document to AO. Being so, we do not find any merit in the contention of Ld. DR that the assessee has not filed any evidence to AO.

10. Having said so, we now go to the vital findings made by Ld. CIT(A) wherein he has dealt with the findings of AO as under:

- (i) Ld. CIT(A) has observed that in the course of assessment-proceeding, the assessee produced books of account, filed copies of audited accounts, filed full details of the investors who had subscribed to the share capital. The AO has not raised any dispute or question on the receipt of money from those investors. (Para 9.7 of CIT(A)'s order).
- (ii) Ld. CIT(A) observed that the AO has not disputed the fact that the money is received from investor-companies but has raised question as to whether it is a loan or not. (Para 9.8 of CIT(A)'s order).
- (iii) Ld. CIT(A) observed that the share applicants are registered under the Companies Act, 1956 and are in the records of the Registrar of the Companies functioning under Ministry of Corporate Affairs, Government of India and they are having Permanent Account

Numbers along with the acknowledgment of submissions of their return of income and furnished audited balance sheet and financial statements which proves *identity*. The share applicants have maintained bank accounts and copies of their bank accounts from which they made payments to the assessee for subscribing to the shares issued to them have been filed. The share applicants have not denied to have subscribed to the shares of the assessee and that such transactions were duly recorded in their books of accounts as well as their audited balance sheet. These facts clearly prove the *genuineness* of the transactions. It is further observed that the sources of the funds of the share applicants are explained as well as their sources were also explained. The facts furnished on record by the assessee-company clearly proved their sources 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 sources of fund explained by the share applicants. It is also observed that the return of allotment as well as the annual return of the three share applicant companies for the A.Y. 2009-10 filed by the Appellant with the Registrar of the Companies, Ministry of Corporate Affairs, further categorically proves the fact of allotment of shares. The assessee has filed the Assessment order of all the three share applicant companies for the A.Y. 2009-10 completed u/s 143(3) of the Act and there is no addition in regard to share application. (Para 9.9 of CIT(A)'s order).

- (iv) Ld. CIT(A) has finally observed that the burden which lay on the assessee u/s 68 has been duly discharged by it and nothing further remains to be proved by it on the issue. 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 capitals 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. (Para 9.10 of CIT(A)'s order).

11. Clearly, therefore, it is discernible that the Ld. CIT(A) has dealt with each and every aspect of the issue and concluded that the assessee has discharged the burden cast upon it u/s 68. The Ld. DR could not show us any reason to interfere with these findings. Therefore, we are inclined to hold that in such a situation, the Ld. CIT(A) has rightly reversed the action of AO and deleted the addition. We subscribe to his view and uphold the deletion. The revenue fails in this appeal.

12. Resultantly, this appeal of revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 28/04/2023.

Order pronounced in the open court on/...../2023.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 28.04.2023

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

Sr. Private Secretary

*Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	