

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'G', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 4595/Del/2018 : Asstt. Years: 2010-11**

DCIT, Circle-25(1), New Delhi (APPELLANT)	Vs.	Tepe Consultants Pvt. Ltd, C-20, Pamposh Enclave, Greater Kailash, New Delhi-110048 (RESPONDENT)
<b>PAN No. AA ACT2658N</b>		

**Assessee by : Sh. Shailesh Gupta, CA**

**Revenue by : Sh. Rajesh K. Dhanesta, Sr. DR**

**Date of Hearing: 20.02.2023**

**Date of Pronouncement: 17.05.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

This appeal has been filed by the Revenue against the order of Id. CIT(A)-33, New Delhi dated 21.02.2018.

2. The revenue has raised the following grounds of appeal:

*"1. The impugned order of the CIT(A) is bad in law as well as on facts of the case.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,61,75,000/- made on account of unexplained cash credits u/s 68 of the IT Act by ignoring the fact that section 68 requires that the assessing officer must be satisfied with the explanation offered by the assessee which has to be genuine. The Ld. CIT(A) has erred in deleting the addition as the assessee has failed to discharge its primary onus of proving the creditworthiness and identity of the concerned party and also genuineness*

*of the transactions in terms of provisions of Section 68 of the IT Act, 1961."*

*3. "The Ld. CIT(A) has erred in appreciating the fact that neither the assessee could produce the parties nor did they attend the proceedings in response to summons issued u/s. 131 of the I.T. Act, 1961 requiring personal deposition."*

**Cash Credits u/s 68:**

**Facts taken from the order of the Id. CIT(A)**

3. The assessee company filed the return of income for the A.Y. 2010-11 on 22.09.2010 declaring total income at Rs. NIL.

4. The assessee received share application money during the year under appeal, from six parties which is as under:

a) M/s. R.S. Capsules Pvt. Ltd.	Rs.25,00,000
b) M/s Amrit Suppliers Pvt. Ltd.	Rs.25,00,000
c) M/s Agni Transports Pvt. Ltd.	Rs.40,00,000
d) M/s Maa Jagdamba Nirman Pvt. Ltd.	Rs.35,00,000
e) M/s Melody Residency Pvt. Ltd.	Rs.30,00,000
f) M/s Arnab Properties Pvt. Ltd.	Rs.25,00,000
TOTAL	Rs.1,80,00,000

5. The Directors of these companies are as under:

Arnab Properties Pvt. Ltd.	Sh. P. P. Bose	
Amriti Suppliers Pvt. Ltd.	Sh. M. K. Singh	
R. S. Capsules Pvt. Ltd.	Sh. M. K. Singh	
Melody Residency Pvt. Ltd.	Sh. P. P. Bose	Sh. V. P. Mittal
Maa Jagdamba Nirman Pvt. Ltd.	Sh. P. P. Bose	Sh. Vijay Kumar Aggarwal
Agni Transports Pvt. Ltd.	Sh. P. P. Bose	Sh. Gopai Kumar Aggarwal

6. While treating the amount received u/s 68, the AO held as under:

*"(1) In the case of M/s Agni Transport Pvt. Ltd., the ITR shows a returned income of Rs 76,130/-, the debit to Tepe Consultant Pvt. Ltd. is preceded by a credit entries which of have come from Ahilya Trading & Finance Pvt. Ltd., Starshine Vinirnay Pvt. Ltd. and Alankrit retails whose own identities and source of funds are unascertained [details of credit entries gathered from Union Bank] and as gathered from instruments given by bank, the signatories of scienara Finyest and Agni Transport are same and of Jet Finvest, Ahilya. Trading are same and of Alankrit retails and. Starshine Vinimay are same the balance increase only before debit entry otherwise the balance in account is minimal.*

*(2) In the case of M/s Melody Residency Pvt. Ltd., the ITR shows a returned income of Rs.76,130/- the debit, to Tepe Consultant Pvt. Ltd. of Rs.30,00,000/- which is preceded by credit entries which are unascertained. Every debit is preceded by a credit entry otherwise the balance is minimal and the source of these funds is not known.*

*(3) In the case of M/s Maa Jagdamba Nirman Pvt. Ltd., the ITR shows a returned income of Rs. Nil, the debit to M/s Tepe Consultant Pvt. Ltd. of Rs.30,00,000/- which is preceded by credit for same amount.*

*(4) In the case of M/s ARNAB Properties Pvt. Ltd., the ITR shows a returned income of Rs.4,270/-, the debit to Tepe Consultant Pvt. Ltd. of Rs.25,00,000/- which is preceded by credit of Rs.30,00,000/-.*

*(5) In the case of M/s Ankrit Suppliers Pvt. Ltd., the ITR has a returned income of Rs.20,167/-, the debit to Tepe Consultant Pvt. Ltd. which is preceded by credit of Rs.30,00,000/-.*

*3.5 It is worthwhile to mention that neither did the assessee produce these parties despite being related parties nor did they respond to summons issued on 04-03- 2012 requiring their attendance. Three of these parties - M/s Maa Jagdamba Nirman sent an AR, Aman Agarwal (Vakalatnama on record) who fled the office after the questioning of Sh. Anoop Tripathi whose of the CA/AR representing the case and not a qualified CA/lawyer to be an AR and knew the parties is no way and disappeared from the scene with the third unknown so called AR in two/alongwith the AR of Tepe Consultants Sh. Sahil Sharma. The noteworthy issue in the submissions sent through so called AR's is that the entire form of share application alongwith acknowledgement with signature and stamp in ink have been provided by the applicants when it should actually have been in the possession of M/s Tepe Consultants Pvt. Ltd."*

7. Further, the AO held that the assessee has received unsecured loans of Rs.81,75,000/- from Advani Pvt. Ltd. The ITR of the company has shown returned income of Rs.24,32,770/-. The loan giver and loan receiver companies both are of one person namely, Sh. Gyan Savroop Garg as evidenced by same signature on confirmation of accounts. The AO held that the loan has been received from unknown sources.

8. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the additions made by the Assessing Officer on account of share application and on account of loan.

9. During the hearings before the ITAT, the Revenue relied on the order of the Assessing Officer and the Id. AR relied on the order of the Id. CIT(A).

10. We have gone through the order of the Id. CIT(A) and submission of the assessee before the Id. CIT(A) is as under:

**"6. Submission of the Appellant**

*The Appellant has stated as under in its written submission dated 19.07.2016:*

**ISSUES**

*Your honor as said above also, in regard to the year under consideration the Ld. Income Tax Officer has erred adding a sum of Rs. 2,61,75,000/- as unexplained credit and added back to the income of the assessee by treating income from undisclosed sources as per provisions of section 68 of the Income Tax Act, 1961 and further penalty u/s 271(1) (c) has been imposed and interest u/s 234A, 234B and 234C has been charged. The appellant is disputing the said action of the Income Tax Officer.*

**PLEA**

*During the accounting period relevant for the year under appeal the appellant received share application money of Rs. 1,80,00,000/- from six parties, who are duly assessed to tax. The appellant filed all the relevant details and A.O. issued commission to DDIT, Kolkata, who also verified the details and nothing adverse was found, but the A. O. considered the entire share application money received of Rs. 1,80,00,000/- as unexplained. In the subsequent year shares have been duly allotted to these parties and the share capital of the appellant company has accordingly increased.*

*During the year under appeal, the appellant company had also received unsecured loan of Rs. 81,75,000/- from M/s Advani Pvt. Ltd.*

*The A.O. issued letter to the creditor. The aforesaid creditor duly replied to the Ld. A.O. and submitted the PAN, copy of acknowledgement of income tax return filed for the AY 2010-11, copy of audited balance sheet along with bank statements from where the funds have been lent and the confirmation of account. The A.O., however, considered the loan as unexplained and made addition of Rs. 81,75,000/-. In subsequent year the amount of Rs. 81,75,000/- has been paid back by the appellant.*

*Ground No. 1 is against addition of Rs. 1,80,00,000/- as unexplained credit u/s 68 of IT Act, 1961. The share application of the appellant company increased from Rs.15,00,000/- to Rs. 1,95,00,000/- during the accounting period relevant for the year under appeal.*

*The appellant filed on 24.02.2013 the following details in respect of the above share applicants for A.Y. 2010-11:*

- a) Balance Sheet*
- b) Copy of Income Tax Return.*
- c) Bank Account Statement.*
- d) Share Application.*
- e) Account Confirmation Statement in respect of share application money.*

*The A.O. issued notices u/s 131 of the Income Tax Act, 1961 to all the six share applicants, who reside in Kolkata. The notice u/s 131 of the Income Tax Act, 1961 dated 06.03.2013 was for submission/filing of required details personally or through authorized representative by 08.03.2013. The notice was received by the parties in Kolkata on 12.03.2013. As per the notice the parties were required to furnish the following details:*

- 1. ITR for the AY 2010-11*
- 2. Bank Statement copies for the FY 2009-10*

*3. Share Application Form*

*4. Account Confirmation*

*It was not possible for them to appear in person in response to the summons, hence as per their request Mr. Gyan Swaroop Garg, one of the director's of the appellant company travelled from Kolkata to Delhi on 13.03.2013 for filling reply of above six parties against the summonses issued, Shri Garg was coming to Delhi to file reply to notice u/s 133(6) issued by A.O. to M/s Advani Pvt. Ltd. for unsecured loan given to the appellant.*

*Mr. Gyan Garg visited the office of A. O. to file the details of M/s Advani Pvt. Ltd., which was accepted by the office of the A.O. He also requested the office staff to accept the details of other six share applicants but the office did not accept the papers. The A. O. was not available in office for the whole day so he handed over the entire documents for filing before the A.O. to the authorized representative of the appellant. The A.O., however, did not accept these documents and wanted to examine the AR's on the papers being filed. Thereafter the A.O. issued another notice u/s 131 dated 14.03.2013 to the above six parties for submission of the following details:*

- 1. Details of Bank Statement from where funds of share application has been transferred.*
- 2. Explanation and documentary evidence of transactions immediately preceding the fund transfer.*

*The second notice u/s 131 was received by the above six parties. The reply including all the documents was sent by them through registered post and was duly received by the A.O.*

*During the assessment proceeding it was brought to the attention of A.O. that notice u/s 131 cannot be issued to persons staying in Kolkata as it was beyond the distance of 500 km. After receipt of*

*documents from the six parties through post, A.O. issued Commission to DDIT (Inv.), Kolkata to issue summons and record statement on oath and to verify identity, genuineness and creditworthiness of the Accordingly the DDIT, Kolkata issued summons u/s 131 on 19/03/2013 for submitting the following:*

- 1. Personal appearance for recording of statement in connection with M/s Tepe Consultant Pvt. Ltd. New Delhi.*
- 2. Details of allotment of share application Money to the above named company during the F. Y. 2009-10.*
- 3. Regular Books of Accounts (Audited Accounts) i.e. Balance Sheet, Bank Statement, Profit & Loss Accounts reflecting the above said transaction made to above named company during the F. Y. 2009-10.*

*The auditors and accountants of the above six share applicant's appeared and submitted all the information before DDIT (Inv), Kolkata on 25.03.2013. The DDIT (Inv.), Kolkata duly verified these facts and sent his report to the A.O., and nothing adverse was found. The DDIT (Inv.) sent the documents and asked the A.O. to draw her own conclusion. However, the A.O. did not accept the evidences filed and made addition in the assessment by making the following observations, which is given hereunder:*

*"3.4 The AR reiterated the stand that the companies from whom share application has been received in are related parties and friends of directors of M/s Tepe Consultants Pvt. Ltd. yet time and again the AR has failed to produce these parties and therefore the assessee's onus to suitably establish identity, genuineness and creditworthiness has not been discharged. The documents submitted by the Id AR revealed the following information:*

(1) In the case of M/s Agni Transport Pvt. Ltd., the ITR shows a returned income of Rs.76,130/-, the debit to Tepe consultant Pvt. Ltd. is preceded by a credit entries which of have come from Ahilya Trading & Finance Pvt. Ltd., Starshine Vinimay Pvt. Ltd. and Alankrit retails whose own identities and source of funds are unascertained [details of credit entries gathered from Union Bank and as gathered from instruments given by bank, the signatories of scionara Finvest and Agni Transport are same and of Jet Finvest, Ahilya Trading are same and of Alankrit retails and Starshine Vinimay are same the balance increases only before debit entry otherwise the balance in account is minimal.

(2) In the case of M/s Melody Residency Pvt. Ltd., the ITR shows a returned income of Rs. 76,130/- the debit to Tepe Consultant Pvt. Ltd., of RS. 30,00,000/- which is preceded by credit entries which are unascertained. Every debit is preceded by a credit entry otherwise the balance is minimal and the source of these funds is not known.

(3) In the case of M/s Maa Jagdamba Nirman Pvt. Ltd., the ITR shows a returned income of Rs. NIL, the debit to Tepe Consultant Pvt. Ltd. of Rs.30,00,000/-which is preceded by credit for same amount.

(4) In the case of M/s ARNAB Properties Pvt. Ltd., the ITR shows a returned income of Rs.4,270/-, the debit to Tepe Consultant Pvt. Ltd. of Rs.25,00,000/-which is preceded by credit of Rs.30,00,000/-.

(5) In the case of M/s Ankrit Suppliers Pvt. Ltd., the ITR shows a returned income of Rs.20,167/-, the debit to Tepe Consultant Pvt. Ltd. which is preceded by credit of Rs. 30,00,000/-.

*3.5 It is worthwhile to mention that neither did the assessee produce these parties despite being related parties nor did they respond to summons issued on 04.03.2012 requiring their attendance. Three of these parties M/s Maa Jagdamba Nirman sent an AR, Aman Agarwal (Vakalatnama on record) who fled the office after the questioning of Sh. Anoop Tripathi whose Vakalatnama is on record and who also refused to sign the order sheet as he was the deputed of the CA/AR representing the case and not a qualified CA/lawyer to be an AR and knew the parties is no way and disappeared from the scene with the third unknown so called AR in tow alongwith the AR of Tepe consultants Sh. Sahil Sharma. The noteworthy issues in the submissions sent through so called AR's is that the entire form of share application alongwith acknowledgement with signature and stamp in ink have been provided by the applicants when it should actually have been in the possession of M/s Tepe Consultants Pvt. Ltd.*

*3.6 The applicants can only possess photocopies of the same but not original forms. The applications forms are scanned below have no application number and the acknowledgment slip has no receiving on it or receipt stamp on it.*

*3.7 The above is true for both M/s R.S Capsules Pvt Ltd and M/s Maa Jagdamba Nirman Pvt. Ltd and the application form sheet is no way appears to be three years old.*

*3.8 The non attendance of parties, non signing of order sheets and submission of documents which are not genuine have raised doubts to the authenticity of transactions. To verify the same, summons were re-issued to the parties on 14.03.2013 directing them to appear on 2003-2013 alongwith documents mentioned in the summons which were duly served on the parties [summons placed on*

record]. The AR approached the office that the parties would not appear.

3.9 As Calcutta was beyond 500 kms and the travel east will not be borne by them. At the outset, I would like /to mention that it was assessee's responsibility to produce the parties. In order to do way with the difficulty of the assessee to travel to Delhi which is more than 500 Kms from Delhi and to do way the burden of bearing travel cost, Commission was issued to Sh. Nayanjoti Nath DDIT (Inv) Kolkatta on 19.03.2013 to issue summons and record statement on Oath and to verify identity, genuineness and credit worthiness of the parties. The issue of Cost of travel was also raised the parties and was taken care of by issue of commission.

3.10 The reply of DDIT (Inv) Dated 25.03.2013 received through fax. The Party Summoned once again failed to appear in Kolkatta before DDIT (inv), the request stated that:

'Authorized representative of the aforesaid concern appeared and submitted the following documents:-

- (i) Copy of share application of Tepe Consultants
- (ii) Copy of bank statement reflecting the transactions.
- (iii) Statement showing the immediate source of fund of the above transaction.
- (iv) Copy of IT acknowledgement of AY 2010-11.
- (v) Copy of Balance Sheet for 31.03.2010 ending.

The DDIT gave an observation that share capital was received by M/s Tepe Consultants from various Kolkata based companies. Further it is found that most of these companies have very merge income in financial year 2009-10. Thereafter, the LD. A. O. many from her own consideration based on the materials gathered by this directorate."

*3.11 It also needs to be emphasized that the shares have been issued at premium of Rs 2400/- which is much higher than the net worth of the company is loss making and whose business has closed down in the succeeding year.*

*3.12 Since the documents which have/been submitted there have also been submitted before the undersigned, in view of the facts stated above, as the assessee has failed to produce the parties, parties have failed to present themselves on all occasions when summons were issued to them in Delhi, as well as Kolkata and submitted false documents (share applications form) and produced ARs who were not ever authorized to do so as per vakalatnama, the AR of M/s Tepe Consultants was/given show cause vide order sheet entry dated 26/03/2013 :*

*"Shri Umesh Pandey AR appeared. He has been informed that the parties (share application have not appeared to the summons issued by DDIT, Kolkata after the commissioning issued by DDIT Kolkata after the commission issued by the undersigned. Therefore, he is to respond to the show cause as to why it should not be treated as unexplained credit as identity, genuineness and creditworthiness has not been established by 28/03/2013 failing which order will be passed on materials on record "*

*5.13 The AR submitted a reply dated 28/03/2013 placed on record. The reply was considered and not found to be convincing .In view of the discussion in preceding paragraphs. I am of the view that these are nothing but accommodation entries and therefore unexplained credits in the account of the assessee. Therefore a sum of Rs.1,80,00,000/-.*

*The Ld. A. O. rejected the explanation of the appellant and made addition of Rs. 1,80,0,000/-. It is submitted that the action of the Ld. A.O. was contrary to the legal principles laid down under the law.*

*The appellant submitted all the relevant material regarding the share application money received. The appellant received share application from six parties for issue of shares of Rs 1,80,00,000/- during the year under appeal. The share application money was received from six parties as under:-*

a)	<i>M/s R.S. Capsules Pvt. Ltd.</i>	<i>Rs. 25,00,000</i>
b)	<i>M/s Amrit Suppliers Pvt. Ltd.</i>	<i>Rs. 25,00,000</i>
c)	<i>M/s Agni Transport Pvt. Ltd.</i>	<i>Rs. 40,00,000</i>
d)	<i>M/s Maa Jagdamba Nirman Pvt. Ltd.</i>	<i>Rs. 35,00,000</i>
e)	<i>M/s Melody Residency Pvt. Ltd.</i>	<i>Rs. 30,00,000</i>
f)	<i>M/s Arnab Properties Pvt. Ltd.</i>	<i>Rs. 35,00,000</i>
	<b>TOTAL</b>	<b>Rs.1,80,00,000</b>

*The Ld. A.O. issued first notices u/s 131 on 06.03.2013 asking for details to be filed on 08.03.2013 to these parties at Kolkata. The notices were received only on 12.03.2013. The information was sent through one Shri Garg but it was not accepted - A. CVs office. It may be mentioned here that Shri Garg came to file reply in regard to notice u/s 133(6) issued to M/s Advani Pvt. Ltd, which had given to the I appellant company and papers relating to this loan was accepted by the office of the Ld. A.O.. The papers relating to the above six parties were, therefore, given by Shri Garg to the AR of the appellant. The representative from AR's office appeared before Ld. A.O. to file the papers of these six parties, but the Ld. A.O. refused to accept and wanted to examine these representatives, and these papers could not be filed. Thereafter, the Ld. A.O. issued another notice u/s 131 on 14.03.2013. These parties complied with the notices by sending the following details by post:-*

- A) Balance Sheet*
- B) Copy of Income Tax Return.*
- C) Bank Account Statement.*

D) *Share Application.*

E) *Account Confirmation Statement in respect of share application money*

*The Ld. A. O. insisted on production of the directors of these parties from Kolkata in Delhi. It was brought to the notice of the Ld. A. O. that since Kolkata was more than 500 Kms. the personal appearance was not feasible and the Ld. A.O. issued Commission to DDIT (Inv.), Kolkata to issue summons and record statement on oath and to verify identity, genuineness and creditworthiness of the parties. The DDIT (Inv.), Kolkata issued summons u/s 131 on 19/20.03.2013 and was duly complied by the parties filing the details on 25.03.2013. The DDIT sent his report to the Ld. A. O. and did not find anything adverse and advised Ld. A. O. to draw own conclusion. Even though nothing adverse was found by DDIT (Inv.), Kolkata the Ld. A.O. did not accept it and went on to make addition by drawing adverse inference. The onus of proving cash credit in the books is rebuttable. The assessee has to discharge the initial onus by proving the identity of the creditor by filing the Confirmatory Letter and other relevant details. The presumption is rebuttable and the Department is also required to bring evidence on record if it wants to reject the explanation of the assessee. It is now settled law that there are three basic requirements in case of a cash credit:*

- 1. the identity of the creditor,*
- 2. the creditworthiness of the creditor, and*
- 3. the genuineness of the transaction.*

*We would like to inform you that the assessee company has properly provided the relevant documents and it is to be noted that by providing all of them the assessee company discharged its onus under section 68 of the Income Tax Act, 1961. The identity of the share applicants, as all the share applicants are active companies*

*and they all have records on the MCA site that is a public domain, which any one can access the records of the company, genuineness of the transactions are also proved as all the share applicants have given share application money by bank only and the share applicants have credit worthiness to invest in the assessee company.*

*By producing the financial statements of the share applicants the assessee company had provided the credit worthiness too of the share applicants.*

*Your honor, apart from Income Tax Provisions, assessee is also replying on the following judgments:*

*1. In case of P. K. Sethi vs. CIT (2006) 286ITR 318 (Gau.) It was held by the Hon'ble High Court that the identity of the creditor is proved when a creditor is shown to be an Income tax assessee. When the amounts were shown as withdrawn from the accounts available and were paid by account payee cheques, the transaction is held to be genuine. In this case the genuineness of transaction was doubted in case of five creditors whose accounts were opened within a short period. Since there was no other material brought on record by the Department it was held by the Hon'ble High Court that the transaction was genuine.*

*2. Principal Commissioner Of Income Tax, Udaipur Vs. M/S. Shubh Mines Pvt. Ltd. Udaipur High Court dated 03.05.2016*

*1. This appeal is directed against order dated 9.10.14 of Income Tax Appellate Tribunal IT AT), Jodhpur Bench, Jodhpur, whereby an appeal preferred by the Revenue against the order of Commissioner of Income Tax (Appeals) [CIT(A)], Jodhpur, dated 30.6.14, deleting the addition of Rs.75,00,000/- made by the Assessing Officer (AO) under Section 68 of the Income Tax Act, 1961 (for short "the Act"),*

*vide assessment order dated 4.3.14 for the assessment year 2006-07, has been dismissed.*

*2. The relevant facts are that the assessee, a company, introduced share application money to the tune of Rs. 75,00,000/- including the sum of Rs.50,00,000/- received allegedly taken from the entry provided namely, Moderate Credit Corporation Limited, Delhi, during the previous year relevant to the assessment year. The AO observed that the assessee could not substantiate necessity for obtaining the huge share application money only after few months of promoting the company. The AO on the basis of the statements of one Shri Aseem Kumar Gupta, concluded that the money deposited in the bank accounts of the assessee company is bogus entry. Accordingly, treating the money received as aforesaid as the money belonging to the assessee company, the same was added to the income of the assessee under Section 68 of the Act.*

*3. Aggrieved thereby, an appeal preferred by the assessee was allowed by the CIT (A) vide order dated 30.6.14. The CIT (A) observed that investment has been made through regular banking channel and it has been refunded through regular banking channel when project of the company was dropped. The CIT (A) found that the investment and refund of the share application money are verifiable from the bank accounts of the appellant company. The statements of Shri Aseem Kumar Gupta recorded behind the back of the company, were not found reliable.*

*That apart, the CIT (A) found that there is no evidence whether direct or indirect to prove that any cash or unaccounted money had either flown from the assessee company to the share applicant company at the time of investment or from share Applicant Company to the assessee company at the time of refund. Accordingly, the addition made was ordered to be deleted.*

4. *Aggrieved by the appellate order, an appeal preferred by the Revenue before the ITAT, stands dismissed by the order impugned. Hence, this appeal.*

5. *Learned counsel for the Revenue contended that this is a case of bogus entry recorded as share capital money. Learned counsel submitted that relying upon the survey conducted in third party's case and the statements of Shri Aseem Kumar Gupta, the addition made by the AO was absolutely justified. Learned counsel submitted that the IT AT has erred in ignoring the fact that the assessee could not substantiate its necessity for obtaining huge share application money only after a few months of promoting the company.*

6. *We have considered the submissions of the learned counsel and perused the material on record.*

7. *A bare perusal of the assessment order reveals that the AO has made the addition on suspicion which is based on the statements of third party Shri Aseem Kumar Gupta, admittedly, recorded in the back of the assessee. It has come on record that the share application money of Rs.50,00,000/- was received from Moderate Credit Corporation Ltd., a listed company. It is not disputed before this court that the investment made was received by account payee cheque and the same was refunded by an account payee cheque when the company dropped its project. In the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the IT AT, which remains a finding of fact, cannot be said to be capricious or perverse.*

8. *In view of the discussion above, in our considered opinion, no substantial question of law arises for consideration of this court in the present appeal.*

9. *Accordingly, the appeal of Department is dismissed.*

3. *Principal Commissioner of Income Tax-1 vs. Green Valley Plywood Limited ITA358/2016, New Delhi High Court dated 01.06.2016.*

1. *This Appeal is by the Revenue against the order dated 30th October, 2014 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 4320/Del/2012 for Assessment Year (AY) 2003-04.*

2. *The issue sought to be urged by the Revenue in the present Appeal is whether the IT AT was justified in upholding the order of the Commissioner of Income Tax (Appeals) in deleting the addition made by the Assessing Officer (AO) of Rs.1,20,00,000/- to income disclosed in the return filed for AY in question on account of unexplained credit under Section 68 of the Income Tax Act, 1961 (Act).*

3. *Learned counsel for the Revenue does not dispute that in the present case despite the Assessee furnishing confirmation from the investor companies, their acknowledgment returns, certificates of incorporation, confirmation of payment of share application money etc, the AO did not conduct any inquiry to verify the said documents. He only relied on the report of investigation which in turn was based entirely on the statements of the alleged accommodation entry providers. However, Mr Zoheb Hossain, learned Senior Standing counsel appearing for the Revenue, seeks to rely on the decision of the Calcutta High Court in Hindustan Tea Trading Company v Commissioner of Income Tax (2003) 263 ITR 289 (Cal) that in such*

*event the matter should be remanded to the CIT (A) for a fresh consideration of the genuineness and creditworthiness of the creditors.*

*4. The Court is not willing to accept the above submission for the reason that the AY in question is of 2003-04 and at this stage to remand the matter to enable the Revenue to rectify an obvious error would not be justified. No substantial question of law arises.*

*5. The appeal is dismissed both on the grounds of the delay in filing as well as on merits.*

*4. Commissioner Income Tax, Siliguri Vs Hotel Silver Cascade Pvt Ltd., Calcutta High Court Dated 08.06.2016.*

*The Court : The appeal is directed against a judgment and order dated 24th February, 2009 passed by the Income Tax Appellate Tribunal "A " Bench, Kolkata in IT A Nos. 799 to 802 (Kol) of 2008 pertaining to the assessment years 1999-2000, 2000-01, 2001-02 and 2003-04.*

*The Assessing Officer made additions under Section 68 principally on two grounds: (a) that the assessee could not produce the share application forms submitted by some of the applicants of share, and (b) that the assessee was unable to produce those shareholders before the Assessing Officer. On these two grounds the Assessing Officer made additions under Section 68 with respect to the money which the assessee received on account of share application. The CIT(A) concurred with views of the Assessing Officer. In an appeal preferred by the assessee, the learned Tribunal deleted the additions for the following amongst other reasons:*

*"Thus the AO has admitted that the assessee has established the identity of the share applicants and also that the share applicants*

*are assessed to income tax. Once the assessee has established identity of share applicant and furnished their income tax file number the assessee has discharged the burden of proving the share application money. While taking this view we also derive support from the decision of Hon'ble Apex Court in the case of CIT vs Orissa Corporation P. Ltd. (159 ITR 78) (SC). We, therefore, respectfully following the above decisions of the Hon'ble Apex Court in the case of Lovely Export (P) Ltd. & Orissa Corporation P. Ltd. (supra) hold that the A. O. was not justified in treating the share application money as unexplained cash credit u/s. 68. The additions made by the AO for unexplained cash credit for the assessment year 1999-2000, 2000-01, 2001-02 and 2003-04 are deleted." Mr. Dudhoria, learned advocate appearing for the revenue/appellant, submitted that the share application forms were not produced by the assessee and the learned Tribunal ignored that fact.*

*We are unable to accept this submission. The share application forms, it is in evidence, were destroyed by fire. The point raised by the Assessing Officer is that the FIR lodged by the assessee does not contain any mention to the share application forms allegedly destroyed during the fire. We are unable to attach any importance to the omission pointed out by the Assessing Officer. It is not humanly possible for a person who has suffered an accident by fire to give particulars of all the documents in the FIR, which were or may have been destroyed. Merely on the basis of this omission, it cannot be said that the assessee failed either to offer an explanation as regards the sum found credited in its books or that the explanation offered by it was not satisfactory. No other point was we are of the opinion that this appeal does not involve any question of law and therefore, is dismissed.*

5. In case of *M/s Jalan Timbers vs. CIT 223 ITR 11 (Gau.)*, the Hon'ble High Court observed as under:-

*"It is true that by proving the identity, the assessee cannot be said to have discharged its onus. In the instant case, the amounts were shown in the income-tax return of the assessee. Besides, the creditors had also shown in the returns about the giving of the loan to the assessee. Strangely, the Income-tax Officer while making the assessment in respect of the three creditors above named accepted the returns. This itself will go to show that the amount received by the assessee was at least prima facie genuine. As the Income-tax Officer had accepted the returns of the three creditors it should go to mean that the amounts given by those creditors were also genuine. On going through the Tribunal's judgment, we find that the Tribunal observed thus: "Of course, confirmation letter was filed but in the instant case, the Income-tax Officer went further and verified the assessment records of that creditor from which he found various facts as mentioned in the assessment order and as discussed by us above. Thus, in our opinion, identity of the creditor alone is not sufficient. It has also to be shown that the creditor had the capacity to advance the loan and that the loan itself was genuine." The Tribunal, however, did not make any endeavour to give any cogent reason why the income-tax returns filed by the creditors and accepted by the Income-tax Officer should be ignored. In our view, the assessee had at least proved its case. Accordingly, we answer the three questions in the negative, i.e., against the Revenue and in favour of the assessee."*

*Thus where return of income is filed by the creditor of the assessee and is accepted by the Department the genuineness of the transaction cannot be doubted.*

6. *In the case of Orchid industries Pvt. Ltd. Vs. DCIT, ITA No. 1867/ Mum/2012, Date of Pronouncement: 7th Feb, 2014*

*ITAT Mumbai deleted the addition made in respect of Share Capital Subscription received by the Assessee Company from Kolkata based companies. IT AT has relied on the case of CIT vs. lovely Exports Pvt. Ltd. (supra) in which Hon'ble supreme court, has held that if the share replication money is received by the assessee company from alleged bogus shareholders whose names are given to the AO then department is free to proceed to reopen their individual assessment in accordance with law but it cannot be regarded as undisclosed income of the assessee company.*

*Facts of the case assessee are private limited company engaged in the business of manufacturing of embroidery laces. During the assessment proceedings, the AO noted that in the balance sheet as on 31.03.2004, the assessee has received share capital to the tune of Rs. 51,50,000/- and Rs. 1,21,50,000/- as share premium. The assessee was asked by the AO to produce the complete name, full address of the shareholders, the amount received from them, Pan and income tax particulars of the shareholders as well as mode of share capital including premium. In response, the assessee filed the details vide letter dated 13.11.2006. From the details furnished by the assessee the AO noted that the majority of the shareholders were form Kolkata. Accordingly, a letter dated 15.11.2006 was issued to the ADIT (Investigation Unit) Kolkata to conduct an enquiry with regard to the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors.*

*The ADIT (Inv.) Kolkata submitted enquiry report, wherein it has been stated that for verification of the creditors, summons under section 131 were issued to the parties. Since there was no compliance of summons and the whereabouts of the parties could not*

*be located as far as five creditors and, therefore, it was observed that the existence of the parties appears to be doubtful. In case of two creditors the summons were duly served and in response the response the representative of the creditors were appeared before the ADIT (Investigation), Kolkata, however, it was observed in the report the these companies were only paper company and used by the these companies were only paper company and used by the assessee to bring its unaccounted money back in the form of share capital. Based on the report of the ADIT (Investigation) Kolkata, the AO made an addition of Rs.95 lakhs as unexplained cash credit under section 68 of the act. This addition was made in respect of share application money with premium claimed to have been received from 7 parties, out of total 13 parties.*

*Held:-*

*The assessee has received share capital and share premium from 13 parties, out of which 7 parties belong to Kolkata. The AO has decided to conduct an enquiry in respect of the 7 parties belong to Kolkata by writing a letter dated 15.11.2006 to ADIT(Inv.) Kolkata.*

*The ADIT (Inv.) Kolkata sent its report vide letter dated 20.12.2006, which has been reproduced by the AO. The AO by relying upon the report of the ADIT (Inv.) Kolkata has made addition of share capital and premium amount in respect of these seven parties under 68 of the act. We will analyze party wise report and basis of disallowance as well as evidences/material produced by the assessee in support of its claim as under:-*

*M/s Century Commo Trade Pvt. Ltd.:*

*The summons under section 131 was issued but there was no response from the said party as per the report of the ADIT (Inv.)*

*Kolkata. Even the Inspector was unable to locate the party. Accordingly, it was observed in the report that the existence of the party appears to be doubtful.*

*M/s Fedder Tie Up Pvt. Ltd.:*

*The report of the ADIT (Inv.) Kolkata is identical in verbatim as in the case of M/s Century Como Trade Pvt. Ltd. accordingly, the existence of the party was doubted. M/s Nahar Vinivog Pvt. Ltd. M/s Sunshine Sales Pvt. Ltd. & M/S Sigma Suppliers Pvt. Ltd.:*

*The report of the ADIT (inv.) in respect of these three parties also similar to that of two other as noted above and the existence of these parties were also doubted by the ADIT (Inv.) in its report.*

*It is pertinent to note that though this report is a good evidence with the AO to doubt the existence of the parties, however, when the assessee has produced all the relevant evidence and material, which is sufficient to prove the existence, identity, creditworthiness of the Parties then it was the duty and burden n the AO to disprove the evidence produced by the assessee. We find from the record that in all these five parties, the assessee has produced PAN, acknowledgement of income tax return filed by these parties, confirmation letter from these parties, whereby it has been confirmed that they have applied for shares of the assessee company and the respective payments were made towards share application. The assessee has also filed the bank account of these parties to show the availability of fund and the payment from the bank account. Apart from this, the assessee has also produced the book of accounts of these parties to show the financial soundness of the parties and sufficient amount of reserve and surplus as well as capital of these companies. Thus, it is clear from the evidence produced by the assessee that the parties were very much in*

*existence as these parties were assessed to income tax. The assessee has produced respective pan and income tax return along with other details. It is manifest from the evidence produced by the assessee that existence/identity and creditworthiness of the parties cannot be doubted. Thus, it appears that the report of the ADIT (Inv.) Kolkata in respect of these five parties is contrary to the fact proved by the assessee with tangible and material evidence brought on record. Once the assessee has discharged its burden by producing the relevant evidence, then the onus is shifted on the AO to disprove the evidence produced by the assessee. In the case in hand, the AO has not proved that the evidence produced by the assessee is either bogus or false. The addition has been made by the A.O. only on the basis of doubt regarding the existence of the parties, which in our view, absolutely contrary to the facts brought on record by the assessee and it goes uncontroverted as the AO has not brought and contrary record or facts. Further, the assessee has also produced all the relevant evidences and record of allotment of shares to these parties, such as the share application form, allotment letter and the share certificate issued by the assessee to these parties. The similar allotment made by the assessee to other six parties has been accepted by the department and the question has been raised only against these 7 parties, which are from Kolkata.*

*Now, we turn to analyse the facts in respect of two other parties, namely, M/s Prime capital market Ltd. and M/s universal multimedia ltd. In its report, the ADIT (Inv.) Kolkata has mentioned that in response to notice the representative of these parties appeared. Copy of bank statement, copy of allotment of shares were produced before the ADIT, however, the ADIT (Inv.) found from the bank statement that before issuing the cheques of the share application money, substantial amounts were deposited in respective of bank accounts through cheques and only on the basis of the fact that the*

*substantial amounts were deposited through cheques prior to issuing the share application money, the ADIT (Inv.) has observed that the assessee has utilized these parties to bring its unaccounted money back in the form of share capital in their books of accounts. It appears that the investigation report of the ADIT (Ins.) is inconclusive and it is only an inference has been made on the basis of the fact that a substantial amount has been deposited in respective bank account through cheques before the share application money was paid to the assessee. The observation of the ADIT (Inv.), in our view, is purely based on an imagination and assumption and not based on the correct and real facts because there in no other enquiry conducted by the ADIT (Inv.) Kolkata to find out as from where these cheques were deposited in the accounts of these two parties. Merely because the cheques were deposited in the respective accounts would not lead to the conclusion that these cheques money was the assessee's own money routed through these parties until and unless it is found in the enquiry and substantiated with the facts and material. This is but natural that whenever a large payment is to be made funds are to be arranged and, therefore if an amount through cheque is deposited in the bank account before making the payment of share application money, in absence of any fact, material or finding, it cannot be said that the said money is assessee's own money.*

*We further note that the assessee produced the balance sheet, profit and loss account, income tax return, PAN and confirmation from these parties, which clearly discharge the assessee from its onus to prove its claim. When the assessee has brought on record the relevant evidence including the balance sheet and profit & loss account and return of income of these parties, then in the absence of proving contrary by the AO these material evidence cannot be brushed aside merely on the basis of suspicious. Even otherwise,*

*when the assessee has produced the share application form, allotment letter share certificate as well as bank account then the genuineness of the transaction cannot be doubted in the assessee is even otherwise cannot be doubted in the absence of any contrary finding. The evidence produced by the assessee is even otherwise cannot be doubted when the return of income is already by the parties are on the record of the department. Thus, we find that the disallowance of the claim of the assessee and addition made by the AO under section 68 is purely based on assumption, guess work without substantiated by any evidence or Material This is not a case of bogus shareholders as all these parties are the company, which are in existence and subjected to income tax as the assessee has produced the relevant evidence. Therefore, when the assessee has produced all the relevant evidences, and if the department has doubted the source of the share application money, then it is free to take necessary action in respect of these parties. The Hon'ble supreme court in the case of CIT Vs. Lovely exports Pvt. Ltd. (supra), has held that if the share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO then the department is free to proceed to reopen their individual assessment is free to proceed to reopen their individual assessment in accordance with law but it cannot be regarded as undisclosed income of the assessee company. There is nothing on record to show that these transactions of allotment of share is a sham transaction, then the department cannot treat the said share capital money as undisclosed income of the assessee. In view of the above discussion as well as facts and circumstances of the case, we are of the considered opinion that the addition made by the AO under section 68 of the act is not justified and the same is hereby deleted.*

7. *In case of M/s Monnet Ispat & Energy Ltd. vs. Dy. CIT (2008) 171 Taxmann 27 (Delhi)*

*It was found that the share application money was received through banking channel and that the assessee had produced confirmatory letters. The creditor was assessed to tax and the PAN had been given in the certificate filed. It was held by the Hon'ble Delhi High Court that the assessee had completely discharged the identity of the creditor, creditworthiness and genuineness of the transaction. In case of CIT vs. Diamond Products Ltd. (2009) the Hon'ble Delhi High Court held that the LD. A.O. is not permitted to examine the source of source, once the assessee has established that the creditor is genuine and creditor's identity and genuineness has been established.*

8. *In case of CIT vs. Orissa Corporation P. Lt. 159 ITR 78*

*The Hon'ble Supreme Court laid down the extent of burden of proof in case of a cash credit and the levy of penalty:*

*"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 assesseees. Their index numbers were 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 creditworthy 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 anything further. In the premises, if the Tribunal came to the conclusion that the assessee has 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.*

*It is common ground that the question on the penalty aspect depended on the quantum aspect."*

*The creditor has to be proved to have actually advanced the moneys to the assessee. However, once the creditor is shown to have advanced the money, the assessee is not required to prove the credits in the account of the creditor. There is no liability on an assessee to prove the source of source. In case of the appellant it is found that the bank account of these parties' credits by cheque, before payment to assessee is made. In case of Nemi Chand Kothari vs CIT (2003) 264 ITR 254, the Hon'ble Gauhati High Court examined the question of proving creditworthiness of sub-creditors. It was held by the Hon'ble Court that:-*

*(i) If sections 106 and 68 have to survive together, the logical interpretation will be that while the assessee has to prove only his special knowledge, i.e., the source from where he has received the credit and once he discloses the source from which he has received the money, he must also establish that so far as his transaction with his creditor is concerned, the same genuine and his creditor had the creditworthiness to advance the loan, which the assessee had received. When the assessee discharges the burden so placed on him, the onus, then, shifts to the Assessing Officer if the Assessing Officer wishes to assess the said loan as the income of the assessee from undisclosed source, to prove either by direct evidence or indirect/circumstantial evidence that the money, which the assessee received from the creditor actually belonged to, and was owned by, the assessee himself.*

*(ii) If there is direct evidence to show that the loan received by the assessee actually belonged to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source ; but if there is no direct evidence in this regard, then, the indirect or circumstantial evidence has to be conclusive in nature and must, in such circumstances, unerringly point to the assessee as the person from whom the money had actually flown to the hands of the sub-creditor and, then, routed through the hands of the sub-creditor to the hands of the creditor. For this purpose, the circumstantial evidence has to be not only consistent with the hypothesis that the money belonged to the assessee, but that this hypothesis must also be inconsistent with the hypothesis that none other than the assessee owned the said money. If the conclusion be that the money received, as loan, by the assessee may or may not belong to him or if the possibility exists that the money received, as loan, by the assessee may not belong to him, then, in none of such two cases, the loan amount can be conclusively treated as income from undisclosed source of the assessee inasmuch as for assessing the money as income of the assessee from undisclosed source, there must be clinching evidence to show that the money actually belonged to none but the assessee himself. If no such clinching evidence is available, the money may be treated as the income from disclosed source of the creditor or of the sub-creditor, as the case may be.*

*(ii) If the inquiry under section 68 reveals that though the creditor had the creditworthiness, on the day on which he had advanced the loan to the assessee, yet the source of the creditor is not genuine, that is to say, though the transaction between the assessee and the creditor is genuine, the transaction between the creditor and the sub-creditor is not genuine, then, in such a situation, it cannot be read as a corollary nor can it lead to the lone and only conclusion, in*

*the absence of any other material, that the money that has changed hands from the sub-creditor to the creditor was received by the sub-creditor from none other than the assessee himself.*

9. *In case of CIT vs. Oasis Hospitalities (P) Ltd, (2011) 238 CTR 402 (Del. HC)*

*The Hon'ble Delhi High Court considered the case of increase in share capital. It was held that though LD. A. O. was permitted to examine increase of share capital and ask the assessee to explain nature and source of credit, but the burden was discharged when the assessee produced PAN card and bank statement of creditors to show it had sufficient balance. It was observed by the High Court as under:-*

*"In all these appeals, issue relates to the addition made by the LD. A. O. under s. 68 of the IT Act (hereinafter referred to as 'the Act') on account of unexplained share application money. Though the background of the facts in which these additions were made in respect of different assessees may not be identical, but there is lot of similarity. In any case, since principle of law which is to be applied in all these cases is common, by way of this singular judgment all these appeals can be decided. However, in the process we would intend to dispose of these appeals by this common judgment. We would proceed to discuss the position of law in first instance and thereafter, on the application of that law, we shall answer the question which arises in different appeals.*

2. *Sec. 68 of the Act deals with unexplained incomes and is couched in the following language:*

*"Sec. 68.—Cash credits.—Where any sum is found credited in the books of an assessee maintained for any previous year, and assessee*

*offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the LD. A.O., satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

3. *As per the provisions of this section, in case the assessee has not been able to give satisfactory explanation in respect of certain expenditure or where any sum is found credited in the books of accounts, the LD. A.O. can treat the same as undisclosed income and add to the income of the assessee. The assessee is required to give satisfactory explanation about the "nature and source" of such sum found credited in the books of accounts.*

4. *It is a common knowledge that insofar as the companies incorporated under the Indian Companies Act are concerned, whether private limited or public limited companies, they raise their capital through shares, though the manner of raising the share capital in the private limited companies on the one hand and public limited companies on the other hand, would be different. In the case of private limited companies, normally, the shares are subscribed by family members or persons known/close to the promoters. Public limited companies, on the other hand, generally raise public issue inviting general public at large for subscription of these shares. Yet, it is also possible that in case of public limited companies, the share capital is issued in a close circuit.*

5. *When the companies incorporated under the Companies Act raise their capital through shares, various persons would apply for shares and thus give share application money. These amounts received from such shareholders would, naturally, be the sums credited in the books of account of the assessee. If the LD. A.O. doubts the genuineness of the investors, who had purportedly subscribed to the share capital, the LD. A.O. may ask the assessee*

*to explain the nature and source of those sums received by the assessee on account of share capital. It is in this scenario, the question arises about the genuineness of transactions. The plain language of s. 68 of the Act suggests that when the assessee is to give satisfactory explanation, burden of proof is on the assessee to provide nature and source of those receipts.*

6. *What kind of proof is to be furnished by the assessee, is the question. It has come up for discussion in various judgments rendered by this Court, other Courts as well as the Supreme Court. The law was discussed by a Division Bench of this Court in the case of CIT vs. Divine Leasing & Finance Ltd. (2007) 207 CTR (Del) 38 : (2008) 299 ITR 268 (Del). Since the entire gamut of case law as on that date was visited in the said judgment, we may initiate our discussion by taking note of this case. In this case, the Court highlighted the menace of conversion of unaccounted money through the masquerade or such channels of investment in the share capital of a company and thus stressed upon the duty of the Revenue to firmly curb the same. It was also observed that, in the process, the innocent assessee should not be unnecessarily harassed. A delicate balance must be maintained. It was, thus, stressed:*

*"15. There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of ability and complexity of the assessee it should not be harassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and*

*make available to the LD. A.O. for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of ss. 68 and 69 of the IT Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the LD. A.O. harbours doubts of the legitimacy of any subscription he is empowered, nay duty bound, to carry out thorough investigations. But if the LD. A.O. fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company."*

7. *Taking note of the earlier judgment of Full Bench of this Court in the case of CIT vs. Sophia Finance Ltd. (1993) 113 CTR (Del)(FB) 472 : (1994) 205 ITR 98 (Del)(FB), the Court observed that the Full Bench had enunciated that s. 68 reposes in the ITO or LD. A.O. the jurisdiction to inquire from the assessee the nature and source of the sum found credited in its books of accounts. If the explanation preferred by the assessee is found not to be satisfactory, further enquiries can be made by the ITO himself, both in regard to the nature and the source of the sum credited by the assessee in its books of accounts, since the wording of s. 68 is very wide. The Full Bench opined that if the shareholders exist then, possibly, no further enquiry need be made. But if the ITO finds that the alleged shareholders do not exist then, in effect, it would mean that there is no valid issuance of share capital. Shares cannot be issued in the names of non-existing persons. If the shareholders are identified and it is established that they have invested money in the purchase of shares then the amount received by the company would be regarded as a capital receipt but if the assessee offers no explanation at all or the explanation offered is not satisfactory then, the provisions of s. 68 may be invoked.*

8. The Court also referred to the earlier Division Bench judgment in the case of *CIT vs. Dolphin Canpack Ltd (2006) 204 CTR (Del) 50: (2006) 283 ITR 190 (Del)* and quoted the following observation:

*".....credit entry relates to the issue of share capital, the ITO is also entitled to examine whether the alleged shareholders do in fact exist or not. Such an inquiry was conducted by the LD. A.O. in the present case. In the course of the said inquiry, the assessee had disclosed to the LD. A.O. not only the names and the particulars of the subscribers of the shares but also their bank accounts and the PAN issued by the IT Department. Super added to all this was the fact that the amount received by the company was all by way of cheques. This material in the opinion of the Tribunal, sufficient to discharge the onus that lay the assessee."*

The Court took note of many other judgments of different High Courts and on the analysis of those judgments formulated the following propositions, which emerged as under:

*"18. In this analysis, a distillation of the precedents yields the following propositions of law in the context of s. 68 of the IT Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders register, share application forms, share transfer register etc. it would constitute acceptable proof or acceptable explanation by the assessee.*

(5) *The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;*

(6) *the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the LD. A. O. take such repudiation at face value and construe it, without more, against the assessee; (7) the LD. A.O. is duty bound to investigate the creditworthiness of the creditor/subscriber, the genuineness of the transaction and the veracity of the repudiation."*

10. *By this common judgment, the Division Bench decided these appeals of which one appeal related to Lovely Exports (P) Ltd. Against the said judgment, Special Leave Petition was preferred, which was dismissed by the Supreme Court vide orders dt. 11th Jan., 2008 and is reported as CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195. The Court while dismissing the SLP recorded some reasons as well albeit in brief, which are as under :*

"2. *Can the amount of share money be regarded as undisclosed income under s. 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 shareholders, whose names are given to the LD. A.O., then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."*

11. *It is clear from the above that the initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove:*

- a) *Identity of shareholder;*
- b) *Genuineness of transaction; and*
- c) *Creditworthiness of shareholders.*

12. *In case the investor/shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the LD. A.O. to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc. can be furnished.*

13. *Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc.*

14. *As far as creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statements of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. This judgment further holds that once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the LD. A. O. to scrutinize the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the LD. A. O. and he cannot go into the realm of suspicion.*

15. At this stage, we would like to refer to the judgment of the Bombay High Court in the case of CIT vs. Creative World Telefilms Ltd. (in IT Appeal No. 2182 of 2009 decided on 12th Oct., 2009). The relevant portion of this order is reproduced below:

*"In the case in hand, it is 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 LD. A.O. to make proper investigation and reach the shareholders. The LD. A. O. did nothing except issuing summons which was ultimately returned back with an endorsement 'not traceable'. In our considered view, the LD. A.O. 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 LD. A. O. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limine with no order as to costs."*

*In addition to the above decisions reliance is also placed on the following decision of the Hon'ble Courts:-*

1. CIT vs. Lovely Exports P Ltd. 216 CTR 195 (SC)

*"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company."*

2. CIT vs. Value Capital Services P Ltd. 221 CTR 511 (Del HC)

*"If department wants to make addition on account of share application money, burden is on department to show that even if applicant did not have means to make investment, investment made by assessee actually emanated from coffers of assessee so as to enable it to be treated as undisclosed income of assessee.*

*The assessee had received an amount of Rs. 51 lakhs as share application money from 33 persons. The Assessing Officer required the assessee to produce all these persons. It appeared that some of them did appear. The Assessing Officer accepted the explanation and the statement given by the three of these persons but found that the response from the others was either not available or was inadequate. On this basis, the Assessing Officer added an amount of Rs. 46 lakhs pertaining to 30 of the persons to the income of the assessee.*

*Held that it is quite obvious that is very difficult for the assessee to show the creditworthiness of strangers. If the revenue had any doubt with regard to their ability to make the investment, their returns might be reopened by the department."*

### *3. CIT vs. New Age Infosys, MANU/DE/2998/2010*

*"We must hasten to add that it is not our finding that share applicants in the present case are bogus. Genuineness of the applicants and transfer of money from them has been clearly established. In case source of funds in the hands of applicants is doubted, which case revenue is seeking to make at present, then revenue has to proceed against the applicants in accordance with law. Addition in the hands of the company under Section 68 of the I.T. Act is not justified at all. On facts and circumstances of the case, we see no error in the approach of the Id. CIT(A) in deleting the addition disputed in the two grounds of appeal by the revenue. These grounds of appeal are accordingly rejected."*

4. *BhavShati Steel v. CIT [2010] 320 ITR 619 (Delhi HC)*

*"We find that the CIT(A) had considered in detail the case of each of the shareholders and came to a conclusion of fact that the identity and creditworthiness of the share holders and the genuineness of the transactions stood established. Therefore, the finding returned by the Tribunal to the contrary cannot be accepted as it is contrary to the record. In any event we also note that the Supreme Court in the case of CIT v. Lovely Exports (P) Ltd. [2008] 216 CTR 195 considered the question as to whether the share application money can be regarded as undisclosed income under Section 68 of the Income Tax Act, 1961. The Supreme Court dismissing the SLP observed that if the share money is received by the assessee company from alleged bogus shareholders whose names are given to the Assessing Officer, then the Department is free to proceed to assess them individually, in accordance with law. The Supreme Court did not find any infirmity with the impugned judgment of the High Court which was a common order along with the decision in CIT v. Divine Leasing & Finance Ltd. MANU/DE/9645/2006: [2008]299ITR268(Delhi). Since the Commissioner of Income Tax (A) has not only found that the identity of each of the shareholders stood established, but has also examined the fact that each of them were Income Tax assesseees and had disclosed the share application money in their accounts which were duly reflected in their Income Tax return as well as in their balance sheets. In these circumstances we see merit in what the learned Counsel for the appellant has submitted and we feel that the Tribunal was unjustified in coming to the conclusion that the CIT(A) had not considered the matter in the right perspective. Consequently, we decide the question in favour of the assessee and set aside the order passed by the Tribunal."*

5. *Aquatech International vs. ITO 119 TTJ 340 (Del- A Bench)*

*"Where the assessee had received money on account of share application and the same was credited by the assessee in its share capital account and it was treated as unexplained cash credit by the Assessing Officer: Held that to discharge the burden, the assessee company had filed confirmation, PAN, copy of balance sheets of the share applicants before the Assessing Officer. The plea on which the Assessing Officer had declined to accept the same was that these persons did not appear in person before the Assessing Officer and creditworthiness of these persons could not be proved. From the record, it was found that the assessee company had filed confirmation in respect of all the share applicants. All the documents produced by the assessee clearly established not only identify of the share applicants but also the source from which they had given the money to the assessee company, in the form of share capital. Thus, there was no merit in the action of authorities for adding the amount of share capital in the hands of the assessee company by invoking provisions of section 68."*

*It is submitted that the appellant had filed all the evidences to discharge its liability to prove the identity, creditworthiness and genuineness of the transactions with the six parties by submitting the following details before the Ld A. O.*

- A) Balance Sheet*
- B) Copy of Income Tax Return.*
- C) Bank Account Statement.*
- D) Share Application.*
- E) Account Confirmation Statement in respect of share application money.*

*The accounts of these parties also show sufficient balance to issue account payee cheques to the appellant. The analysis of these accounts shows the following position:-*

1. *M/s R.S Capsules Pvt. Ltd.*

*The share application money of Rs. 25,00,000/- was debited in the accounts on 28.08.2009. The amount was paid by Ch. No. 941813 dated 29.08.2009. It is seen that on 29.08.2009 the party had balance of Rs. 38,88,122/- before issuing the cheque. Therefore party had sufficient balance in the accounts before issuing the cheque. The party was duly allotted 1000 shares on 30.12.2010.*

2. *M/s Amrit Suppliers Pvt. Ltd.*

*The share application money of Rs. 25,00,000/- was debited in the accounts on 29.08.2009. The amount was paid by Ch. No. 909528 dated 29.08.2009. It is seen that on 29.08.2009 the party had balance of Rs. 30,04,710/- before issuing the cheque. The thus, sufficient balance in the accounts before issuing the cheque. The party allotted 1000 shares on 30.12.2010.*

3. *M/s. Agni Transport Pvt. Ltd.*

*The share application money of Rs. 40,00,000/- was debited in the accounts on 11.09.2009. The amount was paid by Ch. No. 967781 dated 11.09.2009. It is seen that on 11.09.2009 the party had balance of Rs. 40,10,564/- before issuing the cheque. The party had sufficient balance in the accounts before issuing the cheque. The party was duly allotted 1600 shares on 30.12.2010.*

4. *M/s Maa Jagdamba Nirman Pvt. Ltd.*

*The share application money of Rs. 35,00,000/- was debited in the accounts on 14.09.2009. The amount was paid by RTGS dated 14.09.2009. It is seen that on 14.09.2009 the party had balance of Rs. 35,07,841/- before making RTGS payment. The party had,*

*therefore, sufficient balance in the accounts before making the payment. The party was duly allotted 1400 shares on 30.12.2010.*

*5. M/s Melody Residency Pvt. Ltd.*

*The share application money of Rs. 30,00,000/- was debited in the accounts on 06.10.2009. The amount was paid by RTGS dated 06.10.2009. It is seen that on 06.10.2009 the party had balance of Rs. 51,60,082/- before making RTGS payment. Therefore party had sufficient balance in the accounts before making the payment. The party was duly allotted 1200 shares on 30.12.2010.*

*6. M/s Arnab Properties Pvt. Ltd.*

*The share application money of Rs. 25,00,000/- was debited in the accounts on 06.10.2009. The amount was paid by RTGS dated 06.10.2009. It is seen that on 06.10.2009 the party had balance of Rs. 30,09,930/- before making RTGS payment. The party had, thus, sufficient balance in the accounts before making the payment. The party was duly allotted 1000 shares on 30.12.2010.*

*The above details show that these parties had sufficient balance in their accounts to issue account payee cheques to the appellant. In the order passed the Ld. A.O. has referred to the non-appearance of directors of the above six companies. It is submitted that the onus on the appellant was to prove the identity, creditworthiness of the party and genuineness of these transactions. The onus was duly discharged by the appellant. It was for the Ld. A.O. to examine the parties herself or through issue of commission and take necessary action against those parties. Ld. A.O. should not have r adverse view after the appellant had discharged its onus to prove the share application money received. Further, the genuineness of the transaction is further proved by the fact that these parties were duly*

*allotted 30.12.2010 in the subsequent year. The addition made may, therefore, be deleted.*

*Ground No. 2 is in regard to addition of Rs. 81,75,000/- as unexplained investment being loan taken from one M/s Advani Pvt. Ltd. The Ld. A.O. issued notice u/s 133(6) on 04.03.2013 to four parties including M/s Advani Pvt. Ltd. All the parties responded to the communication and filed all necessary documents called for. In case of M/s Advani Pvt. Ltd, Shri Gyan Swaroop Garg, director, appeared and filed details. The details were filed in the office as the Ld. A.O. was not present.*

*During the relevant year the appellant received unsecured loan of Rs 81,75,000/- from M/s Advani Pvt. Ltd. The appellant submitted before the Ld. A.O. the Confirmation Letter, Balance sheet and ITR of M/s Advani Pvt. Ltd for the AY 2010-11. In response to notice u/s 133(6) of The Income Tax Act, 1961 the party also filed reply, vide letter dated 07.03.2013, which has been duly acknowledged by the department. The documents submitted before the Ld. A.O. were:-*

- 1) PAN Number.*
- 2) Copy of acknowledgement of Income Tax Return filed for the AY 2010-11.*
- 3) Copy of audited Balance Sheet along with bank statements from where the funds have been lent.*
- 4) Copy of confirmation of Loan Account.*

*The company has given loan through an account payee cheque and also the company was having sufficient profit and proper bank balance at the time of lending. Ld. A.O. did not accept the evidences filed and made addition in the assessment by making the following observations, which is given hereunder:-*

"3.14 The assesses has shown unsecured loans of Rs 81,75,000/- from Advani Pvt. Ltd. The ITR of the company has a returned income of Rs 24,32,770/- . The loan giver and loan receiver companies both are of Sh. Gyan Swaroop Garg as evidenced by same signature on confirmation of accounts. The bank statement also shows transaction {submission dated 07-03-2013} which have come from unknown sources.

3.15 Therefore I am of the opinion that the above mentioned credit is unexplained as identity, genuineness and creditworthiness are not creditworthiness are not ascertained and therefore the said amount is added as unexplained credit u/s 68 to the taxable income of the assesses."

It is submitted that the Ld. A. O. did not find any deficiency in the details filed and has rejected the details merely on the ground that one of the director was common. The loan taken has not been found as unexplained by the Ld. A.O. The Ld. A.O. has accepted that M/s Advani Pvt. Ltd had filed return showing income of Rs. 24,32,770/- The copy of account filed before the Ld. A.O. also shows that the amount of Rs. 81,75,000/- was given by the party as per detail below :-

Date	Balance before Issue of cheque (in Rs.)	Ch. No.	Amount (in Rs.)
14.09.09	10,05,441	576445	1,50,000
03.11.09	27,44,567	896595	15,00,000
06.11.09	15,60,326	896597	15,00,000
11.11.09	25,53,529	896600	25,00,000
12.11.09	25,53,529	896601	25,25,000
		TOTAL	81,75,000

The appellant had filed the documents to prove the identity, creditworthiness and genuineness of the transaction and discharged the onus to prove the credit. The Ld. A.O. has not found any

*omission or deficiency. It is further submitted that the amounts had been paid back by the appellant to M/s Advani Private Limited in the F. Y. 2009-10 as under:*

<i>Date</i>	<i>Particulars</i>	<i>Vch Type</i>	<i>Vch.No.</i>	<i>Debit</i>	<i>Credit</i>
28.04.2009	ICICI BANK LTD.	Receipt	67		10,45,000
14.09.2009	ICICI BANK LTD.	Payment	378	1,50,000	
12.10.2009	ICICI BANK LTD.	Receipt	378		3,50,000
03.11.2009	ICICI BANK LTD.	Payment	510	15,00,000	
06.11.2009	ICICI BANK LTD.	Payment	522	15,00,000	
11.11.2009	ICICI BANK LTD.	Payment	533	25,00,000	
12.11.2009	ICICI BANK LTD.	Payment	541	25,25,000	
05.12.2009	ICICI BANK LTD.	Receipt	485		47,00,000
				81,75,000	60,95,000
	<i>Closing Balance</i>				20,80,000
				81,75,000	81,75,000

11. Heard the arguments of both the parties and perused the material available on record.

12. Based on the above submission the Id. CIT(A) held that during the assessment proceedings three parties sent their authorized representatives. The Assessing Officer observed that the ARs carried entire forms of share application alongwith acknowledgement with signature and stamp, whereas the same should have been in the possession of Assessee Company. The Assessing Officer observed that the forms did not have application number and the acknowledgement slips did not have stamp on it. Then the Assessing Officer observed that the forms did not look three years old. The Id. CIT(A) observed that The Assessing Officer issued commissions to the DDIT, Investigation, Kolkata for examining the share applicants, who submitted his report to the Assessing Officer. In the report, the DDIT, Investigation stated that authorized representatives of the concerns appeared before him and submitted the following documents:

- i) Copy of share application of Tepe Consultants.
- ii) Copy of bank statement reflecting the transactions.
- iii) Statement showing the immediate source of fund of above transaction.
- iv) Copy of IT acknowledgement of AY 2010-11.
- v) Copy of balance sheet for 31.03.2010 ending.

13. We also find that, the DDIT, Investigation did not comment on the authenticity of the above documents and did not give a report that the documents are either bogus or not valid and left the matter to be decided by the Assessing Officer. It was added by the AO that most of the companies have very meager returned income in FY 2009-10. The Assessing Officer stated that the Assessee failed to produce the parties before him or the parties failed to appear before him or in Kolkata. On these observations, the Assessing Officer added Rs. 1,80,00,000/-. The Assessing Officer issued commission u/s 131 to the DDIT, Investigation, Kolkata as the share applicants reside in Kolkata. The summons u/s 131 were for submission / filing of required details personally or through authorized representatives. The notices were received by the parties in Kolkata. As per the notices, the parties were required to furnish the following details:

- a) ITR for AY 2010-11
- b) Bank Statement copies for FY 2009-10
- c) Share Application Form
- d) Account Confirmation

Besides above, the Assessing Officer with respect to the unsecured loans of Rs.81,75,000/- from Advani Pvt. Ltd. observed that the creditor showed returned income of Rs.24,32,770/-. The Assessee Company and M/s Advani Pvt. Ltd. both are the companies of Sh. Gyan Swaroop Garg, as evidenced by same signature on confirmation of accounts. The Assessing Officer remarked that the source of the funds from which Advani Pvt. Ltd. was not explained. Therefore, he added further Rs.81,75,000/-. The Assessee also received unsecured loans amounting to Rs.81,75,000/- from M/s Advani Pvt. Ltd. The aforesaid creditor duly replied the letter issued from the Assessing Officer. Besides details of PAN, copy of acknowledgement of ITR for AY 2010-11, copy of audited balance sheet, copy of bank statement alongwith the confirmation of the account were filed. The company filed the following details in respect of share applicants:-

- a. Balance Sheet
- b. Copy of Income Tax Return
- c. Bank Account Statement
- d. Share Application
- e) Account Confirmation Statement in respect of share application money.

14. Mr. Gyan Swaroop Garg, one of the directors of the Appellant company travelled from Kolkata to Delhi to submit the reply from above six parties. He appeared before the Assessing Officer in response to notice u/s 133(6) of the Act issued to M/s Advani Pvt. Ltd. He filed the details of M/s Advani Pvt. Ltd. and requested the office staff to accept the details of other six

share applicants. But the office did not accept the submission. This fact was elaborated by the Id. CIT(A) in his order.

15. Further, in response to a summons received u/s 131 for the second time, all six parties sent replies and documents through registered post, which were duly received by the Assessing Officer. The Ld. Assessing Officer was also informed that he could not issue a summons u/s 131 as Kolkata is beyond the distance of 500 km. Then Assessing Officer issued commission to the officer in Kolkata. The auditors and accountants of the above six share applicants appeared before the DDIT, Investigation, Kolkata and submitted the documents called for. The DDIT, Investigation, Kolkata verified these facts and sent his report to the Assessing Officer with no adverse comments.

16. Thus, the Assessee has discharged the initial onus by proving the identity of the creditor, which was complied with by filing the confirmatory letter and other relevant details. The Assessee Company discharged its onus by providing the details and documents in respect of the creditworthiness of the creditors and genuineness of the transactions. All the share applicants are active companies and all of them have records on MCA site. The financial statements of the share applicants were produced to prove the creditworthiness.

17. The Id. CIT(A) held that so far as six share applicants are concerned, the DDIT, Investigation, Kolkata informed that necessary details and documents were filed by the parties in response to a summons issued to them. The DDIT,

Investigation, Kolkata has not commented adversely in his report sent to the Assessing Officer. The share applicants submitted the proof regarding their identity, copy of Income Tax Returns, copy of bank statements alongwith the confirmation of accounts. On these facts and in the circumstances, the Assessing Officer could not dismiss the explanation offered by the Assessee Company with respect to identity and creditworthiness of the creditors and genuineness of transactions unless he had some material in his possession to rebut the explanation offered by the Assessee.

18. As far as, unsecured loan of Rs.81,75,000/- from Advani Pvt. Ltd. is concerned, the Appellant had submitted all the relevant details. The director of the lender company Sh. Gyan Swaroop Garg appeared before the Assessing Officer in response to the notice issued. The Assessing Officer has made a vague comment that the sources of funds of M/s Advani Pvt. Ltd. are unknown. But the Assessing Officer has not pointed out any suspected transaction before advancing the money to the Assessee Company.

19. In view of these facts which have been considered in detail and on perusal of the material on record, allegations of the revenue, replies of the assessee and the shareholders, enquiries conducted by the DDIT (Inv.), we decline to interfere with the reasoned order of the Id. CIT(A). The appeal of the Revenue is hereby dismissed.

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

Order Pronounced in the Open Court on 17/05/2023.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 17/05/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**