

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.6679/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Ronit Capital Management Ltd. 233, Shreeji Industrial Estate, Subhash Road, Jogeshwari (E)-400060.	बनाम/ Vs.	ITO-4(2)(1) 644, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH9239D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharmesh Shah/Ms. Mitali Gopani
Revenue by:	Smt Riddhi Mishra (DR)

सुनवाई की तारीख / Date of Hearing: 30/05/2023

घोषणा की तारीख /Date of Pronouncement: 24/07/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld. CIT(A)-9, Mumbai dated 23.08.2019 for AY. 2012-13

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the addition to the tune of Rs.10,43,77,000/- u/s 68 of the Income Tax Act, 1961 (hereinafter "the Act").

3. Brief facts are that the assessee had filed return of income on 30.09.2012 declaring total income to the tune of Rs.70,768/-. Later, the case of the assessee was selected for scrutiny. The AO noted that the assessee had only partly complied with the notice issued by him on 30.01.2015 and therefore in view of the non-compliance, he framed best judgment assessment u/s 144 of the Act, making several additions totalling Rs 68.83 crores, which are as under: -



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(a) Addition of Securities Premium	Rs.3,86,02,816/-
(b) Addition of Share application money	Rs.11,50,00,000/-
(c) Addition of gross transaction in Multi Commodity Exchange	Rs.53,40,06,550/-
(d) Addition of suppressed interest income	Rs.5,71,510/-
(e) Addition of suppressed profession fees	Rs.1,10,300/-

4. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) and filed additional evidences along with submissions in support of the grounds raised against the above addition/s. It is noted that the Ld. CIT(A) had called for a remand report from the AO, which was submitted by the latter on 13.12.2017. Taking into account the remand report and the submissions of the assessee, the Ld. CIT(A) deleted the additions made on account of securities premium, suppressed interest income & professional fees. The Ld. CIT(A) further restricted the addition made on account of share application monies to the tune of Rs.10,43,77,000/- and also restricted the addition regarding transaction in Multi Commodity Exchange to Rs.1,98,350/- in place of Rs.53,40,06,550/-. Aggrieved by the same, before us, the assessee has only challenged the action of Ld. CIT(A) confirming addition of Rs.10,43,77,000/- in respect of share application money.

5. Assailing the action of Ld. CIT(A), the Ld. AR of the assessee, Shri Dharmesh Shah, submitted that since the AO during the assessment proceeding could not examine the identity, creditworthiness and genuineness of the share applicants from whom the assessee had collected the share application money, the Ld. CIT(A) had called for remand report and the AO pursuant to the same filed his remand report on 13.12.2017. He showed us that the AO had made



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independent enquiries u/s 133(6) of the Act from the nine (9) share applicants from whom the assessee had received an amount of Rs.10,43,77,000/-. The AO in his remand report had also acknowledged that he received confirmation from all of them and they have submitted (i) PAN Card (ii) CIN Master data (iii) Certificate of Incorporation (iv) Share Application Form (v) Board Resolution (vi) Confirmation of Account (vii) Income tax return acknowledgement (viii) Balance-sheet (viii) Bank account statement. The Ld. AR submitted that, on the basis of the enquiries, and upon verifying the relevant documents received from the share applicants, the AO had furnished his remand report [Page 243 to 247 of PB] wherein, he had stated that he had verified the documents submitted by share applicants and found the same to be order. According to the Ld. AR, despite this remand report of AO, the Ld. CIT(A) had erred in opining that the share applicants did not have the creditworthiness/capacity to invest such huge amounts of share premium/capital. The Ld. AR submitted that the reasoning given by the Ld. CIT(A) comprised solely of suspicion and irrelevant considerations viz., the share applicants had (i) meagre income (ii) no major fixed assets (iii) no major administrative expenses (iv) no expenses directly booked for trade/manufacturing and (v) the share applicants received money from some other source prior to the transaction with assessee. According to the Ld. AR, the findings given by the Ld. CIT(A) were extraneous and that his action confirming the addition, despite the remand report of the AO, was fundamentally flawed.



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6. The Ld. AR submitted that only because some investor companies have shown meagre income during the impugned assessment year, could not be a ground to doubt the creditworthiness of the said company especially when the said companies had their own sufficient funds and that the source of funds were discernible from their bank statement/s. The Ld. AR took us through the respective financial statements of the share applicants and brought to our notice that each share applicant barring M/s. Anagi Trading Pvt. Ltd. had substantially own funds to justify the investment made by them in the assessee. Even in respect of M/s. Anagi Trading Pvt. Ltd, he showed that the source of investments were company's own funds, turnover and borrowings, both of which were discernible from the financial statements and drew our attention to balance-sheet placed at page no. 105 PB and showed us that M/s. Anagi Trading Pvt. Ltd. had long term borrowings of Rs.2,24,37,500/- and trade payable to the tune of Rs.8,44,82,150/- and turnover was to the tune of Rs 69.24Crores (refer page 106 PB). Taking us through its bank statement which was placed at Page 113 to 115 of Paper Book, he showed that there was no prior cash deposit in the bank account of this investor and that their source of funds was verifiable. In this regard, the Ld. AR relied upon the decision of this Tribunal in the case of M/s. Mantram Commodities Pvt. Ltd. Vs. ITO (ITA. No. 105/Del/2021) dated 25.04.2022 and Chemicon Engineering Consultant Pvt. Ltd. Vs. ACIT (142 taxmann.com 297).



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7. The Ld. AR further explained that there is no requirement in law that only trading/manufacturing companies who have major fixed assets, administrative expenses etc. can only subscribe to share capital. The Ld. AR pointed out that the share subscribers were investment companies whose primary activity was making & holding investments in shares/projects. He accordingly submitted that, having regard to this nature of business, there was no requirement for investment in fixed assets or incurrance of major operating/administrative expenses. The Ld. AR further showed us that, barring two investors M/s Crown Corps Science Pvt Ltd & M/s Rishabhdev International, all the other investors were group/related entities of the assessee, and had been independently assessed to tax by the Income-tax Department for the relevant AY 2012-13. With regard to M/s Crown Corps Science Pvt Ltd & M/s Rishabhdev International, the Ld. AR demonstrated that these two entities had invested with the assessee in earlier year/s as well and that the Revenue had not disputed their identity, creditworthiness and genuineness in the earlier year/s. On these facts the Ld. AR submitted that the AO had rightly submitted the remand report dated 13.12.2017 stating that these investors were verifiable and that the action of the Ld. CIT(A) disputing the same for the aforementioned reasons was unjustified.

8. Per contra, the Ld. CIT-DR Smt. Riddhi Mishra supported the order of Ld. CIT(A). She further submitted that this is a classic case wherein the assessee company doing no business worth its claim has collected share premium Rs 340 per share having face value of Rs.10.



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According to the Ld. DR, the assessee is not a listed company; and the investors would invest only when there is credibility of the assessee company. According to the Ld. DR, the assessee company has not given any dividend to any of these share applicants. The Ld. DR therefore questioned high premium commanded by the assessee from the shareholders. The Ld. DR also invited our attention to Para 10 of Ld. CIT(A)'s order which contained the opening, receipt, refund and closing balance of share application monies. The Ld. DR submitted that there was partial refund of share application monies received in earlier years and again fresh receipt of share application monies, which according to her, was suspicious and defied commercial prudence. The Ld. DR further supported the order of Ld. CIT(A) by relying on the decision of this Tribunal in the case of DCIT Vs. Leena Power Tech Engineers P. Ltd. (2021) (130 taxmann.com 341) and M/s. Anagi Trading Pvt. Ltd. Vs. ITO in ITA. No.1179/Mum/2020 dated 31.01.2023. The Ld. DR accordingly did not want us to interfere with the order of the Ld. CIT(A).

9. In his rejoinder, the Ld. AR submitted that although the reasons for charging high share premium could not be questioned in the relevant AY 2012-13 as the amendment by way of Section 56(2)(viib) of the Act came into effect only from AY 2013-14 and onwards, he however showed that the book value of the shares of the assessee had gradually increased and that the existing book value of shares as on 31.03.2012 stood at Rs.185 per share. Having regard to this history, the assessee company expected good growth and therefore had raised



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funds primarily from associates/related entities to fund its requirements. With regard to Ld. DR's doubt regarding the refund of earlier share application monies and receipt of fresh monies, the Ld. AR submitted that this was a completely irrelevant consideration. He further submitted that, as the assessee had delayed allotment of shares in the previous year, few of the share subscribers had sought refund of their monies and thus Rs.13,93,77,000/- out of the opening balance of Rs.15 crores had been refunded. Thereafter, during the year the assessee had raised funds from different associates/ related entities amounting to Rs.10,43,77,000/-. The Ld. AR contended that the action of refund and fresh receipt and thus the closing balance of share application money with the assessee of Rs.11,50,00,000/-. With regard to the decision of this Tribunal in case of M/s. Anagi Trading Pvt. Ltd. (supra), the Ld. AR pointed out that this was an ex-parte order which was passed without hearing the assessee and therefore should not be taken as a binding precedent. He also drew our attention to the facts involved in the decision of this Tribunal in the case of Leena Power Tech Engineers Pvt. Ltd. (supra) and pointed out that, in this decided case, the Tribunal had found prior deposit of cash in the source of funds. The Tribunal had taken note of cash deposits just below of Rs. 10 Lakhs were regularly deposited in nineteen (19) different bank accounts maintained with ICICI Bank which was utilized to advance share application monies and the amount so deposited aggregated to Rs.241.50 crores. The Ld. AR pointed out that this was not the case of the assessee and none of the lower authorities have found any prior



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deposit of cash in the bank accounts of the investors. He thus claimed that, this decision was factually distinguishable. Therefore, according to the Ld. AR, the Ld. CIT(A) erred in confirming the addition of Rs.10,43,77,000/- and pleaded that the same may be deleted.

10. After hearing the rival contentions and perusing the material on record, we observe that the assessee has raised share subscription monies of Rs.10,34,77,000/- during the year in relation to equity share having face value of Rs.10/- at a premium of Rs. 340/- per share. It is noted that, in the remand proceedings, the assessee has furnished complete details in support of share capital and share premium raised during the year. The AO thereafter had made enquiries u/s 133(6) from all the investors for carrying out independent verification of these transactions which were duly responded by these investors by filing all the requisite details comprising of PAN/CIN details, share application forms, board resolution, financial statements, bank statements and IT Acknowledgments, copies of which has been placed at Pages 31 to 224 of the Paper Book. Having perused the same, it is noted that each of the investor(s) have PAN / CIN and are filing income-tax returns. It is noted that except 2 investors [*i.e, M/s. Crown Crops Science Pvt. Ltd. and M/s. Rishabhdev International*] all other 7 investors/companies have been subjected to scrutiny u/s 143(3)/144 of the Act for AY. 2012-13/AY 2013-14 and therefore, their identity is not in doubt. The Ld. AR drew our attention to the financials/share capital/reserves of the share applicants and brought to our notice that the own funds of these investors as per the balance-sheet as on 31.03.2012 was



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sufficient to justify the investments [except M/s Anagi Trading]. He also rightly showed us that the share application monies were received through proper banking channel and that the respective sources of the investors were also discernible from their bank statements and that there was no prior deposit of cash in any of these bank accounts. The details of the investors as noted by us have been tabulated below :-

Sr. No.	Name of investor	PAN And ROC CIN	Amount invested in the appellant company (in Rs.)	Net worth of the investor as per the balance-sheet as on 31.03.2012 (in Rs.)	Documents submitted	Page No. in paper book
1	Rishi Automation Pvt. Ltd. Address: - G-9 Shop No.9, Janta Co-op Hsg Society, Jeasl Park, Bhayandar East Thane-401105	AAACR8467K U99999MH1994PTC083972	1,06,00,000	2,09,37,753	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	31-51
2	M/s JVS Builders & Infra Pvt Ltd 97 Heera Panna M.R.No.2, Mhada Layout, A Oshiwara Jogeswari(W) Bhd. Shreeji Hotel Mumbai - 400058	AABCJ0282B U45200MH1995PTC092223	70,00,000	4,93,44,511	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	52-72
3	M/s Corwn Crops Sciens Pvt Ltd G-9 Shop No.9, Janta Co-Op Hsg Society, C	AADCC3551E U72100MI2000PTC127661	62,00,000	1,95,96,759	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13	73-90



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	Jesal Park, Bhayandar East Thane - 401105.				PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	
4	Anagi Trading Pvt Ltd B 43, 1St Floor, Cotton Exchange Building Coton Green East Mumbai - 400033	AAAJCA4557A U51109MH2011PTC213858	3,01,50,000	1,07,04,444	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	91- 115
5	Henna Textiles Ltd 901, Dhukka Chamber, Nr Gurudwara; Off Poddar Park Road, Malad (East) Mumbai - 400097	AACCH0454N U17121MH1991PLC063359	1,07,27,000	12,35,559	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	116- 137
6	Devasenapati Sales Agency Pt Ltd 97, Fleera Panna, M.R. No. 2, Mhada Layout, Oshiwara, Jogeshwari (W), Mumbai - 400058	AADCD8269L U74120MH2011PTC213442	1,91,00,000	6,71,79,838	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	138- 159
7	Prabal Mercantile Private Limited Cabin No.	AAECP6140K US1300MH2008PTC180178	1,46,00,000	8,91,44,140	Share Application Form Board Resolution Confirmation ITR	159- 178



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	IA, Pirabhai Terrace 104 JSS Road, Girgaon Mumbai - 400004				Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	
8	Arista Infotech India Limited (Earlier known as Onspec Infotech Ltd) B-401, Flecell Park, S.V. Road, Nr. 24 Karat Multiplex, Jogeshwari (W), Mumbai -400102	AAACO1151H U72200MH1996PLC100559	7,00,000	16,74,57,253	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	179- 196
9	Rishabhdev International (prop: Ratnesh Desai) 15, Floor-1, Plot 555/559, Plumber House, Jagannath Shankarsheth Marg, Kalbadevi Mumbai - 400002	AHAPD6956D	53,00,000	60,28,958	Share Application Form Board Resolution Confirmation ITR Acknowledgment for AY. 2012-13 PAN Card CIN Master Data Certificate Statements for year ending 31.03.2012 Bank statement of Investor	197- 206
	Total		10,43,77,000			

11. From the above, it is noted that except M/s Anagi Trading Pvt Ltd, all the investors had sufficient own funds to justify the investment made in the assessee. As far as M/s Angadi Trading Pvt Ltd is concerned, it is noted that this company had own funds of Rs.1.07 cr and balance it was explained to have been from long term borrowing of Rs.2,24,37,500/- and trade payable to the tune of Rs.8,44,82,150/- and also received from substantial sale proceeds which was in excess



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of Rs.69.21 crores which forms part of the Revenues credited in their Profit & Loss Account, and therefore the source of funds of this investor is also noted to be verifiable and also pointed out that it was a group/related concern. We also find that the above details/documents were verified by the AO in the course of remand proceedings and he is noted to have observed as follows in his remand report dated 13.12.2017 (relevant portion only):-

Office of the Income Tax Office-4(2)(1)
Room No.644, Aayakar Bhavan, M. K. Road, Mumbai-400020.
Tel No. (022) 22032116

No. ITO-4(2)(1)/Remand Report/2017-17 Date: 13.12.2017

The Commissioner of Income Tax (A)-9, Mumbai

Sir,

(Through Addl. CIT, Range-4(2), Mumbai)

Sub: Remand Report in the case of

M/s. Ronit Capital Management Limited-AY. 2012-13

PAN:AAACH9239D-reg-

Ref: No. CIT(A)-9/Remand Report/2017-18 dated 16.10.2016

Kindly refer to the above,

2.(i).....

3. Addition on account of Share Application Money-
Rs11,50,00,000/-

3.(i) During the course of scrutiny assessment proceedings, an addition of Rs.11,50,00,000/- was made on account of Share Application Money.

3(ii) During the course of remand proceedings, the assessee company was asked to furnish the details of the share application money. In reply the assessee's authorized representative has submitted the detailed break-up of the share application money received by the assessee company during the year under consideration as follows:

3(iii) Thus, it is seen that during the year, the assessee company has received an amount of Rs.10,43,77,000/- as Share Application Money. In view of the above, letters calling for information u/s 133(6) of the Income Tax Act, 1961 were issued to the above share applicants in respect of share application money received during the year.



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3(iv) Replies have been received from all the share applicants in respect of share application money of Rs.10,43,77,000/- received during the year. These share applicants have confirmed the payments made by them to the assessee company. In support, these share applicants have submitted the copy of Income Tax Return for AY. 2012-13 along with copies of Annual Report, Balance-sheet and Profit & Loss Account, Confirmation the payments made by them to the assessee company. In support these share applicants have submitted the copy of Income Tax Return for AY. 2012-13 along with copies of Annual Report, Balance-Sheet and Profit & Loss Account, Confirmation Letter and copy of Bank statement highlighting the transactions of payment.

3(v) Further, the assessee company has also submitted the following documents of the share applicants in support of its claim of receipt of share application received during the year:

- (a) Pan Car
- (b) Company Master Data
- (c) Certificate of Incorporation
- (d) Share Application Form
- (e) Board Resolution
- (f) Confirmation of Account
- (g) Income Tax Acknowledgement
- (h) Balance Sheet
- (i) Bank Stateent

3(vi) All these submissions of the assessee company and the confirmations received from the share applicants in response to letters issued u/s 133(6) have been verified and found to be in order. The same are placed on record.

However, your honour may kindly decide the issue on merits.

4.

.....

5(i).....

6.....

6(i).....

However, your honour may kindly decide the issue on merits.

Submitted.

Yours faithfully

(Archana Koli)
Income Tax Officer-10(1)(3),
Mumbai



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12. It is noted that the above report was submitted by the AO who had made independent enquiries from these investors. The AO did not dispute the identity, creditworthiness and genuineness of these investors and therefore we find that this remand report submitted by the AO supported the case of the assessee. The Ld. AR has rightly pointed out that the Ld. CIT(A) was also unable to point out any factual infirmity therein or controvert the findings recorded by the AO in his remand report. Rather, we note that, the Ld. CIT(A) had doubted the creditworthiness because these investors did not derive sufficient profits during the year. We agree with the Ld. AR that this cannot be reason enough to doubt their creditworthiness. As noted above, the shareholders have demonstrated that the investments made by them with the assessee and their source of funds and the same is noted to have been accepted by the AO as well upon verification. The reliance placed by the Ld. AR on the decision of this Tribunal in the case of Mantram Commodities Pvt Ltd (supra) is found to be useful. The relevant extracts of the decision is as follows:

“7.4. So far as the addition under section 68 of the I.T. Act, 1961 is concerned, I find the assessee has filed the details such as P & L A/c, balance-sheet, bank statements, confirmation letters, PAN, copy of acknowledgment of return, Memorandum and Articles of Association of companies etc. Further out of the 04 Investor Companies, it is seen that in case of Kuber Buildmart and Texcity Construction Pvt. Ltd., although the shares were issued during the impugned assessment year, however, the amounts were received in the preceding years which is verifiable from the bank statements filed by the assessee. In the case



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of Goodluck Industries Ltd., and Rishikesh Buildcon Pvt. Ltd., the assessee has filed the requisite details to substantiate the identity and creditworthiness of the share applicants and genuineness of the transaction. Nothing has been brought on record to negate the various evidences filed by the assessee. A perusal of the audited balance-sheet of these Investor Companies shows that these companies are having sufficient capital and reserves to make the investment in the assessee company and the entire transactions have been made through banking channel. Merely because the Investor Companies have shown meager income during the impugned assessment year, the same in my opinion, cannot be a ground to doubt the creditworthiness of the said company especially when the said company is having sufficient funds in its account in shape of share capital and free reserves.”

13. Gainful reference in this regard may also be made to the following findings of this Tribunal in the case of Chemicon Engineering Consultant Ltd Vs ACIT (supra) wherein also it was held as under:

“6. Another reasoning given by the AO to justify the impugned addition was that, some of the shareholders had reported NIL or meagre income which did not commensurate with the investments made by them and it therefore raised doubts on their creditworthiness. As already noted by us above, each of the shareholders had sufficient own funds and reserves to justify the investments made by them in the assessee company. The fact that some of the shareholders did not derive sufficient profits during the year cannot be the sole determinative factor to doubt their creditworthiness. It is noted that, such shareholders have demonstrated that the investments made by them with the assessee, were either out of the proceeds received on sale of investments which were made in earlier years and/or refund of



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loans granted earlier. The source of source of funds has also been provided, which has already been discussed above. On these facts, in our considered view therefore, nothing much turns on the fact that some of the shareholders had reported meagre income in the relevant year.”

14. The Ld. AR also brought to our notice that, except M/s. Crown Crops Science Pvt. Ltd. and M/s. Rishabhdev International, all other seven (7) investors were related/associate entities of the assessee and therefore the genuineness of the monies received from them could not be doubted. The Ld. AR has demonstrated the same in the form of chart as under: -

Sr. No	Name and Address of Share Applicants	PAN And ROC CIN	Director as on 31.03.2012
1	Rishi Automation Pvt Ltd G-9 Shop No.9, Janta Co-Op Hs Society, Jesal Park, Bhayandar East Thane - 401105.	AAACR8467K CIN No. U99999MH1994PTC083972	(a) Shivaraman Subramanian (b) Padamchand Burad
2	M/s JVS Builders & Infra Pvt Ltd 97 Heera Panna M.R.No.2, Mhada Layout, A Oshiwara Jogeswari(W) Bhd. Shreeji Hotel Mumbai - 400058	AABCJ0282B CIN No.U45200MH1995PTC092223	(a) Ritesh Padamchand Burad (b) Shweta Ritesh Burad
3	M/s Corwn Crops Sciens Pvt Ltd G-9 Shop No.9, Janta Co-Op Hsg Society, C Jesal Park, Bhayandar East Thane - 401105.	AADCC3551E CIN No.U72100MI2000PTC127661	(a) Vikas Dharmichand Birawat (b) Nilesh Naresh Rane
4	Anagi Trading Pvt Ltd B 43, 1St Floor, Cotton Exchange Building Coton Green East Mumbai - 400033	AAAJCA4557A CIN No. U51109MH2011PTC213858	(a) Zinki Madangopal Ruhela (b) Santosh Paramhans Dube
5	Henna Textiles Ltd 901, Dhukka Chamber, Nr Gurudwara; Off Poddar Park Road, Malad (East) Mumbai - 400097	AACCH0454N CIN No.U17121MH1991PLC063359	(a) Vishal Chunilal Sharma (b) Mala M Singh



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6	Devasenapati Sales Agency Pt Ltd 97, Fleera Panna, M.R. No. 2, Mhada Layout, Oshiwara, Jogeshwari (W), Mumbai - 400058	AAACD8269L CIN No.U74120MH2011PTC213442	(a) Rekha Toofani Jaiswal (b) Santosh Paramhans Dube
7	Prabal Mercantile Private Limited Cabin No. IA, Pirabhai Tarrace 104 JSS Road, Girgaon Mumbai - 400004	AAEC6140K CIN No. US1300MH2008PTC180178	(a) Vishal Chunilal Sharma (b) Santosh Paramhans Dube
8	Arista Infotech India Limited (Earlier known as Onspec Infotech Ltd) B-401, Flecell Park, S.V. Road, Nr. 24 Karat Multiplex, Jogeshwari (W), Mumbai -400102	AAACO1151H CIN No.U72200MH1996PLC100559	(a) Shariq Mehboobmiya Shaikh (b) Vishal Chunilal Sharma
9	Rishabhdev International (prop: Ratnesh Desai) 15, Floor-1, Plot 555/559, Plumber House, Jagannath Shankarsheth Marg, Kalbadevi Mumbai -400002	AHAPD6956D	Proprietorship

14. The Ld. AR also brought to our notice that, barring M/s. Crown Crops Science Pvt. Ltd. and M/s. Rishabhdev International all other companies have been subjected to scrutiny u/s 143(3)/144 of the Act for AY. 2012-13/AY. 2013-14 and that their source of investments in the assessee had been examined by their respective AOs. With regard M/s. Crown Crops Science Pvt. Ltd. and M/s. Rishabhdev International, it is noted that they were *existing investors* of the assessee who had invested Rs.4.5 crores and Rs.2.5 crores respectively in the earlier years. The Ld. AR also pointed out that, portion of their earlier investments were refunded during the year and out of the same monies were received back during the year. The Ld. AR has therefore rightly pointed out that when the Revenue has not doubted the identity,



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creditworthiness and genuineness of these two investors in earlier years when these investments were made and then there was no reason for the Ld. CIT(A) to doubt the same in the relevant year, particularly when even the AO had accepted the same in his remand report.

15. As far as the contention of the Ld. DR that, some of these investors did not have trading/manufacturing business, fixed assets or major expenses, is concerned, the Ld. AR showed that those investors were core investment companies and their main object was making investments, which according to the Ld. AR is also a recognized business activity. We find merit in his submission that such investment companies generally will not have major fixed assets or operating expenses and therefore their absence in the books of accounts cannot be decisive enough to doubt the genuineness of their transaction, which is otherwise found to be supported by corroborative evidences.

16. In respect of the Ld. DR's contention that the adequacy of share premium of Rs.340/share was not established by the assessee, the Ld. AR had showed us that the book value of the assessee had gradually risen to Rs.185/share and therefore having regard to the past history and future outlook, the share premium of Rs.340/share was reasonable. Further, according to Ld. AR in the case of unlisted companies, where the investors are related entities/ associate concerns, it is common knowledge that premium fixed is a matter of mutual agreement. It is noted that this Tribunal in the case of Gagandeep Infrastructure Pvt. Ltd., has held that it is a prerogative of the Board of Directors of the



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company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a high premium.

The relevant findings are noted to be as follows :-

"We have carefully perused the orders of the lower authorities. In our considered view, the issue of shares at premium is always a commercial decision which does not require any justification. Further the premium is a capital receipt which has to be dealt with in accordance with Sec. 78 of the Companies Act, 1956. Further, the company is not required to prove the genuineness, purpose or justification for charging premium of shares, share premium by its very nature in a capital receipt and is not income for its ordinary sense. It is not in dispute that the assessee had filed all the requisite details/documents which are required to explain in the books of accounts by the provisions of Sec. 68 of the Act. The assessee has successfully established the identity of the companies who have purchased shares at a premium. The assessee has also filed bank details to explain the source of the share holders and the genuineness of the transaction was also established by filing copies of share application forms and Form No. 2 filed with the Registrar of Companies."

17. The aforesaid view of the Tribunal has been upheld by the Hon'ble Bombay High Court order dated 20th March 2017, by observing as under:-

" (ii) Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in CIT vis. Lovely Exports (P) Ltd. 317 ITR 218 in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has



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been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit. "

18. It is noted that similar view was endorsed in the case of DCIT vs. M/s. Alcon Biosciences (P) Ltd., ITA No. 1946/M/2016, which is extracted below :-

"As regards the AOs observation with regard to the issue of shares at a face value of Rs.10/- issued at a premium of Rs.990 per share, we find that there is no merit in the findings of the AO for the reason that the issue of shares at a premium and subscription to such shares is within the knowledge of the company and the subscribers to the share application money and the AO does not have any role to play as long as the assessee has proved genuineness of transactions. We further notice that the AO cannot question issue of shares at a premium and also cannot bring to tax such share premium within the provisions of section 68 of the Act, before (supra) held that Proviso inserted to section 68 is prospective in nature.

19. The Hon'ble M.P. High Court in the case of CIT vs. Chain House International (P) Ltd., reported in 98 taxmann.com 47 has also held at Para 52 as under-

"Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates if fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any



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law, the price of the shares is decided on the mutual understanding of the parties concerned.”.

20. As far as the judgments relied upon by the lower authorities is concerned, they are found to be not applicable to the facts of the present case in hand. In the case of M/s. Anagi Trading Pvt. Ltd. (supra), it is noted that the order passed was *ex-parte* in which the assessee was not heard and hence cannot be said to be binding. Further, it is noted that in that case, the assessee / shareholders had failed to provide relevant evidences in support of the transaction, whereas in this case, not only did the assessee but also the investors complied with the enquiries made by the AO and even the AO has found these investors to be verifiable and conveyed his satisfaction in his remand report (supra). In the case of Leena Power Tech Engineers Pvt. Ltd. (supra), the Tribunal had found prior deposit of cash in the bank accounts of shareholders and thus doubted the creditworthiness and genuineness of transaction. In the present case however, as noted above, there was no prior deposit of cash and that the sources were found verifiable by the AO in his remand report. Further, unlike in the case of Leena Power Tech Engineers Pvt. Ltd. (supra), the shareholders are found to be related entities and/or existing investors and therefore the rationale behind them investing in the assessee cannot be doubted. Thus, ratio of both these judgments will not apply in the present case because the facts in those cases were different.

21. Instead, we draw support from and guidance from the judgment of Hon'ble Bombay High Court in case of Pr. CIT v. Ami Industries



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(India) (P.) Ltd. [2020] 116 taxmann.com 34/271 Taxman 75/424 ITR 219 where it was held as under:

'17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs. 34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under section 68 of the Act.

18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that non-responding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and credit-worthiness of the creditors were available, without any infirmity in such evidence and the explanation required under section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.



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19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:—

- (a) PAN number of the companies;
- (b) Copies of Income-tax return filed by these three companies for assessment year 2010-11;
- (c) Confirmation Letter in respect of share application money paid by them; and
- (d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:—

"5.7 As per the provisions of section 68 of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following-

- (a) Identity of the creditor
- (b) Genuineness of the transaction
- (c) Credit-worthiness of the party



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(i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.

(ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represent company's own income from undisclosed sources.

Accordingly, no addition can be made u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

22. Gainful reference may also be made to the decision rendered by the coordinate Bench of this Tribunal in the case of *Abhijavala Developers (P.) Ltd. v. ITO* [2021] 124 taxmann.com 72/187 ITD 222 (Mum. - Trib.). In the decided case the assessee had raised share



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subscription monies from six bodies corporate. Although the summons issued u/s 131 of the Act remained unserved/non-complied, the assessee had furnished all documentary evidences including copies of confirmations, PAN Card, IT Acknowledgement, financial statements and bank statements of all these shareholders. Having regard to these documents and taking into account the judgments rendered in the cases of Ami Industries (I) (P.) Ltd. (supra) and NRA Iron & Steel (P.) Ltd. (supra), the Tribunal held that the assessee had discharged its primary onus of establishing the identity of the investors, proving their creditworthiness and establishing the genuineness of the transactions and accordingly deleted the addition/s made u/s 68 of the Act. The relevant extracts of the decision are as follows :-

"1.2 It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders/investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of CIT v. Lovely Exports (P.) Ltd. [2009] 216 CTR 195, dismissing revenue's appeal, observed 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 shareholders, whose names are given to the AO, then the Department



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is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of Gagandeep Infrastructure (P.) Ltd. case (supra) & subsequently in CIT v. Orchid Industries (P.) Ltd. [2017] 88 taxmann.com 502/397 ITR 136 (Bom.). The Hon'ble Delhi High Court followed the said decision in Pr. CIT v. Adamine Construction (P.) Ltd. [2019] 107 taxmann.com 84 against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at Pr. CIT v. Adamine Construction (P.) Ltd. [2019] 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in Pr. CIT v. Himachal Fibers Ltd. [2018] 98 taxmann.com 172 against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in Pr. CIT v. Chain House International (P.) Ltd. [2018] 98 taxmann.com 47/[2019] 408 ITR 561 against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18-2-2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in Pr. CIT v. Ami Industries (India) (P.) Ltd. [2020] 116 taxmann.com 34/271 Taxman 75/424 ITR 219 (Bom.) which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr. CIT v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48/262 Taxman 74/412 ITR 161.

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Upon perusal of above documents, we find that the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source for this year. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for the fact that summons remained un-served, there is nothing in the armory of revenue to unsettle the assessee's claim. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. So far as the information of DGIT (Inv.) is concerned, we find that these were merely third party statements which were never confronted to the assessee and those statements on standalone basis could not form the basis of making additions in the hands of the assessee. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the opening paragraphs duly support the said conclusion. Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed."

23. For the reasons as aforesaid and on the given facts of the case, coupled with the observations made by the AO in his remand report dated 13.12.2017, we thus hold that the assessee had discharged the burden cast upon it under the provisions of Section 68 of the Act. We therefore direct the AO to delete the



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addition of Rs.10,34,77,000/-. Accordingly, the grounds taken by the assessee stands allowed.

24. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 24/07/2023.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24/07/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai