

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	20/RPR/2018	M/s. Purvi Finvest Ltd, Kamla Hari Villa, Mani Road, Vidya Nagar, Bilaspur-495 001 PAN: AABCP6564C	The Deputy Commissioner of Income Tax, Circle-1(1), Bilaspur	2014-15

Assessee by : Shri Harsh Vijayvargiya, CA
Revenue by : Shri V.K Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 08.06.2023

घोषणा की तारीख / Date of Pronouncement : 14.08.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals), Bilaspur, dated 29.12.2017, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 28.12.2016 for A.Y. 2014-15. The assessee

company has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal:

“1 That the Learned Commissioner of Income Tax (Appeals), Bilaspur erred in passing an order dated 29th of December, 2017 under section 250 of the Income Tax Act, 1961 dismissing the appeal of the Appellant without allowing reasonable opportunity of being heard.

2. That the learned Commissioner of Income Tax (Appeals), Bilaspur erred in confirming the addition of Rs.1,21,88,00,000/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961 on irrelevant considerations and arbitrary grounds.

3. That the learned Commissioner of Income Tax (Appeals), Bilaspur erred in confirming the addition of Rs.1,21,88,00,000/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961 on the basis of judgments which are distinguishable on facts as well as on law.

4. That the learned Commissioner of Income Tax (Appeals), Bilaspur erred in confirming the addition of share capital of Rs.1,21,88,00,000/- made under section 68 of the Income Tax Act, 1961 in disregard of the binding judgments of Hon'ble Apex Court, Hon'ble High Courts and the Hon'ble ITATs which directly lays down ratio on the merits of the addition of share capital under section 68 of the Income Tax Act. 1961.

5. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

2. Succinctly stated, the assessee company, which is registered as a Non-Banking Financial Corporation (NBFC) and is primarily engaged in the business of providing unsecured loans/advances and trading in shares and securities, had filed its return of income for A.Y. 2014-15 on 30.11.2014, declaring an income of Rs. Nil. The case of the assessee company was selected for scrutiny assessment u/s.143(2) of the Act.

3. Survey u/s.133A of the Act was conducted at the business premises of the assessee company on 22.01.2014 by the DDIT (Investigation)-II, Raipur. After that, the A.O., during the assessment proceedings, verified the documents impounded during the survey vis-à-vis the books of accounts of the assessee company. The A.O observed that the assessee company, which was incorporated on 23.09.1997, had during the year received share application money of Rs.121.88 crore (approx.), against which it had allotted 4,93,460 shares of a face value of Rs.100/- per share at a premium of Rs. 2400/- per share. The A.O considering the fact that the assessee company during the year had carried out negligible business activities and reported a loss of Rs. (-) 1,01,80,468/-, thus carried serious doubts about the veracity of its claim of having raised share capital/premium by issuing shares of the face value of Rs.100/- per share at a high premium of Rs. 2400/- per share. Observing that the amount of investment received by the assessee company had increased its reserves and surplus by a towering sum, the A.O. called upon it to substantiate the same based on supporting material. The A.O. observed that it was beyond comprehension that the assessee company, which had hardly carried out any business and was running into losses, would have attracted investments without adequate protection and ensuring appropriate returns. The A.O., guided by the principle of preponderance of

human probabilities, held a conviction that it was highly implausible that any investor without due diligence would have invested its hard-earned money with the assessee company which had no credibility.

4. The A.O., to verify the identity and creditworthiness of the 40 Kolkata-based share applicant/subscriber companies, issued a commission u/s. 131(1)(d) of the Act to the DDIT (Inv.), Unit-4(1), Kolkata on 21.11.2016. In reply, the DDIT (Inv.), Unit-4(1), Kolkata, reported that the aforesaid Kolkata-based share applicant/subscriber companies had doubtful credentials. He pointed out that the share applicant/subscriber companies lacked identity, genuineness, and creditworthiness. The A.O., in all fairness, provided a copy of the report received from DDIT (Inv.), Kolkata, to the assessee company.

5. Further, the A.O., to verify the identity and creditworthiness of the share applicant/subscriber companies a/w. genuineness of the transactions of receipt of the share application money from them, issued summons to the director of the assessee company, viz. Shri Sarad Kumar Darak. The statement of Shri Sarad Kumar Darak (supra) was recorded on oath by the A.O. in the course of the assessment proceedings on 13.12.2016. As is discernible from the assessment order, Shri Sarad Kumar Darak (supra) on being directed to produce the directors of the share applicant/subscriber companies for a necessary examination so that their identity and

creditworthiness a/w. genuineness of the transaction of receipt of the share application money from them could be verified; however, he explained his inability to do so and requested that the Department may summon the said persons. Also, Shri. Sarad Kumar Darak (supra), in his attempt to discharge the onus that was cast upon the assessee company as regards proving the authenticity of its claim of having received genuine share application money from the investor companies filed with the A.O. copies of the PAN, returns of income, audit reports, bank statements, etc. of the share applicant/subscriber companies. The A.O. observed that as in the majority of the cases of share applicant/subscriber companies, the summons, which were on an earlier occasion issued u/s.131 of the Act by the DDIT (Inv), Unit-4(1), Kolkata, were either returned unserved; or where they were served had remained uncomplied with, thus, was of the view that no useful purpose would be solved by heeding to the request of the assessee company and issuing summons to the aforementioned persons. Apart from that, the A.O. observed that Shri Sarad Kumar Darak (supra), despite specifically being directed to produce the directors/principal officers of the share applicant/subscriber companies, had not only failed to effect the necessary compliance but had also most whimsically adopted an evasive approach and submitted through post certain bundle of papers/documents which were never called for.

6. The A.O considering the facts as mentioned earlier, held a conviction that the assessee company, by failing to substantiate the identity and creditworthiness of the share applicant/subscriber companies, and genuineness of the transactions of receipt of the share application money from them, had thus failed to discharge the primary onus that was cast upon it u/s 68 of the Act. The A.O. referring to the "1st proviso" to Section 68 of the Act (as had been made available on the statute vide the Finance Act, 2012 w.e.f. 01.04.2013), observed that in the absence of an explanation as regards the source of the funds from where the share applicant/subscriber companies had made the respective investments with the assessee company, the onus that was cast upon the latter as regards proving the authenticity of the transactions of receipt of share application money from them was not discharged as per the mandate of the Act. Relying on the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. N.R. Portfolio Private Limited (2014) 42 taxmann.com 339 (Delhi), the A.O. was of the view that now when the assessee company had adopted an evasive approach and deliberately and intentionally failed to produce evidence before the A.O with the desire to prevent inquiry or investigation, then adverse inferences as regards its claim of having entered into genuine transactions of receipt of share application money from the investor

companies were liable to be drawn. Apart from that, the A.O., on scrutinizing the documents that the assessee company had filed, observed that the amount of share application money was stated to have been received from the share applicant/subscriber companies, which had virtually no worth and no fixed assets. The A.O. further observed that the financial status of the share applicant/subscriber companies during the year under consideration was found to be very pathetic, which established that their creditworthiness to invest a substantial amount with the assessee company was highly questionable. Elaborating on his view above, the A.O. observed that the share applicant/subscriber companies had meager income during the year under consideration, which was not commensurate with the towering figure of their alleged investments towards share capital/premium with the assessee company. The A.O. further observed that though the share applicant/subscriber companies were incorporated about 4-5 years back, their financial status revealed meager profit and loss figures. The A.O. further observed that though the aforementioned share applicant/subscriber companies, since incorporation, had not done any actual business activities in spite of that, they had invested considerable amounts in securities premium account vis-à-vis non-current investments in the shares of private limited companies.

7. The A.O further considering the facts mentioned above held a conviction that the share applicant/subscriber companies were shell/paper companies that had no creditworthiness to make investments in the assessee company. The A.O., after deliberating at length on the *modus-operandi* that was adopted by shell/paper companies for laundering unaccounted money in the form of share capital/premium, therein observed that a perusal of the documents placed on his record revealed that the investor companies in the case of the assessee company were briefcase companies which had facilitated parking of the funds of the assessee company in the guise of share application money at a premium after routing the same through various other briefcase/shell companies associated with them. Referring to the returned income of the share applicant/subscriber companies and their financial statements, it was observed by the A.O. that the amount of share application money/premium received by the assessee company was nothing but the circulation of its own unaccounted money through Kolkata-based briefcase companies. Also, the A.O., on a perusal of the bank statements of the share applicant companies, observed that the inflow of funds in their accounts was from certain other Kolkata-based briefcase companies, which in turn had allegedly received their liquidated investments. He further observed that the companies in which the share

applicant/subscriber companies had earlier invested were also found to be companies having no substantial worth and were only entry providers.

8. In sum and substance, it was observed by the A.O. that the assessee company, in the guise of transactions carried out through banking channels, had tried to give the color of genuineness to the receipt of amounts from the aforementioned share applicant companies. The A.O. rebutting the support that the assessee company had sought to draw from the fact that the respective share applicant companies were registered with ROC, filing their returns of income, holding PAN and bank accounts, and had submitted share application forms, etc., therein relied on certain judicial pronouncements and observed that the said facts would by no means establish the identity of the companies which in reality might be existing only on papers and were factually non-existent. Rather, it was observed by the A.O. that mere furnishing of the aforementioned details/documents, i.e., names, addresses, PAN particulars, etc., of the share applicant/subscriber companies would not on such a standalone basis suffice to discharge the onus that was cast upon the assessee company u/s. 68 of the Act. Elaborating on his aforesaid view, the A.O. relied on the judgment of the Hon'ble Supreme Court in the Case of A Govindarajulu Mudaliar, 34 ITR 807 (S.C.), and observed that if on verification of the documents, the A.O. was

unable to contact the share applicants or the information was found to be unverifiable, then the onus shifted back to the assessee to substantiate his claim by making available the requisite details, failing which, the addition would be called for u/s.68 of the Act.

9. As the assessee company had failed to substantiate the creditworthiness of the share applicant/subscriber companies, therefore, the A.O., in all fairness, once again issued a "Show Cause Notice" (SCN) dated 16.12.2016, wherein it was called upon to prove the identity and creditworthiness of the share applicant/subscriber companies, and also the genuineness of the transactions of receipt of the share application money from them. Also, the A.O. brought to the notice of the assessee company that the DDIT(Inv.), Kolkata, on a commission issued u/s.131(1)(d) of the Act dated 21.11.2016 had based on his report dated 20.12.2016 stated that as per the database of the entry operators maintained by the directorate, the share applicant/subscriber companies from whom the assessee company had claimed to have received share application money appeared to be paper/shell companies. Apart from that, it was brought to the notice of the assessee company that, as reported by the DDIT(Inv.), Kolkata, in his report dated 20.12.2016, the share applicant companies were managed by infamous entry operators who had already acknowledged in their statements

recorded on oath before the Department that they were only providing accommodation entries through the said paper/shell companies. Also, the assessee was made aware that the directors of many of the share applicant/subscriber companies were found to be dummy directors of the entry operators. The A.O. further informed the assessee company that in the rest of the cases, summons issued u/s. 131 of the Act by the DDIT (Inv.), Kolkata seeking personal attendance of the principal officers of the said companies were either returned unserved by the postal authorities; while for in cases where those were served, they were never complied with. Further, the A.O. informed the assessee company that the fact that the Kolkata-based share applicant/subscriber companies had returned negligible/Nil income further fortified the serious doubts about their credibility. On the basis of the aforesaid facts, the A.O. called upon the assessee company to explain that now when the onus that was cast upon it as regards proving the identity and creditworthiness of the share applicant companies a/w. genuineness of its claim of having received share application money from them had not been established, then, why the same may not be treated as unexplained cash credits u/s.68 of the Act. In reply, the assessee company tried to dislodge the aforesaid adverse inferences that were sought to be drawn by the A.O. by submitting as under:

“With the reference to the above captioned subject, I on behalf of the assessee company do hereby submits following facts along with supporting documents are as under-

In your letter dated 20/12/2016, you have mentioned that in response to the commission issued under section 131(d) to the Hon'ble DDIT(inv.), unit 4(1), Kolkata for the enquiry of 48 companies for their investment of Rs.120,71,50,000/- during the relevant assessment year are well known entry operators and are of doubtful credentials. Further you have also mentioned that the identity, credit worthiness and genuineness of the 48 shareholders of our company are not proved. On the contrary attached documents of the report u/s. 131(d) of Hon'ble DDIT(inv.), unit 4(1), Kolkata clearly shows that all the alleged companies are duly assessed regularly u/s.143(1) and u/s.143(3) .Further statement of some of the directors of some of the alleged companies were recorded on Aug 2014 & March 2015 in case of another assessee not specifically directly or indirectly related to our company Hon'ble DDIT(inv.), unit 4(1), Kolkata has not enquire our transactions with all such alleged companies. therefore report given the Hon'ble DDIT(inv.), unit 4(1), Kolkata is based on presumptions only .However report of the Hon'ble DDIT(inv.), unit 4(1), Kolkata itself prove the followings –

-the Hon'ble DDIT(inv.), unit 4(1), Kolkata has not enquire the matter specifically related to our transactions with the all such alleged companies.

- All the alleged companies are existed at their address and traceable.

- All the alleged companies are assessed regularly u/s 143(1) and W' 143(3) at their respective jurisdictional income Tax Ward.

-All such alleged companies have been duly assessed with their sufficiency of funds for their investments in the A/Y 2012-13, 2013-14 & 2014-15. Kindly refer to the same.

-Directors of all such alleged companies are identifiable and well-traceable to the Department.

-Report of the Hon'ble DDIT(Inv), unit 4(1), Kolkata also stated that out of the alleged companies, summons u/s 131 has been served, and as informed to us by those companies, they have submitted requisite documents before the Hon'ble DDIT(Inv). unit 4(1), Kolkata through the speed post dated 16/12/2016 and the same facts also mentioned by them in the submissions letters before you. Kindly refer to the same.

- On critical reading of the Report of the Hon'ble DDIT (inv.), unit 4(1), Kolkata, it reveals that the report is issued merely on presumptions and pre-fix mindset.

Assessee company has submitted complete details of 48 companies before you at the time of recording of the statement under section 131 dated 13/12/2016. Details of the evidence submitted on 13/12/2016 are as under.

-Directors have appeared and recorded statements and oaths for providing complete facts along with supporting documents which he possessed on 13/12/2016. Active status of all the 48 companies from the Ministry of Corporate Affairs website (www.mcasov.in) wherein it clearly mentions the name of the company, its address, and the name of its directors as of today. Therefore identity of all the 48 companies were given with the authenticated documents is proved

-Directors have furnished a copy of the memorandum of association of all the 48 companies, which is obtained from the authenticated website of the Ministry of corporate affairs, wherein details of the objects of the company and the name and address of its directors, authorized capital, issued capital, and its registered head office address are clearly mentioned. Therefore it proves that the identity of the alleged 48 companies is duly substantiated.

-Directors have further furnished an audited financial statements of all the alleged 48 companies to prove their credentials, wherein clearly mentioned sufficient funds for providing share application money to our company.

-Directors have also produced till the bank statement of many alleged companies to prove that all the share application money transactions passed through proper banking channels like RTGS/account pay cheques.

Apart from the above since your good office has also compelled to the director of the assessee company during the statement recorded under section 131 dated 13/12/2016 to produce directors of all the 48 alleged companies whereas director stated that companies are located far away from Bilaspur city. Therefore kindly summon the directors as you deem fit necessary. However our company has compelled to the directors/ principal officers of all the alleged 48 companies through a written letter dated 13/12/2016 for their personal appearance along with supporting documents of the transactions between us. All such written letters were received by all the alleged 48 companies at their registered head office address on 15/12/2016 to 17/12/2016. Copy of all such receipt has already been furnished at your office on 20/12/2016 In compliance to the said compelling letters issued from our office to the all alleged 48 share holders companies, Following documents are given by the Investors companies to confirm the transactions between us and its genuineness and the source of their investments(Details of letter issued date letter received date, speed post date and speed post received by the department are enclose here with for your reference) :-

Copy of share application on which face value and the premium value of our equity share, name and address of applicant company are clearly mentioned and in support of these applications money source of the investment are also attached.

Genuineness of transaction-

Copy of related bank accounts.

Copy of share certificates.

To prove identity-

PAN card of their companies,

A copy of the IT returns for the assessment year 2014-15,

Copy of memorandum of association.

To prove credit worthiness-

Copy of profit and loss accounts, balance sheet; audit report for F/Y 2013-14. In light of above facts and supporting evidences, it is quite clear that the identity, genuineness and the credit worthiness of all the 48 alleged companies has been proved and the report of Hon'ble DDIT(inv.), unit 4(1), Kolkata is issued without any basis and merely on presumptions. Moreover report of the Hon'ble DDIT (Inv.), unit 4(1), Kolkata is not specific on corroborative/cogent evidences and is based on their database not in the basis of current position of all the companies. Report also stated that out of 48 companies many of the summons issued under section 131 has been served to the many companies and the some of these summons under section 131 were unserved and returned back to them. Therefore, conclusion of the above mentioned report is confusing and without proper inquiry because of on the contrary all the 48 alleged companies have well responded directly to your office and submitted, all the supporting evidences to prove their identity, genuineness and credentials of their companies.

It is our humble request that all the ingredients of Section 68 along with its provisos are duly discharged and submitted to you for your kind satisfaction. On the basis of similar facts Hon'ble Income Tax Appellate Tribunal A Bench, Ahmedabad in the case of Chartered Speed Pvt. Ltd., ... vs Assessee on 28 August, 2014 wherein it was held that "We find that in the instant case, the addition is made u/s. 68 of the Act on the ground of unexplained cash credit. As per the provisions of section 68, the initial onus lies upon the assessee to prove the nature and source of amount credited in his books of account. We find that this initial onus was discharged in the instant case by the assessee by furnishing documents like MOA, AOA, share application & board resolution, Certificate of In corporation, Certificate of Commencement, acknowledgements of ITRs, audited accounts etc. of concerned. companies. Thereafter, in our view, the onus shifted upon the Department and it was for the Department to bring on record relevant material to show that why inspire of the above stated documents, the addition is still to be made in the hands of the assessee. In the instant case,

the Department has endeavored to discharge its burden the basis of statements recorded by it of the persons mentioned above.”

10. It was further stated by the assessee company that the Principal Officers/Directors of the 48 (*sic*) investor companies who were called upon to put up an appearance a/w supporting documents to substantiate the authenticity of their investments made with the assessee company, had filed before the A.O. requisite documents to confirm the transactions entered into between them and the assessee company a/w respective source of the same. Also, the assessee company refuted the report of the DDIT (Inv.), Unit-4(1), Kolkata, on the ground that the same was neither specific nor corroborative. Based on its aforesaid contentions, and by drawing support from certain judicial pronouncements, the assessee company tried to impress upon the A.O. that now when the nature and source of the cash credit of Rs.121.88 crore (approx.) received from the share applicant/subscriber companies were proved based on supporting documentary evidence, the same could not be held as unexplained cash credits u/s. 68 of the Act. However, the A.O. was not persuaded to subscribe to the aforesaid claim of the assessee company. The A.O. was of the view that now when the DDIT (Inv.), Unit-4(1), Kolkata, based on deep inquiry and detailed analysis of the facts, had reported that the share applicant companies were briefcase/paper companies, therefore, said fact could not

be summarily brushed aside. Also, the A.O. observed that the creditworthiness of the share applicant/subscriber companies could not be proved merely by furnishing copies of the bank statements and the claim that the respective amounts were received through the banking channels. The A.O. observed that the assessee company was obligated to have filed supporting documentary evidence revealing that the share applicant/subscriber companies had made genuine investments and had not merely acted as angel investors. The A.O. believed that simply furnishing contact details PAN of the share applicant companies, i.e., private limited companies, would not suffice to establish their identity. Elaborating on his view above, it was observed by the A.O. that the identification of the persons would include their place of work, the staff, the fact that it was carrying on business, and recognition of the said company in the eyes of the public.

11. Apropos the fact that the payments from the investor companies were received by the assessee company through cheques/banking channels, the A.O., by relying on the judgment of the Hon'ble High Court of Calcutta in the Case of CIT Vs. Precision Finance Pvt. Ltd., 208 ITR 465 (Cal.), observed that the mere fact that the transactions were carried out through banking channels would not conclusively establish the identity of the creditors or their creditworthiness. As regards the judicial pronouncements that were relied

upon by the assessee company, the A.O. was of the view that as all of those were rendered before the amendment to Section 68 of the Act vide the Finance Act, 2012 w.e.f. 01.04.2013, i.e., before insertion of the "1st proviso" to the said section; therefore, the same would not come to its rescue. The A.O. observed that the assessee company had, except for furnishing some documents, failed to file the other requisite details as were required per the mandate of Section 68 of the Act; therefore, the entire amount of share capital/premium of Rs.121.88 crore (approx.) received by it during the year under consideration was to be treated as unexplained cash credit within the meaning of the said section. Accordingly, the A.O. vide his order passed u/s. 143(3) of the Act dated 28.12.2016, after making the addition described above of Rs.121.88 crore (approx.) u/s.68 of the Act, brought the same to tax u/s 115BBE of the Act and determined the income of the assessee company at Rs.120.86 crore (approx.).

12. Aggrieved, the assessee assailed the order passed by the A.O. u/s.143(3) dated 28.12.2016 before the CIT(Appeals). The CIT(Appeals), after deliberating at length on the contentions advanced by the assessee, did not find any infirmity in the view taken by the A.O. It was observed by the CIT(Appeals) that as per the post-amended section 68 of the Act that was applicable from A.Y.2013-14, the assessee company was not only required

to explain the source of the share application money but was also statutorily obligated to explain the source of the money out of which the investor companies had made the respective investments. The CIT(Appeals) was of the view that as in the case before him, neither of the share applicant/subscriber companies had appeared and put forth any explanation as regards the respective source of their finance out of which investments towards share application money were made with the assessee company; therefore, the assessee company had failed to discharge the onus that was cast upon it u/s. 68 of the Act. Accordingly, based on his deliberations above, the CIT(Appeals) upheld the addition of Rs.121.88 crore (supra) that the A.O made u/s 68 of the Act. For the sake of clarity, the relevant observations of the CIT(Appeals) are culled out as under:

"2.3 I have gone through the assessment order and considered the submission made by the assessee.

Basically, the submission of the assessee is that in view of the documents such as PAN, ROC certificate, bank statements, etc., furnished in respect of share applicants, the A.O. should have accepted the credit of share application money as genuine. In his submission filed on 22.12.2017, the Ld. A.R. contended that in the report of the DDIT, Inv. name of the assessee company was not mentioned. Assessee company's name is not mentioned also in the list of companies providing accommodation entry. Assessee company files I.T. return regularly, which have been assessed in respect of A.Y.s 2005-06 to 2009-10, 2012-13, and 2013-14. Documents such as PAN, MOA, AOA, share application forms, and audited financial statements in respect of some of the investor companies; were submitted and were duly accepted by the A.O.; therefore, similar documents in the current assessment year should also be accepted. In the AY 2012-13 and 2013-14, the A.O. had issued notices u/s 133(6) to all alleged investor companies,

and these companies furnished all required information to establish identity, creditworthiness, and genuineness. The Ld. A.R. wants the Department to accept a certain set of papers on the ground that similar papers were accepted in earlier years also. However, estoppels do not apply in I.T. proceedings, and each assessment year is separate and exclusive from earlier years. Moreover, there was no inquiry caused through the DDIT Inv at Kolkata in earlier years as has been caused in the current year with findings adverse to the assessee. If, on an inquiry, different facts are found, and it is revealed that the directors and persons related to the purported share application companies have accepted having provided accommodation entries to the assessee company, then the share application money of the assessee company becomes doubtful, and unexplained. Once doubt is cast on the genuineness of a fact this year, the very documents become suspicious and unacceptable, and it cannot be accepted for the reason that similar documents were accepted in earlier years also. To mitigate the doubt and establish genuineness, the appellant must furnish further evidence. The A.O. has provided the opportunity to the appellant to produce directors of purported share application companies who could have given statements and added further to what was said before the DDIT and establish the genuineness of share application money and creditworthiness of their respective companies. But the assessee refused to avail the opportunity and instead tried to shift the onus on the A.O., which is not permissible prior to the assessee discharging his onus.

The Director Shri Darak has not produced the directors of companies advancing share application money and has, in turn, requested the A.O. to summon these persons. When a person claims certain facts as true, the onus is on him to produce necessary witnesses to support his claim. He cannot shift the onus on the A.O. Only after Shri Darak produces his witnesses; the onus will shift on the A.O. It is on record that these directors were already summoned by the Deputy Director of Income-tax (DDIT) (Inv) at Kolkata. In several cases, the summons could not be served at the addresses, and in other cases where the summons were served, the directors of these companies failed to appear before the DDIT Inv. In light of these facts, the A.O. asked the assessee company to produce the directors of companies making share application. Why and for what reasons a share premium would be payable to a company like the applicant company, which has no net worth, is beyond comprehension. It is highly implausible that some persons would invest their money, without adequate protection and ensuring appropriate returns, in a company that did not have a proven, reputable, and reliable record. Any and every reasonable person is normally expected to practice due diligence while investing its hard-earned money, let alone purchase shares of an unknown company. In fact, such a high premium is not commanded even by blue chip quoted companies. It is not a

case where angel investors had invested upon being satisfied with the innovativeness and entrepreneurial skills of the management.

With the amendment to section 68, applicable w.e.f from AY 2013-13, not only is the assessee required to explain the source of share application money, but in case the applicant is a company, then the said applicant company is also required to explain the source of money in is handing out of which the amount of share application money was advanced to the assessee. In the present case, none of the share applicants has appeared and explained its finances, out of which the amount was advanced to the assessee.

In conclusion, the credit in the assessee's books as share application money is unexplained. The addition of the amount of Rs.121,88,00,000/-in the hands of the assessee, made in the assessment order, is hereby sustained, and the ground of the assessee is dismissed."

13. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before us.

14. On 05.06.2023, the assessee company had moved an application seeking adjournment of the appeal on the ground that as the appeal in the case of its sister concern, viz. M/s. Jayganga Exim India Pvt. Ltd for A.Y. 2012-13 involving identical facts was pending before the ITAT, Kolkata Bench, therefore, the hearing of the appeal in its case be adjourned till disposal of the appeal of the sister concern. Along with the application for adjournment, the assessee company had also referred to the documents that were enclosed in the case of its sister concern viz, M/s. Trimurti Finvest Limited, ITA No.19/RPR/2018 for A.Y.2014-15. As the present appeal had earlier been adjourned on twelve occasions, out of which, on two occasions,

it was adjourned on the request of the assessee, while on three occasions, the matter had to be adjourned as the assessee appellant had failed to put up an appearance, therefore, finding no justification in the reason based on which the hearing of the appeal was requested to be adjourned, i.e. request for adjourning the hearing of the appeal till the disposal of the appeal of the sister concern, the same was in all fairness posted for final hearing on 08.06.2023. On 08.06.2023, the Ld. AR sought liberty for placing on record "Paper Book Volume-2" (*sic*) (comprising of Page 1-45), which subject to no objection of the Ld. DR was admitted, and the appeal of the assessee appellant was heard at length and the order was reserved.

15. Before proceeding any further, it would be pertinent to point out that though the hearing of the captioned appeal was concluded on 08.06.2023, but thereafter, the registry of the Tribunal on 26.06.2023, through speed post received an application of the assessee appellant company (in multiple sets) seeking permission to place on record Written submissions/Synopsis and an "affidavit" of the director in support of the grounds of appeal raised before us. The assessee appellant, to support its claim that though the written submissions /synopsis/affidavit were being filed after the culmination of the appellate proceedings, the same in all fairness were required to be considered, had relied on the judgment of the Hon'ble Supreme Court in the

case of Aurangabad Electricals Ltd. Vs. Commissioner of Central Excise & Customs, Aurangabad (2011) 1 STD 118. In the aforesaid case, the assessee appellant claimed that the Hon'ble Apex Court had observed that technicalities should not defeat the rendering of justice to a litigant. Referring to the facts involved in the case mentioned above, the assessee appellant stated that the Court had remanded the matter to the file of the Tribunal with a direction to consider the document/certificate that the appellant had filed with the latter after hearing of the appeal was concluded and order was reserved, and decide the matter afresh. Also, the assessee appellant had, along with its aforesaid application filed a short synopsis/written submission in support of the grounds raised in the memorandum of appeal a/w an affidavit of Shri Rohit Darak, director of the assessee company.

16. As the aforesaid application seeking to place on the record the written submission/synopsis a/w. the affidavit of the director of the assessee company after the culmination of the appellate proceedings was not in conformity with the procedure contemplated in Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963, regulating the mode and manner for an appellant or a respondent who proposes to refer or rely upon any document or statements or other papers on the file of or referred to in the assessment or appellate orders; therefore, initially, we were of the view that the same did

not merit admission. Our conviction above was fortified by sub-rule (7) of Rule 18, as per which any paper/paper book filed in a manner that does not conform with that prescribed under Rule 18 is to be ignored. For the sake of clarity, Rule 18 of the Income Tax (Appellate Tribunal) Rules, 1963 is culled out as under:

“18. Preparation of paper books, etc.-(1) If the appellant or the respondent as the case may be, proposes to refer or rely upon any document or statements or other papers on the file of or referred to in the assessment or appellate orders, he may submit a paper book in duplicate containing such papers duly indexed and paged at least a day before the date of hearing of the appeal along with proof of service of a copy of the same on the other side at least a week before:

Provided, however, the Bench may in an appropriate case condone the delay and admit the paper book.

(2) The Tribunal may suo motu direct the preparation of a paper book in triplicate by and at the cost of the appellant or the respondent containing copies of such statements, papers and documents as it may consider necessary for the proper disposal of the appeal.

(3) The papers referred to in sub-rule (1) above must always be legibly written or type-written in double space or printed. If xerox copy of a document is filed, then the same should be legible. Each paper should be certified as true copy by the party filing the same, or his authorised representative and indexed in such a manner as to give the brief description of the relevance of the document, with page numbers and the Authority before whom it was filed.

(4) The additional evidence, if any, shall not form part of the same paper book. If any party desires to file additional evidence, then the same shall be filed by way of a separate paper book containing such particulars as are referred to in sub-rule (3) accompanied by an application stating the reasons for filing such additional evidence.

(5) The parties shall not be entitled to submit any supplementary paper book, except with the leave of the Bench.

(6) Documents that are referred to and relied upon by the parties during the course of arguments shall alone be treated as part of the record of the Tribunal.

(7) Paper/paper books not conforming to the above rules are liable to be ignored.”

(emphasis supplied by us)

Further, we may herein observe that there is also nothing discernible from the documents forwarded through speed post by the assessee appellant company (after the appeal was heard), which would reveal that the copies of the same were also sent to the respondent department. The assessee appellant to impress upon us that the written submission/synopsis/affidavit that were being filed with us, though after the culmination of the hearing of the appeal, therein merit admission, had relied on the judgment of the Hon'ble Apex Court in the case of Aurangabad Electricals Ltd. Vs. Commissioner of Central Excise & Customs, Aurangabad (supra).

17. We have perused the aforesaid judgment of the Hon'ble Apex Court in the case of Aurangabad Electricals Ltd. Vs. Commissioner of Central Excise & Customs, Aurangabad (supra), and the facts/issues therein involved are for the sake of clarity being culled out by us, as under:

Facts in the case before the Hon'ble Apex Court – Re: Aurangabad Electricals Ltd.:

18. In the case before the Hon'ble Supreme Court, the allegation against the appellants, viz. Aurangabad Electricals Ltd., who were manufacturers of “Magneto Assemblies,” was that they were receiving inputs from M/s Bajaj

Auto Ltd., which was the primary consumer of their goods, at an undervalued landed cost by not including an element of the landed cost of inputs incurred on account of Sales Tax, Octroi, Freight, Insurance, loading, unloading and handling charges. It was alleged that the appellant company was further undervaluing the clearances effected by them to M/s Bajaj Auto Ltd. since they were already receiving the price compensation in terms of inputs at reduced landed cost, and thereby were aiding each other for mutual business interest so that the production cost by both of them be kept at a minimum, and the central excise duty is discharged at a lower value. Before the Hon'ble Apex Court, it was claimed by the appellant company that both the adjudicating commissioner and the Tribunal had non-suited it because the details of the final product and the landed cost of the material supplied were not provided. Also, it was observed that the appellant company had not furnished any material/data as regards the actual expenses incurred on account of freight, loading, unloading charges, profit margin, etc. The appellant company produced before the Hon'ble Apex Court a Certificate issued by a Chartered Accountant (CA) in respect of the valuation of the normal price of "Magneto assemblies," which were manufactured and sold by it to M/s Bajaj Auto Ltd. in wholesale, which was in support of costing. Also, the said Certificate pointed out freight charges incurred by the appellant company for getting material from M/s Bajaj Auto Ltd. a/w loading

and unloading charges, consumable overheads, and profit. The Hon'ble Apex Court observed that the appellant had produced the Certificate along with other documents before the Tribunal after the appeals were heard and reserved for judgment. It was observed by the Hon'ble Apex Court that as technicalities should not defeat rendering of complete justice to a litigant, therefore, the matter in all fairness required to be remanded to the Tribunal with a direction to consider as to whether the Certificate placed on record by the appellant, would assist them in support of their claim.

19. After perusing the aforesaid judgment of the Hon'ble Supreme Court in the case of Aurangabad Electricals Private Limited Vs. Commissioner of Central Excise & Customs, Aurangabad, (2011) 1 STD 118, as had been relied upon by the assessee appellant, we find that the Hon'ble Apex Court in the said case, observing that technicalities should not defeat justice to the litigants, had remanded the matter to the file of the Tribunal with a direction to consider the CA certificate that was filed by the appellant with the Tribunal, though after the case was heard and order was reserved for judgment, and therein verify as to whether the same would assist the appellant company in support of their defense. Respectfully following the aforesaid observation of the Hon'ble Apex Court, we find substance in the claim of the assessee-appellant that the written submission/synopsis/affidavit

placed on our record, though after the conclusion of the hearing of the appeal, requires to be considered to verify as to whether the same in any way supports its claim that has been raised in the present appeal before us.

20. We have heard the Id. Authorized representatives of both parties, perused the orders of the lower authorities and the material available on record a/w. the synopsis/written submissions filed by the assessee appellant (received through post), as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

21. Although we, in terms of our observations above by relying on the judgment of the Hon'ble Supreme Court in the case of Aurangabad Electricals Ltd. Vs. Commissioner of Central Excise & Customs, Aurangabad (2011) 1 STD 118 had admitted the synopsis/written submissions/affidavit that the assessee appellant had filed a/w his letter seeking permission for admission of the same (received through post), however, it would be relevant to point out that though the same states that an "Annexure-A" is being enclosed but no such annexure is found enclosed with the said application/written submission/synopsis.

22. Adverting to the facts involved in the present appeal before us, we find that the controversy therein involved lies in a narrow compass, i.e., as to whether or not the lower authorities are correct in law and facts of the case in concluding that the amount of share application money of Rs.121.88 crore (approx.) claimed by the assessee company to have been received from 40 share applicant/subscriber companies was to be treated as unexplained cash credit u/s. 68 of the Act?

23. On a perusal of the assessment order, it transpires that the A.O., in the course of assessment proceedings, observed that the assessee company had claimed to have received share application money to the tune of Rs.121.88 crore (approx.) from 40 Kolkata-based share applicant/subscriber companies, as under:

S. No	Name of company	Share application money with premium
1	Accurate vinitrade pvt. Ltd.	42700000
2	Ambeshree commotrade pvt. Ltd.	124450000
3	Amritash commerical pvt. Ltd. Amritrashi merchandise pvt. Ltd.	2000000
4	Arrowlink vanijya pvt. Ltd.	4500000
5	Arrowspace trexim pvt. Ltd. Arrowspace tracon pvt. Ltd.	4600000
6	Bhalanetra vinimay pvt. Ltd.	47000000
7	Blockdeal dealcom pvt. Ltd.	57950000
8	Club side deal com pvt. Ltd.	60000000
9	Crabel distributor pvt. Ltd.	53900000
10	Everest retails pvt. Ltd.	7500000
11	Evermore sales pvt. Ltd.	2500000
12	Fastspeed vintrade pvt. Ltd. Fastspeed construction pvt. Ltd.	65000000
13	Ganeshvani commodeal pvt. Ltd. Ganeshwani commosales pvt. Ltd.	35400000
14	Goodpoint impex pvt. Ltd.	5000000
15	Intellect tradelink pvt. Ltd.	54500000
16	Interland sales pvt. Ltd.	7750000
17	Kamalkant dealers pvt. Ltd.	26900000
18	Kathrene suppliers pvt. Ltd.	1000000
19	Kirteshwari vintrade pvt. Ltd.	19000000
20	Lemonmint commercial pvt. Ltd.	8800000
21	Life wood dealmark pvt. Ltd.	12600000
22	Lifewood shoppers pvt. Ltd.	15700000
23	Malcom sales pvt. Ltd.	21500000
24	New town mercantiles pvt. Ltd.	39700000
25	Purujit vinimay pvt. Ltd.	35400000
26	Rinam distributors pvt. Ltd.	52900000

27	Rotomac vinimay pvt. Ltd.	72700000
28	Sandesh vanijya pvt. Ltd.	1300000
29	Safalta vinimay pvt. Ltd.	28000000
30	Srijan merchants pvt. Ltd.	6500000
31	Swarnchura tradelink pvt. Ltd.	49500000
32	Shri ram rathi marketing pvt. Ltd. (sthavistha)	39100000
33	Trishul retailers pvt. Ltd.	8800000
34	Unifour commosales pvt. Ltd.	75500000
35	Smart commosales pvt. Ltd.	4000000
36	Skybase infra pvt. Ltd.	2500000
37	Singrodiya bors. Holding pvt. Ltd.	45800000
38	Winsome commotrade pvt. Ltd.	1500000
39	Worldwealth deal trade ltd.	72450000
40	Zoom advisory pvt. Ltd.	2900000
		1218800000

24. The A.O. further noticed that the assessee company had, during the year, allotted 4,93,460 shares of a face value of Rs.100/- per share at a premium of Rs.2400/- per share. As the assessee company had carried out negligible business activities and was a loss-making company that had returned a loss of Rs. (-) 1,01,80,468/- during the year under consideration, therefore, the A.O. to verify the identity and creditworthiness of the share applicant/subscriber companies, and the genuineness of the transactions of receipt of the share application money by the assessee company from them had issued a commission u/s.131(1)(d) to the DDIT (Inv.), Unit-4 (1), Kolkata on 21.11.2016. As observed hereinabove, the DDIT (Inv.) Unit-4(1), Kolkata, vide his letter dated 20.12.2016, had reported to the A.O that the Kolkata-based share applicant/subscriber companies in question had doubtful

credentials. In all fairness, the A.O. confronted the facts above that were brought to his notice by the DDIT (Inv.) Kolkata to Shri Sarad Kumar Darak, director of the assessee company. The A.O. directed Shri. Sarad Kumar Darak (supra) to produce the directors of the share applicant/subscriber companies so that the identity and creditworthiness of the respective investor companies a/w. genuineness of the transaction of receipt of the share application money from them could be proved. However, it transpires on a perusal of the record that the directions of the A.O. were not complied with by the assessee company. Shri. Sarad Kumar Darak (supra), in his attempt to discharge the onus that was cast upon the assessee company to substantiate the authenticity of receipt of the share application money from the investor companies, furnished copies of PAN, returns of income, audit reports, and bank statements, etc. of the share applicant/subscriber companies. Regarding the A.O.'s direction to produce the directors of the share applicant/subscriber companies for necessary examination before him, Shri Sarad Kumar Darak (supra) expressed his inability to do so and requested the A.O. to summon them. However, the A.O. not losing sight of the fact that the summons that were earlier issued u/s.131 of the Act by the DDIT (Inv.) Unit-4(1), Kolkata (on a commission issued to him u/s 131(1)(d) of the Act) seeking personal attendance of the directors/principal officers of the aforesaid share applicant/subscriber companies were either not complied

with or were returned unserved, thus, knowing well that the repetition of the said exercise of summoning the persons above on his part would be nothing but futile and of no use, refrained from doing so.

25. Apart from that, as noticed by us hereinabove, the assessee company had throughout adopted an evasive approach, wherein instead of complying with the directions of the A.O. and producing the directors/principal officers of the share applicant/subscriber companies for necessary examination before him, it had instead chosen to file through speed post bundles of papers with the office of the A.O. The A.O. considering the fact that the assessee company was not forthcoming with the requisite details in discharge of the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine share application money from the share applicant/subscriber companies, thus, for verifying the factual position referred to the financial statements of the share applicant/subscriber companies, which revealed that they had virtually no worth and no fixed assets, as under:

S.no.	Name of company	Profit / loss	Total income shown in ITR	EPS	Non cureent investment
1	Accurate vinitrade pvt. Ltd.	-22496	Not enclosed	0.12	0
2	Ambashree commotrade pvt. Ltd.	-4565	77475	0	367350000
3	Amritrashi merchandise pvt. Ltd.	-4030	0	0	86140000
4	Arrowlink vanijya pvt. Ltd.	1068	1545	0	58938954
5	Arrowspace trexim pvt. Ltd.	2471	6517	0	104147000
6	Arrowspace tracon pvt. Ltd.	2471	3576	0	88809000
7	Bhalanetra vinimay pvt. Ltd.	106	156	0.00001	397985072
8	Blockdeal dealcom pvt. Ltd.	-7310	0	0	263198025
9	Club side deal com pvt. Ltd.	14204	Not enclosed	0.02	0
10	Crabel distributor pvt. Ltd.	1347	1951	0.000211	272217238
11	Everest retails pvt. Ltd.	2057	2978	0	80110870
12	Evermore sales pvt. Ltd.				
13	Fastspeed vintrade pvt. Ltd.				
14	Ganeshvani commodeal pvt. ltd.	-7109	0	0	175385000
	Ganeshvani commosales pvt. ltd.	-7423	0	0	190560000
15	Goodpoint impex pvt. ltd.				
16	Intellect tradelink pvt. ltd.	-15087	not enclosed	0.07	0
17	Interland sales pvt. ltd.	2835	3379	0.14	54670708
18	Kamalkant dealers pvt. ltd.	-5334	3245	0	68123000
19	Kathrene suppliers pvt. ltd.	5930	10286	0	126466050
20	Kirteshwari vintrade pvt. ltd.	642	930	0.000116	240057965
21	Lifewood shoppers pvt. ltd.	-7363	0	0	162050000
22	Lemonmint commercial pvt. ltd.	850	1230	0.000159	220350000
23	Malcom sales pvt. ltd.	939	1359	0.000219	150500000
24	New town mercantiles pvt. ltd.	9316	not enclosed	0.05	0
25	Purujit vinimay pvt. ltd.	19195	not enclosed	0.06	0
26	Rinam distributors pvt. ltd.	6670	9653	0	162215000
27	Rotomac vinimay pvt. ltd.	41726	not enclosed	0.03	0
28	Sandesh vanijya pvt. ltd.	848	1228	0.00455	150600000
29	Safalta vinimay pvt. ltd.	1625	2352	0.000345	187684960
30	Srijan merchants pvt. ltd.	599	866	0	68178848
31	Swarnchura tradelink pvt. ltd.	-7194	0	0	223939800

32	Shri ram rathi marketing pvt. ltd. (sthavistha)	8048	not enclosed	0.04	0
33	Trishul retailers pvt. ltd.	1463	2119	0	100754700
34	Unifour commosales pvt. ltd.	-14153	53817	0	311690000
35	Smart commosales pvt. ltd.	57531	54661	0.72	42161700
36	Skybase infra pvt. ltd.	104993	1136202	0.14	0
37	Singrodiya bors. holding pvt. ltd.	1871	not enclosed	0	0
38	Winsome commotrade pvt. ltd.	-9595	3075	0	66450000
39	Worldwealth deal trade ltd.	-14053	50676	0	254750000
40	Zoom advisory pvt. ltd.	13746	19886	1.19	5750000

Based on the facts above, the A.O. held a firm conviction that the share applicant/subscriber companies lacked creditworthiness to make investments aggregating to Rs.121.88 Crore (approx.) with the assessee company. Also, it was observed by the A.O. that since incorporation, the aforementioned share applicant/subscriber companies had yet to carry out any actual business activities. Apart from that, it was observed by the A.O. that the financial statements of the aforementioned share applicant/subscriber companies revealed that despite the huge amounts in securities premium account vis-à-vis non-current investments in the shares of private limited companies, they were since incorporation not carrying out any actual business activities. The A.O. further observed that the features of the share applicant/subscriber companies were peculiar features of shell/paper companies which were incorporated to facilitate the nefarious activities of laundering unaccounted money. Considering the fact that the

assessee company had failed to substantiate the identity and creditworthiness of the share applicant/subscriber companies, and genuineness of the transactions of receipt of the share application money from them, the A.O. concluded that having failed to do so, the amounts in question were to be held as unexplained cash credits u/s.68 of the Act.

26. Shri Harsh Vijayvargiya, Ld. A.R. for the assessee vehemently submitted that the A.O. had grossly erred in law and facts of the case in not considering the substantial documentary evidence that was filed before him to substantiate the identity and creditworthiness of the share applicant/subscriber companies, and also the genuineness of the transactions of receipt of the share application money from the said investor companies. The Ld. AR drew our attention to the assessment order, wherein the A.O. had observed that he had received bundles of papers through post from the assessee company. Referring to the documents mentioned above, it was submitted by the Ld. A.R. that the view taken by the A.O. without addressing the contents of the said documents, which in turn substantiated the authenticity of the transactions of receipt of share application money by the assessee company, was in clear violation of the basic principles of natural justice. Based on his contentions above, it was submitted by the Ld. A.R. that the matter, in all fairness, be restored to the file of the A.O. with a

direction to him to re-adjudicate the same after duly considering the documents that the assessment company had filed before his predecessor. However, on a specific query by the Bench, whether the documents mentioned above, stated to have not been considered by the A.O., were produced before the CIT(Appeals), the Ld. A.R. failed to come forth with any reply. Also, no such material/documents were placed before us, which would evidence that the assessee company had duly discharged the onus that was cast upon it as regarding proving the authenticity of its claim of having received genuine share application money from the 41 share applicant/subscribers companies. Further, a "chart" filed by the assessee appellant company demonstrating that out of 41 companies therein stated, some of those were active, along with details of company master data from ROC website of 41 share subscriber companies, in our considered view on such standalone basis would not suffice to discharge the onus cast upon it as regards proving the authenticity of the transactions under consideration.

27. Be that as it may, we shall look into the aspect as to whether the assessee company had duly discharged the primary onus that was cast upon it as regards proving the identity and creditworthiness of the share applicant/subscriber companies, and also established the genuineness of

the transactions of receipt of the share application money from the investor companies.

28. On a perusal of the records, it transpires that the assessee company had failed to comply with the directions of the A.O. to produce the directors of the Kolkata-based share applicant/subscriber companies for necessary examination before him. At this stage, we may herein observe that the DDIT (Inv.), Unit-4(1), Kolkata, had, pursuant to a commission issued to him u/s 131(1)(d) of the Act by the A.O., filed his report about the share applicant/subscriber companies, viz. (i). that the notices issued to them were either returned by the postal authorities as unserved or were not complied with; (ii). they had doubtful credentials; (iii). that as per the database of entry operators available with the income-tax directorate, the investor companies appeared to be paper/shell companies that were being managed by infamous entry operators who had admitted to having carried out their nefarious activities of providing bogus/accommodation entries through the said companies; and (iv). the directors of the said companies were dummy directors. Considering the aforesaid details about the share applicant/subscriber companies as was reported by the DDIT(Inv.)-4(1), Kolkata, pursuant to a commission issued to him u/s 131(1)(d) of the Act, and the factum of the poor financial credentials of the said share

applicant/subscriber companies, which, as could be gathered from their financial statements, were not involved in any real business activities, the A.O., in our considered view, was duly justified in carrying serious doubts as regards the authenticity of the claim of the assessee company of having received genuine share application money from the aforementioned share applicant/subscriber companies. In so far furnishing of the copies of PAN, income tax returns, audit reports, and bank statements by the assessee company in its attempt to discharge the primary onus that was cast upon it to prove the authenticity of its claim of having received genuine share application money from the investor companies, we concur with the view taken by the CIT(Appeals) that as held by the **Hon'ble High Court of Delhi** in the Case of **CIT Vs. N.R. Portfolio Private Limited (2014) 42 taxmann.com 339 (Delhi)**, that in a case where the assessee had adopted an evasive approach and had deliberately and intentionally failed to produce evidence before the A.O. with the desire to prevent inquiry or investigation, then adverse view should be taken. At this stage, we may herein observe that Shri Sarad Kumar Darak (supra), in his statement recorded on oath by the A.O. on 13.12.2016 on being directed to produce the principal officers/directors of the share subscriber/applicant companies, had expressed his inability to do so and had requested that the Department may summon the said persons. In our considered view, now when neither of the

aforementioned persons had complied with the summons issued to them u/s. 131 of the Act by the DDIT (Inv.), Unit-4(1), Kolkata; therefore, the A.O. being well aware of the fact that the summoning of the said persons on his part would be a futile exercise, had thus rightly refrained from acceding to the said request of the assessee. Considering the totality of the facts involved in the present case, wherein the principal officers/directors of the share applicant/subscriber companies were evading their participation and compliance to the summons that were issued by the DDIT(Inv.)-4(1), Kolkata on a commission issued by the A.O. to him, we are of the considered view that the assessee company being well aware of the aforesaid state of affairs could not have shifted the onus that was cast upon it as regards proving the authenticity of the transactions of receipt of genuine share application money from the aforesaid share applicant/subscriber companies by seeking summoning of the said persons by the A.O. As the aforesaid share applicant/subscriber companies had not complied with the summons that were issued to them u/s 131 of the Act by the DDIT(Inv.)-4(1), Kolkata, therefore, the assessee company in discharge of the onus that was cast upon it to prove the authenticity of the transactions of receipt of the share application money from them statutorily remained under an obligation to have complied with the directions of the A.O and produced the concerned persons for necessary examination before him. On a careful perusal of the

orders of the lower authorities, we would not hesitate to observe that the assessee company had absolutely adopted an evasive approach and except for placing on record certain documentary evidence, i.e., copies of PAN, returns of income, audit reports and bank statements, etc. of the share applicant/subscriber companies, and harping on the fact that transactions were carried out through banking channel, had however failed to substantiate the set of conditions envisaged u/s. 68 of the Act, i.e. (i) proving the identity and creditworthiness of the share applicant/subscriber companies; and (iii) establishing the genuineness of the transactions under consideration based on irrefutable supporting documentary evidence. As the DDIT(Inv.), Unit-4(1), Kolkata had vide his report dated 21.11.2016, i.e., pursuant to the commission issued u/s.131(1)(d) of the Act by the A.O., therein stated that share applicant/subscriber companies had doubtful credentials and lacked identity, creditworthiness, and genuineness, which fact was brought by the A.O. to the notice of the assessee company, therefore, in our considered view a very heavy onus was cast upon the assessee company to dispel the said adverse observations by placing on record supporting documentary evidence, and such other material which would have substantiated the authenticity of the transactions of receipt of genuine share application money from the said share applicant/subscriber companies. However, we find that the assessee company had failed to

discharge the primary onus that was cast upon it for proving the authenticity of the transactions of receipt of the share application money from the share applicant/subscriber companies based on any irrefutable documentary evidence. As observed by us hereinabove, it is though the claim of the Ld. AR that the assessee company on the basis of supporting documents/material had duly discharged the onus that was cast upon it as regards proving the authenticity of its claim of having received genuine share application money from the 40 investors companies, which, as claimed by him had not been considered by the A.O, but we find that neither any such documents/ material so heavily relied upon by the Ld. AR were produced before the CIT(Appeals) or before us.

29. Also, the fact that notices issued by the DDIT (Inv.) Unit-4(1), Kolkata, to the 40 shares applicant/subscriber companies mentioned above were either returned unserved; or were not complied with by them, further fortifies the view taken by the A.O. that the assessee company had laundered its ill-gotten money in the garb of the share application money from the aforementioned shell/paper companies. In case the aforesaid 40 share applicant/subscriber companies would have made genuine investments aggregating to a towering sum of Rs. 121.88 crores (supra) with the assessee company, then it is not only beyond comprehension but also

beyond human probability that they would have shirked from or evaded compliance of the summons that were issued to them u/s 131 of the Act by the DDIT(Inv.)-4(1), Kolkata. We have a firm conviction that had it been a case of genuine investments made by the 40 share applicant/subscriber companies mentioned above, then there was no reason as to why they would not have complied with the summons issued to them u/s 131 of the Act and appeared before the DDIT(Inv.)-4(1), Kolkata and confirmed their respective investments along with the source of making the same. The evasive approach adopted both by the assessee company and all of the so-called 40 share applicant/subscriber companies speaks for itself, and reveals that the latter were merely name-sake investors forming part of a well-knit chain of paper/shell companies managed by entry operators who had facilitated the laundering of the unaccounted money of the assessee company in the guise of share capital/premium. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the Case of **Pr. CIT, Circle-1 Vs. NRA Iron & Steel Pvt. Ltd. (2019) 103 taxmann.com 48 (S.C.)**. In the said case, the Hon'ble Apex Court had observed that where the assessee company had received share capital/premium but had failed to establish the creditworthiness of the investor company, then the A.O. was justified in treating the said amount as an unexplained cash credit u/s.68 of the Act. The Hon'ble Apex Court, while concluding as hereinabove had, inter

alia observed that the A.O. is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders. The Hon'ble Apex Court, while concluding as hereinabove, had laid down the principles which emerge where sums of money are credited as Share Capital/Premium, as under:

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

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and the creditworthiness of the investors who should have the financial capacity to invest in question to the satisfaction of the A.O., to discharge the primary onus.

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

iii. If the inquiries and investigations reveal that the identity of the creditors is dubious or doubtful, or lacks creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

(emphasis supplied by us)

30. Considering the facts as were involved in the case before the Hon'ble Apex Court it was observed, viz. (i). that the investor companies had filed returns for a negligible taxable income which would show that the investors did not have the financial capacity to invest the substantial amount with the assessee company; (ii) there was no explanation whatsoever offered by the investor company as to why they had applied for shares of the assessee

company at a high premium; (iii) that none of the investor companies established the source of funds from which they invested the high share premium; and (iv) that mere mention of the income tax file number of an investor was not sufficient to discharge the onus that was cast upon the assessee u/s. 68 of the Act. Also, the peculiar fact involved in the present case before us, which can also be traced in the facts involved in the case before the Hon'ble Apex Court, was that the A.O. *[DDIT(Inv.)-4(1), Kolkata in the case of the present assessee company before us]* had issued summons to the investor companies, who despite having validly been served failed to put up an appearance before him. Also, in the case before the Hon'ble Apex Court, the Kolkata-based companies had responded to the notices issued by the A.O. only through 'Dak' and had failed to substantiate the source of funds from where they made the alleged investments.

31. Considering the totality of the facts involved in the case before them, it was, inter alia, observed by the Hon'ble Apex Court that once the assessee has submitted the documents relating to identity, genuineness of the transaction and creditworthiness, then the A.O. must conduct an inquiry, and call for more details. It was further observed that if the assessee is not able to provide a satisfactory explanation of the nature and source of the investments made, it is open to the revenue to hold that it is the income of

the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. The Hon'ble Apex Court had further observed that the Department is obligated to carry out careful scrutiny of a private placement of shares, and the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the A.O., and failure of the same would justify the addition of the said amount to the income of the assessee, observing as under:

"14. The practice of conversion of unaccounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of a private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the A.O., failure of which would justify addition of the said amount to the income of the assessee."

Also, the Hon'ble Apex Court had not found favour with the view taken by the lower appellate authorities, wherein they had observed that as the assessee company had filed all the documentary evidence in the course of assessment proceedings, therefore, the onus that was cast upon it to establish the creditworthiness of the investor companies stood discharged. Rebutting the aforesaid view taken by the lower authorities, the Hon'ble Apex Court had observed that the lower appellate authorities, while so concluding, had not even adverted to the field inquiry conducted by the A.O., which revealed that in several cases, the investor companies were found to

be non-existent, and thus the onus to establish the identity of the investor companies was not discharged by the assessee.

32. Considering the principles which the Hon'ble Supreme Court had laid down in the case of **Pr. CIT, Circle-1 Vs. NRA Iron & Steel Pvt. Ltd. (supra)**, we find that the facts involved in the present case before us fall within four corners of the same. As observed by the Hon'ble Apex Court, though the assessee company in the present case before us had also filed copies of PAN, returns of income, audit reports, and bank statements of the share applicant/subscriber companies in the course of the assessment proceedings, the same on such standalone basis would not justify discharge of the onus that was cast upon it as regards proving the identity and creditworthiness of the share applicant/subscriber companies, and also the genuineness of the transactions of receipt of share application money from them. Apart from that, we find that a reference to the financial statements of the share applicant/subscriber companies as culled out by the A.O in the body of the assessment order (reproduced hereinabove) reveals that the aforesaid 40 investor companies had no financial means to invest such huge amounts aggregating to Rs.121.88 crore (approx.) with the assessee company. Also, the fact that the said 40 investor companies had subscribed the shares of the assessee company, a loss-making company, of the face

value of Rs.100/- per share at a premium of Rs.2400/- per share does not inspire any confidence as regards the authenticity of the transactions under consideration. Also, we may observe that as the aforesaid judgment of the Hon'ble Apex Court in the Case of Pr. CIT, Circle-1 Vs. NRA Iron & Steel Pvt. Ltd. (supra) was rendered in the context of pre-amended Sec. 68 of the Act; therefore, pursuant to the insertion of the "1st proviso" to Sec. 68 of the Act vide the Finance Act, 2012 w.e.f 01.04.2013 which applies to the case of the present assessee company before us, a much heavier onus was therein cast upon it to substantiate the authenticity of the share application money that was credited in its books of accounts. Apropos the claim of the assessee company that the lower authorities had miserably failed to establish that the assessee's unaccounted money was routed back to its coffers in the guise of share application money received from the share applicant/subscribers companies, therefore, the amount so received could not be held as its unexplained cash credit u/s.68 of the Act, we are unable to concur with the same. We, say so, for the reason that as held by the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra), if the assessee is not able to provide a satisfactory explanation of the nature and source of the investments made, then it is open to the revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.

33. Be that as it may, as observed by the lower authorities and rightly so, the case of the assessee company falls within the realm of post-amended Section 68 of the Act, i.e., as had been made available on the statute vide the Finance Act, 2012 w.e.f. 01.04.2013. For the sake of clarity, Sec. 68 (post-amended – as applies to the case of the assessee company) is culled out as under :

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

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium, or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company, also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

As per the "1st Proviso" to Section 68 of the Act an additional obligation was fastened upon the assessee company to substantiate the authenticity of its

claim of having received genuine share application money, and the respective investors were required to offer an explanation as regards the nature and source of the sum so credited against their name in the books of account of the assessee company. To sum up, the claim of the assessee company of having received share application money from the 40 share applicant/subscriber companies did further cast an obligation upon it to mandatorily supplement the same with the explanations of the respective investor companies about the nature and source of such sum credited against their names in the books of account of the assessee company. However, we find that in the present case before us, not only the assessee company had failed to substantiate to the hilt the nature and source of the amount credited in its books of account based on any clinching documentary evidence, but also, there is no whisper in the orders of the lower authorities about any explanation of the respective investor companies about the nature and source of such sum so credited against their names in the books of account of the assessee company.

34. Now, we shall deal with the judicial pronouncements pressed into service by the Ld. AR to support his contentions above, as under:

(A) Chhattisgarh Metaliks and Alloys (P.) Ltd. Vs. ITO, (2023) 147 Taxmann.com 441 (Raipur-Trib)

35. Referring to the order above, the Ld. AR had tried to impress upon us, that as the onus cast upon the assessee company to prove the authenticity of the transactions of receipt of the share application money from the 41 share applicant/subscriber companies was duly discharged, therefore, on a similar footing, no adverse inferences were liable to be drawn in its case. We are unable to persuade ourselves to subscribe to the aforesaid claim of the assessee. We, say so, for the reason that a perusal of the facts involved in the aforementioned case of Chhattisgarh Metaliks and Alloys (P) Ltd. Vs. ITO (supra) reveals that the same is distinguishable on facts. In the aforesaid case, the assessee company that had received share application money from the concerned share applicant/subscriber company had filed requisite documents to prove the transaction's authenticity. On a perusal of the capital account of the investor company, viz. M/s. Aayush Steelco (P) Ltd., it was therein observed by the Tribunal that the investment in question was made by the investor company out of its "opening balance" of Rs.89.18 lac on 01.04.2014 as a partner with M/s. Sri Balaji Iron & Steel Traders, Visakhapatnam, and not out of any fresh amount parked in its capital account during the year under consideration. Considering the duly substantiated explanation as regards the source of investment of share application money by the investor company, viz. M/s. Aayush Steelco (P)

Ltd. and other supporting documentary evidence that the assessee had filed in the course of the proceedings before the lower authorities, it was observed by the Tribunal that the onus cast upon the assessee company for proving nature and source of the share application money a/w. additional burden that was cast upon it as per the "1st Proviso" to Section 68 of the Act was duly discharged.

36. Unlike the facts involved in the aforementioned case, in the case of the present assessee company before us, we find that as it had failed to discharge the onus that was cast upon it as regards proving the authenticity of its claim of having received share application money from the share applicant/subscriber companies by satisfying the set of conditions envisaged u/s 68 of the Act, i.e. (i). proving the identity and creditworthiness of the share applicant/subscriber companies, and establishing the genuineness of the transactions under consideration based on irrefutable documentary evidence; and (ii). explanation of the share applicant /subscriber companies about the nature and source of the sum recorded against their name in the books of the assessee company; therefore, the reliance placed by the Ld. AR on the aforesaid order passed in the case of Chhattisgarh Metaliks and Alloys (P) Ltd. Vs. ITO (supra) would not come to its rescue.

(B) Pr. Commissioner of Income-tax Vs. Chain House International (P) Ltd. (2019) 103 taxmann.com 435 (SC)

37. In the aforesaid case, it was observed by the Hon'ble High Court that once the genuineness, creditworthiness, and identity of investors were established, no addition could be made concerning the cash credit on the ground that the shares were issued at an excess premium. The Hon'ble High Court had observed that as there was no dispute about the identity, creditworthiness, and genuineness of the investors which was established beyond any doubt, therefore, there could be no question or dispute about the premium paid by them and thus, no justification for the A.O to have doubted the authenticity of the transaction and drawing of adverse inferences on the ground that the investor as a prudent businessman could have managed by paying lesser premium.

38. Once again, unlike the facts involved in the present case of the assessee before us, as the identity, creditworthiness, and genuineness of the investor companies in the aforesaid case were proved to the hilt based on irrefutable documentary evidence, therefore, the facts therein involved leading to the view taken by the Hon'ble High Court would by no means assist the case of the assessee before us.

(C) ACIT Vs. Shri Pramod Kumar Sethi, ITA No.382 & 383/Ind/2014 dated 06.11.2018

39. As is discernible from the aforesaid order, it transpires that the same had been pressed into service by the Ld. AR to impress upon us that the assessee company a/w. its two other sister concerns were held by the Tribunal to be genuine, and it was held that the unsecured loans raised by the assessee before them, viz. Shri Pramod Kumar Sethi (supra) from the present assessee before us and its sister concerns was not to be treated as unexplained cash credit u/s.68 of the Act.

40. We are unable to comprehend that as to how the aforesaid order of the ITAT, Indore would assist the case of the assessee company before us. It is not the existence of the assessee company before us which is in question, but it is the authenticity of its claim of having raised genuine amount of share application money from 40 shares applicant/subscriber companies which is the issue for which our indulgence has been sought. Considering the fact that the addition in the case of the assessee company had been made by the A.O u/s.68 of the Act, for the reason that it had failed to discharge the onus that was cast upon it as regards proving the authenticity of its claim of having received genuine amount of share application money from the aforementioned investor companies, therefore, reliance placed on the aforesaid order of the ITAT, Indore in the case of ACIT Vs. Shri Pramod Kumar Sethi (supra), being not relevant to the issue in

question before us, would by no means come to the rescue of the assessee company.

41. Because the assessee company had grossly failed to discharge the onus that was cast upon it as regards proving the authenticity of its claim of having raised genuine share application money of Rs.121.88 crore (approx.) from the 40 investor companies, i.e., by satisfying the double facet conditions contemplated in the aforesaid statutory provision, i.e., Sec. 68 of the Act (post-amended), viz. (i) explanation about the nature and source of the credit in its books of account; and (ii) explanation by the investor companies as regards the nature and source of the sum so credited against their name in the books of account of the assessee company - therefore, finding no infirmity in the view taken by the lower authorities who had rightly held the entire amount as unexplained cash credit u/s. 68 of the Act, we uphold the same. Thus, the **Grounds of appeal No(s). 2 to 4** raised by the assessee company are dismissed in terms of our observations above.

42. **Ground of appeal No.5**, being general, is dismissed as not pressed.

43. Although the assessee company has also assailed the order of the CIT(Appeals) on the ground that he had erred in dismissing the appeal without allowing a reasonable opportunity of hearing, we are unable to

persuade ourselves to concur with the same. On a perusal of the CIT(Appeals) order, it transpires that the assessee company, during the proceedings before him, was duly represented by its C.A., viz. Shri Dinesh Kumar Agrawal, FCA, who had argued the matter and filed written submissions during the proceedings before the said first appellate authority. Also, a perusal of the CIT(Appeals) order reveals that he had duly considered the written submission filed by the assessee company before him and had passed a speaking order. We, thus, finding no merit in the aforesaid claim of the assessee company, dismiss the same. Thus, the **Ground of appeal No.1** raised by the assessee company is dismissed in terms of our observations above.

44. In the result, appeal of the assessee company being devoid and bereft of any merit is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 14th day of August, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 14th August, 2023
SB

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The Pr. CIT, Bilaspur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.