

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
 श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.201/RPR/2018
 (Assessment Year: 2012-2013)

The Income Tax Officer-2(1), Raipur	Vs	M/s.Aryan Builders and- Developers Pvt. Ltd., Near Shitla Mandir, Machhi Talab, Gudiyari, Raipur
PAN No. : AAJCA 3942 M		
AND Cross Objection No.09/RPR/2022) (Arising out of ITA No.201/RPR/2018) (Assessment Year: 2012-2013)		

M/s.Aryan Builders and – Developers Pvt. Ltd., Near Shitla Mandir, Machhi Talab, Gudiyari, Raipur	Vs	ITO-2(1), Raipur
PAN No. : AAJCA 3942 M		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ramesh Kumar Singhania, CA, & Shri Vijay Sharma, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.K.Meena, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	15/06/2023
घोषणा की तारीख/ Date of Pronouncement	:	06/09/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The revenue has filed this appeal against the order passed by the CIT(A)-1, Raipur, dated 05.07.2018 for the assessment year 2012-2013. The assessee has also filed cross objection.

2. The revenue has filed revised grounds of appeal vide letter dated 14.12.2022, which read as under:-

1. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,07,00,000/- made by the AO u/s 68 of the Act?"*
2. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) deleting the addition of Rs. 3,07,00,000/- by ignoring the facts as brought on record by the AO that the assessee company failed to prove the identity, genuineness and creditworthiness of the investor company as per the parameters of the legal provisions u/s 68 of the Act?"*
3. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) having concurrent powers of the AO u/s 250(4) of the Act, was justified in deleting the addition of Rs. 3,07,00,000/- made by the AO in the absence of satisfaction of parameters prescribed u/s 68 of the Act?"*
4. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary to the ratio of the decision of Hon'ble Supreme Court in the case of M/s Rajmandir Estates Pvt Ltd vs. PCIT-III, Kolkata (SLP No. 22566-22567 dt. 09.01.2017)"*
5. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary to the ratio of the decision of ITAT, Kolkata 'B' Bench in the case of M/s Subhlakshmi Vaniya (P) Ltd. Vs. CIT-1, Kolkata in ITA No. 1104/Kol/2014 and other cases dated 30.07.2015?"*
6. *"Whether on points of law and facts & circumstances of the case, the Ld. CIT(A) has erred by giving a finding which is contrary to the ratio of the decision of ITAT, Kolkata Bench in the case of M/s. Bisakha Sales (P) Ltd. Vs. CIT-II, Kolkata [ITA No. 1493/Kolkata/2013]?"*
7. *Whether on points of law and facts & circumstances of the case, the Ld. CIT(A) has erred by giving finding which is contrary to the ratio of the decision of Hon'ble ITAT (A Bench),, New Delhi in the case of M/s. Pee Aar Securities Ltd. Vs. DCIT-Circle 14(1), New Delhi [ITA No. 4978/Del/2014]?"*
8. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,07,00,000/- by holding the identity, creditworthiness of the entitles investing in the share capital and share premium of the assessee company as genuine, a finding which is factually incorrect, thereby rendering the decision, which is perverse?"*
9. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in giving a decision in favour of the assessee and against the revenue though there is no nexus*

between the conclusion of fact and primary fact upon which conclusion is based ?"

10. *"The order of is erroneous both in law and on facts".*

11, *"Any other ground that may be adduced at the time of hearing".*

3. Brief facts of the case are that the assessee is a company incorporated under the Companies Act 1956 and engaged in the real estate business. The assessee has filed its return of income electronically on 30.09.2012 declaring total income at Rs. Nil. Sunsequently, the case of the assessee was selected for scrutiny and notice u/s.143(2) of the Act was issued to the assessee, in response to which the assessee filed its written submission. The AO examined the books of accounts, bill & vouchers produced by the assessee. During the year under consideration the commercial operations of the assessee had not been commenced, therefore, the assessee did not prepare any profit and loss account. The lands purchased during the year have been classified as Inventory. The AO found that there were receipts of share capital and share premium to the tune of Rs.4,06,000/- and Rs.3,02,941,000/- respectively from various shareholders. The information was sought from the shareholders u/s.133(6) of the Act with a view to conduct enquiry into the genuineness of receipt of the share capital/premium, however, no response was received from the following shareholders from whom the assessee has claimed to have received share capital/premium aggregating to Rs.1,10,00,000/- :-

1. *Winsher Vinimay Pvt. Ltd.*
2. *Everlast Vinimay Pvt. Ltd.*
3. *Subhlabh Prints Pvt. Ltd.*
4. *Rajhans Dealers Pvt. Ltd.*

5. *Liberal Merchangs Pvt. Ltd.*

Therefore, in absence of establishment of genuineness of the receipt of share capital/premium, the AO added Rs.3,07,00,000/- to the total income of the assessee u/s.68 of the Act.

4. Against the above order of AO, the assessee preferred appeal before the Id. CIT(A) and the Id. CIT(A) allowed the appeal of the assessee and deleted the addition made by the AO.

5. Now, the revenue is in appeal before the Tribunal against the order of the Id.CIT(A).

6. Ld. CIT-DR, at the outset, submitted that the case of the assessee was selected for scrutiny under CASS. The assessment proceedings were initiated by issuing notice u/s.143(2) of the Act, detailed questionnaire in terms of Section 143(2) & 142(1) of the Act were issued, hearings were conducted, the assessee had submitted its written replies against the above questionnaire. Ld. CIT-DR drew our attention to para 2 of the assessment order and reiterated the facts. As per the observations of the Id. AO in the assessment order, it was the submission that the assessee company has raised a sum of Rs.4,06,000/- and Rs.3,02,94,000/- from various shareholders under the head share capital and share premium respectively. Ld. AO cast the onus on the assessee to furnish the explanation in support of the said cash credits by establishing the identity, creditworthiness and genuineness of the shareholders and transactions, As per the statement of the assessee, notices were issued to the shareholders seeking information u/s.133(6) of the Act to conduct

enquiry on the impugned shareholders, however, no response was received from the following 5 (Five) shareholders from whom the assessee claimed to have received share capital/premium aggregating to Rs.1,10,00,000/- :-

1. *Winsher Vinimay Pvt. Ltd.*
2. *Everlast Vinimay Pvt. Ltd.*
3. *Subhlabh Prints Pvt. Ltd.*
4. *Rajhans Dealers Pvt. Ltd.*
5. *Liberal Merchangs Pvt. Ltd.*

7. Ld DR further submitted that, It was further observed by the Id. AO that since no response has been received from the five share subscriber companies, it is proved that the said five companies does not exist in real sense and mere furnishing of PAN and certificate of incorporation indicates dormant existence and cannot be accepted as sufficient discharge of onus u/s.68 of the Act, As there is no positive affirmation from aforesaid companies, the genuineness of the receipt of share capital/premium has not been established. By observing so, the Id. AO has contended that the companies from whom the assessee has received substantial amount in the form of share capital/premium are merely paper companies without any concrete business. The financial statements of the said companies also defy all logics of investment in shares of the assessee company. It was further noticed by the Id. AO that the said companies do not have any real business and have been merely used as a conduit to channelize the unaccounted money of the assessee company. The AO while concluding has remarked that the amount received from the companies on whom basis of information received certain enquiries were also conducted looking into the genuineness of the

investment made by such Kolkata based companies, since the said companies do not exist in reality, therefore, mere furnishing of PAN and certificate of incorporation indicates dormant existence and the same cannot be considered as sufficient discharge of onus u/s.68 of the Act. By stating so, and rightly, Id. AO added the entire amount of Rs.3,07,00,000/- as income of the assessee from undisclosed source u/s.68 of the Act. Ld. CIT-DR further submitted that the issue was raised by the assessee before the Id. CIT(A), wherein the Id. CIT(A) has granted relief to the assessee observing that the AO has discussed in the assessment order that no response was received from five shareholders to the notice u/s.133(6) of the Act. Ld. AO without assigning any reason rejected the documents even for those companies from whom, the documents were received. It was the observation of the Id. CIT(A) that the Id. AO has not pointed out any defect in the document received and the adverse conclusion drawn by on the basis of fact in respect of those companies on which reply was not received. It was the observation of the Id. CIT(A) that the AO has mentioned about certain information received about genuineness of investment made by the Kolkata based companies, but the same information was never shared with the assessee, neither any opportunity has been provided to the assessee to refute the information if any before making the additions. The assessee has furnished certain documents like PAN, audited accounts, ROC certificate etc. in respect of the five companies which the Id. AO has requisitioned u/s.133 (6) of the Act and no reply was received were again submitted by the assessee at

the appellate stage and the same was forwarded to the AO to furnish a remand report on the same. Ld. CIT-DR drew our attention to the remarks in the remand report furnished by the AO before the Id. CIT(A), which reads as under :-

“The AO had concluded that the companies actually do not exist and thus the genuineness and creditworthiness could not be established. Now, the assessee has furnished the required documents to establish the identity, genuineness and creditworthiness of the investor companies at appellant state. It is beyond one’s comprehension as to what prevented the assessee to produce the same before the AO during assessment proceedings

However, on perusal of assessment order it is amply clear that the AO had not disallowed the investment of the companies, which failed to respond to the notices u/s 133(6), rather she had disallowed the share capital and share premium introduced by all the 12 companies aggregating to Rs. 30700000/- in view of inquiries conducted by her wherein it was revealed that the companies are merely paper companies and the investment does not commensurate with their financial status.

The document submitted by the assessee in respect of five investor companies which were not received in response of notice u/s 133(6) during assessment proceedings are similar to those in respect of other companies which were received before finalization of assessment order. The AO had taken an adverse view on the financial status of the companies which appears to be applicable in these 5 companies also. Thus the order deserves to be confirmed”.

8. The remand report was confronted to the assessee and the Id.CIT(A) has concluded that once the onus has discharged by the assessee by furnishing details and documents such as ROC registration, PAN, audited accounts and bank account evidencing the transaction, onus shifts on the AO to make enquiries/investigation to establish that either or all of the identity, creditworthiness and genuineness of shareholders has not been established. Since documents were submitted before the AO in all cases it shows that the companies do exist. Ld.

CIT(A) discussed as an example the balance sheet of M/s Apurva Bartar (P) Ltd. As on 31.12.2012 stating that it has interest income of Rs.15,35,594/- and share capital and reserve of the company was Rs.5,79,33,838/- out of which the share subscriber company has invested in long term loans, advances and shares of the companies. Ld. CIT(A) has observed that the picture is same in respect of other shareholders also. Thereafter applying certain case laws, Id. CIT(A) has deleted the addition. It was the submission of the Id. CIT-DR that the Id.CIT(A) has not discussed the financial statement of all the 12 companies whose financial conditions are apparently suggesting that the companies are shell or paper companies, no cognizance to the observations of the AO in the remand report was also given by the Ld CIT(A). Ld CIT(A) who poses the powers coterminous with that of the AO, was obligated to conduct enquiry, when a negative report was received with respect to such Kolkata based companies and informed by the AO, but Ld CIT(A) chooses to accept the submissions of assessee rather than that of AO. Such method of examination of facts by the Id. CIT(A) was totally perverse, unacceptable, bad in law and, therefore, the conclusion drawn by the Id. CIT(A) was erroneous, unjustified, deserves to be set aside.

9. On the other hand, Id. AR filed his written synopsis which read as under:-

Synopsis

1. *Evidences submitted before the AO summarized in the chart.*
2. *The AO conducted enquiry u/s 133(6) from the investors:*
 - i) *Notice to all investors served.*
 - ii) *Out of 13 investors, to the best of knowledge of assessee, all of them replied to the AO but AO observed that 5 investors did not respond.*
 - iii) *Fact of no response received from the 5 investors never brought to the notice of assessee.*
 - iv) *Even response in respect of such five investors submitted before CIT(A) on which remand report was called from the AO and AO made similar observations as have been made in the assessment order.*
 - v) *No finding has been made by the assessing officer in respect of those companies which have complied to the notice u/s 133(6). Also, AO has not thrown any light about what inquiry was conducted about those companies.*
3. *Assessee filed all the evidences. All the investors confirmed having made investment. In such a case, no addition could be made in the hands of assessee. Reliance on: -*
 - i) *ACIT vs Venkateshwar Ispat (P) Ltd. (2009) 319 1TR 393 (Chhattisgarh).*
4. *Burden cast on assessee discharged. No addition could be made. Reliance on: -*
 - i) *CIT vs Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC).*
 - ii) *Pr. CIT vs Laxman Industrial Resources Ltd. (2017) 397 ITR 106 (Del.).*
 - iii) *Prabhatam Investment (P) Ltd. vs ACIT (2017) 49 CCH 299 (Del. Trib.).*
5. *Onus u/s 68 discharged. The burden never shifted back by the AO to the assessee as the outcome of enquiry was never confronted to the assessee and no positive material has been brought on record by the AO disputing the legal and cogent evidences.*
6. *Addition made on the basis of inference, which is not permissible. Even such inference is arbitrary and based on presumption and suspicion.*
7. *Allegation of fund transfer*

In absence of any enquiry conducted by AO, only on the basis of such observations, addition could not have resulted.

8. *Allegation of meager income*

- i) It is undisputed that all investors had huge net worth.*
- ii) Investment made by them not out of their income but out of overall funds available with them.*
- iii) Balance sheet being filed by the investors in their individual returns, which has been accepted without any dispute in their case. Availability of funds in the hands of such investors could not have been doubted in the case of assessee without disturbing the assessments of the investors.*

iv) Reliance on: -

- CIT vs Vrindavan Farms (P) Ltd., in ITA 71, 72 & 84/2015 of Hon'ble Delhi High Court dt. 12.08.2015.*
- Anjani Associates vs ITO in ITA No. 27/RPR/2018 dt. 10.08.2018 of Raipur Bench of ITAT.*
- Prabhatam Investment P. Ltd. vs ACIT. (2017) 49 CCH 299 (Del. Trib.).*
- Pr. CIT vs AMI Industries (India) P. Ltd. (2020) 424 ITR 219 (Bom.)*

9. Burden was on the AO to disprove the legal & cogent evidences. Burden not discharged and so addition could not be made.

10. Although requisite compliance was made by all the investors, even if some of the investor did not respond, no addition could be made only on this account.

11. In ACIT vs R. N. Navnirman Pvt. Ltd. in ITA No. 143/RPR/2018 dt. 23.09.2022, relying upon Pawan Kumar Agrawal vs ITO (Hon'ble Chhattisgarh High Court), it was held by the Raipur Bench of the Honorable Tribunal that when the assessee discharged its burden, the AO could not have made addition without bringing on record any material to prove otherwise. It was also held that when the investor had confirmed having made investment, it was open to the AO to have made addition in the hands of subscriber companies.

12. Regarding observations of AO: -

- i) Positive confirmation of investment was already there on record by way of confirmation, bank statement etc.*
- ii) In para no. 6 of the assessment order, the AO has only come out with general observations and nothing concrete*

has been brought out. No facts and figures are given and no basis is given for such conclusion.

- iii) Regarding allegation of paper company, nothing has been brought on record to support such allegation. Companies have net worth which has remained undisputed and therefore, the observation of AO about alleged paper companies is arbitrary.*
- iv) The balance sheet of investors show substantial net worth of the companies and nothing has been brought on record to show why such net worth was not acceptable to the AO.*
- v) The credit worthiness of the investors is being accepted in their individual cases.*

10. Further, the Id. AR vide letter dated 26.07.2022, has filed additional written submission, which read as under:-

BEFORE THE HON'BLE INCOME TAX APPELATE TRIBUNAL, RAIPUR

Date:26/07/2022

**Re: ARYAN BUILDERS & DEVELOPERS PRIVATE LIMITED
[PAN: AAJCA3942M]**

Ref.: Appeal No. ITA 201/RPR/2018, [A.Y. 2012-13]

Date Fixed for hearing: 26th July 2022

Subject: Our additional written submission against the above referred appeal before the tribunal preferred by the department (Department's Appeal).

Honorable Sir,

Most respectfully, in continuance of our earlier submission, we submit as under-

- 1. That the assessing officer vide its assessment order dated 25/03/2015 has made an addition of Rs. 3,07,00,000/- u/s 68 of the IT Act, 1961 which includes Rs. 1,00,000/- received from promoters against share subscription and Rs. 3,06,00,000/- from 13 different private limited companies against share capital and share premium.*
- 2. That on being aggrieved from the aforesaid assessment order of Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-I, Raipur on the ground that the Ld. AO has grossly erred on facts and in the circumstances of the case and in the law while making addition of share capital money amounting to Rs. 3,07,00,000/- to the total income of assessee as unexplained credit u/s 68 of the IT Act, 1961 on arbitrary basis, unjustified and bad in law, and should be deleted.*
- 3. That the CIT(A) after taking extensive note of the observations made in the assessment order and oral & written submissions made on behalf of the assessee, found substantial merits in the plea of the assessee and reversed the additions so made by passing a self speaking and self-*

explanatory appellate order dated 05/07/2018.3

4. *That against the aforesaid appeal order dated 05/07/2018, assessing officer has filed an appeal before the honorable tribunal.*
- 5 *That point wise objections raised by the department in its appeal paper book (Form-36 read with statement of fact and ground of appeal) and assessee's submission against those objections is put before your honor in tabular format as under:*

Sr. No.	Department's Objection raised in appeal paper book (Statement of Facts and Grounds of Appeal)	Assessee's Submission against respective objections
1.	<p>The Ld. CIT(A) has erred in deleting the entire addition of Rs. 3,07,00,000/- made by the AO. (Para-3.1 of SOF)</p> <p>The Ld. CIT(A) has also given the finding that the AO has heavily relied upon the only fact that the appellant could not furnish the documents of some investors is factually incorrect. In fact, the AO had made the addition not only on the basis of non-response was received from the alleged shareholders but also on the basis of creditworthiness of such shareholders. (Para-3.1 of SOF)</p>	<p>Assessee wishes to submit before your as under:</p> <p>(i) As evident from the copy of the assessment order, the Ld. AO based his additions solely on the ground that the genuineness of the receipt of share capital/ premium has not been established. (Para-6 of the assessment order)</p> <p>(ii) The Ld. AO in his assessment order nowhere questioned the identity as well as creditworthiness of investor companies also both these aspects has duly been established before the Ld. AO in the course of assessment proceedings.</p> <p>(iii) Therefore the allegation of Ld. AO that AO had made the addition not only on the basis of non-response was received from the alleged shareholders but also on the basis of creditworthiness of such shareholders is not tenable your honor.</p> <p>(iv) Further, Since all the essential ingredients of sec.68 of the Act, viz. identity of the creditor, creditworthiness of the creditor and genuineness of the transaction, are been abundantly proved before the AO as well as CIT(A) on the strength of the documentary & other evidences, the impugned addition made by the AO, unsubstantiated on the strength of corroborative evidence, is unsustainable on facts and in law.</p>
2.	<p>The Ld. CIT(A) ignored the findings of the AO which was given after enquiries that the genuineness as well as creditworthiness of the investor companies were not proved. (Para-3.2 of SOF)</p> <p>The Ld. CIT(A) has not considered the finding of the AO that the creditworthiness of the investor companies are not satisfactory. The said company was earning very meager income without having any business activity. The said company had never been eligible for compulsory audit u/s 44AB as its income from operations was either zero or negligible and turnover is also not within the purview of required limit. (Para-3.5 of SOF)</p> <p>It was clear that the creditworthiness of the said entity was non-existent as they were merely paper or shell or jamakharchi company providing accommodation</p>	<p>Here, the allegation of Ld. AO that Ld. CIT(A) ignored the findings of the AO which was given after enquiries that the genuineness as well as creditworthiness of the investor companies were not proved is also not correct as Ld. CIT(A) himself has gone through the relevant case in detail along with relevant enquiries being made by the AO and has categorically observed that:</p> <p>❖ no report is available regarding any enquiry conducted by the AO which she was alluding at Para-6 of the assessment order</p>

<p>entries to various other entities. (Para-3.6 of SOF)</p> <p>The Ld. CIT(A) has given relief to the assessee by giving a finding that the assessee has furnished the details and documents such as ROC registration, PAN, Audited accounts and bank accounts evidencing the transaction and as per bank statements, payment have been received by the assessee from shareholder's account to assessee's account. Therefore genuineness of the transactions cannot be doubted. But the Ld. CIT(A) has ignored the other parameter of creditworthiness of investor company which was raised by the AO in assessment order. (Para-3.8 of SOF)</p> <p>The Ld. CIT(A) has not appreciated the fact that how such a weak balance sheet commands such as high premium. (Para-3.2 of SOF)</p>	<ul style="list-style-type: none"> ❖ Probably she is referring to certain other enquiries conducted in some other cases. However no specific details have been mentioned ❖ Any general information received in inquiry in respect of other person cannot be the basis to make adverse decision in assessee's case (Page-4 of CIT(A)'s order) <p>Moreover, assessee was never confronted this fact that, in inquiry, some of the subscriber companies, if any, were paper companies. No opportunity has been provided to the assessee to controvert/ cross examine the information if any, before making additions</p> <p>Further the allegation that the Ld. CIT(A) has not considered the finding of the AO that the creditworthiness of the investor companies are not satisfactory is not tenable as:</p> <ul style="list-style-type: none"> ❖ Firstly, there is no allegation whatsoever with respect to creditworthiness of investor companies in the assessment order so passed by the AO. ❖ Secondly, Ld. CIT(A) has thoroughly examined all the documents submitted by the assessee and found the creditworthiness of investor companies as satisfactory, which is also substantiated by the Ld. CIT(A) by citing example as under: <p>"For example on going through the balance sheet of M/s Apurva Bartar (P) Ltd as on 31/03/2012 it has interest income of Rs. 15,35,594/-. Share capital and reserve of the company was Rs. 5,79,33,838/-, which was invested in long term loan and advances and shares of the companies" (Page-6 of CIT(A)'s Order)</p> <p>Further,</p> <p>(i) The net-worth of each of the investor companies as on 31.03.2012 is much higher than the amount of investment made by them in the assessee company, which itself signifies creditworthiness of respective investors</p> <p>(ii) Only a minor percentage of net-worth ranging from 1% to 9% has been</p>
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		<p>invested by the respective investor companies in the assessee company, which itself signifies genuineness</p> <p>The audited balance sheet of investor companies clearly depict the receipt of such amounts the fact that it had sufficient balance available for investment. As already stated, copy of Statutory Audit Report of the investor company reflects the factum of impugned investment made by that company. In response to notice u/s. 133(6) of the Act issued by the AO, the investor company, in categorical terms, had confirmed the fact of having invested the said sum with the assessee company towards share application money</p> <p>Based on above, we may conclude that all the allegation raised by the AO is baseless and is not tenable in the law and facts of the case.</p>
3.	<p>The fact of investor companies being shell or jamakharchi companies has been established in enquiry conducted by the Department. In search and seizure action, one of the entry provider of named Sh. Vinod Kumar Jajoo was recorded and he admitted that the companies were managed by him for the purpose of providing accommodation entries various beneficiaries companies. Sh. Vijay Jajoo has clearly accepted that entities and their respective bank account were managed and controlled by him through a number of Dummy Directors to provide accommodation entries to various beneficiary companies in lieu of commission. The relevant part of the statement are also scanned below for ready reference.</p> <p>Thus, it is established that the share capital taken in the name of such investor companies are unaccounted money of the assessee which has been credited in the accounts of the assessee in the form of share capital. (Para-3.7 of SOF)</p>	<p>Your honor, at the outset the assessee wishes to challenge the admissibility of statement of Sh. Vinod Kumar Jajoo on following grounds:</p> <ul style="list-style-type: none"> ❖ As evident from the copy of Statement of Facts submitted by the department, the said statement was recorded by the investigation department on 05/10/2017 whereas the assessment order was passed by the AO on 25/03/2015, which is much before the date of recording of statement. ❖ As any such statement was not recorded till the date of passing of assessment order, how can the AO rely on such statement at the time of framing his opinion in his assessment order. ❖ Further without prejudice to above, no opportunity of cross-examination of those statements has been given to the assessee. ❖ Furthermore, copy of such statements has not been

		<p>provided to the assessee in the course of assessment proceeding for assessee's counter submission.</p> <ul style="list-style-type: none"> ❖ It is already the settled principal of law that merely based on the statement of some individual with whom the assessee has no link or reference, and in the absence of any corroborative evidence on record, one cannot establish that the share capital taken from investor companies are unaccounted money of the assessee. ❖ There was no evidence brought by the AO on record to prove that the impugned investment was actually flown from the coffers of the assessee company. <p>For this preposition, the assessee wishes to rely on following decided case laws:</p> <ul style="list-style-type: none"> (i) Aravali Trading Co. v. ITO (2008) 220 CTR (Raj.) 622 (ii) ACIT v. Anima Investment Ltd. (2000)73 1TD 125 (Del.) (iv) CIT v. Real Time Marketing (P) Ltd. (2008) 306 ITR 0035 MM Securities Ltd. v. ACIT (2004) 1 SOT 452 (Hyd.) <p>CIT v. Gangeshwari Metal Pvt. Ltd. (2014) 361 ITR 10 (Del. HC) etc.</p>
4.	<p>The fact of the present case was also discussed by the Hon'ble ITAT, New Delhi (A Bench) in the case of M/s Pee Aar Securities Ltd. Vs. DCIT- Circle-14(1), New Delhi in ITA No. 4978/Del/2014 for the AY 2005-06 and it was held that "genuineness of transaction has to be determined by ground realities and not by documents like PAN cards, board resolutions, share certificates etc. as even shell companies have these documents. If the assessee is not able to produce the brains behind these companies and the documents with respect to their financials the transaction cannot be regarded as genuine. [Para- 3.8 of SOF]</p>	<p>the brains behind these companies and the documents with respect to their financials either.</p> <ul style="list-style-type: none"> • No such notice u/s 133(6) was issued for conducting enquiry and no such responses were made by the investor companies against 133(6) notices • • The investor companies were identified as shell companies. •

		<p>Therefore, it is respectfully be submitted here that the ratio of the case of Hon'ble IT AT, New Delhi (A Bench) in the case of M/s Pee Aar Securities Ltd. Vs. DC1T- Circle-14(I), New Delhi in ITA No. 4978/Del/2014 is distinguished and therefore not applicable in assessee's present case.</p>
5.	<p>The assessee has submitted only the documents, but he could not establish the source of share capital as the investor companies has no creditworthiness to make investment in assessee company. The assessee could not explain the fact how the share capital was generated by such investor companies which are not financially sound. Hence, the same was added by the AO during assessment proceeding by treating as unexplained credit u/s 68 of the Act. (Para-3.8 of SOF)</p>	<p>It is respectfully be submitted here that no legal obligation is prescribed upon assessee in law to prove the 'source of source' of such share capital receipts in view of the prospective insertion of proviso to section 68 of the Act from AY 2013-14 foisting such obligation. A reference may be made to the decision of Hon'ble Bombay High Court in the case of CIT Vs. Gagandeep Infrastructure Pvt Ltd. 80 taxmann.com 272 (Bom.) in this regard. Further a reference is made to the decision of Apex Court in the case of Lovely Exports Pvt. Ltd. 319 ITR 5 (SC) wherein it was held that in the case of alleged bogus shareholders, the department is free to proceed to reopen the individual assessments of the subscriber in accordance with law</p> <p>The Bombay High Court in Pr. CIT v. Veedhata Tower (P.) Ltd. [2018] 403 ITR 415 held that the requirement of explaining the source of the source of receipts came into the statute book by amendment to section 68 of the Act on April 1, 2013, i.e., effective from the assessment year 2013-14 onwards.</p> <p>Further, it is also submitted here that no adverse inference has been drawn in the assessment order on the source of funds and therefore it can't be raised in any subsequent stage of proceeding.</p>

6. Distinction of present case with the case laws relied on by the AO in his grounds of appeal:

In his grounds of appeal filed before the honorable tribunal, the AO has relied on several case laws, which are summarized in below table along with assessee's submission on merit as well as on distinction of those case laws with the facts of the present case:

Sr. No.	Department's Objection raised in appeal paper book	Assessee's Submission against respective objections
1	Honorable Supreme Court in the case of M/s Rajmandir Estates Pvt Ltd Vs PCIT-III, Kolkata (SLP No. 22566-22567 dated 09.01.2017)	<p>The facts of the case of M/s Rajmandir Estates Pvt Ltd Vs PCIT-III, Kolkata (SLP No. 22566-22567 dated 09.01.2017) is absolutely different from the facts of present case.</p> <p>In present case:</p> <ul style="list-style-type: none"> • genuineness of the receipt of share capital/ premium is in question. • AO in order to verify the genuineness conducted enquiry and issued notices u/s 133(6) to respective shareholders. • There is no such issue of section 263 invocation treating assessment order erroneous and prejudicial to interest of revenue and therefore there is no such question with respect to jurisdiction of CIT for invoking section 263 in instant case. <p>Whereas in the case of M/s Rajmandir Estates Pvt Ltd Vs PCIT-III, Kolkata as relied on by the AO,</p> <ul style="list-style-type: none"> • The case of M/s Rajmandir Estates Pvt Ltd was with respect to the jurisdiction of CIT for invoking section 263 treating the assessment order erroneous and prejudicial to interest of revenue • The question before the court was legality of invocation of section 263 where assessee with a small amount of authorised share capital, raised a huge sum on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees. • Further in that case, Assessing Officer did not hold requisite investigation except for calling for records, he also did not interrogate persons behind assessee company and persons behind subscribing companies which was essential to unearth truth • Further, in that case, the decision of Calcutta High Court was only in respect of whether commissioner was justified in treating assessment order erroneous and prejudicial to interest of revenue, against which SLP was dismissed by the Apex Court. However there is no decision as far as genuineness of share-capital/ premium are concerned. <p>•</p> <p>Therefore, based on above, ratio of the case of M/s Rajmandir Estates Pvt Ltd Vs PCIT-III, Kolkata is not applicable in</p>

		assesse's present case.
2	ITAT, Kolkata 'B' Bench in the case of M/s Subhlakshmi Vanijya (P) Ltd. Vs. CIT-1, Kolkata in ITA No. 1104/Kol/2014	The facts of instant case of assessee is clearly distinguished from the facts of the decision given by ITAT, Kolkata 'B' Bench in the case of M/s Subhlakshmi Vanijya (P) Ltd. Vs. CIT-1, Kolkata in ITA No. 1104/Kol/2014 as in the case of M/s Subhlakshmi Vanijya (P) Ltd., the jurisdiction of CIT for invoking section 263 was under challenge whereas in present case, substantial question before the bench is with respect to legality of additions made by the AO with respect to share capital/ premium. Consequently, ratio of the case of M/s Subhlakshmi Vanijya (P) Ltd. is not applicable in assessee's present case
3	ITAT, Kolkata Bench in the case of M/s Bisakha Sales (P) Ltd. Vs CIT-II, Kolkata [ITA No. 1493/Kolkata/2013]	The facts of instant case of assessee is clearly distinguished from the facts of the decision given by ITAT, Kolkata 'B' Bench in the case of M/s Bisakha Sales (P) Ltd. Vs CIT-II, Kolkata [ITA No. 1493/Kolkata/2013] as in the case of M/s Bisakha Sales (P) Ltd., the jurisdiction of CIT for invoking section 263 was under challenge whereas in present case, substantial question before the bench is with respect to legality of additions made by the AO with respect to share capital/ premium. Consequently, ratio of the case of M/s Bisakha Sales (P) Ltd. is not applicable in assessee's present case
4	Hon'ble ITAT, New Delhi (A Bench] in the case of M/s Pee Aar Securities Ltd. Vs. DCIT- Circle-14(I), New Delhi in ITA No. 4978/Del/2014	The assessee respectfully submit before your honor that the decision of Hon'ble ITAT, New Delhi (A Bench] in the case of M/s Pee Aar Securities Ltd. Vs. DCIT- Circle-14(I), New Delhi in ITA No. 4978/Del/2014 is not applicable in assessee's case and facts of present case is clearly distinguished from the facts of the quoted so quoted by the AO as under: In the instant case of the assessee: the assessee has submitted before the AO as well as before the CIT(A) all the documents and information such as list of shareholders along with Name, Address, PAN, Amount received & mode of receipt, share application forms, share certificates, relevant extracts of bank statements, audit report, ITR, Board resolution, ledger confirmation of respective shareholders etc. Further, the notices u/s 133(6) has been issued by the AO to all the respective shareholders which were duly served to them and there is no evidence on record with respect to non-serving of any such notices.

		<p>Further, all those shareholders has duly responded to notices issued to them u/s 133(6), copy of which is also in record of AO as well as CIT(A).</p> <p>The current MCA status of all the investor companies are "Active" and none of those companies are there in the list of shell companies as identified by the government.</p> <p>Whereas in the case of M/s Pee Aar Securities Ltd. Vs. DCIT- Circle-14(l), New Delhi:</p> <ul style="list-style-type: none"> • The assessee was not able to produce the brains behind these companies and the documents with respect to their financials either. • No such notice u/s 133(6) was issued for conducting enquiry and no such responses was made by the investor companies against 133(6) notices • The investor companies were identified as shell companies. <p>Therefore, it is respectfully be submitted here that the ratio of the case of Hon'ble ITAT, New Delhi (A Bench) in the case of M/s Pee Aar Securities Ltd. Vs. DCIT- Circle-14(l), New Delhi in ITA No. 4978/Del/2014 is not applicable in assessee's present case.</p>
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7. That the Ld, AO overlooked various jurisdictional binding pronouncements on the issue as given by the Raipur Bench of the Tribunal as well as by the Chhattisgarh high court and honorable Supreme Court of India

7.1.Honorable Chhattisgarh High Court in the case of ACIT v. Venkateshwar Ispat (P.) Ltd. (2009) 319 ITR 393 (Chhattisgarh HC) held that: As decide by the SC in CIT v. Lovely Exports (P.) Ltd. (2009) 319 ITR 5 (SC), even if the share application money was received by the assessee company from alleged bogus shareholders whose names were given to the AO, then, the Dep't. Was free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company. Hence, the Jurisdictional HC held that no question of law arose from the Tribunal's order deleting the addition.

Therefore, the additions made by the Ld. AO is unsustainable in the light of the aforesaid decision of jurisdictional High Court in the case of ACIT v. Venkateshwar Ispat (P.) Ltd. reported in 319 ITR 393 (Chhattisgarh).

7.2.ITAT, Raipur Bench in the case of DCIT (Central) Vs. Mahalaxmi Technocast Ltd. ITA No. 256 to 256/RPR/2014 held that CIT(A) has eloquently examined the

weighed all relevant facts peculiar to the instant case by was of a speaking order. After a detailed and objective scrutiny of factual & legal position, the CIT(A) has set aside and reversed the additions carried out without showing any iota of incriminating material to support the allegation of accommodation entries. The action of CIT(A) is in consonance with the binding precedents of jurisdictional High Court. Hence we see no reason to depart from the rationale of the decision of CIT(A) on reversal of additions u/s 68 of the Act. We thus decline to interfere

Similar decision has been given by ITAT, Raipur bench in following case:-

- i. DCIT (Central) Vs. M/s Abhishek Steel Industries Limited (ITA No. 250 to 255/RPR/2014)*
- ii. DCIT (Central) Vs. M/s Shree Shyam Sponge & Power Pvt. Limited (ITA No. 243 to 249/RPR/2014)*
- iii. DCIT (Central) Vs. M/s Devi Iron & Power Pvt. Limited (ITA No. 262 to 265/RPR/2014)*

7.3. Further, the jurisdiction Raipur bench of ITAT on the basis of similar facts in the case of Deputy Commissioner of Inome-tax, 1(2) Raipur v. RCP Infratech (P.) Ltd. IT APPEAL NO. 273 (RPR) OF 2014 [ASSESSMENT YEAR 2011-12] [2018] 95 taxmann.com 163 (Raipur - Trib.) has held as under:

In course of assessment, Assessing Officer found that assessee had received huge amount of money by issuing shares at high premium - Assessing Officer asked assessee to furnish complete details of persons from whom share capital and share premium had been received - Assessee furnished PAN details along with copies of audited financial statements and copy of bank statements in case of all share applicants - Assessing Officer, however, taking a view that share applicant companies were mere paper companies, added amount in question to assessee's income under section 68 - It was noted that Assessing Officer had not made any enquiry in respect of share applicant companies - Assessing Officer had merely made addition by discarding/disbelieving documentary evidences filed by assessee - Moreover, Assessing Officer had not demonstrated that share applicant companies fulfilled requirement of shell company - Whether impugned addition made by Assessing Officer was to be set aside - Held, yes

7.4. The jurisdictional Raipur ITAT on the basis of similar facts in the case of ITA No. 225 to 231/RPR/2014 DCIT, Central Circle, Raipur Vs. R.R. Energy Ltd. has ruled in favour of the assessee and deleted the additions on account of share capital & premium by observing as under:

"It is an undisputed fact that the names, addresses and assessment particulars of the investors, certificate of registration from the ROC and bank statement of the applicants had been furnished by the appellant before the AO. It is further observed that the share application/capital money has been received by way of account payee cheques from the investors most of whom are companies and is duly reflected in the bank account of the appellant. I have perused the bank statements of the investors, their audited financial statements and confirmation for making such investments, which clearly establishes the factum of making investments. These facts are clearly establishing the identity of the investors and the genuineness of the impugned transactions. It is observed from the records and assessment order that for the purpose of making addition as unexplained cash credits, the AO has heavily relied upon the judicial pronouncements, however, the appellant has made elaborate submissions distinguishing the facts, I am convinced with the explanation of the appellant that the decisions relied upon by the A.O are not applicable in the facts of the present case as there is nothing on record which can indicate that the receipt of share application money was by way of accommodation entries only. It is also not the case of the A.O that the investors have accepted by way of statement that the sums paid to the appellant was in fact received from the appellant and investors merely routed the undisclosed income of the appellant through money laundering process in the form of share application money. On the contrary, the A.O himself has stated in the assessment order that the investors have sent confirmatory letters. In the backdrop of these facts and documentary evidences, in my considered opinion, the identity and creditworthiness of the subscribers has been established and cannot be doubted, it is not justified on the part of the A.O to simply reject the documentary evidences on record and take an adverse view and clothing the case of the appellant with the judicial pronouncements which have been rendered on absolutely different facts and circumstances.

In my considered opinion, apart from drawing presumptions, the AO has not brought any clinching material or evidence on record to prove that the said share capital money belongs to the appellant since no nexus has been established that the money for augmenting the investment in the business has flown from appellant's own money which is an essential pre-requisite for making addition in such cases. I am convinced that the case of the appellant is squarely covered by the decisions rendered by the Hon'ble Apex Court in the case of the CIT vs. Lovely Exports (P) Ltd. reported in 216 CTR 195 and the jurisdictional High Court viz. the Chhattisgarh High Court in the case of the ACIT vs. Venkateshwar Ispat (P) Ltd. reported in 319 ITR 393 for the reason that the facts in such cases are entirely same, particularly, when no differentiation could be effectively demonstrated and brought on to the record by the A.O. The submissions of the AO that the decision of the

Hon'ble Supreme Court in the case of Lovely Exports (P) Limited was rendered in the light of different facts inasmuch as the said judgement was rendered by the Hon'ble Supreme Court in the context of public issue, is devoid of merit because the decision was rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. which is a Private Limited Company and which cannot bring public issue of shares. I find that the investments made by the share applicants were duly reflected in the audited financial statements of the corporate investors. It is a settled principle of law that reason for suspicion, however grave it may be, cannot be a basis for holding adversity against appellant.

The Assessing Officer has disregarded the documentary evidences adduced by the appellant such as confirmation from the share applicants, their PAN, certificate of incorporation of subscriber companies. The subscription for the shares was received through cheques. The Investor-companies are duly registered with ROC. Those companies were also having their income tax PAN numbers and regularly fled returns of income. No material was brought on record by the A.O independently of the information received, if any, from the investigation wing of the Income Tax Department to show that the monies represented the appellant's undisclosed income.

The Hon'ble Supreme Court in CIT vs. Lovely Export, 216ITR 198 SC and the Delhi High Court in Divine Leasing and Finance Limited. (2008) 299 ITR 268 have held that in the case of money received towards share capital only the identity of the share holders needs to be proved and once that is established and it is also shown that the money did in fact come from them, it is not for the assessee to prove as to how the share applicants came to be in possession of the money. In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the A.O which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.

1 am convinced that the appellant has been able to establish the identity and creditworthiness of the subscribers as also the genuineness of the transactions. In my considered opinion, the ratio of the aforesaid judgements of the Hon'ble Supreme Court in Lovely Exports and that of jurisdictional High Court are certainly binding in nature on all the revenue authority and courts etc. and further, the judgement of the jurisdictional High Court as well as that of the Hon'ble Supreme Court in Lovely Exports has been rendered on identical facts. Hence it is

impermissible to deviate from the ratio laid down therein and against the law of judicial precedents. In view of the above and respectfully following the ratio of the binding judgements, the addition of share application/capital money of Rs. 12,71,00,000/- in A.Y 2006-07 and Rs.6,51,50,000/- in A.Y 2007-08 as unexplained cash credits under section 68 are uncalled for and hence, deleted."

7.5. **Honorable Supreme Court in the case of Lovely Exports Pvt. Ltd. 319 ITR 5 (SC) held held that** *If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company.*

8. **In support of its case, the assessee inter-alia wishes to rely on some recent judicial pronouncements on similar facts as under:**

Sr. No.	Case Reference	Decision laid down by the Judiciary
1.	<i>Calcutta HC in the case of PRINCIPAL COMMISSIONER OF INCOME TAX - 9, KOLKATA VERSUS M/S. SREELEATHERS ITAT/18/2022 (IA NO: GA/02/2022)</i>	The issue before the Calcutta High court in the case of PCIT-9, Kolkata Vs Sreeleathers was whether addition u/s 68 can be made casually by assessing officer by simply saying that the loan creditor companies are paper companies and the assessee is involved in money laundering. The Calcutta High Court relying on the decisions in the case of Sreelekha Banerjee Vs CIT(1963) 49 ITR 112 and other landmark decisions held that where the assessee furnishes full details regarding the creditors, it is up to the department to pursue the matter further to locate those creditors and examine their creditworthiness.
2.	ITAT SURAT BENCH- Deputy Commissioner of Income-tax V. Karmeshwar Exim (P.) Ltd. [2022] 138 taxmann.com 560 (Surat-Trib.) IT APPEAL NO. 90 (SRT) OF 2017 [AY 2012-13]	Where assessee company received share application money and had submitted enough relevant evidences including bank statements, audited financial statements, copies of ITR etc., of investors so as to prove their identity and creditworthiness and genuineness of transactions of receiving such share application money, impugned additions made by Assessing Officer treating said share capital money as unexplained cash credit was unjustified.
3.	ITAT DELHI BENCH 'C Assistant Commissioner of Income-tax, Central Circle- 13, New Delhi V.	Whether where all investments (in form of share capital and share premium) have been duly made via banking channels where investor companies have shown sufficient balances in their

	Sur Buildcon (P.) Ltd.* [2021] 133 taxmann.com 31 (Delhi - Trib.)	bank accounts to make such an investment in assessee companies, Assessing Officer without questioning material submitted by assessee could not have added said share premium to income of assessee under section 68 - Held, yes
4.	ITAT DELHI BENCH 'F' Renu Proptech (P.) Ltd. V. ACIT, Circle-21(1), New Delhi [2021] 128 taxmann.com 242 (Delhi - Trib.)	Where assessee company issued shares at premium and received sharecapital and share premium of certain amount, since assessee had filed documentary evidences in respect of all share allottees such as copy of PAN, copy of share application, confirmation of receipt of shares, copy of share certificate, copy of ITR acknowledgement, affidavit, bank statement so as to prove identity and creditworthiness of parties and genuineness of transactions, impugned addition made under section 68 in respect of said sharecapital and premium amount received by assessee was unjustified.
5.	ITAT KOLKATA BENCH 'C' Tradelink Carrying (P.) Ltd. V. Income Tax Officer, Ward 4(1), Kolkata [2020] 113 taxmann.com 520 (Kolkata - Trib.)	Assessing Officer had acknowledged that in compliance of notice issued under section 133(6) all share applicants filed evidences in form of balance sheets, ITR acknowledgement and bank statements Identity of share applicants was proved by furnishing name, address, PAN of share applicants together with copies of their respective balance sheets and income tax returns - It was further found that these individuals were having capital in lakhs of rupees and investment made in assessee-company was a small part of their capital - Thus, creditworthiness of share applicants was also established - Further, sharecapital monies were directly paid to assessee by cash out of sufficient bank balances available in their bank accounts - Whether assessee had discharged its onus to prove identity and creditworthiness of share subscribers and genuineness of transactions, therefore, addition made under section 68 was unjustified.
6.	ITAT PUNE BENCH 'A' Deputy Commissioner of Income Tax Central Circle, Aurangabad V. Mahalaxmi TMT (P.) Ltd. [2021] 128 taxmann.com 396	Where assessee a newly startup company received sharecapital and share premium amount from several parties and furnished all necessary details such as confirmation of parties,

	(Pune - Trib.)	copy of ITR, copy of bank statement of parties along with their balance sheet, share certificate, etc. so as to prove identity and creditworthiness of parties and genuineness of transactions and, further, all transactions were carried out through banking channel, impugned addition made on account such share capital and premium under section 68 was unjustified.
7.	HIGH COURT OF PUNJAB AND HARYANA Principal Commissioner of Income-tax, Bathinda V. Amravati Infrastructures Developers (P.) Ltd. [2020] 117 taxmann.com 152 (Punjab & Haryana)	Where question of genuineness of investors who introduced share capital and capacity of persons from whom loan was taken and genuineness of transactions, had been considered at length by First Appellate Authority and revenue had failed to point out any infirmity in fact or law, said sums could not be added as unexplained investments of assessee under section 68.
8.	HIGH COURT OF BOMBAY Commissioner of Income- tax- 1 V. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272 (Bombay)	Whether proviso to section 68 introduced by Finance Act 2012 with effect from 1-4-2013, would not have retrospective effect - Held, yes Whether where assessee-company had established identity, genuineness and capacity of shareholders who had subscribed to its shares, Assessing Officer was not justified in adding amount of share capital subscription as unexplained credit - Held, yes Whether where revenue urged that assessee had received share application money from bogus shareholders, it was for Income-tax Officers to proceed by reopening assessment of such shareholders and assessing them to tax in accordance with law and it did not entitle revenue to add same to assessee's income as unexplained cash credit - Held, yes.

PRAYER

In the light of all that has been extensively enumerated above along with documentary evidence submitted herewith and paper book submitted earlier, the impugned addition made by the AO, unsubstantiated on the strength of corroborative evidence brought on record against the assessee, is unsustainable on facts and in law.

It is therefore submitted before your honor that no interference is called for on the order of CIT(A) on merits.

11. Further, the Id. AR of the assessee placed reliance on the decision of CIT Vs. M/s Orchid Industries Pvt. Ltd., passed in Income Tax Appeal No.1433 of 2014, order dated 5th July, 2017, and drew our attention to para 5 to 7, which read as under :-

5] The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

*6] The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of **Gagandeep Infrastructure (P.) Ltd.** (supra) would be applicable in the facts and circumstances of the present case.*

7] Considering the above, no substantial question of law arises. The appeal stands dismissed. However, there is no order as to costs.

12. We have considered the rival contentions, perused the relevant material on record, case laws relied upon and orders of the revenue authorities. In the present case the sole issue is pertaining to addition u/s 68 made by the Ld AO on account of receipt of bogus share capital and share premium, which was deleted by the Ld CIT(A) on account of following observations:

- (i) Notice U/s 133(6) was issued to 12 share subscriber companies, out of which 5 companies have not responded. However, papers in respect of all 12 companies were submitted by the assessee (para 2.3 of CIT(A)'s order). AO has not accepted the share capital of even those companies from which the documents were received. No reason have been given by the AO to reject such documents.
- (ii) AO's observation "*As there is no positive response from the companies the genuineness of the share capital/ premium has not been established*" was considered as perverse in absence of in specific defect pointed out by the AO in the documents received for drawing such adverse conclusion, it was found even worse when the same conclusion was drawn for the companies from which no reply was received.
- (iii) AO's conclusion based on certain information received about genuineness of investment made by the Kolkata Based companies/ subscribers to shares of the assessee company that these are merely paper companies without concrete business was never confronted with the assessee to refute, before making additions.
- (iv) Remand report was called for from the AO with respect to documents like PAN, audited accounts, ROC Certificate etc for the 5(five) companies. In remand report Ld AO allegedly mention that "*It is beyond one's comprehension as to what*

prevented appellant to produce the same before the AO during the assessment proceedings.” And has further stated that “on perusal of assessment order it is amply clear that the AO had not disallowed the investment of the companies, which failed to respond to the notices u/s 133(6), rather she had disallowed the share capital and share premium introduced by all the 12 companies aggregating to Rs. 30700000/- in view of inquiries conducted by her wherein it was revealed that the companies are merely paper companies, and the investment does not commensurate with their financial status.” On such comments by the AO in remand report Ld CIT(A) observed that such documents were submitted by the assessee before the AO also which she had ignored. At appellate stage also AO has adopted an evasive approach, has not thrown any light about the inquiry conducted about Kolkatta based companies.

- (v) CIT(A) observed that once the assessee has discharged its onus by furnishing the details and documents, onus shifts back to AO to make enquiries/investigation to establish that either or all of the identity, creditworthiness of shareholders and genuineness of the transaction has not been established.
- (vi) Reliance was placed on the judgment in the case of Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports, 216 ITR 198 (SC), ratio of law emerged from the said judgment was adopted by Hon'ble Jurisdictional High Court of Chhattisgarh in the Case of M/s Venkateshwar Ispat (P) 319

ITR 393 which are binding judgments rendered on identical facts, but the AO has failed to consider such judgments.

13. In backdrop of aforesaid observations of the Ld CIT(A) in the present case, it is evident that Ld AO has squarely failed in substantiating that how the onus cast upon the assessee was not discharged u/s 68 of the act. AO further erred by neither making any specific comments nor have demonstrated the reasons for adverse conclusions about the share subscribers which could be supported with the documents or borne out from the records. Ld AO also misplaced in her observations by not distinguishing that how the facts of the present case are different on which binding judgments in the case of *Lovely Exports (supra)* and *Venkteshwar Ispat (supra)*, relied upon by the assessee, are not applicable. Under such facts and circumstances, respectfully following the ratio of law laid down by Hon'ble Supreme Court in the case of *CIT Vs. Lovely Exports (supra)* and was adopted by Hon'ble Jurisdictional High Court of Chhattisgarh in the Case of *M/s Venkateshwar Ispat (supra)*, we concur with the decision of the order of Ld CIT(A) having no infirmity, in absence of any divergent argument advanced by the revenue apart from the contentions raised and considered herein above, or without any cogent material or decision having different binding consequence on the instant case, we do not have any distinct opinion other than that of the opinion of Ld CIT(A), thus, we order to sustain the same. Resultantly grounds raised in the present appeal by revenue are dismissed.

14. Since appeal of the department in ITA No.201/RPR/2018 in the present case is dismissed by us, the cross objection filed by the assessee in CO No.09/RPR/2022 wherein ground of cross objection are to support the order of the CIT(Appeals) and regarding granting of opportunities to cross examine during assessment proceedings, becomes academic and needs no separate adjudication, therefore, dismiss.

15. In the result, both appeal of the revenue and cross objection of the assessee stand dismissed in terms of our observations.

Order pronounced in the court on 06/09/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 06/09/2023

Self

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur