

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

Sr. No.	ITA. No.	Asstt. Year	Name of Appellant	Name of Respondent
1.	ITA No.315/Rjt/2017	2012-13	Income Tax Officer, Ward-3(1), Jamnagar.	M/s. Paras Buildcon Pvt. Ltd., 7, Siddharth Shopping Centre, Opp. Jolly Bungalow, Jamnagar. PAN: AACCP1687K
2.	ITA No.316/Rjt/2017	2012-13	Income Tax Officer, Ward-3(1), Jamnagar.	M/s. H.P Chemicals Pvt. Ltd., 7, Siddharth Shopping Centre, Opp. Jolly Bungalow, Jamnagar. PAN: AAACH5369Q
3.	ITA No.317/Rjt/2017	2012-13	Income Tax Officer, Ward-3(1), Jamnagar.	M/s. F.C. Pharmaceuticals Pvt. Ltd., 7, Siddharth Shopping Centre, Opp. Jolly Bungalow, Jamnagar. PAN: AABCF1336J

(Applicant)	(Respondent)
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Revenue by :	Shri B.D. Gupta, Sr. D.R
Assessee by :	Shri Mehul Ranpura, A.R

सुनवाई की तारीख/**Date of Hearing** : **19/07/2023**

घोषणा की तारीख /**Date of Pronouncement**: **13/09/2023**

आदेश/ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the different Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeals), Jamnagar, (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-13.

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

- 1. The Ld.CIT(A) erred on facts and in law in deleting the addition of Rs.12,92,615/- as per the provision u/s.40A(3) of the Act. The Ld.CIT(A), has failed to appreciate the fact that the assessee furnished its written submission on 30/03/2015 in the office of the Addl./Jt. CIT instead in the office of the AO and hence the AO had no chance to rebut the written submission of the assessee as the order had to be passed by 31/03/2015.*
- 2. The Ld.CIT(A), erred on facts and in law in deleting the addition of Rs.1,85,00,000/- on account of cash credit in form of capital u/s.68 of the Act.*
- 3. On the basis of the facts and circumstances of the case, the learned CIT(A) ought to have upheld the order of the Assessing Officer.*
- 4. That the revenue craves leaves to add, amend, alter or withdraw any ground of appeal.*
- 5. It is therefore prayed that the order of the CIT(A), jamnagar may kindly be set aside and that of the Assessing Officer be restored.*

3. The first issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition of Rs. 12,92,615/- made by the AO on account of cash payment over the limit specified under section 40A(3) of the Act.

4. The facts in brief are that the assessee is a private company and engaged in the trading business of VAT free goods and subcontracting. The AO found that the assessee during the year has made cash purchases of garlic amounting to Rs. 12,92,615/- having invoice value more than the prescribed limit of Rs. 20,000/- under section 40A(3) of the Act. The party wise and invoice wise purchases are detailed as under:

<i>Party Name</i>	<i>Date</i>	<i>Quantity</i>	<i>Rate</i>	<i>Total</i>
<i>Nanda Rajesh</i>	<i>02.04.2011</i>	<i>11,260</i>	<i>23</i>	<i>2,58,980</i>

<i>Steel</i>				
<i>Nanda Rajesh Steel</i>	<i>07.04.2011</i>	<i>96,20</i>	<i>26.75</i>	<i>2,57,335</i>
<i>Nanda Rajesh Steel</i>	<i>15.04.2011</i>	<i>12,630</i>	<i>28</i>	<i>3,53,640</i>
<i>Nanda Rajesh Steel</i>	<i>05.05.2011</i>	<i>6,440</i>	<i>27</i>	<i>1,73,880</i>
<i>Nanda Rajesh Steel</i>	<i>10.05.2011</i>	<i>6,440</i>	<i>31.5</i>	<i>2,02,860</i>
<i>Brahmi Fabricators</i>	<i>18.05.2011</i>	<i>1,435</i>	<i>32</i>	<i>45,920</i>
		<i>14,315</i>		<i>12,92,615/-</i>

5. The AO further found that above mentioned suppliers are neither in agricultural activity nor working as agents for agricultural producers. As such both i.e. the assessee and the supplier have claimed to be engaged in the trading business. The AO also made an enquiry with APMC Jamnagar and found that the assessee does not have APMC license. Therefore, the assessee cannot trade in the AMPC yard, which means that the impugned purchase of garlic in cash was made outside the APMC yard. Accordingly, the AO was opinion that the cash payment made by the assessee in violation of the provision of section 40A(3) of the Act and the same is also not covered by the exception provided under rule 6DD sub-rule (e) or (k) of Income Tax Rule 1962 wherein cash payment for purchase of agricultural produce or cash payment to agent over the prescribed limit has been allowed. Thus, the AO vide show cause notice dated 20-03-2015 proposes to disallow the impugned cash purchases of Rs. 12,92,615/- under section 40A(3) of the Act and requiring the assessee to make reply/explanation by 26th March 2015 as the assessment was getting time barred on 31st March 2015.

5.1 However, the reply of the assessee was received on 30th March 2015 wherein it was contended that though invoice amount is in excess of prescribed amount specified under section 40A(3) of the Act but the actual payment against such invoices are less than prescribed limit. Hence the provision of section 40A(3) of the Act cannot be attracted. The assessee in support of its contention furnished

the ledger copies of parties showing cash payment in a day for less than Rs. 20,000/- only.

5.2 However, the AO held that payment shown under the ledger account is after thought and altering the journal entries in tally to show the payment less than the limit prescribed whereas actual bill amounts are far more than the limit. Hence, the AO disallowed the impugned cash purchases of Rs. 12,92,615/- under section 40A(3) of the Act and added to the total income of the assessee.

6. On appeal by the assessee the learned CIT(A) deleted the disallowances/addition made by the AO by observing as under:

- a) *I have perused the assessment order and the paper book which inter alia includes the written submission filed by the Ld.A.R and documentary evidences in support of his arguments. So far as the disallowance of Rs.12,92,615/- made u/s.40A(3) is concerned, it is seen that, during the year under consideration the appellant had made purchases from different parties. In the course of assessment proceedings the appellant in response to notice u/s 142(1), had made compliance vide letter dated 30.03.2015 wherein details of vouchers/bills of purchase and sales were furnished. In fact the purchases are on credit and payments are made in piecemeal as evident from the edger accounts of the seller furnished in the assessment proceedings as well in the present proceedings. The ledger accounts clearly shows the payment did not exceed Rs. 20,000/- and as such provisions of section 40A(3) is not attracted. As per section 40A(3), violation can be said to have taken place only if the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees. Here in the present case, the payments were not made in excess of twenty thousand rupees and the AO never established that payments were indeed made. The AO was not justified in the absence of any documentary evidence or inquiries during assessment proceedings. Hence, there is no violation of the provisions of section 40A(3) and hence, the disallowance of Rs. 12,92,615/- is therefore directed to be deleted. This ground of appeal is allowed.*

7. Being aggrieved by the order of the learned CIT(A) the Revenue is in appeal before us.

8. The learned DR before us reiterated the findings contained in the assessment order.

9. On the other hand, the learned AR before us vehemently supported the order of the Id. CIT-A.

10. We have heard the rival contentions of both the parties and perused the materials available on record. From the order of authorities below and on perusal of materials available on record, we note that the respondent assessee in the month of April to May 2011 made purchases of garlic for Rs. 12,46,695/- and 45,920/- from M/s Nanda Rajesh Steel and Brahmi Fabricator respectively. The invoice values of the purchases range between Rs. 45,920 to Rs. 2,58,980/- only. The payment against the impugned purchases was made in cash. The assessee contended the purchases were made on credit and the same were paid in piecemeal in cash which was not exceeding Rs. 20,000/- in a day for a single party. However, the AO held that the payments were made as per bill but in tally the same broken over the number of days which is quite possible to do in tally in case of cash transactions and disallowed the same. But the same was deleted by the learned CIT(A) for the reasons discussed above.

10.1 Admittedly, it is hard to believe that the assessee will make the payment for the purchase over a period in piecemeal amounting to Rs. 18,000 to 20,000 in the given facts and circumstances. However, the onus lies upon the revenue to justify that the payment was made by the assessee over and above Rs. 20,000/- by conducting necessary enquiries from the concerned parties. But no such enquiry has been conducted by the revenue authorities. Accordingly, we are not convinced with the finding of the AO. Hence, the ground of appeal of the Revenue is hereby dismissed.

11. **The second** issue raised by the Revenue is that the learned CIT(A) erred in deleting the addition of Rs. 1.85 Crores made by the AO on account of credit of share application money under section 68 of the Act.

12. The assessee in the year under consideration has issued 92,500 shares at Rs. 200 per share, comprising of premium at Rs. 190 and face value of Rs. 10 per share to 17 persons being HUF. The assessee in support of such share capital has finished the copies of Pan, address and original proof of the share subscribers to

justify the identity of the person who have made investment in the company. The assessee has also filed the copy of ITR of the share subscriber to justify the creditworthiness. It was also submitted by the assessee that the transactions were carried out through the banking channel and therefore genuineness of the transaction is also not doubted. Besides the above, the assessee has also filed the details for increase in share capital and allotment of shares with the ROC along with the resolution, memorandum of association, an article of association of the company. Thus, it was contended that onus cast u/s 68 of the Act, was duly discharged by furnishing necessary details as discussed above. Accordingly, the assessee submitted that there is no question of making any addition on account of share capital under the provisions of section 68 of the Act.

13. However, the AO issued summons u/s 131(1) of the Act for the personal appearance of the share subscribers but none of them appeared except filing the confirmation letter. Thus, the AO was of the view that identity of the person under the provision of section 68 of the Act, has not been complied with before the AO. With respect to the credit worthiness of the share subscribers, the AO observed certain defects as detailed below:

- I. All the share subscribers filed the return of income u/s 44AD of the Act, just below the threshold limit of taxable limit in the last two years.
- II. All the share subscribers claimed to be in the business of general merchant. The income shown by the share subscribers in some of the cases were the same.

13.1 The email ID in the Income tax return of the share subscribers were of the CA firm being doshi.maru@gmail.com and one of the partners of the CA firm was the Director in the assessee's company.

13.2 All the 17 HUFs being shares subscribers made investments in the group companies of the assessee and the aggregate investment made by the share subscribers was in the multiple of 10 to 20 times of their income.

13.3 On question to furnish the books of accounts by the AO, it was replied by the share subscriber that they did not maintain any books of account because they declared income under the provision of section 44AD of the Act. In view of the above, the AO opined that the return of income has been filed by the share subscribers to deviate/hide the facts to justify the investment made by them in the different companies of the assessee. As such, considering the income of the share subscribers, the investment made by share subscribers in the different companies of the assessee cannot be justified. Likewise, the assessee did not furnish the bank statement of the share subscriber which were arranged by the AO by issuing a notice to the bank. On perusal of the bank statements, it was discovered that all the bank account were opened in same branch of the bank "Indian overseas", Manek Centre, Jamnagar in the year 2011. There was only single introducer namely Shri Shanshank Hetal Doshi partner of the CA firm Doshi Maru and Associates who was also the Director in the assessee company. The contact number in the bank account was mentioned of the CA office. Furthermore, the CA office was in the same building where the branch of the bank was operating. In view of the above, the AO concluded that credit worthiness of the share subscribers has not been justified based on the documentary evidence.

13.4 The AO about genuineness of the transaction observed that there was no transfer of money from the bank account of the share subscriber. As such the money was transferred to the bank account of the assessee from the bank account of M/s Magnum limited in which Shri Shashank H. Doshi is Director. The bank account of Magnum limited was credited from the bank account of 7 parties who were operating their account from the same bank namely Vardhman Co-operative Bank, Chandi Bazar, Jamnagar. All the bank accounts of the 7 parties except M/s Adarsh Sales Corporation were opened in the month of January 2011

whereas the bank account of M/s Adarsh Sales Corporation in June 2012. There was single introducer namely Shi Vijay K. Ghalia. Likewise, the phone number in the bank account of all the 7 parties belonged to the CA firm Shashank Hetal Doshi. There were cash deposits in the bank account of 7 parties immediately after opening aggregating to Rs. 2 to 5 lacs which was immediately transferred to Magnum Limited. After verification of the cash deposit slip, it was found out that the cash was deposited in the bank account of 7 parties by the single person as evident from the deposit slip. On verification of the 7 parties, it was found that 5 persons out of 7 persons only have filed the return of income below the taxable limit. The notices were issued to all the 7 persons u/s 131 of the Act, but none appeared except Shri Vijay Keshavji Galaya proprietor of M/s Adarsh Sales Corporation who denied having given any money to the assessee. Even the assessee did not avail opportunity of cross verification. In view of the above, the AO was of view that the genuineness of the share subscribers cannot be verified. In view of the above, a final show cause notice was issued by the AO dated 28/03/2015 proposing to make the addition of the share capital received by it u/s 68 of the Act, with the direction to make a reply dated 26/03/2015. The assessee made reply in response to such notice dated 31/03/2015 but without furnishing any new details. It was submitted by the assessee that it has furnished necessary documents such as PAN, confirmation of ITR in support of the transaction. Thus, the onus-imposed u/s 68 was discharged. However, the AO was not satisfied with the submission made by the assessee and observed that the assessee was given enough opportunities to make the necessary reply, but he failed to do so. The AO also observed that in the absence of necessary details and explanation by the assessee and in the light of the fact stated above, treated share capital amounting to Rs. 1,85,00,000/- unexplained cash credit u/s 68 of the Act and added to the total income of the assessee.

14. Aggrieved assessee preferred an appeal to the Ld. CIT(A).

15. The assessee before the Ld. CIT(A), submitted that the share subscribers were introduced to it by the investor who have made their investment considering the profile of the assessee. The opportunity of cross examination of Shri Vijay K. Ghalia was not availed as there was no transaction between assessee and such party. The assessee also submitted that in most of the cases there were assessments made u/s 147 of the Act, wherein the genuineness of investment by such subscribers were accepted as genuine.

16. On appeal Ld. CIT(A), after considering the submission of the assessee deleted the addition made by the AO by observing as under:

6.3 Thus from the above it can be seen that, all the subscribers of the shares are in existence, residing in the town, and have confirmed the transactions duly supported by supporting documents which includes their identity proof, return of income and banking details. Thus, the prime conditions laid down in section 68 stand discharged. As regards the depositing the cash in respective bank account and then immediately transferring the same to the appellant's account, the onus lies on the subscriber to satisfactorily explain the same. This is particularly so because, the AO himself had proceeded to reopen some of the cases. The AO is also not clear as to whether the cash belonged to the Director of the company or the investors. The AO also confirms that all the share holders are assessed tax and the transactions are through banking channel. Hon'ble Delhi High Court in CIT vs. Tulip Finance Ltd [2009] 178 TAX182 while deleting the addition made u/s 68 in respect of share capital received, had held that the assessee has discharged the onus which lay upon it, of establishing identity of share holders as well as genuineness of transactions. The AO did raise some doubts and suspicions on the introduction of share capital, but he has not been able to take such doubt and suspicion to further stage by any corroborative finding. The jurisdictional High Court in the case of closely held company, Hindustan Inks & Resins Ltd, 60 DTR 18 has held that once the identity of the subscriber is proved, no addition can be made in the hands of the recipient company. Thus decision is binding precedent.

6.4 The Hon. Gujarat High Court had held in another case that, when full particulars, inclusive of the Confirmation with Name, address and, PAN Number, Copy of Income Tax Return, Balance Sheet, Profit and Loss Accounts and Computation of Total Income In respect of all the Creditors/Lenders were furnished and when it has been found that the loans were received through cheques/Banking Channels and the loan accounts were duly reflected in the balance Sheet, The AO was not justified in making addition on account of Cash Credit u/s 68 of the Income Tax Act, 1961 (A.Y. 2007-08). CIT Va. Apex Term Packaging (P) Ltd. (2014) 222 Taxman 125 (Mag). The Hon. Delhi High Court in the Case of CIT. Expo Globe India Ltd. (2014) 361 ITR 147 (Delhi High Court) had held that where the assessee had furnished material which include Income Tax Returns, Balance Sheet, Registrar of Companies Particulars, Bank Accounts Statements, on the basis of these the Commissioner (Appeals) held that the share application money or the source of the Share Application money had been) satisfactorily explained. The Tribunal was of the Opinion that no Interference was warranted having regard to the facts of the Case. This was a pure finding of the Fact of Sec. 68 was not applicable. The Hon. Delhi High Court in the Case of CIT Vs. Kansal Fin Cap Ltd. (2014) 221 Taxman 151 (Mag.) (Delhi High Court) held that,

no addition shall be made in the hands of the assessee were transactions related to the receipt of share application money are genuine and are full recorded by the Share Applicants. The Assessee had received share applications money from 11 different, companies. The A.O. made addition on the ground that the assessee could not discharge the onus and prove the genuineness of the Receipt. The First appellate authority observed that the assessee had produced various documents in support of the share application money received. The Tribunal restored the matter to the A.O. The High Court upheld Tribunal's Order clarifying that the AO should objectively examine the whole issue and in case he found that the transactions were genuine and fully recorded by the share applicants, no addition would be made in the hands of the respondent assessee. In other words, two conditions has to be satisfied, First the transactions should be genuine, true and not a camouflaged, and secondly the transactions should be duly recorded in the Books of the Share Applicants. The Hon. Allahabad High Court in the Case of CIT Vs. Som Tobacco India Ltd (2014) 222 Taxman 58 (Mag.) had held that, where assessee produced names, addresses and PAN Of depositors which were sufficient to prove their identity and creditworthiness it was not justified in making addition a/ 68 in respect of amount in question. The A.O. found that the Assessee had reflected amount in the balance sheet under the head "Share Application Money Pending Allotment" as on 31.03.2005. During the Assessment proceedings the assessee could not file confirmations of share applications and therefore addition of the entire amount was made in the hands of the assessee. The CIT(A) dismissed the appeal confirming the findings of the A.O. share applications money had deposited the cash in their respective bank accounts cheque before cheques In the name of the assessee for share allotment. The High Court observed that the A.O. made the addition for the reason that the assessee did not file confirmation from the share applicants. However, he did not doubt either the identity or the creditworthiness of the share applicants because no such discussion has been made in the assessment Order. The explanation of the assessee as regard to the Inability in filling the confirmation before the assessing officer was that sufficient time was not provided. It Is noticed that the Ld. CIT(A) confirmed the addition for the reason that the creditworthiness was not proved. High Court held that, the assessee had discharged the onus by furnishing the name, address and Permanente Account Number of the Share Applicants and if the AO was having any doubt he could have Issued the Summons to the persons who were claimed to be assessed to Income tax and were having Permanent Account Number," Hon'ble Supreme Court in the Case of Sarogl Credit Corporation V. CIT (1976) 103 ITR 34 (SC) held that if there is credit entry in the books of the assessee and it is not in the name of the close family members or relation but in the name of any Independent party, the assessee is only required to give the Identity of that part to the AO. Once the identity of a third part is established and there is other evidence to show that entry is not fictitious, the initial burden lying on the assessee shall be deemed to be discharged. Similarly, the Hon'ble Rajasthan High Court in the Case of Shree Barkha Synthetics Ltd, Va. ACIT (2006) 15 Taxman 289 (Raj.) held that once the assessee has discharged its burden regarding the Identity of the persons, genuineness of the Transaction and capacity of the person investing in the share capital by furnishing confirmation of accounts, share applications made by the Investors, bank statements of such Investors, Copy of Return of Income for the said Assessment year and the audited accounts of such Investors reflecting the Investment In assessee company during the course of assessment Proceedings. It was further submitted that the amounts were received as share application from Investors though baking channels, and the assessee was required to prove existence of the person, in whose name, the share application was received. Once the existence of the Investor is proved, it is not further the burden of the assessee to prove whether that person itself has Invested the said money or some other persons has made Investment in the name of that person. The Burden then shifts on to the Revenue to establish that such Investment has come from the assessee-company itself. Once the receipt of the confirmation letter from the creditor is proved and the Identity and the existence of the Investor has not been disputed, no addition on account of share application money in the name of such Investor can be made in the

assessee hand. Needless to say, the Special leave petition of the Department in the case of Lovely Exports has been dismissed by the Supreme Court 319 ITR (St.) 5 observing that, "Can the amount of share money be regarded as undisclosed Income under section 68 of the Income Tax Act, 1961? We find no merit in this special leave petition for the simple reasons that if the share application money received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their Individual assessment In accordance with law. Hence we find no infirmity with the Impugned Judgment". The Honourable High Court of Delhi In CIT vs. Samir Bio Tech (Pvt) Ltd. In ITA 415/2008 held that when Identities of the subscribers are not in doubt and creditworthiness has been established specially subscribers give their confirmations about the Investments of capital in the company. the Department could not draw an adverse Inference against the assessee only because the subscribers did not Initially respond to summons. The Subscribers, however, subsequently gave their confirmations of letters as would be apparent from assessment order. It is in these circumstances following the decision of this court in Divine Leasing and Finance Ltd, deleted the addition made by the Authorities.

6.5 In the light of the above facts, I find that the appellant has sufficiently discharged the onus to explain the share capital received by it, and the case of the appellant is squarely covered by the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. In view of the above, it is held that no addition on account of share capital within the meaning of section 68 can be made in the hands of the appellant. The addition of Rs. 1,85,00,000/- is therefore directed to be deleted. The appeal on this ground is therefore allowed.

17. Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

18. The Ld. DR before us reiterated the contentions made by the AO in his order. On the contrary the Ld. AR before us filed a paper book running from pages 1 to 118 and submitted that the share subscribers are still holding shares in the assessee's company. According to the Ld. AR, had this being a bogus transaction then the party who have acquired the shares must have exited from the company after making sale of shares.

19. The Ld. AR also submitted that the revenue in the cases of other companies namely CCS Investment and Shah Maru Construction Pvt. Ltd. accepted identical transactions on share capital received from the so called 17 persons as genuine which evidence contradictory stand of the revenue. Accordingly, no addition is warranted on this count alone. The Ld. AR also submitted that necessary details with respect to share subscribers has furnished during the assessment

proceedings which are available on pages 34 to 114 of the paper book. The Ld. AR also submitted in most of the cases of share subscribers the genuineness of the transaction was admitted in the proceedings u/s 147 of the Act. Accordingly, no addition can be made.

20. Both the Ld. AR and the Ld. DR vehemently supported the order of the authorities below as favourable to them.

21. We have heard the rival contentions of both the parties and perused the materials available on record. The AO in the present case has treated the share application money along with the premium received by the assessee as unexplained cash credit under section 68 of the Act. The AO in holding so has pointed out numerous infirmities with respect to the shares subscribers which have been detailed in the preceding paragraph and the same is very glaring. Keeping aside the glaring mistakes highlighted by the AO, what crucial facts requires to be highlighted are that the AO in his order has clearly observed that the shares subscribers have made investments in 5 companies as detailed below:

1. Paras Buidlcon Pvt Ltd. (present assessee)
2. HP Chemicals Pvt Ltd.
3. FC Pharmaceuticals Pvt Ltd.
4. CCS Investment
5. Shah Maru Construction Pvt Ltd.

21.1 However, what we find that there were no proceedings initiated by the revenue against the companies namely CCS Investment (no assessment from A.Y. 2008-09 to 2022-23) and M/s Shah Maru Construction Pvt Ltd. despite having known about the fact that the transactions involved in the case of these two companies are identical to the present case of the assessee. Thus, it appears that the revenue has accepted the transaction as genuine in the case of the companies namely CCS Investment and Shah Maru Construction Pvt Ltd. whereas the revenue has treated the identical transaction with the assessee on hand as

unexplained cash credit under section 68 of the Act. To our knowledge, the revenue has taken the contrary stand despite having the full knowledge about the facts of the case as discussed above. According to our understanding, it is not expected from the revenue to take different stand in the hands of different assessee involving identical facts and circumstances which were not privy to the Department.

21.2 The Hon'ble Delhi High Court in the case of CIT Vs. Muthoot M. George Bankers reported in 159 taxman 22 has observed as under:

7. This Court has time and again taken the view that there must be some consistency in the stand of the revenue and they cannot pick and choose cases in which to file an appeal in respect of some assessee and not to file an appeal in respect of identical orders in respect of another assessee. This view has also been expressed by the Supreme Court on several occasions and despite that we find that the revenue insists upon taking such arbitrary decisions for which there is no iota of justification. If the revenue puts forward some reason for its differential treatment, that will, of course, be considered on merits but in this particular case there is no such reason except to say there is no res judicata or estoppel. The rule of consistency must be followed by the revenue, which they have failed to do in this particular case.

21.3 The facts of the case in the above judgement are different from the facts of the case on hand but as far as the principles are concerned, they are same i.e. Department should not take the contrary stand in case of different assessee involving identical transaction.

21.4 In addition to the above, we note that the department in many of the cases of the shares subscribers which were taken under scrutiny under section 147 of the Act has accepted them as genuine investors. In simple words, no addition of whatsoever was made even on protective/ substantive basis in the hands of them knowing fully well that those shares subscribers failed to discharge onus in the case of the assessee. From this observation, it again appears that there was a contrary stand taken by the Revenue for the assessee viz a viz the shares subscribers.

21.5 At this juncture, it is important to note that the appeal relates to the assessment year 2012-13 whereas the amendment under provisions of section 68 of the Act by adding the proviso to section 68 of the Act, requiring the assessee to justify the source of source in the case of credit of share application money in private limited companies was brought but the same is applicable effective from the assessment year 20013-14 as held by the Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt Ltd. Reported in 80 taxmann.com 272. Accordingly, the amended provisions cannot be made applicable to the year in dispute.

21.6 Thus, in view of the above and after considering the facts in totality, we do not find reason to interfere in the finding of the learned CIT(A). Hence the ground of appeal raised by the Revenue is hereby dismissed.

Coming to ITA Nos.316-317/Rjt/2017, A.Y. 2012-13 an appeal by the revenue in the case of M/s. H.P Chemicals Pvt. Ltd. And M/s. F.C Pharmaceuticals, Jamnagar

22. At the outset, we note that issues raised by the revenue in its grounds of appeal are similar to the grounds raised by the revenue in the case of **M/s Paras Buildcon Pvt. Ltd in ITA No. 315/Rjt/2017 for AY 2012-13**. Therefore, the findings given in ITA No. 351/Rjt/2017 for A.Y. 2012-13 shall also be applicable to the present two appeals bearing ITA Nos. 316-317/Rjt/2017 for A.Y. 2012-13. The appeal of the revenue bearing ITA No. 315/Rjt/2017 for A.Y. 2012-13 in the case of M/s Paras Buildcon P. Ltd has been decided by us vide paragraph Nos. 10 and 21 of this order in favour of the assessee and against revenue. The learned AR and the DR also agreed that whatever will be the findings for issues raised in ITA No. 315/Rjt/2017 for A.Y. 2012-13 shall also be applied to the other two appeals mentioned. Hence, the grounds of appeal filed by the revenue are dismissed.

23. In the result, the appeals of the revenue are dismissed.
24. In the result, all the three appeals filed by the revenue are dismissed.

Order pronounced in the Court on 13/09/2023 at Ahmedabad.

**Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)

13/09/2023