

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

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

आयकर अपील सं. / ITA No.110/RPR/2020
निर्धारण वर्ष / Assessment Year : 2015-16

The Assistant Commissioner of Income Tax-1(1),
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Tripco Services Pvt. Ltd.
1st Floor, H. NO.69, Behind Ayurvedic College,
Rohini Puram Road, Raipur (C.G.)
PAN : AADCT2207J

.....प्रत्यर्थी / Respondent

Assessee by : S/shri Praveen Khandelwal &
Praveen Goyal, CAs
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 28.06.2023

घोषणा की तारीख / Date of Pronouncement : 14.09.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income-Tax (Appeals)-II, Raipur, dated 13.08.2020, which arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act') dated 30.12.2017 for A.Y. 2015-16. The revenue has assailed the impugned order on the following grounds of appeal before us:

- “1. "Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs.2,65,05,000/- on account of share application money received from bogus/shell/paper companies?"
2. Whether on the facts of the cases and in law, the CIT(A) is justified in holding that PAN & ROC certificate proves the identity of share subscribers though the notice u/s 133(6) issued to them return back?"
3. "Whether on the facts of the cases and in law, the CIT(A) is justified in deleting the addition of Rs. 2,65,05,000/- on account of share application money received from bogus companies those do not have net worth to make investment and no dividend has been received from these investments?"
4. Whether on the facts of the cases and in law, the CIT(A) is justified on relying on ration of CIT Vs Lovely Exports P. ltd [216 CTR 195] holding that the department is free to proceed to reopen the case of the bogus shareholder which is not relevant after 01.04.2013 as the section 68 has been amended by Finance Act, 2012 inserting the sub-section 1 that source of source has to be proved in the cases of share application money ?
5. "Whether on the facts of the cases and in law, the CIT(A) is justified in replying on jurisdictional high court order in the case of ACIT Vs Venkateshwar (spat Pvt. Ltd 319 ITR 393 while ignoring the ratio decided by Hon'ble Supreme Court of India in the case of PCIT Vs NRA Iron & Steel Pvt. Ltd in SLP 29855 of 2018 ?
6. The order of Ld. CIT(A) is erroneous both in law and on facts.

Any other ground that may be adduced at the time of hearing.”

2. Succinctly stated, the assessee company had filed its return of income for A.Y.2015-16 on 15.09.2015, declaring an income of Rs.22,87,492/-. The case of the assessee company was thereafter selected for limited scrutiny through CASS for verifying the “large share premium received by it during the year”.

3. During assessment proceedings, it was observed by the A.O that the assessee company had allotted 659967 equity shares for Rs.5,88,46,370/- and 2500000 preference shares for Rs.2,50,00,000/-, respectively. The A.O to verify the authenticity of the aforesaid transactions issued notice(s) u/s.133(6) of the Act to the shareholders/investors and directed them to produce specific information/details, as under:

“1. Please furnish the details of investments made, if any by you in the share capital/ share application money of above related company(s).

2. Please furnish Copy of share certificates, if any, issued by above related company(s) to you pertaining to A.Y. 2015-16. Please also state the date and the mode by which these certificates have been received by you.

3. Please furnish Copies of all correspondences (letters, applications, etc.) made by you and received by you from above related company(s).

4. Please furnish copy(s) of the statement of the bank account(s) from which money has been transferred to above related company(s) for A.Y. 2014-15.

5. Please state if any notice/ letter for attending the Annual Meeting or any other meeting of above related company(s) has/ have been received by you till date. If so, a copy of the said notice along with the date and mode of receipt may be sent.

6. Please state if any meeting of above related company(s) was attended by any of your representatives. If so, please name the person who attended the meeting along with the date, time and place of meeting.
7. Please state if any of your representatives ever visited the office or factory of above related company(s). If so, please name the person along with the date and time of visit.
8. Please state how did you come to know about above related company(s).
9. Please state to whom did your representative contact above related company(s). Please also mention the mode of contact (i.e. personal meeting, telephonic conversion, letter or any other).
10. Please supply the list of offices/ godowns/ factories/ workshops & others premises used by you for your business activities during the aforesaid period.
11. Please submit a list of your directors during the A. Y. 2015-16.
12. Please supply a copy of your Audit Report, Profit and Loss account and Balance Sheet along with Annexure for A. Y. 2015-16.
13. Please give a brief note on the nature of business carried out by You during A.Y. 2014-15.
14. Please supply the names of your directors at present along with their present postal address/ telephone/ mobile number along with a copy of the latest return of income filed by them.
15. Please state whether you have received any dividend from these companies till date. If so, please furnish details thereof.
16. Please furnish the list of employees as on date.
17. Please furnish the list of companies along with their address in which you have made investment towards share capital.
18. Please supply list of your share holding pattern as on date along with the address of the shareholders.
19. Please furnish your contact number (Telephone No. & Mobile No.). Also furnish the residential telephone number and mobile number of your directors and other key officials.
20. Please state the nature of possession of your office premises. Kindly also furnish a copy of rent/ lease agreement if any in respect of these premises.
21. Any other document you may like to supply in support of your identity, credit worthiness & genuineness of transaction for the transactions mentioned in S. No. (1) above.

Any other information you would like to furnish on above points.”

However, the notices that were issued through registered post u/s.133(6) of the Act to some of the shareholders were returned unserved by the postal authority. On the other hand, replies received from the remaining shareholders did not substantiate their creditworthiness to the satisfaction of the A.O. The details of the shareholders to whom shares were allotted by the assessee company are culled out as follows:

Sl. No.	Name of the share holder company	Address	Amount received (in Rs.)	No. of shares allotted	Face value @ Rs.10 per share (In Rs.)	Premium @Rs.100 per share (in Rs.)
Equity Shares :						
1.	All Time Buildtech Pvt. Ltd.	Shahadara Near Agrawal Sweets, New Delhi	30,03,000	27300	2,73,000/-	27,30,000
2.	M/s. Ram Alloys Casting Pvt. Ltd.	2 nd floor, Sector-14, Kausambi, Gaziabad-201010	20,02,000	18200	1,82,000/-	18,20,000/-
3.	Symbolic Finance and Investment Pvt. Ltd.	602, 6 th Floor, Naurang House, 21, K.G. Marg, Connaught Place, New Delhi-110001	20,02,000	18200	1,82,000/-	18,20,000/-
4.	Rampyari D/o. Karamchand	Flat No.702, Ahlon Apartment, Sector-3,	4,12,50,000	500000	3750000	37500000

		Vaishali, Ghaziabad, Uttar Pradesh				
Preference shares :-						
5.	All Time Buildtech Pvt. Ltd.	Shahadara Near Agrawal Sweets, New Delhi	1,00,00,000/-	10000000		
6.	M/s. Anuj Buildcon Pvt. Ltd.	H. No.3/12, 2 nd Floor, Asaf Ali Road, Near- Delite Cenema Hall, New Delhi- 110002	30,00,000/-	300000		
7.	M/s. B G Freight Shopee (I) Pvt. Ltd.	29-A, J & K, Block Laxmi Nagar, Delhi- 110092	20,00,000/-	200000		
8.	M/s. Vincere Mfg. Pvt. Ltd.	A-49, F.I.E.E, Okhla Industrial Area, Phase-II, New Delhi- 110020	20,00,000/-	200000		
9.	M/s. Anupam Buildmart Pvt. Ltd.	Plot No.95, Ground Floor, Block-B, Tagore Garden Extn. New Delhi- 110027	25,00,000/-	200000		

10.	M/s. Bell Indus Fibrecom Pvt. Ltd.	H. No.3/12, 2 nd Floor, Asaf Ali Road, Near Delite Cenema Hall, New Delhi	25,00,000/-	200000		
11.	M/s. NCR Buildtech Pvt. Ltd.	H. No.3/12, 2 nd Floor, Asaf Ali Road, Near Delite Cenema Hall, New Delhi	25,00,000/-	200000		
12.	M/s. Saabi Mining Pvt. Ltd.	H. No.3/12, 2 nd Floor, Asaf Ali Road, Near Delite Cenema Hall, New Delhi	25,00,000/-	200000		

4. Because the letters that were sent to some of the shareholders were returned by the postal authority and the companies from whom replies were received were not found to be creditworthy to make huge investments toward share capital/share premium with the assessee company, the A.O brought the said facts to the notice of the assessee company and directed it to provide details of its correspondence with the said shareholders and produce supporting documentary evidence to substantiate their identity and creditworthiness, and genuineness of the transaction of receipts of share

application money/share premium from them. In compliance, the assessee company submitted its reply dated 21.12.2017.

5. After necessary deliberations, the A.O accepted the share application money/premium aggregating to Rs.75.02 lacs that was received from three shareholders, as under:

Sl. No.	Name	Amount invested (Rs.)
1.	Symbolic Finance And Investment Pvt. Ltd.	20,02,000/-
2.	M/s. Anuj Buildcon Pvt. Ltd.	30,00,000/-
3.	M/s. Bell Indus Fibrecom Pvt. Ltd.	25,00,000/-
	Total	75,02,000/-

Also, the A.O., after verifying the substantial means of one of the shareholder, viz. Smt. Rampyari (since deceased) did not draw any adverse inferences regarding the transaction's authenticity.

6. Apropos the remaining shareholders, it was observed by the A.O. that though the letter which was forwarded to one of the shareholder company, viz. M/s. Anupam Buildmart Pvt. Ltd. that had invested Rs.25 lacs (against which 20000 preference shares were allotted) was returned by the postal authority with the remark "No Such Firm," but strangely, the reply from the said shareholder company was received without any service of notice having been

affected on it. Considering the facts above, the A.O., to verify the creditworthiness of the remaining shareholder companies, gathered their “balance sheets” and annual returns from the official site of the Ministry of Corporate Affairs. On a perusal of the “balance sheets” of the shareholder companies, it was observed by the A.O. that they had disclosed nil income and had, in turn, raised capital, i.e., share capital or unsecured loans from other paper/shell companies. Observing that the aforementioned paper/shell investor companies had in the preceding years only raised capital through other non-existing paper companies, the A.O. was of the firm conviction that the investment claimed by the assessee to have been received in the form of share application money from the said investors could by no means be justified.

7. Apart from that, it was observed by the A.O. that other investor companies were also running into losses. Further, it was observed by the A.O. that when the assessee company could not offer good financial returns, it was incomprehensible as to how the loss-making investor companies would have made investments with the assessee company and also arranged funds for making such investments. The A.O. further observed that a perusal of the share application forms submitted by the investor companies revealed that some had applied for share allotment on the same date, and payments against

such allotments were made either before two months or on the same date. Considering how the share application forms were submitted and payments made by the investor companies, the A.O. believed that the same was impossible in everyday practice. In fact, he observed that the nature of the transactions above revealed beyond doubt that in the garb of the share application money, the assessee company had tried to launder and route its unaccounted income in its books of accounts. The A.O culled out the complete details of the share application forms for share allotment and receipt of payments from the investor companies in the body of the assessment order, as follows:

Name of the investor company	Date of application Form	Date of payments
All Time Buildtech Private Limited	05.09.2014	21.07.2014
All Time Buildtech Private Limited (Preference shares)	26.12.2015	26.12.2015
Ram Alloys Castings Private Limited	05.09.2014	16.07.2014
B.G Freight	01.01.2015	01.01.2015
Vincere Manufacturing	27.12.2014	27.12.2014
Anupam Buildmart	16.02.2015	16.02.2015
NCR Buildtech	13.02.2015	13.02.2015
Saabi Mining Private Limited	17.02.2015	17.02.2015

On further perusal of the bank accounts of the shareholder companies, it was observed by the A.O that the amounts that were credited in their bank accounts, i.e., receipts from various paper/shell companies, were thereafter transferred on the same day or the next day leaving nil or meager amount as closing balance on that day. To sum up, it was observed by the A.O that the amount credited in the bank accounts of the shareholder companies was equivalent to the amounts that were paid to the assessee company against allotment of shares (the A.O had tabulated details of the aforesaid bank transactions at Page 8 to 10 of the assessment order). Considering the facts above, the A.O. believed that the abovementioned bank transactions revealed the meticulously planned layering of unaccounted money through various concerns which was introduced with the assessee company in the garb of share application money. Also, the A.O. held a firm conviction that it was incomprehensible that the investors based in Delhi and other faraway places would have made substantial investments with the assessee company whose neither past performance nor future plans would have attracted any prudent investment.

8. In the backdrop of the observations above, the A.O called upon the assessee company to explain why the share application money/share premium introduced through the aforementioned shell /paper companies may

not be assessed as its unaccounted income for the year under consideration. As the reply filed by the assessee company did not find favor with the A.O, the latter, after deliberating at length on the *modus operandi* that the paper/shell companies adopted for providing accommodation entries through a maze of circuitous transactions and referring to the financial details of the shareholder companies which resembled the characteristics of shell companies, therein concluded that the amount so received in the garb of share application money/share premium by the assessee company was a rotation of its unaccounted money. Although it was the claim of the assessee company that its promoters and family members, who were permanently based in Delhi, had, through their social and business circles, come in contact with directors of the subscriber's companies, which had, after duly diligence and considering business prospects of the assessee company made their respective investments, the A.O rejected the said explanation for the reasons which are culled out, as under:

“(i) On scrutiny of the audited accounts of the subscriber companies shows a peculiar character. The financial data reflected in the audited accounts, bank accounts are not in accordance with the business activity of the subscriber companies. The detail analysis in respect of audited account and transaction in the bank account is already discussed in the above para.

(ii) After analyzing the net worth and net profit for the year under consideration it is established that the subscriber companies have no such creditworthiness to make so huge investment in the assessee company. The subscriber companies are utilized for the rotation of fund.

(iii) If the assessee had contacted with the director of the subscriber company why the same not come before the department to put the fact and for cross

verification of the same. It is the onus of the assessee to prove the genuineness of the transaction. It is also important to mention that the assessee company had not revealed the fact that how the subscribers were contacted for investment.

As discussed above, submissions of the assessee can't be accepted due to following reasons: (i) Non-justification of high premium on the shares allotted.

(ii) No business activity of share applicants in accordance with the investment.

(iii) Non creditworthiness of these share applicants.”

9. On a perusal of the financial statements of the shareholder companies, the A.O. observed that they had a minimal capital account and minuscule revenue from operations. Apart from that, it was observed by him that an analysis of the income of the shareholder companies revealed that the net profit earned by them was very dismal. Considering the aforementioned peculiar facts, the A.O. observed that it was incomprehensible that the aforementioned shareholder companies could raise capital at a very high premium despite such poor financials. Based on the facts above, the A.O. was of the firm conviction that the shareholder companies were paper/shell companies used only for routing the unaccounted income through various layers of accounts of different paper *companies*. Once again, referring to the modus operandi that paper/shell companies would adopt to facilitate their nefarious activities of laundering unaccounted money, the A.O. was of the view that the assessee company had received share capital from fictitious companies through a series of layering transactions using the services of entry

operators and exit providers. Observing that the assessee company had made a deliberate attempt to subvert the law to facilitate evasion of tax, which was illegal and impermissible, the A.O after relying upon a host of judicial pronouncements vide "Show cause Notice" (SCN) dated 21.12.2016 intimated to the assessee company that creditworthiness of the shareholder companies was not proved to his satisfaction. Also, it was brought to the notice of the assessee company that the genuineness of the transactions shown in the garb of receipt of the share application money from the shareholders was not justified. In reply, the assessee submitted certain documents and claimed that the same sufficed to support the identity and creditworthiness of the shareholders and the genuineness of the transactions of receipt of share application/share premium from them. However, the A.O was not persuaded to subscribe to the aforesaid claim of the assessee company and held a conviction that the latter had failed to discharge the onus that was cast upon it regarding proving the identity and creditworthiness of the shareholders and genuineness of the transactions of receipt of share application money /premium of Rs.2,65,05,000/-, held the same as unexplained cash credit u/s.68 of the Act. Accordingly, the A.O., based on his deliberations above vide his order passed u/s.143(3) dated 30.12.2017, determined the income of the assessee company at Rs.2,87,92,490/-.

10. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals). After deliberating at length on the contentions advanced by the assessee company, the CIT(Appeals) found favor with the claim of the assessee company that no additions qua investments received from the aforementioned shareholder companies were called for in the hands of the assessee company. The CIT(Appeals) observed that after notices u/s.133(6) of the Act were returned unserved, the assessee company had provided the new addresses of the subscriber companies and had also brought the said fact to the notice of the subscriber companies, which, thereafter, had provided the requisite documents that the A.O. had called for. It was observed by the CIT(Appeals) that in some of the cases, the A.O. had accepted the share capital/premium received by the assessee company as genuine. Rebutting the observations of the A.O. about the receipt of details/documents from one of the investor company, viz. M/s. Anupam Buildmart Pvt. Ltd. (supra) even though notice issued to the said shareholder company was returned unserved, it was observed by the CIT(Appeals) that the aforementioned shareholder company had provided the said details after the facts were brought to its notice by the assessee company. Also, the CIT(Appeals) did not favor the A.O.'s observation that, in some instances, as against the amount received as a loan by the assessee company, shares were allotted to them.

11. Referring to the observation of the A.O that the investments made by the shareholder companies with the assessee company were sourced out of amounts which, on the date of investment, were credited in the bank account of the shareholder company, the CIT(Appeals) was of the view that there was no substance in the said observation of the A.O. Apart from that, it was observed by the CIT(Appeals) that it was not so that in all the cases the shareholders money was credited on the same day in their bank accounts. To support his observation above, it was noticed by the CIT(Appeals) that as the shareholder companies would make an investment with the assessee company only after it received funds in its bank account; thus, no adverse inference on the said count, was even otherwise liable to be drawn as the amounts so credited were not cash deposits.

12. Rebutting the observation of the A.O that it was incomprehensible that investor companies which were based in Delhi had made investments with the assessee company, the CIT(Appeals) was of the view that the same was made possible because directors of the assessee company were well acquainted with the shareholder companies and had arranged the funds through their efforts. Apart from that, he observed that the directors of the assessee company, i.e. "Malani Family" were based in Delhi, and the operations of the said company were being carried out in and around Raipur.

Considering the facts above, the CIT(Appeals) believed there was nothing strange in receiving funds from the shareholders based in Delhi.

13. Adverting to the observation of the A.O that the financial statements of the investor companies revealed minuscule income, the CIT(Appeals) was of the view that as the said investor companies had sufficient money in their “balance sheets” either by way of their own funds or out of loans and had advanced money to the assessee company out of those funds, therefore, the creditworthiness of the said investor companies could not have been doubted. In support of his observations above, the CIT(Appeals) relied on the order of the ITAT, Mumbai, in the case of Dipesh Ramesh Vardhan Vs. DCIT, Central Circle-2(2), Mumbai, ITA No.7648/Mum/2019, wherein the Tribunal had observed that the A.O cannot allege collusion between the investor and the assessee company of passing on of cash and giving color of a genuine transaction unless there was evidence with him to prove the same.

14. Referring to the observation of the A.O. that the assessee company had charged a high premium for its shares, the CIT(Appeals) observed that the assessee company had explained the basis for charging the premium. He observed that the shares had been allotted by the assessee company to the share subscribers at the rate derived as per the valuation method prescribed under rule 11UA of the Income Tax Rules, 1962. Observing that valuation of

the share of the assessee company for the year under consideration was Rs.110.38, while for those were allotted at Rs.110 per share, the CIT(Appeals) was of the view that the question of charging a high premium by the assessee company was ruled out. Apart from that, it was observed by the CIT(Appeals) that as the “book value” of the shares of the assessee company had increased by 9.3% since the allotment of shares, it had revealed a prudent and wise investment decision that the investor companies took.

15. The CIT(Appeals) further observed that to establish the genuineness of share capital after initial non-compliance/non-service of notice, all supporting documents were placed on record by the assessee company, viz. ROC certificate with the address of the investor company, share application forms, bank statements, copies of the returns of income of the investor companies, etc. It was observed by him that now when the assessee company had duly discharged the primary onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share capital/premium, then the onus was shifted upon the A.O to carry out necessary verifications or investigation to dislodge the aforesaid well-substantiated claim of the assessee company. Observing that though the notices which were initially issued by the A.O u/s.133(6) of the Act could not be served upon the shareholders due to change of their addresses, but, as the said investors had

thereafter made necessary compliance after their correct addresses were made available by the assessee company, therefore, no adverse inference on the said count was liable to be drawn. Also, it was observed by the CIT(Appeals) that though the A.O had objected to the low income of the investor companies but had chosen to remain silent on the other documents they submitted to substantiate the authenticity of the transactions under consideration. The CIT(Appeals) further observed that the ROC certificate and PAN of the investor company duly established their identity, while the fact that the transactions were carried out through banking channels established the genuineness of the transactions.

16. Apropos the observation of the A.O that the assessee company had entered into circuitous transactions with the paper/shell companies for building capital and laundering its unaccounted money, the CIT(Appeals) was of the view that the said observation of the A.O was in thin air and was not supported by any supporting evidence. Regarding the observation of the A.O. that the investor companies were not carrying on any business activities and had minuscule income, the CIT(Appeals) believed that to judge the creditworthiness, the mere income criterion cannot be adopted as the sole basis. The CIT(Appeals) further observed that though the investor companies had decent income every year, but even otherwise, their creditworthiness was

to be judged based on their net worth and not only based on their cash-based assets. Referring to the net worth of certain shareholder companies, it was observed by the CIT(Appeals) that they had, while explaining the source of the source out of which they made investments, categorically clarified that the same was sourced out of the sale of investments, refund of unsecured loans, etc. It was observed by the CIT(Appeals) that the investor companies had much more net worth than the amount they had invested in the assessee company. Considering the facts above, the CIT(Appeals) believed that the assessee company had duly established the creditworthiness of the investor companies a/w. genuineness of the transaction of receipt of share application money/share premium from the investor companies. Referring to certain case laws/judicial pronouncements, i.e. judgment of the Hon'ble Apex Court in the case of CIT Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC), and that of the Hon'ble Jurisdictional High Court in the case of ACIT Vs. Venkateshwar Ispat (P) Ltd., 319 ITR 393, the CIT(Appeals) observed that now, when the investment made by the shareholder companies was duly reflected in their audited financial statements, therefore, in the backdrop of the aforesaid binding judicial pronouncements, no adverse inferences as regards the authenticity of the transactions of receipt of share application money/share premium from them was liable to be drawn in the hands of the assessee company. Accordingly, the CIT(Appeals), based on his observations above,

vacated the addition of Rs.2.65 crore (approx.) that was made by the A.O u/s.68 of the Act.

17. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

18. We have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

19. At the very outset of the hearing of the appeal, the Ld. Authorized Representative (for short 'AR') for the assessee company had placed on record a "chart" wherein complete details regarding the respective investments made by the shareholder companies aggregating to Rs.2,45,05,000/- had been reflected. On a specific query by the Bench that though the addition made by the A.O, which had been vacated by the CIT(Appeals) amounted to Rs.2,65,05,000/- (supra) but the aforesaid "Chart" referred to an addition of Rs.2,45,05,000/-, it was submitted by the Ld. AR that the same was for the reason that while one of the shareholder company, viz, M/s All Time Buildtech Pvt. Ltd., had invested an amount of Rs.80 lacs towards preference shares of the assessee company, the A.O had, however, wrongly

taken the same at Rs.1 crore. The Ld. AR, to substantiate his aforesaid claim, took us through the financial statements of the investor company, viz. M/s All Time Buildtech Pvt. Ltd., Page 93-96 of APB. Referring to the non-current investments of Rs.5.45 crore (approx.) of the investor company, it was stated by the Ld. AR that the same, inter alia, was comprised of investments it had made towards 800000 preference shares of Rs. 80 lac with the assessee company, viz. M/s. Tripco Service Pvt. Ltd.

20. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the order of the A.O.

21. We have thoughtfully considered the abovementioned claim of the Ld. A.R and find that the aforesaid factual averment canvassed by him is supported by the financial statements of the assessee company wherein the investment made by the shareholder company, viz. M/s All Time Buildtech Pvt. Ltd. in 800000 non-cumulative redeemable preference shares of Rs.10/- each is duly reflected, Page 263-264 of APB. Accordingly, the quantum of addition made by the A.O. in the hands of the assessee company is scaled down to Rs.2,45,05,000/- (as against Rs.2,65,05,000/- taken by the A.O.).

22. Before proceeding any further, we may observe that as the judgments of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports (P) Ltd.,**

216 CTR 195 (SC), and that of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd., 319 ITR 393 (Chattisgarh)** that had been relied upon by the CIT(Appeals) pertained to the pre-amended Section 68 of the Act, wherein in absence of "1st proviso" to Sec. 68 of the Act that had been made available on the statute vide the Finance Act, 2012 w.e.f 01.04.2013, no obligation was earlier cast upon the person, in whose name credit consisting of share application money, share capital, share premium or any such amount by whatever name called, to explain the "nature" and "source" of such sum so credited against its name with the assessee company, therefore, the reliance placed on the said judicial pronouncements would not carry the case of the assessee company any further.

23. Adverting to the facts of the case, we shall now deal with the respective investments made by the shareholders, as follows:

A). All Time Buildtech Pvt. Ltd.:-

(i). On a perusal of the records, it transpires that the investor company mentioned above had made an investment aggregating to Rs. 1,10,03,000/- with the assessee company, as under:

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of shares allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
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1. (Equity Shares)	All time Buildtech Pvt. Ltd.	30,03,000/-	27,300	2,73,000/-	27,30,000/-
2. (Preference shares)	All time Buildtech Pvt. Ltd.	80,00,000/- (wrongly mentioned by the A.O at Rs.1 crore)	8,00,000	.Nil	Nil
Total		1,10,03,000/-			

(ii). On a perusal of the chart, which the Ld. A.R. has filed before us a/w. other supporting documents that the aforementioned shareholder company had filed vide its reply dated 17th November, 2017 with the A.O in compliance to notice u/s.133(6) of the Act, wherein it had duly confirmed its investment and provided other requisite details as were called for by the A.O, i.e. copy of share certificates, copy of bank account statements out of which investments were made, details of the promoters of the shareholder company, office address of the shareholder company, list of directors since the date of incorporation, the details of employees, income tax credentials of the shareholder company for the year under consideration, i.e. intimation u/s.143(1) of the Act a/w copies of the return of income for the A.Y.2013-14 and A.Y.2015-16, audit report/balance sheet and details of investments made in the other companies, copy of PAN, copy of latest ITR confirmation a/w. source of the investment, Page 69 to 105 of APB, it transpires that substantial

material to support the authenticity of the transactions, i.e. investments made by the aforesaid shareholder company with the assessee company was filed with the A.O. The details as regards the investments made by the aforementioned shareholder company, viz. M/s All Time Buildtech Pvt. Ltd. as had been filed with us is culled out as under:

S. No.	Details of payment to Tripco (Source of fund)			Page No. PB			Details of source of funds			Page No. PB			Nature of receipt	Remarks		
	Name of Share Applicant	Date	Amount	ITR	Balance Sheet	Bank A/c	Date	Name of Party	Amount	ITR	Confirmation	Bank A/c				
1	All Time Buildtech Pvt Ltd	21-07-2014	25,00,000	87	88-97	79	21-07-2014	Trf*	14,07,500							
										Trf*	5,50,000					
										Trf*	5,42,500					
	All Time Buildtech Pvt Ltd	02-08-2014	5,00,000			79	02-08-2014	K D Sales	5,00,000	105	103	104	Refund of advance	Returned Income Rs. 9,24,222		
	All Time Buildtech Pvt Ltd	06-09-2014	3,000			80		Out of bank balance								
			30,03,000						30,00,000							
1	All Time Buildtech Pvt Ltd	23-12-2014	20,00,000	87	88-97	86	23-12-2014	Rukmani Devi	90,00,000	98	99	101	Refund of advance	Returned Income Rs. 77,48,743		
	All Time Buildtech Pvt Ltd	24-12-2014	20,00,000													
	All Time Buildtech Pvt Ltd	26-12-2014	40,00,000						86	26-12-2014	Narendra Singh	55,00,000				
	Total		80,00,000						1,45,00,000							

(iii). On a careful perusal of the aforementioned chart read a/w. other documentary evidence filed in the course of the proceedings before the lower authorities, it transpires that in compliance with the statutory obligation that was cast upon the assessee company as per the "1st proviso" to Section 68 of the Act (as was applicable in its case for the year under consideration), an explanation had been provided as regards the "nature" and "source" of the sum of Rs. 45 lacs (out of Rs. 1,10,03,000/-) recorded as an investment towards share application money/share premium in the books of the assessee company against the name of the shareholder company, i.e. M/s All Time Buildtech Pvt. Ltd. viz. (i) investment with the assessee company of Rs.5 lacs

on 02.08.2014 (sourced out of refund of advance/loan received by the shareholder company from M/s. K.D. Sales Corporation), Page 103 to 104 of APB; and (ii) investment with the assessee company aggregating to Rs. 40 lacs received in two tranches of Rs.20 lacs each on 23/24.12.214 (sourced out of refund of loan/advance of Rs. 90 lac received by the shareholder company from Smt. Rukmani Devi), Page 99-102 of APB.

(iv). As regards the amount aggregating to Rs.25 lacs received by the assessee company from the aforementioned shareholder company on 21.07.2014, the bank account of the shareholder company i.e. A/c. No.1603002100036431, Page 79 of APB though, reveals that the said investment is sourced out of the amounts therein credited in three tranches, i.e. Rs.14,07,500/-, Rs.5,50,000/- and Rs.5,42,500/- but the shareholder company had failed to file any explanation as regards the “nature” of the said amounts that were utilized by it for investing in share application money/share premium of the assessee company. In sum and substance, the aforementioned shareholder company, viz. M/s All Time Buildtech Pvt. Ltd. had though explained the “source” of the investment of Rs.25 lacs made by the aforesaid shareholder with the assessee company on 21.07.2.014 but had failed to come forth with any explanation as regards the “nature” of said sum which had thereafter found its way as an investment towards share application

money/share premium with the assessee company. Accordingly, in absence of due compliance with the “1st proviso” to Section 68 of the Act, it is herein concluded that the assessee company had, to the said extent, failed to discharge the onus that was cast upon it u/s.68.

(v). As regards the amount of Rs.40 lacs stated to have been received by the assessee company from the aforementioned shareholder, viz. M/s All Time Buildtech Pvt. Ltd. on 26.12.2014, it transpires that though the assessee had placed on record a copy of bank a/c of the shareholder company, viz. 1603002100036431 (supra), wherein the aforesaid investment of Rs.40 lacs (supra) with the assessee company is stated to have been sourced out of an amount of Rs.55 lacs that was received from Shri Narendra Singh on 26.12.2014, but neither as per the records nor as per the “chart” filed before us there is any explanation as regards the “nature” of the aforesaid sum in the hands of the shareholder company. Considering the facts above, as the assessee company had failed to discharge the onus that was cast upon it as regards proving the genuineness of receipt of share application money/share premium of Rs.40 lacs (supra) on 26.12.2014 from the aforementioned shareholder company, as required per the mandate of the “1st proviso” to Section 68 of the Act, therefore, we are constrained to hold the same as an unexplained cash credit u/s.68 of the Act.

(vi) As regards the amount of Rs.3000/- stated to have been received by the assessee company from the aforementioned shareholder, viz. M/s. All time Buildtech Pvt. Ltd. on 06.09.2014, it transpires that though it is claimed that the same was sourced out of the latter's bank account but there is no explanation as regards the "nature" of the aforesaid sum in the hands of the shareholder company. Accordingly, in absence of compliance of the mandate of "1st proviso" to Section 68 of the Act, we are constrained to hold the same as unexplained cash credit u/s.68 of the Act.

B). Ram Alloys Casting P. Ltd. :

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1. (Equity Shares)	M/s. Ram Alloys Casting Pvt. Ltd.	20,02,000	18200	1,82,000/-	18,20,000/-

(i). On a perusal of the aforesaid details a/w. the supporting documents filed by the assessee company in the course of proceedings before the lower authorities, we find that the investment of Rs.20.02 lacs made by the shareholder company, viz. M/s. Ram Alloys Casting Pvt. Ltd. on 11.07.2014 towards share application money/share premium with the assessee company is sourced out of refund of loan/advance of Rs.20 lacs received by the said shareholder company from M/s. K.D. Sales Corporation, Page 131-133 of

APB. Considering the aforesaid facts a/w. supporting documentary evidence, i.e. copy of confirmation, copy of the return of income, copy of bank account and financial statements of the aforesaid shareholder company, we are of the considered view that as both the “nature” and “source” of the credit in the hands of the shareholder company, which, thereafter, had been invested towards share application/share premium with the assessee company, had been explained, therefore, the onus that was cast upon the assessee company u/s 68 of the Act stands duly discharged. Accordingly, we uphold the order of the CIT(Appeals) who had rightly vacated the addition of Rs.20.02 lacs made by the A.O u/s.68 of the Act.

(C). M/s. B.G Freight Shoppe (I) Pvt. Ltd.

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1.	M/s. B.G Freight Shoppe (I) Pvt. Ltd.	20,00,000	200000	Nil	Nil

(i). On a perusal of the details filed by the assessee company during the proceedings before the lower authorities, Page 134-154 of APB a/w. the aforesaid “chart” that has been filed before us, it transpires that the investment of Rs.20 lacs made by the aforementioned shareholder company on 01.01.2015 towards share application money/share premium with the

assessee company was, in turn, sourced out of an amount of Rs.20 lacs that the said shareholder company had received from Narayana Securities Limited on account of sale of securities, Page 153 of APB. Accordingly, as the aforesaid shareholder company had come forth with an explanation as regards the “nature” and “source” of the sum credited against its name in the books of accounts of the assessee company towards share application money/share premium, therefore, we concur with the deletion by the CIT(Appeals) of the addition of Rs.20 lacs made by the A.O u/s. 68 of the Act.

(D). Vincere Manufacturing Pvt. Ltd.

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1.	M/s. Vincere Manufacturing Pvt. Ltd.	20,00,000	200000	Nil	Nil

(i). Although it is stated by the assessee company that the sum of Rs.20 lacs received on 27.12.2014 from the aforementioned shareholder company, viz. M/s. Vincere Manufacturing Pvt. Ltd. towards share application money/share premium was in turn sourced out of the amount received by the said shareholder company (through cheque clearing from one Shri Praveen Khanna), Page 177 of APB, but no explanation as regards the “nature” of the said sum credited in the hands of the investor company, viz. M/s. Vincere

Manufacturing Pvt. Ltd. is either discernible from the record nor any details in support thereof had been provided during the hearing of the appeal before us. Accordingly, in the absence of any explanation as regards the “nature” of the sum of Rs.20 lacs credited in the account of M/s. Vincere Manufacturing Pvt. Ltd., which thereafter was invested by the latter towards share application money/share premium in the books of account of the assessee company, we, thus, in the absence of compliance of the “1st Proviso” to Section 68 of the Act are constrained to sustain the addition to the said extent.

E). Anupama Buildmart Pvt. Ltd. :

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1.	M/s. Anupama Buildmart Pvt. Ltd.	25,00,000	200000	Nil	Nil

(i). Although it is claimed that the amount of Rs.25 lacs invested by the aforementioned shareholder company, viz. M/s. Anupama Buildmart Pvt. Ltd. on 16.02.2015 towards share application money/share premium of the assessee company was, in turn, sourced out of Rs.40 lacs that the shareholder company had received from M/s. V.K Udyog, Page 183 of APB, but in the absence of any explanation discernible from the record as regards the “nature” of such sum so credited against the name of the aforesaid

shareholder company in the books of account of the assessee company towards investment in its share application money/premium, we, thus, in the absence of compliance of the “1st Proviso” to Section 68 of the Act are constrained to sustain the addition to the said extent.

(F). NCR Buildmart Pvt. Ltd.

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1.	M/s. NCR Buildmart Pvt. Ltd.	25,00,000	200000	Nil	Nil

(i). Although it is stated by the assessee company that an investment of Rs.25 lacs towards share application money/share premium made on 13.03.2015 by the aforementioned shareholder company, viz. M/s. NCR Buildmart Pvt. Ltd. was sourced out of Rs.25 lacs, which the said company had received from M/s. Shakti Enterprises on 13.02.2015 in its bank account, Page 203 of APB, but in the absence of any explanation as regards the “nature” of such sum so credited against the name of the investor company towards investment in share application money/share premium in the books of account of the assessee company, we, thus, are constrained to sustain the addition of Rs.25 lacs made by the A.O u/s. 68 of the Act.

(G). Saabi Mining Pvt. Ltd.:

Sr. No	Name of the shareholder company	Amount received (Rs.)	No. of share allotted	Face value @10/- per share	Premium @ 100/- per share (in Rs.)
1.	M/s. Saabi Mining Pvt. Ltd.	25,00,000	200000	Nil	Nil

(i). As is discernible from the details furnished in the aforementioned chart a/w. other supporting documentary evidence that has been filed by the assessee company in the course of the proceedings before the lower authorities, Page 218-243 of APB, we find that the investment of Rs.25 lacs made by the aforementioned shareholder company towards share application money/share premium with the assessee company is sourced out of an amount of Rs.25 lacs received by the latter from two persons, viz. Shri. Manoj Kumar (Tarun Trading Company) and Shri. Shivendu Kumar Upadhaya (Bhagwati Traders) of Rs.20 lacs and Rs.5 lacs, respectively, which, as confirmed by the aforementioned persons were the amounts of loan/advance refunded by them to the investor company, Page 240-243 of APB.

(ii). Considering the fact that the “nature” and “source” of the sum so credited in the name of M/s. Saabi Mining Pvt. Ltd. had duly been substantiated based on supporting documentary evidence; therefore, we concur with the deletion by the CIT(Appeals) of the addition of Rs.25 lacs that was made by the A.O u/s.68 of the Act.

24. Resultantly, the additions made by the A.O by treating the share application money/share premium received from the aforementioned 7 shareholder companies as had been sustained/vacated by us, is culled out as under:

Sr. No.	Particulars	Amount	Addition (sustained/vacated)
1.	All Time Buildtech Pvt. Ltd.	Rs.1,01,03,000/-	(i) Rs.45 lacs (addition vacated) (ii) Rs.65,03,000/- (addition sustained)
2.	Ram Alloys Casting P. Ltd.	Rs.20,02,000/-	Rs.20,02,000/- (addition vacated)
3.	M/s. B.G Freight Shoppe (I) Pvt. Ltd.	Rs.20 lacs	Rs.20 lacs (addition vacated)
4.	Vincere Manufacturing Pvt. Ltd.	Rs.20 lacs	Rs.20 lacs (addition sustained)
5.	Anupama Buildmart Pvt. Ltd.	Rs.25 lacs	Rs.25 lacs (addition sustained)
6.	NCR Buildmart Pvt. Ltd.	Rs.25 lacs	Rs.25 lacs (addition sustained)
7.	Saabi Mining Pvt. Ltd.	Rs.25 lacs	Rs.25 lacs (addition vacated)
<p>Note : (i) Total addition sustained : Rs.1,35,03,000/- (ii) Total Addition vacated : Rs.1,10,02,000/-</p>			

25. In the result, the appeal of the revenue is partly allowed in terms of our observations above.

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

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 14th September, 2023
#***SB

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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