

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

श्री रवीश सूद, न्यायिक सदस्य, एवं
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष
**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.13/RPR/2021
निर्धारण वर्ष /Assessment Year: 2017-18

ITO-4(1)
Raipur

v. Aviral Finance Pvt. Ltd.
Ground Floor, Nalghar
Chowk, Raipur – 492 001

[PAN: AABCG 2701 N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Praveen Khandelwal &
Shri Praveen Goyal, Cas
प्रत्यर्थी की ओर से /Respondent by : Smt. Ila M. Parmar, CIT-D.R.
सुनवाई की तारीख/Date of Hearing : 13.07.2023
घोषणा की तारीख /Date of Pronouncement : 22.09.2023

आदेश / ORDER

PER ARUN KHODPIA, ACCOUNTANT MEMBER:

The captioned appeal is filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-II, Raipur dated 08.09.2020 which in turn arises from the order by Ld. Assessing Officer u/s 143(3) dated 23.12.2019 for Assessment Year 2017-18.

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

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. 3,26,00,000/- made by the AO u/s 68 of the Act?"

:: 2 ::

2. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs.3,26,00,000/- by ignoring the facts as brought on record by the AO that the assessee company failed to prove the genuineness and creditworthiness of the share subscribers 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) was justified in deleting the addition, thereby not considering and not distinguishing the findings of the AO which is well supported by the ratio of the judgment of Hon'ble Gujarat High Court in the case of Pavan kumar M Sanghvi Vs ITO (2018) 404 ITR 601 (Guj), wherein it is mentioned that it is also settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars' ?"*
4. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition which is contrary to the ratio of the decisions in CIT Vs Precision Finance Pvt Ltd 1994 2008 ITR 465, wherein it was held that it is for the assessee to prove the identity of the creditors, the creditworthiness and genuineness of the transaction and mere furnishing of particulars is not enough?"*
5. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition which is contrary to the ratio of the decisions of Hon'ble Supreme Court in the case of A Govindarajulu Mudaliar Vs CIT (1958) 34 ITR 807 (SC), CIT Vs M. Ganapathi Mudaliar (1964) 53 ITR 623 (SC), which clearly states that where the assessee failed to prove satisfactorily the source and nature of a credit entry in his books, and it is held that the relevant amount is the income of the assessee, it is not necessary for the Department to locate its exact source?"*
6. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition, thereby without considering and distinguishing the ratio of the judgment of the cases such as Rameshwar Prasad Bagla 68 ITR 653 (Allahabad) & Homi Vs CIT 41 ITR 135, 142 by (Supreme Court) wherein it is stated that the totality of circumstances*

:: 3 ::

must be considered in a case of circumstantial evidence & the totality of the circumstances has to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular act is proved ?"

7. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition made by the AO and giving a decision in favour of the assessee and against the revenue, thereby giving a finding against the ratio of the settled law of the Hon'ble Bombay High Court in the case of Sanjay Bimalchand Jain, Nagpur (1.TA. No. 18/2017 dated 10.04.2017. Bombay High Court, Nagpur Bench) wherein it is stated that since there is no economic or financial justification for the investment in the shares, the transaction has all the ingredients of attracting the rigors of Section 68 of the IT Act ?"*
8. *"Whether on points of law and on points of 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. 3,26,00,000/- made by the AO in the absence of satisfaction of parameters prescribed u/s 68 of the Act?"*
9. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) has violated the due provisions of law under Rule 46A of the IT Rules by accepting additional evidences, without giving an opportunity to the Assessing Officer while deleting the addition of Rs. 3,26,00,000/- made by AO on account of unexplained cash credit?"*
10. *"Whether on points of law and on facts & circumstances of the case, the Ld. CIT (A) was justified by giving a finding which is contrary to the evidence on record, as the Ld. CIT(A) has accepted the identity, creditworthiness of the entities investing in the share capital and share premiums of the assessee company as genuine, a finding which is factually incorrect, thereby rendering the decision, which is perverse?"*
- 11 *"Whether on points of law and 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 without conclusion is based?"*

:: 4 ::

12. *"The order of the Id. CIT(A) is erroneous both in law and on facts".*

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

3. Brief facts of the case are that, the assessee is a private limited company filed its return of income for the year under consideration i.e. F.Y. 2016-17 relevant to A.Y. 2017-18 on 30.09.2017 declaring total income of Rs.11,43,850/-. The case of the assessee was selected for scrutiny and notices under Section 143(3), 142(1) and questionnaire was issued and served upon the assessee. The assessee responds to the queries raised from time to time during the assessment proceedings by way of written submissions and also by submitting relevant documents electronically. Such documents and submissions were examined. The main business of the company is found to be lending of loans and the case of the assessee was selected for scrutiny for the reason that large Share premium received during the year (verify applicability of Section 56(2)(viib) or any other relevant section). During the course of assessment proceedings, Learned AO observed that assessee has issued Rs.1,92,400/- Shares having face value of 100/- each at a premium of Rs.100/- each. The details pertaining to shareholders along with investment made by them in the assessee company are as under :

:: 5 ::

S. No.	Name of the share holder (S/Shri/Smt.)	Amount of share application	Amount of appropriate towards share capital	Amount attributed towards share premium	No. of shares allotted	Date of allotment
1.	Premlata Golechha	31,00,000	15,50,000/-	15,50,000/-	15500	16.09.2016
2.	Avani Golechha	22,00,000	11,00,000/-	11,00,000/-	11000	16.09.2016
3.	Vivek Golechha (HUF)	25,00,000	12,50,000/-	12,50,000/-	12500	16.09.2016
4.	Ankush Golechha	34,80,000	17,40,000/-	17,40,000/-	17400	16.09.2016
5.	Praksh Golechha	36,00,000	18,00,000/-	18,00,000/-	18000	16.09.2016
6.	Prakash Golechha, Karta	35,00,000	17,50,000/-	17,50,000/-	17500	16.09.2016
7.	Ankush Golechha, Karta	44,00,000	22,00,000/-	22,00,000/-	22000	16.09.2016
8.	Gunjan Golechha	28,00,000	14,00,000/-	14,00,000/-	14000	16.09.2016
9.	Vivek Golechha	25,00,000	12,50,000/-	12,50,000/-	15000	16.09.2016
10.	Mahalaxmi Moulds Pvt. Ltd.	25,00,000	12,50,000/-	12,50,000/-	12000	16.09.2016
11.	Pentacle Consulting Services Pvt. Ltd.	15,00,000	7,50,000/-	7,50,000/-	7500	16.09.2016
12.	Gurudev Fintrade Pvt. Ltd.	28,00,000	14,00,000/-	14,00,000/-	14000	16.09.2016
13.	Hamilton Traders Pvt. Ltd.	32,00,000	16,00,000/-	16,00,000/-	16000	16.09.2016
	Total	3,85,80,000/-	1,92,40,000/-	1,92,40,000/-	192400	16.09.2016

4. Learned AO proceeded with to verify basic ingredients pertaining to the investments made by the aforesaid 13 shareholders i.e. identity and creditworthiness of the shareholders and genuineness of the transactions. In course of assessment proceedings, the assessee was asked to discharge onus cast upon under Section 68 of the Act, 1961. In response, the assessee filed ITR, Computation, Bank Statement of Share subscriber. The Learned AO on perusal of these documents have found that the entire sum received by the assessee company was from family members and family concerns in which such members are either Director or partners. To verify the genuineness of the share application and share

:: 6 ::

premium money received, summons was issued to the shareholders which are the responded. Learned AO on verification of documents and response from the shareholders have made certain categorical observations pertaining to all 13 shareholders with respect to each shareholders, the same are extracted hereunder for completeness of the facts :

1. In the case of Premlata Golechha w/o Shri P.R. Golecha (PAN AHDPG55430)

It has been stated by Smt. Premlata Golechha that she has subscribed to 15500 shares of face value Rs. 100 and premium of Rs. 100/-. Thus, total investment of Rs. 31,00,000/- has been during the year. From the bank statement, it is observed that identical amount have been credited to her bank account just before the date of payment to Aviral Finance Pvt. Ltd. The shareholder was asked to explain about the same. In her reply vide statement dated 03.12.2019 has simply stated that the entire amount is received from M/s ALV Enterprises, a partnership firm in which she is a partner.

2) In the case of Smt. Avani Golechha W/o Shri Vivek Golecha, (PAN: AKVPG5075G)

It has been stated by Smt. Avani Golechha that she has subscribed to 11000 shares of face value of Rs. 100 and premium of Rs. 100/- total investment being Rs. 22,00,000/-. It was observed from the bank statement, that identical amount have been credited to her bank account just before the date of payment to Aviral Finance Pvt. Ltd. The shareholder was asked to explain about the same. In her reply vide statement dated 03.12.2019 has simply stated that the entire amount is received from M/s ALV Enterprises, a partnership firm in which she is a partner.

:: 7 ::

3) In the case of Shri Vivek Golecha (HUF):

It has been stated by Shri Vivek Golechha that he has made investment in shares of Aviral Finance Pvt. Ltd., and has subscribed 12500 shares of face value of Rs. 100 and premium of Rs. 100/-. The total investment being Rs. 25,00,000/-. In this case Shri Vivek Golechha Karta has stated that the investment in shares was made out of opening balance of Rs. 45,26,602/-. The confirmations in respect of which has also been submitted.

4) In the case of Ankush Golechha S/o Shri Prakash Chandra Golechha:

In this case, Shri Ankush Golechha, has stated that he has subscribed to 17400 shares of face value of Rs. 100 and premium of Rs. 100/- . He has stated that R 34,80,000/- has been invested out of opening balance of Rs. 10894446/- with Aviral Finance Pvt. Ltd.

5) In the case of Shri Prakash Chandra Golechha :

Shri Prakash Chandra Golechha has stated in his statement that he has subscribed 18000 shares and total investment has been made of Rs. 36,00000/-. And that transactions have been made by cheque and that sum of Rs. 3,00,000/ was received from Mahalaxmi Moulds Pvt. Ltd., and Rs. 29,91,818/- from ALV Enterprises.

6) In the case of Prakash Chandra Golechha, Karta of Prakash Chandra Golechha HUF.

Shri Prakash Chandra Golechha has stated that he has made investment of Rs. 30,86,314/- in Aviral Finance Ltd. It was observed that identical amount of subscription has been credited to the bank account just before the date of payment to Aviral Finance. Regarding this issue, Shri Prakash Chandra Golechha, has stated that sum of Rs. 30,86,314/- is received from M/s ALV Enterprises is a family concern having all family members as partners as unsecured loan through bank.

7) In the case of Shri Ankush Golechha (HUF) Karta of Ankush Golechha.

:: 8 ::

Shri Ankush Golechha has stated that total investment in shares of Rs. 44 lakhs has been made during the year From the bank statement produced it was observed that identical amount of subscription has been credited to the bank account just before the date of payment to Aviral Finance, Regarding this point. Shri Ankush Golechha has stated that the sum is received from ALV Enterprises as unsecured loan.

8) In the case of Smt. Gunjan Golechha, W/o Shri Ankush Golechha

It was observed that identical amount of subscription has been credited to the bank account just before the date of payment to Aviral Finance. Regarding this issue, Smt. Gunjan Golechha has stated that the sum is received from ALV Enterprises.

9) In the case of Shri Vivek Golechha

It was stated by Shri Vivek Golecha that the amount of subscription totalling to Rs. 30,00,000/- on 15000 shares has been made out of fund received from Aviral Finance Pvt. Ltd as repayment of loan.

*10) The statement of Director Shri Vivek Golechha, of **Pentacle Consulting Services Pvt. Ltd., Gurudev Fintrade Pvt. Ltd., and Hamilton Traders Pvt. Ltd. and Mahalaxmi Moulds Pvt. Ltd.** was recorded. He has stated that the companies have been liquidated and were operated from Nalghar Chowk, Raipur. Regarding the source of investment by these companies, Shri Vivek Golechha stated that earlier the money was lent to the assessee company (earlier Golechha Trade and Management Pvt. Ltd., which was received back and further invested in Assessee Company.*

7. FINDINGS:

*The Inspector of this office, was deputed for enquiry and service of summons. He has submitted his report on 14.11.2019. The report reveals that there was **no sign board of the companies at the premises at Nalghar Chowk, Raipur except names on the wall at outer place depicting the names of all the companies.** There were no employees in the said companies. Summonses were*

:: 9 ::

served to Ankush Golecha. It may not be out of place to mention here that the companies Gurudev Fintrade Pvt. Ltd., Hamilton Traders Pvt. Ltd., Pentacle Consulting Services Pvt .Ltd are all under liquidation.

Mahalaxmi Moulds Pvt. Ltd., Raipur: Total Income as declared in return of income for the year under consideration is Nil. It is observed that the Key Management personnel **are all members of Golechha family**. From the bank statement, it is observed that there are cash deposits and payment by RTGS. The assessee is involved in the business of Manufacturing and Trading activity.

Pentacle Consulting Service Pvt. Ltd., Raipur Total Income as declared in return for the asstt. year 2017-18 **Rs 31,800/-**, it is observed that the promoters. shareholders are **all members of Golechha Family**. From the bank statement, it is noticed that there is a meagre amount of cash balance and before the date of transfer to the assessee company the said amount was deposited. The company is involved in the business of providing consulting services.

Gurudev Fintrade Pvt. Ltd: Total income as per return declared for asstt. year 2017-18 is Rs. 72,340/-. Key management persons are members of Golechha Family. The company is involved in the business of providing consulting services.

Hamilton Traders Pvt. Ltd. Total income declared for asstt. year 2017-18 is 72,450/-. **Key management personnel are mostly members of Golechha family**. The company is involved in the business of providing consulting services.”

5. With the aforesaid observation, Learned AO noticed that the investor companies are in business from many years, however, their ITR for the A.Y. 2017-18 are showing very meagre income. It was also observed that the Bank Statement filed are inadequate to prove the financial creditworthiness of the 4 companies namely Mahalaxmi

:: 10 ::

Moulds Pvt. Ltd., Raipur, Pentacle Consulting Services Pvt. Ltd., Raipur, Gurudev Fintrade Pvt. Ltd. and Hamilton Traders Pvt. Ltd. Funds used to invest in assessee company have been found to transfer in the investor company just a few days before the transactions by the related companies/firm of the assessee company. The Bank accounts does not seem to have a sufficient Bank balance at any time during the year. Operational income of the 4 companies were found to be insufficient. The company has no fixed assets as per their Balance Sheet even on account of expenses. The aforesaid 4 companies have meagre expenses on basic requirement of business like; Salary, Rent, Mobile Expenses, Office Expenses, Conveyance etc. It claims business connected to the Learned AO that the business is operated from Nalghar Chowk, Raipur. The Office was found to be belongs to Aviral Finance Pvt. Ltd. i.e. the assessee. The impugned 4 companies paying rent for business operations but in reality, neither there was any sign board of companies, nor any employee of these companies were found at the address. It was the observation of Learned AO that when the summons issued to the share subscriber wherein assessee asked to furnish the details like; ITR, Computation, Balance Sheet, Bank Statement of the year in which all the investments were made in case to original amount invested represents receipt of loan given in earlier years but no information

:: 11 ::

was provided in this respect. As per Director, Mr. Vivek Golechha, investments were made for profit motive but till date no dividend has been received by them. Learned AO further observed about the ALV Enterprises who is the main source in most of the cases from where funds were transferred in the account of share subscribers. The return income of M/s. ALV Enterprises for the year under consideration is Rs.9910/-, the Bank Statement of M/s. ALV Enterprises reveals that the money is being rotated among the family members and no credit or debit appears to any other entity. It is also observed that ALV Enterprises is also filing its return of income mentioning the address as Nalghar Chowk, Raipur but the name of ALV Enterprises was not found mentioned at the said address/premises. Learned AO believed that the ALV Enterprises is a bogus firm which exists only on papers and used for rotating the funds of family members which is ultimately invested in the assessee company. With such observation, Learned AO recorded that the transactions in question were clearly sham transactions. The money has been routed through the assessee's own held companies/firm in the guise of share application/share premium amounts. To camouflage the bogus nature, excellent paperwork has been done to make believe these transactions, but these tricks are of no avail to assessee, as the real motive was to invest the unaccounted income of the assessee company through its family members.

:: 12 ::

Learned AO observed that, however, Shri Vivek Golechha and Shri Ankush Golechha invested the funds in assessee Company out of funds received from Aviral Finance Pvt. Ltd invested earlier in Assessee Company which is received back in this year, therefore, the investment from above two person is accepted and no addition is made on this account. Finally, out of the total share application along with premium introduced during the year for Rs.3,85,80,000/-, an amount of Rs.3,26,00,000/- was treated as unexplained cash credit under Section 68 of the Act and have been added to the total income of the assessee.

6. Aggrieved with the aforesaid conclusion by the Learned AO, assessee preferred an appeal before the Learned CIT(A) wherein Learned CIT(A) accepted the contentions of the assessee and has deleted the entire addition made by Learned AO for Rs.3,26,00,000/- . Since the relief was granted to the assessee which was against the observation of Learned AO, feeling aggrieved, the Revenue has filed this appeal before the ITAT to challenge the decision of the Learned CIT(A).

7. At the outset, Learned CIT-DR reiterated the facts of the case and submitted that the Learned CIT(A) has grossly erred in deciding

:: 13 ::

the issue in hand ignoring the facts brought on record by the AO that assessee company was failed to prove the genuineness and creditworthiness of the share subscribers as obligatory by the provision of Section 68 of the Act. It is further submitted that the findings of the AO are well supported by the ratio of judgment in the case of Pavankumar M. Sanghvi v. ITO (2018) 404 ITR 601 (Gujarat) wherein Hon'ble Gujarat High Court has held that it is also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. Thus, the deletion of addition by the Learned CIT(A) was unjustified. Learned CIT-D.R. drew our attention to various case laws referred to by the Department in the grounds of appeal and has argued that if the Learned CIT(A) was not satisfied with the enquiries made by the AO, the Learned CIT(A) having concurrent powers with that of the AO under Section 250(4) of the Act. He himself could have made the necessary enquiries so as to arrive at a logical conclusion on the issue, however, Learned CIT(A) has only confined his findings to the submissions of assessee and has deleted the addition on the basis of observation that the Assessing Officer failed to bring on record any adverse finding against the appellant that the issue of

:: 14 ::

share capital is a sham transaction. Learned CIT-D.R. also mentioned that as per order of Learned CIT(A), it seems that certain additional evidence were also produced by the assessee before CIT(A) but those documents were not confronted to Learned AO for his rebuttal. This was clearly violation of Rule 46A of the IT Rules, therefore, on this count also the order of Learned CIT(A) is liable to be set aside. The order of Learned CIT(A) was misplaced with respect to appreciation of the facts wherein there was no nexus between the conclusion of the primary facts upon which the final finding was based. Ld CITDR further submitted that order or finding of Ld CIT(A) was totally based on the Judgments of Hon'ble Apex Court in the case of Lovely Export P. Ltd. reported in [2009] 319 ITR (St.) 5, where in the pre-amended section 68 was dealt with, whereas the case of the assessee for the AY 2017-18 is squarely covered by the provisions of post amended section 68, Ld CIT(A) has not touched the provisions brought into by insertion of 1st proviso to section 68, thus was bad in law. With such submissions, Learned CIT-D.R. submitted that under such facts and circumstances, the order of Learned CIT(A) is to be termed as perverse and the same needs to be reversed and the addition made by the Learned AO should be directed to be maintained.

:: 15 ::

8. In rebuttal, Learned AR of the assessee submitted that the addition of Rs.3,26,00,000/- made by the Learned Assessing Officer should be for Rs.3,20,00,000/- only since there was an error in Item No.9 and Item No.13 i.e. Share Capital receipt from Mr. Ankush Golechha and M/s Mahalaxmi Moulds Pvt. Ltd. for Rs.5,00,000/- and Rs.1,00,000/- respectively. Learned AR further drew our attention to a chart submitted showing source of investments up to 4 layers i.e. 1st main source, 2nd source of 1st source, 3rd source of 2nd source and 4th source of 3rd source, from where the funds were sprung, from 4th source to the main source. It was the submission of Learned AR that the documents pertaining to the main source and source of source were submitted before the Learned Assessing Officer, the same were examined by him, however, she was dissatisfied from the explanations offered and contentions made by the assessee. Learned AO has made the disallowance with the observation that the investor company has meagre income. It was also the observation of the Learned AO that the Bank statement of M/s ALV Enterprises i.e. the 2nd source, who has transferred the funds to the Share subscribers, reveals that the money is being rotated among the family members and no any credit or debit appears to prove the identity, genuineness and creditworthiness of the share applicants as well as transactions. It is also discernible from the assessment order that documents were

:: 16 ::

also examined by Learned Assessing Officer, however, Learned AO has summarily rejected the contentions of assessee without bringing on any cogent reason or material on record so as to dislodge the contentions of the assessee. According to Ld AR, the Learned CIT(A) has correctly examined the issue and observed that assessee company has submitted all the documentary evidence before the Assessing Officer in order to prove the identity, creditworthiness of share subscriber and genuineness of the transactions. With respect to transactions by the family members with the assessee company and source of source, Learned CIT(A) has observed that ALV Enterprises is a firm which was promoted with an intention to pool in the resources of the family under a single entity so as to decide the best course of action for management of these funds. The Bank statement of ALV Enterprises shows that funds are transacted only with the family members who have either invested or withdraw from the firm. It is therefore, submitted that there was no comment by Learned AO with respect to the funds rotated by the family members through the ALV Enterprises treating the same as bogus with any material on record thus such contentions deserve dismissal. With respect to the contentions of Learned Assessing Officer that the name of ALV Enterprises was not found at the premises. Learned CIT(A) has categorically mentioned that the Inspector who visited the premises

:: 17 ::

at Nalghar Chowk missed to verify name of the firm which is also prominently displayed along with the other companies and entities. When the partners of firm are real entities and transactions regarding pooling of funds from known persons, not any obscured, unidentified entities are taking place and it has well identified office, then it is not correct to conclude that M/s. ALV Enterprises is bogus firm. With the aforesaid submissions Learned AR prayed that AO has decided the issue with preconceived mindset and has drawn a negative inference under her own surmises, therefore additions made in the order by Learned AO are rightly struck down by Learned CIT(A), by deleting the same and by allowing the appeal of the assessee, thus, the order of the Learned CIT(A) which is very judicious, thoughtfully drafted after much deliberation, with proper consideration of the facts and circumstances of the case, is undoubtedly sustainable.

9. We have heard the rival contentions, perused the material available on record and referred the case laws relied upon by the parties. The perusal of the order of Learned CIT(A), it is mandated that the assessee has duly provided/submitted all the necessary documents pertaining to enquiries made by the Assessing Officer. Even the documents pertaining to source of source were submitted before the Assessing Officer in compliance of first proviso to Section

:: 18 ::

68 of the Income Tax Act. Learned CIT(A) has deliberated the matter discussed at length, has decided the issue relying upon the judgment of Hon'ble Jurisdictional High Court in the case of ACIT vs. Venkateshwar Ispat (P.) Ltd. 319 ITR 393 (2009) (Chhattisgarh High Court), culminating that the assessee has discharged the onus cast upon it to substantiate the identity, creditworthiness of the shareholders and genuineness of the transactions, thus have deleted the additions made by Assessing Officer on account of bogus share capital, share premium received by the assessee company during the relevant assessment year.

10. We observe that, the reliance by the Learned CIT(A) on the judgment of Hon'ble Jurisdictional High Court in the case of Venkateshwar Ispat (P.) Ltd. (supra) which was based on the judgment of Hon'ble Apex Court in the case of Lovely Export P. Ltd. reported in [2009] 319 ITR (St.) 5. Since, the judgments in the case of Lovely Exports (supra) is based on pre-amended Section 68 whereas the present case falls within the scope of amended section 68 after insertion of 1st proviso regarding offering of explanation by the investor about the nature and source of sum so credited.

:: 19 ::

11. To understand the provision of Section 68 better reproducing hereunder the provision of Section 68 after amendment w.e.f 01.04.2013, which is applicable in the instant case since the relevant assessment year of the present case is A.Y. 2017-18:

"22. *In section 68 of the Income-tax Act, the following provisos shall be inserted with effect from the 1st day of April, 2013, namely:—*

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

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

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

12. According to first proviso to Section 68 of the Act, it is mandatory in the case of addition on account of unexplained cash credit under Section 68 of the Act that where the assessee is a company, (not being a company in which the public are substantially

:: 20 ::

interested) and the sum so credit consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory, unless; the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory. In the present case, the source of source in majority was from ALV Enterprises and the assessee as per paper book dated 12.12.2022 submitted to the ITAT on 13.12.2022, wherein copies of documents pertaining to ALV Enterprises were furnished before us, this documents are consist of Income-tax Return Acknowledgement and Computation of Income of ALV Enterprises, Copy of Balance Sheet, Copy of Bank Statement of ALV Enterprises and appellant company. These documents were placed at page nos. 1-3, 4 & 9 of the said paper book and copy of financial statement were also furnished. Likewise, certain additional evidence which were requisite during the course of hearing by the Bench such as Copy of Board Resolution passed by the subscribers companies, copy of extract of section 78 of Companies Act, 1956 and correspondence under Section 52 of the Companies Act, 2013, copy of Certificate of registration issued by RBI, Copy of master direction

issued by RBI. Thus, additional documents were placed at serial no.5, 6, 7, 8 & 10 of the paper book dated 12.12.2022. Learned AR has also submitted before us a chart showing nature and source of the funds received from share subscribers, similarly the nature and source of source of the funds to share subscriber, the same is extracted hereunder for better appreciation of the facts :

Aviral Finance Private Limited, Earlier Known as Golechha Trade and Management Private Limited AY 2017-18																
Details of returned income and networth of the share subscribers and source of funds																
S. No.	Name of subscriber	Share application Money	First Source			Nature and Source (Source of source)			Third Source and Nature			Fourth Source and nature				
			Amount as per Asst. Order	Funds received during the year	Confirmation of account	Bank statement	Confirmation of ALV (Source of source)	Source of source of funds	Nature of transaction	Page No. of PB-II (Bank statement of ALV)	Source of ALV	Nature of transaction	Page No. of PB-II (Bank statement of ALV)	Aviral Finance *	Nature of transaction	Page No. of PB-II (Bank statement of Aviral)
Added u/s 68																
1	Premalata Golechha	31,00,000	31,00,000	30,01,415	65	67	67A	ALV Enterprises on 30/08/2016 Rs. 19,13,686/- ALV Enterprises on 30/08/2016 Rs. 10,87,729/- A. Total (19,13,686 + 10,87,729) = Rs. 30,01,415/- B. Adjusted out of opening USL Rs. 98,585/- Total (A+B) Rs. 31,00,000/-	Capital Account Transaction	5	Longview Suppliers P Ltd Rs. 8,46,990/- Gurudev Fintrade P Ltd Rs. 10,96,706/- Total Rs. 19,43,696/- Longview Suppliers P Ltd Rs. 50,00,000/-, utilized in payment to ALV Rs. 10,87,729/- Balance Rs. 39,12,271/- utilized at s. no. 5 & 8)	Unsecured Loan	5	On 30/08/2016 Rs. 8,46,990/- On 30/08/2016 Rs. 10,96,706/- Total Rs. 19,43,696/- Rs. 50,00,000/- on 30/08/2016	Repayment of Loan Repayment of Loan	7
2	Avani Golechha	22,00,000	22,00,000	21,51,236	73	75	75A	ALV Enterprises on 30/08/2016 Rs. 11,51,236/- ALV Enterprises on 12/09/2016 Rs. 10,00,000/- A. Total (11,51,236 + 10,00,000) = Rs. 21,51,236/- B. Adjusted out of opening USL Rs. 48,764/- Total (A+B) Rs. 22,00,000/-	Capital Account Transaction	5	Vivek Golechha on 30/08/2016 Rs. 30,89,000/-, Utilized in payment to ALV Rs. 11,51,140/-, balance 19,37,764/- utilized at s. no. 7 & 10) Longview Suppliers on 12/09/2016 Rs. 30,00,000/-, utilized in payment to ALV Rs. 10,00,000/-, unutilized Rs. 20,00,000/-)	Capital Account Transaction Unsecured Loan	5	On 30/08/2016 Rs. 30,88,937/- On 12/09/2016 Rs. 25,00,000/- (Mahalaxmi Moulds)	Repayment of Loan Repayment of Loan	7
3	Vivek Golechha HUF	25,00,000	25,00,000		118		121A	Unsecured Loan Converted into SC	Capital Account Transaction							
5	Prakash Chandra Golechha	36,00,000	36,00,000	32,91,818	89	91	91A	ALV Enterprises on 30/08/2016 Rs. 29,91,818/- Mahalaxmi Moulds P Ltd on 29/04/2016 Rs. 3,00,000/- A. Total (29,91,818 + 3,00,000) = Rs. 32,91,818/- B. Adjusted out of opening USL Rs. 3,08,182/- Total (A+B) Rs. 36,00,000/-	Unsecured loan	5	Longview supplier P Ltd on 30/08/2016 Rs. 50,00,000/-, utilized Rs. 29,91,818/-, out of balance of Rs. 39,12,271 stated at s. no. 1 and balance 9,20,453/-, utilized at s. no. 8) Out of loan taken from Mahalaxmi Moulds Pvt Ltd	Unsecured Loan	5	On 30/08/2016 Rs. 50,00,000/- Out of loan taken from Mahalaxmi Moulds Pvt Ltd	Repayment of Loan Unsecured loan	7
6	Prakash Golechha HUF	35,00,000	35,00,000	30,86,314	96	98	98A	ALV Enterprises on 30/08/2016 Rs. 30,86,314/- Adjusted out of opening USL Rs. 4,13,686/- Total Rs. 35,00,000/-	Unsecured loan	5	Hamilton Trade P Ltd on 30/08/2016 Rs. 30,56,304/- and balance of Rs. 30,010/- from bank balance Out of opening unsecured loan	Unsecured Loan	5	On 30/08/2016 Rs. 30,56,304/- Out of opening unsecured loan	Repayment of Loan	7

7	Anish Golecha HUF	44,00,000	44,00,000	33,38,140	111	113	113A	ALV Enterprises on 30/08/2016 Rs. 23,38,140/-	Capital Account Transaction	Vivek Golecha HUF on 30/08/2016 Rs 19,11,000/- Vivek Golecha unutilized balance used 4,27,140/- (Rs 30,89,000 - 11,51,140 - 19,37,860), unutilized balance Rs. 15,10,720/-	Capital Account Transaction	5	On 30/08/2016 Rs. 19,11,000/-	Repayment of Loan	7		
								ALV Enterprises on 12/09/2016 Rs. 10,00,000/-		Longview Suppliers unutilized balance Rs. 10,00,000/- stated at s. no. 2	Unsecured Loan	6	On 12/09/2016 Rs. 25,00,000/- Mahalaxmi Moulds Pvt Ltd	Repayment of Loan			
								A. Total (23,38,140 + 10,00,000) = Rs. 33,38,140/-									
								B. Adjusted out of opening USL Rs. 10,61,860/-									
								Total (A+B) Rs. 44,00,000/-		Out of opening unsecured loan			Out of opening unsecured loan				
8	Gurjan Golecha	28,00,000	28,00,000	27,98,930	104	106	106A	ALV Enterprises on 03/09/2016 Rs. 9,30,930/-	Capital Account Transaction	Longview Suppliers Private Limited utilized Rs. 9,20,433/- balance as stated at s. no. 5	Unsecured Loan	6	On 30/08/2016 Rs. 50,00,000/-	Repayment of Loan	7		
								ALV Enterprises on 03/09/2016 Rs. 10,00,000/-		Vivek Golecha HUF on 03/09/2016 Rs. 1,15,000/- Longview Suppliers on 03/09/2016 Rs. 9,00,000/-	Capital Account Transaction	6	On 03/09/2016 Rs. 1,15,000/- On 03/09/2016 Rs. 9,00,000/-	Repayment of Loan	8		
								ALV Enterprises on 03/09/2016 Rs. 8,68,000/-		Longview Suppliers on 03/09/2016 Rs. 10,00,000/-	Unsecured Loan		On 03/09/2016 Rs. 10,00,000/-	Repayment of Loan			
								A. Total (9,30,930 + 10,00,000 + 8,68,000) = Rs. 27,98,930/-									
								Adjusted out of opening USL Rs. 1,070/-									
								Total Rs. 28,00,000/-		Out of opening unsecured loan			Out of opening unsecured loan				
10	Pentacle Consulting Service Pvt. Ltd.	15,00,000	15,00,000	15,00,000	149	150		ALV Enterprises on 30/08/2016 Rs. 15,00,000/-	Unsecured loan	Vivek Golecha HUF on 30/08/2016 utilized Rs. 15,00,000/- out of unutilized balance of Rs. 15,10,624/- at s. no. 6 above	Capital Account Transaction	5	On 30/08/2016 Rs. 19,11,000/-	Repayment of Loan	7		
11	Gurudev Farade Pvt. Ltd.	28,00,000	28,00,000		178			Loan converted into SC									
12	Hamilton Traders Pvt. Ltd.	32,00,000	32,00,000		163			Loan Converted into SC									
13	Mahalaxmi Moulds Pvt. Ltd.	24,00,000	25,00,000	24,00,000	127-128	126		Received through Cash credit account maintained with Bank of India having account no. 935036110000096									
	Total (A)	3,20,00,000	3,21,00,000	3,15,67,853													
	Accepted by AO																
4	Anish Golecha**	34,80,000	34,80,000					Accepted by AO	Accepted, Unsecured Loans Converted into SC								
9	Vivek Golecha**	30,00,000	25,00,000	10,00,000				Accepted by AO	ALV Enterprises on 08/09/2016 Rs. 10,00,000/-	Capital Account Transaction	6	Longview Suppliers P Ltd on 03/09/2016 Rs. 8,68,000/- and balance out of bank balance	Unsecured Loan	6	On 03/09/2016 Rs. 8,68,000/-	Repayment of Loan	8
								Adjusted out of opening USL Rs. 20,00,000/-									
								Total Rs. 30,00,000/-									
	Total (B)	64,80,000	59,80,000	10,00,000													
	Total (A+B)	3,84,80,000	3,80,80,000	3,25,67,853													

* Except Rs. 25,00,000/- from Mahalaxmi Moulds Private
** Accepted by AO

13. On perusal of the assessment order, it is coming out that the Assessing Officer has verified the documents pertaining to the share subscriptions and also with respect to ALV Enterprises i.e. the source of source. With respect to source of source, Assessing Officer was found to be not convinced / dissatisfied, thus, the addition was made. Learned CIT(A) has only observed that the source of source M/s. ALV Enterprises is not a bogus firm however, there was no examination pertaining to the onus cast upon the investors / share subscriber by virtue of first proviso to Section 68 which is applicable with effect from 1st April 2013, which is very much in force for relevant assessment year. Learned CIT(A) also relying upon the judgment in the case of

:: 23 ::

Venkateshwar Ispat (P.) Ltd. (supra) by the Jurisdictional High Court of Chhattisgarh has deleted the addition wherein Hon'ble High Court had religiously followed the law laid down by the Hon'ble Apex Court in the case of Lovely Exports (Supra), which was pronounced by the Apex Court under the facts and circumstances considering the provisions of pre-amended Section 68, thus the same cannot be relied upon post amendment in section 68. This contention of ours is further fortified by the order of Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. (2017) 394 ITR 680 (Bombay High Court), the findings of the Hon'ble Bombay High Court in the said case are as under:

- e. *We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore, it is not open to give it retrospective effect, by proceeding on the basis that the addition of*

:: 24 ::

*the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. **The Apex Court in Lovely Exports (P.) Ltd. (supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.***

(Emphasis supplied by us)

14. From the aforesaid observations of the Hon'ble Bombay High Court, it is clearly emanated that the provision of Section 68 of the Act has been introduced by Finance Act, 2012 w.e.f 1st April 2013 thus it would be effective only from A.Y. 2013-14 onwards. It is also

:: 25 ::

observed by the Hon'ble Bombay High Court that the judgment in the case of Lovely Export Pvt. Ltd. (supra) by the Hon'ble Apex Court is in context to the pre-amended section 68 of the Act which was followed by Hon'ble Jurisdictional High Court in the case of Venkateshwar Ispat (P) Ltd. (supra) and Venkateshwar Ispat (P) Ltd. (supra), thus, has been relied upon by the Learned CIT(A) in the present case while deciding the issue in favour of the assessee. From these observations and also since there was no finding by the Learned CIT(A) pertaining to nature and source of the investment by the source of source i.e. ALV Enterprises, therefore, ostensibly, the aspect which is mandated by law by inserting the proviso of Section 68 of the Act was not examined by the Learned CIT(A) also the observation of the Ld AO in this respect has not been dislodged, therefore, the finding of Learned CIT(A) cannot be concurred with *in toto*. As per the information furnished by the Learned AR before us in the form of the chart stating nature and source of the amount invested by the share subscribers to satisfy the requirements of 1st proviso to Section 68 of the Act, however the nature of transactions mentioned by the Learned AR in the said statement are not verifiable from the documents furnished by the Learned before lower authorities as well as before us. Copy of the 1 page unaudited balance sheet of M/s. ALV Enterprises furnished before us is extracted hereunder,

:: 26 ::

which inspires no confidence, since the same is for only one year without corresponding figures for the previous year, from which it is not possible to find out the nature of transactions :

ALV ENTERPRISES		31.03.2017 Rs.
BALANCE SHEET AS ON MARCH 31, 2017		
I. SOURCES OF FUNDS		
Partners Capital		
Opening balance	15,05,269	
Add: Net profit for the year	9,913	
Add: Additions by Partners	52,15,000	
Less: Withdrawals by Partners	1,48,01,721	-80,71,539
Unsecured Loans		1,11,90,000
Total		31,18,461
II. APPLICATION OF FUNDS		
Loans & Advances		30,78,132
Cash & Bank Balance		40,329
Total		31,18,461

15. On perusal of the aforesaid one page Balance Sheet, we can see that there was withdrawal from the partners to the tune of Rs.1,48,01,721/- and there were unsecured loan of Rs.1,11,90,000/- . However, what are the transactions pertaining to this withdrawals by partners and unsecured loans on the basis of which nature of transactions were defined by the Learned AR as capital account transactions and unsecured loan transactions in the chart submitted before us, thus we are unable to comprehend with the same. The extract of Balance Sheet is also not providing the details like; name

:: 27 ::

of partners, name of lenders from whom unsecured loans were taken, what was the opening balances, transactions during the year etc. Only entries in the bank account are not enough to enlighten the fact pertaining to nature of the transaction. Ld AR though tried substantiating about the nature and source, but in absence of adequate supporting evidence, we are unable to persuade to subscribe with the same. Under such facts and circumstances, in order to comply with the provisions of amended Section 68 of the Act and proviso therein, we are of the considered view to set aside the order of Learned CIT(A) and direct with restoring the matter to the files of AO to examine the issue pertaining to nature and source of the share capital receipt from M/s. ALV Enterprises, in terms of amended section 68 a/w proviso thereto. Consequently, grounds of appeal raised by Revenue in the present appeal are partly allowed for statistical purposes.

16. With respect to Ground No.9 of the Revenue pertaining to violation of Rule 46(A) by the Learned CIT(A) in accepting of additional evidence without giving an opportunity to the Ld AO of being heard while deleting the addition. Since, the Revenue has not brought on record as to what are the evidences which were not before

:: 28 ::

the Learned Assessing Officer but were additionally submitted before the Learned CIT(A), we do not find any merit in this contention of Revenue and therefore dismissed the same.

17. In the result, appeal of Revenue is partly allowed for statistical purposes.

Order pronounced on the 22nd day of September 2023, in Raipur.

Sd/-
(रवीश सूद)
(RAVISH SOOD)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(अरुण खोडपिया)
(ARUN KHODPIA)
लेखा सदस्य/ACCOUNTANT MEMBER

रायपुर/Raipur,

दिनांक/Dated: 22nd September, 2023.

Priti Yadav, Sr.PS (on Tour)

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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

आदेशानुसार / By Order

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