

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.6320/DEL/2016
Assessment Year 2012-13

ITO Ward-20(2), New Delhi.	Vs.	Priceless Overseas Limited A-30, 2 nd Floor Kailash Colony, New Delhi.
TAN/PAN: AAACP7636C		
(Appellant)		(Respondent)

Appellant by:	Shri Vinod Bindal, CA Ms. Rinky Sharma, ITP Shri Saurabh Sharma, Adv.		
Respondent by:	Ms. Beenu, Sr.DR		
Date of hearing:	15	09	2023
Date of pronouncement:	14	12	2023

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXXVI, New Delhi ('CIT(A)' in short) dated 14.10.2016 arising from the assessment order dated 27.03.2015 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the Revenue read as under:

"1. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,95,00,000/- made by the AO without appreciating the fact that the assessee has completely failed in discharging its onus of genuineness of the transaction & creditworthiness of the entities from where the credits have been appearing in the books of assessee.

2. *On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of RS. 3,90,000/- on account of commission @2% of the above addition .”*

3. Briefly stated, the assessee-company is stated to be engaged in the business of import, processing and trading of marble. The assessee filed return of income for Assessment Year 2012-13 in question declaring taxable income at Rs.32,16,820/-. The return filed by the assessee was subjected to scrutiny assessment. In the course of scrutiny assessment, the Assessing Officer *inter alia* observed that assessee-company has made addition in share capital from three Kolkata based companies namely, (i) Capetown Merchandise Pvt. Ltd. – Rs.65,00,000/-; (ii) New Look Vinmay Pvt. Ltd. – Rs.65,00,000/-; (iii) Vishal Enclave Private Ltd. – Rs.65,00,000/-. The Assessing Officer made inquiries on the genuineness of subscription received from the so called subscribers based in Kolkata. The Assessing Officer *inter alia* observed that though new shareholders who are Kolkata based companies now hold 97.50% of the shares of the assessee-company and the shares of original promoters, i.e., Dalmia Family has been reduced to 2.5% from existing 100%, despite such drastic reduction in the equity holdings of Dalmia Family, there has been no change in the management, directorship, control or operations of the assessee-company. To enquire into nature and source of such subscription, notices under Section 133(6) were issued to the subscriber companies. However, the notices issued to these companies returned back unserved. The fact of non service was confronted to the assessee-company. Notices were again sent but returned back unserved. Thereafter, the assessee was asked to produce the shareholders of the company along with their books of account for necessary verifications. The assessee however

expressed its inability to produce the shareholders. One more opportunity was given to the assessee to file its response. The assessee filed assessment order of two subscribers namely, Vishal Enclave Pvt. Ltd. and New Look Vinmay Pvt. Ltd. passed under Section 143(3) of the Act for AY 2012-13. The Assessing Officer further observed that despite non-service of notice, letters from three subscribers in question were received by DAK in a bid to confirm the subscription. The Assessing Officer perused the financial statement of the subscriber companies and concluded that the transaction shown to have been made by way of share subscription are transactions typical of paper companies providing accommodation entries. Reply of the assessee was considered in the light of the decision of the Co-ordinate Bench of Tribunal in the case of *Bisakha Sales (P) Ltd. vs. CIT, (2014) 52 taxmann.com 305 (Kol)* and held that the money received by way of share subscription lacks genuineness on the touchstone of Section 68 of the Act. It was further held that the assessee has failed to discharge its onus under Section 68 of the Act in the light of various judgments referred to in the assessment order including judgment rendered by the Hon'ble Delhi High Court in the case of *CIT vs. N.R. Portfolio Pvt. Ltd., 96 DTR 281 (Del)*. A reference was made to various decisions and observed that mere filing of PAN, acknowledgement of Income Tax return of the entry providers, bank account statement etc. is not necessarily sufficient to discharge the onus under Section 68 of the Act. The Assessing Officer observed that the subscribers are not shown to be known to the assessee-company and thus it is highly implausible that such unknown subscribers having Nil/negligible income will make substantial investment in an unknown private company without

adequately protecting the investment and ensuring appropriate returns. The Assessing Officer emphasized that the person behind these companies were not produced for examination by the assessee to make suitable inquiry. The assessee adopted non co-operation attitude and act evasively before the Assessing Officer. The identity, creditworthiness or genuineness of the transaction cannot be stated to be established by merely showing that the transaction was made through banking channels. In such cases, the nature of transaction required a deeper scrutiny for which the Assessing Officer was prevented from doing so. The facts of the case warranted appropriate inquiry on circumstances for making investment. Neither the notice under Section 133(6) could be served nor subscribers were produced despite specific requirement. The Assessing Officer referred to many judgments and observed that tests laid down in various judicial decisions towards identity of the investors, their creditworthiness and genuineness of the transaction cannot be said to be established by merely producing paper evidence of transaction. The Assessing Officer thus held that it is quite evident that assessee has received unexplained credit of Rs.1,95,00,000/- by way of share capital and premium from such operators/subscribers through camouflaged transaction. The genuineness and creditworthiness of the persons giving share application money to the assessee is not proved and Assessee has completely failed to discharge its onus which lay upon the assessee. The Assessing Officer accordingly invoked the provisions of Section 68 of the Act and made an addition of Rs.1,95,00,000/- to the total income declared by the assessee. The Assessing Officer also estimated commission expenses incurred for such accommodation entry and made an addition of

Rs.3,90,000/- on such account.

4. Aggrieved by the additions made, the assessee preferred appeal before the CIT(A). The CIT(A) in the first appeal found merit in the plea of the assessee and held that the onus placed under Section 68 of the Act was duly discharged by the assessee on the basis of documentary evidences. The CIT(A) further observed that the sum of Rs.1.95 crore was invested by these share applicants in AY 2011-12 and not in AY 2012-13 in question and therefore, Section 68 could not have been invoked in relation to amount in question in so far as AY 2012-13 is concerned. It was observed by the CIT(A) that the actual amount invested by these three share applicants in AY 2012-13 was Rs.64.75 crores each, i.e. a total of Rs.1,94,25,000/- whereas sum of Rs.65 lakhs were invested as share application money in AY 2011-12 by such investors. The Assessing Officer has made inquiries with reference to amount received in Assessment Year 2011-12, i.e., Rs.1.95 crore as against Rs.1.9425 cr received in Assessment Year 2012-13. The CIT(A) thus disagreed with the action of the AO and reversed the additions made. The relevant operative paragraphs of the order of the CIT(A) is reproduced hereunder for ready reference.

6. I have gone through the assessment order, grounds of appeal and the submissions of the assessee. The AO has added an amount of Rs.1.95 crore u/s. 68 of the Act considering the share application money received from 3 parties as unexplained credits. It has been stated that the assessee has failed to prove the genuineness and creditworthiness of the share applicants. The addition has been made mainly relying on the modus operandi as described in the case of M/s. Bisakha Sales decided by the Hon'ble ITAT, Kolkata Bench and on the fact that despite takeover of Rs. 97.5% of share holding, there has been no change in management and control of the assessee company. The assessee in its submission submitted that all the details required like the bank account of share applicants company., audited financial statement, I.T returns, Form for allotment of shares etc. were submitted to the AO as also the confirmation from the 3 share applicants. It was also submitted that as noted

by the AO, the management of the company has indeed changed. The share holders have appointed their own directors in the company w.e.f. 25.09.2014. The change in management has also been registered under the Companies Act. Further, all the 3 applicants have been assessed u/s. 143(3) for A.Y. 2013-14 and two of them for A.Y. 2012-13. It therefore appears that the assessee has discharged its onus regarding the identity and genuineness of the transaction. By the bank accounts submitted, it is clear that the share applicants have enough funds for investment which were liquidated from another company. The creditworthiness is also therefore explained. The Assessing Officer has on theoretical basis tried to prove that the amount is unexplained credit rather than disputing and disproving the facts as submitted by the assessee.

7. It was pointed out by the assessee and is also seen from the balance sheet that the amount of Rs. 1.95 crore was invested by the share applicants in A.Y. 2011-12 and not in A.Y. 2012-13. This amount of Rs. 1.95 crore i.e. Rs. 65 lacs received from each of the 3 share applicants was converted into share holding by allotting the shares to them in A.Y. 2012-13. The amount can therefore not be cash credit for A.Y. 2012-13, The actual amount invested in A.Y. 2012-13 by the 3 share applicants was Rs. 64.75 lacs each i.e. a total of Rs. 1,94,25,000/-. Against these amounts also, the shares have been allotted in A.Y. 2013-14. Thus, the 3 share applicants have invested in 2 years continuously and they have been assessed u/s. 143(3) where the transactions were accepted. Similar transaction of Rs. 1.95 crore has been accepted by the department in A.Y. 2011-12 without raising any doubt and suspicion on the share applicants which are the same as in current year. I am therefore inclined to decide in favour of the assessee as the assessee has discharged its onus by providing the required details which have not been disproved by the AO. The addition u/s. 68 may therefore be deleted.

8. The ground related the commission of Rs.3,90,000/- @ 2% on amount of share capital becomes infructuous in view of the above discussion and the addition may therefore be deleted.

9. In the result, the appeal of the assessee is Allowed.

5. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

6. The Id. DR for the Revenue strongly assailed the findings of the CIT(A) and submitted that the CIT(A) has adopted easy course of rejecting the observations made by the Assessing Officer which were founded upon inquiries conducted and the surrounding circumstances pointing out that such subscription in question is typical of accommodation entries received from paper companies. The Id. DR referred to and relied upon the observations made in the assessment order, large number of judgments quoted by the

Assessing Officer befitting the circumstances and existing in the present case and pointed out that the CIT(A) has defused the observations in a very generic terms and in a petty fogging manner. It was alleged that CIT(A) has not applied its mind to all the considerations existing in the present case. For instance, the subscribers who invested such large amount did not come forward before the AO along with their books as called for. The notice under Section 133(6) was also returned unserved for which no reasons have been provided. The AO is entitled to make such inquiry as deemed fit in a given case. Attendance of the witness is crucial in such cases more particularly in the present case where the transactions recorded in the books of the assessee company smacks of paper transaction. The CIT(A) has merely placed reliance upon documentary evidences and completely ignored the surrounding circumstances which are screaming hoarse on the clandestine nature of such accommodation. The CIT(A) has not answered as to why an unknown company situated in Kolkata will make an investment in a Delhi based company when it hardly has any amount lying in its bank account and is not engaged in any income generating activity at all. The subscribers claimed to have liquidated certain existing advances and transferred the amount to the assessee company based on a lopsided balance-sheet such re-characterization of advances are also typical of accommodation entries. No income is shown to have been generated by the subscriber companies either in the past or during the year.

6.1 The Id. DR next pointed out that it would be interesting to know as to why a promoter will hand over 97.5% of shareholding to an unknown subscriber without premium, unless of course where such subscription is a mere book entry without any

intention of actual transfer. The assessee-company is engaged in a established business and generating good amount of revenue (Rs. 31.37 crore - FY 2012-13; Rs. 23.56 crore - F.Y. 2012-13) and generates taxable income and has filed a return of Rs.32.16 lakhs during the year. It is for this reason that subscribers are non existent and the command & control continues with the existing shareholders and such arrangement has been conceived. It is perplexing that shareholder holdings of 97.5%, i.e., the real holder will not choose to come forward to defend their case of *bona fide* ownership. It is a classic case of conversion of unaccounted money through the cloak of share capital as circumstances points out. The CIT(A) has not looked into any of such overwhelming aspects and applied wrong tests to reverse the action of the AO. The CIT(A) himself has not made any inquiry nor asked the Assessing Officer to make such inquiries which remained uncompleted in the course of the assessment.

6.2 The Id. DR referred to the judgment rendered by the Hon'ble Supreme Court in the case of *Pr.CIT vs. NRA Iron & Steel (P) Ltd., (2019) 103 taxmann.com 48 (SC)* where the investment from Kolkata based companies having similar traits as present in the impugned appeal were subjected to judicial scrutiny and the Hon'ble Supreme Court made far-reaching observations including that the assessee is required to prove by cogent and credible evidence that the subscription made was genuine. If the inquiries and investigations revealed that identity of creditors/subscribers are dubious or doubtful for lack of creditworthiness then one cannot say that genuineness of the transaction is established.

6.3 The Id. DR also referred to the judgment delivered by the

Hon'ble Delhi High Court in the case of *CIT vs. Nova Promoters and Finlease (P) Ltd.*, (2012) 342 ITR 169 (Del) and *NR Portfolio (supra)* and submitted that the principles laid down in such judgments and other host of judgment referred in the assessment order would squarely apply to the present case. The Id. DR thus submitted that the CIT(A) has ignored the surrounding circumstances, human conduct and preponderance of probabilities overwhelming in such type of subscription. The Id. DR next submitted that CIT(A) has summarily brushed aside the case made out by the Assessing Officer based on a nominal difference in the amount of share subscription received during the year qua the amount received in the previous year and held that the inquiries made pertain to AY 2011-12. It is nobodies' case that the amount has been received from the same subscribers in AY 2011-12 as well as AY 2012-13 in question. Similar amount has been received indeed in this year vis-à-vis earlier year. Therefore, it was incumbent upon the assessee to explain the credit received during the year if not more. The money credited is fungible and one can not say that the enquiry traversed beyond the previous year relevant to AY 2012-13 in question as long as the money came to the credit of the assessee during the year from same set of parties albeit with some marginal differences. The CIT(A) holding the co-terminus power of the AO could not have simply rejected the assessment without indulging himself in making suitable inquiries or causing such inquiries through Assessing Officer when such substantive allegations have been made. The Id. DR thus submitted that the order of the CIT(A) is founded of irrelevant considerations and has been passed without appreciation of ground realities. The Id. DR thus sought reversal of the order of the

CIT(A) and restoration of the order of the Assessing Officer.

7. The Id. counsel for the assessee, on the other hand, relied upon the order of the CIT(A) and submitted that the view taken by the CIT(A) is in symmetry with the factual matrix and documentary evidences filed and thus no fault can be found therewith. The Id. counsel submitted that the payments have been received towards subscription in both the AYs 2011-12 and 2012-13 through banking channel. The subscribers are duly assessed under Section 143(3) of the Act by the Income Tax Department either in the AY 2012-13 or in AY 2013-14. The transaction of subscription was thus ostensibly examined and accepted by the AO of subscriber cos.. The Id. counsel also pointed out that the assessee has received Rs.65 lakhs in AY 2011-12 for which the present inquiry appears to have been made. The assessee has actually received Rs.64,75,000/- from same subscribers in AY 2012-13 which is not subject matter of inquiry by the Assessing Officer. The Id. counsel thus submitted that the Assessing Officer has travelled beyond the scope of Section 68 of the Act and indulged in inquiries in relation to the transactions executed in AY 2011-12 which is not permissible in such proceedings. The Id. counsel next pointed out that overemphasis has been placed for non-service of notice under Section 133(6) of the Act to the subscribers whereas the AO himself has admitted that compliance to the requirement of notice under Section 133(6) has been carried out by the subscribers. The Id. counsel also pointed out that nothing turns on the fact that the management of the company has not been shifted to the new subscribers despite their holdings of 97.5%. Such delay in transfer of management do occur in business world and the management has been eventually transferred in the

later years. As pointed out before the CIT(A), the Id. counsel also submitted that the decisions rendered in the case of NRA Steels, Bisakha Sales, Nova Promoters, NR Portfolio etc. have been delivered in their peculiar facts whereas present case is premised on different facts. Thus, the ratio of the judgment has no application in the present case. The Id. counsel submitted that the CIT(A) has taken a rational view consistent with various decisions rendered by different courts and rightly held that onus placed upon the assessee was duly discharged.

7.1 It was further pointed out that it is not the obligation of the assessee to discharge the onus to the hilt. The assessee is expected to offer explanation which is plausible. The assessee has successfully established the plausibility of such subscription.

7.2 The Id. counsel thus submitted that no interference with the order of the CIT(A) is called for.

8. We have dispassionately considered the rival submissions and perused the first appellate order and the assessment order. We have also perused the material and evidences referred to and relied upon in the course of the hearing by the respective sides and have also perused the case laws referred to and cited.

8.1 The nature and source of subscription of share capital of three subscriber-companies and consequently creditworthiness of such subscriber cos. as well as genuineness of respective transactions is in controversy on the counters of s. 68 of the Act. While it is the case of the revenue that onus cast upon the assessee to prove the creditworthiness of the subscriber and genuineness of the transaction is not proved in the facts of the case, the assessee,

on the other hand, contends that such onus placed upon the assessee under Section 68 of the Act has been duly discharged as rightly held by the CIT(A). The issue is essentially factual in nature and thus wholly depends on the examination of facts threadbare.

8.2 To recapitulate, the AO in the course of assessment observed that the assessee has received share application money/subscription amounting to Rs. 65 Lakh each from three subscriber companies namely (i) Captetown Merchandise Pvt. Ltd.(ii) New Look Vinmay Pvt. Ltd. and (iii) Vishal Enclave Pvt. Ltd. aggregating to Rs.1,95,00,000/-. The Assessing Officer made certain key observations such as the shareholding of promoters of the Assessee co. namely Dalmia Family was reduced from 100% to 2.5% and despite such near complete sale of the assessee-company. Despite purported transfer of ownership, there was no change in the management and old promoters continue to manage the assessee co. The shares were purportedly allotted to the new subscribers without any premium. Notice issued under Section 133(6) of the Act for inquiry towards the nature and source of money received from subscribers sent on two occasions returned back un-served. Despite non service of notice, the three subscribers have *suo motu* filed letters confirming the transaction. The assessee-company failed to produce the subscribers along with their books of account as called for by the AO. The AO further observed that the balance-sheet and the extract of bank account of the shareholders would show that such transactions carried out by the subscriber companies are typical of paper companies and their activities are typical of providing accommodation entries. The auditors of three investor-companies based in Kolkata are common

and situated in Delhi. The AO called the identity, the genuineness and creditworthiness in question having regard to attended circumstances and preponderance and probabilities in the light of the judicial pronouncements. The explanation offered were not found satisfactory by the AO on the touchstone of s. 68 of the Act and consequently the money received from subscribers were treated as unexplained cash credits in the hands of Assessee. In first appeal The CIT(A) reversed the action of the Assessing Officer by a brief finding as quoted in paragraph no. 2 supra.

8.3 In the backdrop of delineations recorded in preceding paragraphs, we observe that certain pertinent points has not been addressed by the CIT(A) while granting relief to the assessee viz. (i) the transaction of share subscription bears unnatural and unusual features such as the financial statement of subscribers show Nil or negligible income; a Kolkata based non active co. making large investments by corresponding reduction of so called non current investments; no income being derived despite large capital and reserves and so on. In this backdrop, the AO was indeed entitled to entertain legitimate suspicion on the propriety of transactions. Such suspicion being mother of enquiry, the AO rightly issued notice under 133(6) and also asked the Assessee to produce the subscribers to elicit the circumstances of making investment and source of such investment. The subscriber companies were not found traceable on the address made available and thus the conclusion drawn is solely upon the paper evidences filed in the form of bank statement, financial statement etc. The subscribers evaded their presence before the AO to clarify the facts available to their personal knowledge. (ii) The investment were accepted as bonafide by the CIT(A) without any inquiry on

the circumstances which lead to such large investment in an unknown company. (iii) The CIT(A) overlooked the vital fact that the concerned investors were not presented before the Assessing Officer to elicit information on the reasons for such investments despite negligible income of their own and a near lack of cash flow. (iv) the financial credibility of subscribers were found to be under serious doubt. (v) why the existing promoters have purportedly given control and command of a running company to unknown subscribers without any premium in direct odds with ordinary prudence and rationale where assessee co. enjoys large turnover and profits. Such subscription thus would trigger suspicion on the bonafides of transactions and indicate element of surrogate ownership. The proper course was to make enquiry with the subscribers for logical conclusion which the AO indeed tried without success. (vi) The AO has undertaken analysis of the financial statements of the subscriber and demonstrated that the transactions are typical of a paper company in the light of the financial data; for instance, the subscriber company namely Capetown Merchandise P. Ltd. has a meager capital of Rs.24.19 lakhs but however treasure large reserve of Rs.11.71 crore and such reserves are kept invested in unproductive non-current assets. Despite such large reserves, the subscriber has not earned even a rupee. Coupled with this, the auditor of the assessee-company is an auditor of such Kolkata based company as a common thread. (vii) The bank statement tends to reflect that certain existing advances have been liquidated and deployed in the assessee-company. (viii) The AO has raised pertinent question as to why the unknown promoter will bring such large money and thereafter act evasively in the replies and explanations.

8.4 The dispute surfaced in the present case is attributable to determination of income tax liabilities of the assessee rather than fixing any criminal liability or accountability of the assessee for any other law or obligation. It is trite that the admissibility of documents, evidences on material differs greatly in income tax proceedings and criminal proceedings respectively. The income tax liability is ascertained on the basis of material available on record coupled with the surrounding circumstances, human conduct and preponderance of probabilities. The AO is not fettered or bound by technical rules about evidence contained in the Indian Evidence Act and he is entitled to act on material which may not be accepted as evidence in a court of law. The Assessing Officer in the present case has demonstrated that a company set up in a far off place unknown to the assessee-company has transferred large amount by way of share which effectively transfers complete control of the assessee-company in the hands of such unknown company and such unknown subscriber company have nil or negligible income and have no fixed assets. The reserves are correspondingly represented by similar non current assets nature of which is again unknown. Such act is contrary to common course of human conduct and appears out of sync with ground realities. The transactions being uncharacteristic of business world, a greater degree of onus lies upon the assessee to establish the *bona fides* of the transaction. The explanation offered by the assessee that money was received through banking channel and also assessed in the hands of the subscriber appears very shallow and incomprehensible. The substitution of one party by another in the hands of subscriber co. does not have any income tax implications. The Hon'ble Supreme Court in the case

of *NRA Iron & Steel (supra)* has *inter alia* observed that mere transaction recorded through banking channel is not always sufficient to discharge the burden of proof. The AO in the instant case has attempted to investigate the circumstances for making investment in the assessee-company and creditworthiness of the subscribers etc. The AO was stonewalled from making such enquiry in a logical manner. Certain evidences were placed by way of bank statement, financial statement of the subscriber etc without knowing as to how the subscribers have come into possession of such money and what actuated them to place such large investment in a Delhi based assessee-company. Besides, it is also not known as to why the promoters of the assessee-company will part with their business ie 97.5% holding to the subscriber without any premium when the business model of the assessee company appear robust and yields are consistent and quite attractive year after year. It is trite that the principle 'what apparent is real' is not necessarily sacrosanct and may be overlooked if surrounding circumstances so suggest by applying the test human probability. The AO has applied twin test of surrounding circumstances and test of probability. The CIT(A) on the other hand has merely accepted the version of the assessee towards shares subscription without any demur and without any inquiry either himself or through the AO. It is the fact on record that the share subscribers have not attended the proceedings before the AO and therefore, the factual analysis rendered by the AO cannot be said to be unworthy of any reliance. The CIT(A) to our mind, merrily accepted mundane and stereo-typed defenses raised on behalf of the assessee in a perfunctory manner without seeking any comment from the AO and without traversing glaring

facts. It was expected of the quasi judicial authority of CIT(A) to inquire on such facts. The CIT(A) has accepted the share subscription broadly on the basis of the assessment carried out under Section 143(3) in the respect of share subscriber companies. We hardly see any substance in such course of action. When a specific inquiry is put up, the corresponding party is required to explain such query to the satisfaction of the AO unless the issue can be determined without such a course. An assessment carried out under Section 143(3) in the hands of a lender/subscriber is not a panacea to discharge such heavier onus.

8.5 The CIT(A) has further observed that the assessee was having enough funds for investment on liquidation from another company. Such recycling of money is integral part of the *modus operandi* in such cases as observed in large number of cases. The creditworthiness of the assessee cannot find refuge to such inter-transfer from one party to another. Such act is a smoke screen as doubted by the revenue. The CIT(A) ought to have applied his mind to all the pertinent angle and ought to come to a rational conclusion.

8.6 The CIT(A) further discarded the action of the AO on the ground that amount subjected to enquiry by the AO stands at Rs.1.95 crore as against the correct amount of 1.9425 lakhs recd. from these parties during the year. The CIT(A) thus drew inference that the AO has wrongly inquired into the credits relating to other assessment years which is not permissible in law under Section 68 of the Act. We do not understand the rationale of such observations. It is an admitted position that assessee has received subscription of Rs.64.75 lakh from each party during the

year as against Rs.65 lakh alleged by the Assessing Officer. However, it is not a case that no subscriptions from the impugned parties have been received during the year. The scope of inquiry at best could be restricted Rs.64.75 lakh each subscriber rather than Rs.65 lakh each subscriber. The CIT(A) holding the co-terminus power of the Assessing Officer was under duty to correct such mistake as long as the amount was received from such subscribers during the year. The judgment rendered by the Hon'ble Delhi High Court in the case of CIT vs. Jansampark Advertising and Marketing Pvt. Ltd. (2015) 56 taxmann.com 286 (Del.) serves as a useful guide. The Hon'ble Delhi High Court in that case observed that where the AO failed to discharge its obligation to conduct a proper inquiry to take the matter to logical conclusion, it is also the obligation of the first appellate authority and indeed that of ITAT to have ensured that effective inquiry is carried out on the subject matter of appeal. The CIT(A) has failed to adhere the legitimate expectations and passed a nondescript and cryptic order without dealing with fundamental aspects permeating the issue involved.

9. It is trite that the scope of powers vested to CIT(A) under Section 251 are co-terminus and co-extensive with that of AO exercising *quasi judicial* functions. The CIT(A) is not only an appellate authority but also possesses the unique power of an adjudicating authority similar to that of AO. The powers of inquiry thus, in essence, runs concurrently for proper appreciation of all material placed before him. The CIT(A) ought to have made suitable inquiries on the propriety of share subscription declared in the light of the documentary evidences and the attendant circumstances instead of brushing aside the action of the Assessing Officer in loop sided manner.

10. In our considered view, the order of the AO lack comprehension. The CIT(A) is expected to expound the facts in perspective while displacing the order of the Assessing Officer. The fallacy in the action of the CIT(A) is quite visible and hence the impugned first appellate order cannot be countenanced in law.

11. The appellate order of the CIT(A) is thus set aside and the matter is restored back to the file of the CIT(A) for fresh determination of the issue in accordance with law after making inquiries or causing inquiries through Assessing Officer in this regard. The assessee shall however be given suitable opportunity to adduce evidence and offer explanation as may be considered expedient to defend its claim on bonafides of the subscription recd. during the year.

12. Our observations noted above shall not constitute any expression of opinion on merits of the case. It shall be open to the assessee to establish the *bona fides* of the subscription to the satisfaction before the CITA). With these observations, the order of the CIT(A) is set aside and the matter is restored back to the file of CIT(A) for fresh determination in accordance with law.

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

Order pronounced in the open Court on 14/12/2023

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /12/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**