

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 850/Kol/2023
Assessment Year: 2011-12

Dy. CIT Central Circle - 1(4), Kolkata	Vs	Femina Stock Management Company Ltd. 5 TH Floor, Room No. 2 P23/24, Radha Bazar Street Tea Board Kolkata - 700001 [PAN: AAACF3689H]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manish Tiwari, FCA
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 10/10/2023
घोषणा की तारीख /Date of Pronouncement: 14/12/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the revenue against the order of the Commissioner of Income Tax (Appeals), Kolkata - 21, (hereinafter the "Id. CIT(A)") dt. 12/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2011-12.

2. The Registry has pointed out that there is a delay of 36 days in filing the present appeal by the revenue. Petition for condonation of delay is placed on record explaining the reasons. On perusing the same, we are convinced that the revenue was prevented by sufficient cause from filing this appeal in time. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. The revenue has raised the following grounds of appeal:-

- “1. That on the facts and circumstances of the case the Ld. CIT(A) erred to delete the addition of Rs.33,19,33,000/- added by the AO as undisclosed income in the form of share capital and share premium.*
- 2. That on the facts and circumstances of the case the Ld. CIT(A) erred to delete the addition of Rs.3,00,000/- added by the AO as unexplained cash credit.*
- 3. That on the facts and circumstances of the case, the Ld. CIT(A) erred to delete the addition of Rs.29,00,000/- added by the AO as bogus income of the assessee.*
- 4. That on the facts and circumstances of the case the Ld. CIT(A) erred to delete the addition of Rs. 16,75,665/- added by the AO as an unexplained expenditure in the form of commission paid to the broker.*
- 5. That the department craves leave to add, alter or modify any grounds of appeal in the course of appellate proceedings.”*

4. Facts in brief are that the assessee is a limited company and is a Non-banking Financial Company (NBFC) engaged in the business of investment and trading in shares. Income of Rs.7,474/- declared in the income tax return for Assessment Year 2011-12 on 25/09/2011. Consequent to the search operation carried out at Chandak Group of cases on 02/11/2017 of which assessee company is also part of the group, the case of the assessee was reopened for Assessment Year 2011-12 by validly issuing notice u/s 148 and 143(2) of the Act and proceedings were carried out u/s 147 of the Act. During the year under consideration, share capital with share premium to the tune of Rs.33,19,33,000/- received from 14 share applicants all of which are private limited companies. Various details as called for were filed by the assessee. However, the Id. Assessing Officer was not satisfied with the information and also noticed that some of the notices were issued u/s 133(6) of the Act have returned unserved. The Id. Assessing Officer made detailed observation that most of the share applicant companies are *jamakharchi* companies engaged in the activity of providing accommodation entries. The Id. Assessing Officer on examining

the financial statements of the share subscribers noticed that they have no reasonable sources to purchase shares of the assessee company and in order to examine the said transactions it is the assessee who knows the intricacies of its account to prove its claim of share capital/application money. As there was no personal appearance, therefore, the Id. Assessing Officer concluded the assessment referring to various decisions and observing that the alleged transactions of receiving share capital and share premium are in the nature of accommodation entries and is mere rotation of funds and the share subscribing companies are paper/shell companies. He thus held that the assessee failed to explain the sum of Rs.33,19,33,000/- received towards share capital and share premium and added the said sum u/s 68 of the Act.

4.1. Similarly, addition also made at Rs.3,00,000/- towards cash deposited in the bank account of the assessee from Shri Tuhin Banerjee of M/s. Shyam Udyog and which was immediately given as loan to the assessee. The Id. Assessing Officer treated it as unexplained cash credit u/s 68 of the Act.

4.2. Similarly addition of Rs.29,00,000/- also made for sum received from Shri Shyam Sharma, which the Assessing Officer held it to be unexplained cash credit.

4.3. Addition was also made towards unexplained expenditure in the form of commission paid for arranging the accommodation entries in the form of share capital and share premium. Income assessed at Rs.33,68,16,139/-.

5. Aggrieved the assessee preferred appeal before the Id. CIT(A) and filed complete details about the identity and creditworthiness of the share

applicants and genuineness of the transactions. Various additional evidence were also filed to which remand report was called for. In the remand report, it has been categorically mentioned and observed by the Id. CIT(A) that the assessee has filed complete details including financial statements confirmation of accounts, proof of the directors. Even the directors of the share applicant companies appeared before the Assessing Officer. But since the other share applicants could not be brought by the revenue authorities for cross-objection, the Id. CIT(A) took note of the fact that the assessee has discharged the burden of proof casted on it. Creditworthiness of the share applicants were also examined. Consequently, being satisfied with the explanation of the assessee, the Id. CIT(A) deleted all the additions made u/s 68 of the Act as well as the addition for unexplained expenditure u/s 69C of the Act.

6. Aggrieved, the revenue is now in appeal before this Tribunal.

7. The Id. CIT D/R submitted that the Id. Assessing Officer has examined the facts of the case extensively and financial statements of the share applicants were also scrutinised and came to a plausible conclusion. He vehemently argued supporting the order of the Id. Assessing Officer and stated that merely filing paper documents cannot be treated as a compliance to explain the nature and source of the alleged sum. Surrounding circumstances which includes the meagre income offered by the share subscribers, no regular business activity carried out by the assessee company as well as by the share subscribers and the typical nature of flow of funds in the bank statement indicates that share subscribing companies are engaged in rotation of funds for providing accommodation entries and they are *jamakharchi* or shell/paper

companies and, therefore, the Id. Assessing Officer has rightly added the sum in the hands of the assessee. The Ld. D/R has further relied upon the decision of the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron & Steel (P) Ltd. reported in [2019] 103 taxmann.com 48(SC)*.

8. On the other hand, the Id. Counsel for the assessee submitted that the assessee is a limited company and is a NBFC and its main object is to take investments and loans and further utilize such funds for giving advances/loans and investments. In the interest of business, share capital with share premium was received from 14 share applicants and to explain the nature and source of the sum so received, the assessee has provided complete postal address, bank statement, audited financial statements, share application form and also source of funds. It is also explained before the lower authorities that share capital and reserves and surplus available with the companies were sufficient enough to cover up the investments and the exposure of the share applicant companies towards assessee company are ranging between 1% to 16% only. It is also submitted by providing all necessary details that the assessee company has discharged its onus with respect to the alleged transactions and it was not legally obliged to produce the share applicants because that was beyond the assessee's control and nor the assessee is equipped with enough powers to produce the share applicants before the Assessing Officer. However, director of the assessee company appeared before the Id. Assessing Officer and replied to various questions asked and also made submission about the alleged transactions. Even the Id. Assessing Officer in the first remand report confirmed that the share investment companies were very much present at the address provided and there was compliance. Reliance

placed on the detailed finding of fact by the Id. CIT(A) and various decisions referred and relied by the Id. CIT(A).

9. We have heard rival contentions and perused the material placed before us and carefully gone through the decisions referred and relied by both the sides.

10. Ground No. 1, is against the finding of Id. CIT(A) deleting the addition u/s 68 of the Act made for alleged unexplained cash credit in the form of share capital and share premium amounting to Rs.33,19,33,000/-. During the year, the assessee company received share capital including share premium of Rs.33,19,33,000/- from 14 share subscribers who are body corporate entities:-

<i>Name of share applicant</i>	<i>Application Money</i>
<i>Aadish Commercial Pvt. Ltd.</i>	<i>2,23,00,000</i>
<i>Anandsagar Tradelink Pvt. Ltd.</i>	<i>1,14,00,000</i>
<i>Arpit Vanijya Pvt. Ltd.</i>	<i>5,29,00,000</i>
<i>Avanillfrahome Pvt. Ltd.</i>	<i>2,67,00,000</i>
<i>Cooper Commercial Pvt. Ltd.</i>	<i>4,06,10,000</i>
<i>Jugantar Commercial Pvt. Ltd.</i>	<i>5,00,000</i>
<i>Jyotika Commercial Pvt. Ltd.</i>	<i>1,77,23,000</i>
<i>Natural Business Pvt. Ltd.</i>	<i>3,81,00,000</i>
<i>Pariartan Commercial Pvt. Ltd.</i>	<i>3,62,50,000</i>
<i>Riteshwari Trading & Investment Pvt. Ltd.</i>	<i>99,00,000</i>
<i>Ritz Agencies Pvt. Ltd.</i>	<i>96,00,000</i>
<i>Shreyas Distributors Pvt. Ltd.</i>	<i>89,00,000</i>
<i>Uphar Trade Enterprises Pvt. Ltd.</i>	<i>3,46,50,000</i>
<i>Yugoveri Marketing Pvt. Ltd.</i>	<i>2,24,00,000</i>
Total	33,19,33,000

11. We further observe that during the course of assessment as well as appellate proceedings before the Id. CIT(A), the assessee which is a NBFC and is a limited company has complied and has filed all the details, evidences and relevant documents which are necessary to prove the identity and creditworthiness of the share applicants and genuineness of the transactions. Though these details have been filed in the paper book

for each of the share subscriber but the same can be summarized as filing of the copy of PAN card, share application form, allotment advices, relevant bank statements, ITRs for Assessment Year 2011-12, audited financial statement, source of funds i.e., the immediate source of fund which has been utilised by alleged share applicants to apply for the equity shares of the company. Assessee has also filed copy of the summons issued u/s 131 of the Act during the course of assessment proceedings and reply of each of the share subscribing companies sent directly to the Assessing Officer and again provided necessary details before the Id. CIT(A). The Id. Counsel for the assessee also referred to the assessment orders u/s 143(3) of the Act in the case of various share subscribing companies which have been passed through scrutiny proceedings for the very same Assessment Years and the alleged transactions have been examined by the concerned Assessing Officer. Perusal of these details which have been filed in the paper book containing 708 pages indicates that whatever documents which the assessee needs to file in order to explain the identity and creditworthiness of the share applicants and genuineness of the transactions have been filed and thereby the primary onus casted upon the assessee by virtue of Section 68 of the Act has been discharged and consequently the burden shifted over to the Assessing Officer to prove the contrary which the Id. Assessing Officer failed.

12. We further observe that the Id. CIT(A) has made a thorough examination of all these facts and also referred to various judicial pronouncements adjudicating similar type of issues and we find it necessary to go through the relevant finding of the Id. CIT(A):-

“Ground 3

In this ground the appellant has agitated against the action of the AO in treating the share capital raised by the assessee company including premium money from 14 investing companies, cumulatively amounting to Rs. 33,19,33,000/- on issue of equity shares to these 14 companies, as bogus and adding the same under sec. 68 of the Act. Facts are that during the year the appellant company raised share capital including share premium of Rs. 33,19,33,000/- from 14 share subscribers who are body corporate entities.

<i>Name of the share applicant</i>	<i>Application Money</i>
<i>Aadish Commercial Pvt. Ltd.</i>	2,23,00,000
<i>Anandsagar Tradelink Pvt. Ltd.</i>	1,14,00,000
<i>Arpit Vanijya Pvt. Ltd.</i>	5,29,00,000
<i>AvaniInfrahome Pvt. Ltd.</i>	2,67,00,000
<i>Cooper Commercial Pvt. Ltd</i>	4,06,10,000
<i>Jugantar Commercial P. Ltd</i>	5,00,000
<i>Jyotika Commercial Pvt. Ltd.</i>	1,77,23,000
<i>Natural Business Pvt. Ltd.</i>	3,81,00,000
<i>Pariwartan Commercial Pvt. Ltd.</i>	3,62,50,000
<i>Riteshwari Trading &Investment Pvt. Ltd.</i>	99,00,000
<i>Ritz Agencies Pvt. Ltd.</i>	96,00,000
<i>Shreyas Distributors Pvt. Ltd.</i>	89,00,000
<i>Uphar Trade Enterprises Pvt. Ltd</i>	3,46,50,000
<i>Yugveri Marketing Pvt. Ltd.</i>	2,24,00,000
Total	33,19,33,000

In the course of the assessment proceedings AO has stated that the appellant could not ensure the personal appearance of the director of the share subscribing companies in response to notice u/s 131 of the Act. The appellant has submitted that he furnished the relevant details of share applicant companies which included the address and PAN of the allottees, the identity and address proof of the directors of

he share applicant companies, share application forms, bank statements highlighting the transactions, PAN Cards of the applicants, financial statements with ITR acknowledgements for AY 2011-12, along with details of sources of funds, with supporting documentary evidences. In fact, these details were also submitted during appeal, from where they were once again sent to the AO, when the matter was sent to him in remand. Therefore there is no dispute as to the fact that all the evidence that was required to be produced in the form of documentary proofs of various kinds related to the ingredients of section 68 of the Act were duly produced before the AO - mostly at every stage, otherwise at one stage or the other. Later, the matter was examined in remand on two occasions. During these remand proceedings, once more, it is undisputed that the AO obtained these details, not only from this office, since all details, submissions, paperbooks and evidence received by this office were forwarded to the AO for him to conduct his verifications/investigations, but also directly from the investor companies when he issued them summons u/s 131 - but this last aspect of the controversy at hand will be discussed, at greater length, later in this order.

The assessment order has recorded that in order to test the genuineness of the impugned transaction, the Directors of the share subscribing companies were issued summons u/s 131 of the Act by post, on the addresses available in MCA database but the same had been returned back by postal authority with comments " Address not known/Left". The objective, explained in the subsequent paragraphs of assessment order, for the issue of these notices was to examine and verify the identity of the appellant company, and its share holders, genuineness of the transaction and the creditworthiness of share holders. The AO, on account of the fact that the summons u/s 131 could not be served and the Departmental Inspector being unable to trace the said share allottee companies, placed a question mark upon the entire transaction, including the identity and creditworthiness of share applicant companies along with the genuineness of the transaction, and found that the appellant companies did not have sufficient income to make the impugned investments in share capital/premium. In addition, the AO has also relied upon some statements given by certain alleged entry operators in some separate proceedings, in March 2015, that they had been providing accommodation entries against a fee through certain Shell companies controlled by them through dummy directors. The AO, finding that some of the share capital/premium received by the appellant came after being routed through some of these shell companies or that these shell companies appeared in the fund trail of some of the share capital/premium that led finally to the appellant, came to the conclusion that the share capital that had been received by the appellant during the year, that had these shell companies appearing

in the fund trail leading to the appellant, was bogus. The AO has also argued that the share subscriber companies did not have sufficient creditworthiness nor did they show any profits to

warrant acceptance of the proposition that they could have subscribed to the large share capital/premium shown to have been received by the appellant. Hence, he concluded the assessment and made an addition of Rs. 33,19,33,000/- u/s 68 of the Act treating the entire amount of share capital/premium as bogus and the unexplained income of the appellant company.

In the course of appeal proceedings, the appellant submitted its written submissions with enclosures, including two detailed and comprehensive paperbooks of evidence of proceedings and those related to the evidence of the bonafides of the transactions. Of these, evidence related to the various facets of section 68, in relation to proving the identity, creditworthiness of the share applicants and the genuineness of the transaction, themselves numbered 507 pages. The submissions of the appellant are already reproduced above in this order. The matter was remanded to the AO for examination. All paper books/evidence/submissions received in this office were also forwarded to the AO. The first remand report dated 16.10.2019 was received in this office and a copy of this remand report was provided to the appellant. In his Remand Report, the AO accepted the fact that during the assessment proceedings, the statements of the directors/entry operators could not be supplied to the assessee. During the course of remand proceedings, copies of relevant portions of the statements of entry operators were provided to the assessee.

The AO, during remand, also made efforts to provide the assessee opportunity of cross examination of the alleged entry operators whose statements were recorded earlier. For the purpose of cross examination summons u/s. 131 of the I.T. Act, were issued by the AO to the alleged entry operators/ dummy directors:

S.N.	Name of the entry operator/ dummy director	Addresses	Date of issuance of summon u/s. 131	Status
1	Shri Manoj Kumar	6A, Saklat Place, 4th Floor, Kolkata-700073	17.07.2019	Returned back
			26.08.2019	Returned back

		87C, Cossipore Road, Kolkata-700002.	17.07.2019	Returned back
2	Sanjib Bhattacharjee	27, Gobra Gorasthan Road, Kolkata - 700046.	17.07.2019	Returned back
			26.08.2019	Returned back
3	Ashok Jha	14/1A, Sambhu Chatterjee Street, Kolkata-700007	17.09.2019,	Returned back
			26.08.2019	Returned back
		9, Lal Bazar Street, Block A, Kolkata-700001	17.07.2019	Returned back

All the Summons u/s. 131 of the I.T. Act, 1961, issued to the above entry operators through registered post to the addresses available, returned un-served. Further, the said Summons u/s.131 of the Act were issued through the office notice server who also could not serve the notices on the given addresses. Finally, the Inspector attached to the office of the AO was deputed by him to serve the notices but he also failed as he also could not trace out the entry operators. The director of the assessee company, however, appeared before the AO, but as the entry operators were not available and could not be produced by the AO, the process of cross-examination could not be made. At this point, in his remand report, the AO has made an interesting counter-argument, viz., that even though he admits to his failure to produce the said entry operators/dummy directors, he (the AO) has pointed out that even the appellant had failed to produce the directors of the share applicant companies. Without prejudice to the discussions and proceedings that will follow, the above observation by the AO is specious in nature and shows a lack of appreciation of the legal propositions involved. While it is beyond doubt, that the appellant, in order to discharge his onus with respect to this transaction, was legally obliged to produce the share applicants for their examination, this fact has nothing to do with the right of the assessee against whom certain statements are being used, to cross- examine the person making such a statement. Since the evidence, in the form of these statements, is being furthered by the AO, the onus for providing the appellant with an opportunity to cross-examine the person making this statement, lies upon the AO himself. A failure to discharge this

onus has the effect of diluting the evidentiary value of the said statements against the appellant. These remarks, of course, are without prejudice to the fact that the appellant, at a later date, has been able to produce before the AO, the directors of the share applicant companies. (This aspect will be discussed at length later in this order). As regards the statements of the alleged entry operators, an examination of these statements does not show that there was any specific mention of the appellant or the particular impugned transactions at all. These statements had been taken in March 2015. They had not been taken in any proceedings connected with the appellant. Since the impugned transactions pertain to a period of FY 2010-11, there has to be some correlation or mention of the fact that the accommodation entries were being provided in that period. No such mention is apparent from record. In the absence of any form of causal link, or some form of connection between the said statements and the impugned transactions, or even the appellant or even the period, it is difficult to see how these statements can be used to make additions u/s 68 of the Act, especially in view of the fact that the appellant has already discharged his onus u/s 68 as will be discussed in the following passages. Further, the appellant's contention that without even going into the merits and substance of these statements at all, it would be unlawful on the part of the AO to use these statements against the appellant, without at least providing him an opportunity for cross-examination, has merit in it. The denial of such an opportunity for cross-examination has the legal effect of diminishing any evidentiary value that may be associated with these statements. It must not be forgotten that the appellant was searched and no evidence was found that would go towards proving that the impugned transactions were bogus or that the appellant had injected his own undeclared income in the form of share capital/premium. It must be kept in mind that a Search upon the appellant was conducted on 02.11.2017. The statement of the alleged entry operators, Sri Ashok Jha, and Manoj Kumar, were recorded respectively on 02.03.2015 and 30.01.2014 respectively; while the statement of another alleged entry operator, Sanjib Bhattacharya was recorded on 01.11.2017. In the same context, it is also pertinent to note that the impugned transactions have, in almost every case, taken place in February, March 2011. Now, if the statements of the said entry operators are proposed to be used in connection with the impugned transactions, then at least some form of a nexus or link has to be shown to exist, of these statements with the impugned transactions which had been completed several years before the said statements were given. No such link or nexus has been shown to exist. The said statements undeniably existed at the time the appellant was searched. I do not find anything on record found during this search, which could be said to corroborate these statements with respect to the appellant. In the absence of any form of corroboration, either from the search, or from post search proceedings, or indeed from the assessment or remand proceedings, these statements cannot be relied upon to make huge additions. To these circumstances is the aforementioned fact that the appellant was not given any opportunity to cross-examine these alleged operators; in fact the AO himself admitted that he could not even trace these operators.

Coming to the issue of the onus that lay upon the appellant - that of providing the correct addresses and identities of the share applicants, I find that during the course of appeal proceedings before my predecessor, the appellant had explained that since a lot of time had elapsed between the subscription of the said share capital/premium and the present dates, in several cases the addresses of the share applicant companies had changed. He had therefore submitted new addresses of the share applicant companies and the then CIT(A) had directed the AO to depute an Inspector to verify whether these share applicant companies are existing at the new addresses. The enquiries conducted by the inspector deputed for this purpose by the AO, revealed that the share applicant companies did indeed exist at the addresses provided by the appellant. This confirmation of their physical existence, though, was qualified by the observations of the AO that the presence of the share appellant companies at the given addresses was surrounded by circumstances that cast doubts upon the credibility of the fact that there actually was a genuine company doing business from these premises. The AO in his remand report pointed out that in most places there was a single employee present, with tables and chairs and a signboard that appeared to have been newly painted. In the case of each company, the employee present at the company's office was however different in each case, with a valid identification in the form of his driving licence, voter ID card or Adhar card and stating that he was an employee of the said company. Such persons, of course, were also carrying (as admitted by the remand report) documents and requirements related to section 68 of the Act, for the impugned transactions in relation to the particular company present on those premises. These documents have already been elaborately listed earlier in this order, and included the PAN Card, IT acknowledgement, audited balance sheets and so on. It was also pointed out in the 1st remand report that the inspector did not find the Directors/Principal officers of the share applicant companies on the premises at the time of his visit. As per the 1st Remand Report, the person present on the premises also did not know of their whereabouts nor much about the operations of the company. This last assertion of the Remand Report has been vehemently contested by the appellant. The AR of the appellant company has pointed out that the inspector report annexed to the remand report clearly indicates that the inspector during his visit to the office premises of the share applicants had made no such queries from the employees who were present on the premises. He has submitted that this incorrect assertion, that the employee did not know either about the business of the company or the whereabouts of the Directors, was being added by the AO of his own accord, without any factual basis. It may be stated at this juncture that an examination of the said inspector report attests to the truth of the appellant's statement in this connection. The appellant has also added that, in any case, the absence of the Directors from the company office premises at the time of the visit of the inspector, by

itself could not be used as any form of adverse inference to conclude that the company itself was bogus. There could have been a number of reasons for his absence at that particular time.

In addition, even though the various Directors/Principal Officers of the applicant companies complied with the requirements of the notices issued to them in respect of the requirements, u/s 68, for the share application moneys subscribed and allotted, in terms of all the supporting documents in support of the identity and creditworthiness of the share applicant companies, as well as the genuineness of the transactions, none of these Directors/ Principal Officers made a personal appearance before the AO, as had been requested by the latter.

Therefore even though the AO, at this stage of the first remand report, did indeed confirm that the share investment companies were very much present at the addresses provided and there was compliance to the requirements of the notice u/s 131 of the Act at these addresses, the fact that none of the directors of such share applicant companies were making a physical appearance and deposing before the AO, cast a serious doubt on the bona fides and genuineness of the transactions.

The appellant in its rejoinder to the remand report has explained its case with reference to enquiries conducted by the AO that the share capital along with share premium raised by it was explained through genuine evidences and that it has discharged the onus cast upon it u/s 68 of the Act. It has also distinguished its case with reference to the decision of Principal CIT vs. NRA Iron & Steel (P) Ltd reported at 412 ITR 161.

In its rebuttal, the appellant has stated that it should be noted that the directions of the CIT(A) were to ascertain whether the share applicants existed at the new address supplied by the appellant. The appellant contends that the AO has himself admitted that the Inspector has reported that at the new address, the share applicant companies were found. Thus, the identity, as per the appellant, of the share applicant companies had been established without any doubt. The inspector's report dated 12-08-2019 which was enclosed as Annexure to the remand report, stated that all the share applicant companies were found at the new address given by the appellant and the respective employees had also submitted documentary evidences like bank statements, copy of the ITR Acknowledgement, copy of the PAN, Copy of the Annual Accounts for the AY 2011-12, etc. As per the appellant, the aforesaid documents proved the genuineness of the transaction beyond any doubt.

The appellant has explained that the observations of the inspector regarding there being mostly only one employee at the premises at the new addresses supplied by the appellant, as well as the fact that there

was only limited furniture and that the sign boards appeared newly paid, were observations that had not been corroborated and were in any case subjective as well as having no bearing upon the identities of the share applicants as present upon the said addresses. The appellant has reiterated that the basic issue involved was whether the said transactions were bonafide transactions or not, and whether the identity and creditworthiness of the share applicants as well as the genuineness of the transaction were under any form of doubt. The appellant has stated that it had been brought on record by the remand report that the field enquiries yielded the fact that the share applicant companies were indeed present upon the addresses provided by the appellant.

In response to the AO's observations with respect to the enquiry conducted by the inspector, wherein the latter has stated that the whereabouts of the business of the company, name of the directors, name of other employees could not be explained by the present person, the appellant has stated that the AO has deliberately misread the inspectors report. In the report, the Inspector has nowhere mentioned that he enquired about the whereabouts of business or directors of the company from the person present upon the premises, or that the latter expressed his lack of knowledge in respect of these subjects. At this juncture, it may be mentioned, purely as a matter of establishment of facts, I find, upon the examination of the inspector's report appended to the 1st remand report, that this statement of the appellant is found to be factually correct.

In continuation of his rejoinder, the appellant, vide its letter dated 22.04.2022, stated that the share applicant companies have made documentary compliances to the summons issued to them u/s 131 of the Act but that they could not appear personally before the AO as the time allowed was very short and the number of persons who were to attend was very large. Thereafter, during hearing, while explaining the facts and circumstances of the case, the AR of the appellant explained that as the time period that had elapsed between the time when the impugned investments had been made by the share applicants and now, when the enquiries were being conducted during remand, was very large - of the order of a decade - the effort required to marshal the Directors/Principal Officers of the share allottee companies would be very large and it was unrealistic on the part of the AO, during remand, to expect that all the share allottees could be rounded up and produced before him within the short period of time given to the appellant. During the hearing he also submitted that the investors and directors being non-Income tax people, had mistakenly been under the belief that submission of all necessary documentary details had been sufficient compliance to notices u/s 131. The AR said that the appellant had to personally explain to each and every such Director the significance and importance of making a personal appearance before the AO and to convince them that this was a legal requirement and in any case, was essential in order to go to the root of the impugned transaction and to prove it to be bona fide. The appellant also prayed that if an opportunity was provided to the

appellant it could produce the share applicants on a random basis to substantiate its claim. Considering the request of the appellant and the fact that it is important to provide substantive justice to an appellant who faces the prospect of paying a huge demand, in order to provide adequate opportunity and natural justice to the appellant to establish all the ingredients of the impugned transactions, the matter was once again remanded on 05.05.2022 to the AO for conducting enquiries by examining the directors of share applicant companies u/s 131 of the Act.

Since the matter, at this juncture, was being examined in detail, it was considered prudent, lawful and in the interests of proper investigation of the impugned transactions, to make a thorough examination of the entire issue involved by having the principal officers/directors of the share applicant companies examined after having them produced before the AO physically. Accordingly, the AO, during remand, issued summons not only to the Director of the appellant company, who was asked to produce the directors/principal officers of the share applicant companies, but in fact also to the Principal officers/Directors of the share applicant companies, asking them for their personal appearance and for the production of all the supporting documents/evidences in relation to the impugned transactions, thus ensuring a more thorough examination of the issues at hand.

The remand report was received in this office on 29.07.2022, and a copy was provided to the appellant for his rejoinder. The appellant has also submitted its rejoinder, which is placed on record as well as reproduced earlier in this order. In this remand report, the AO conducted independent enquiries and reported that the director of the appellant company along with the directors of share applicant companies on a random basis, a total of directors of ten (10) companies of which 9 had given share capital/premium money in the impugned assessment year, appeared before him in person, in compliance to summons u/s 131, carrying with them the requisite documentary details in relation to the impugned transaction.

These enquiries by the AO were in addition to the field enquires already made by the AO at the time of the earlier remand proceedings discussed above, when he had deputed the departmental inspector to conduct field enquiries in order to ascertain the physical existence of the 14 share applicants at the addresses provided to the AO. This, it has already been discussed, had resulted in the confirmation of the physical existence of the 14 companies, albeit with some misgivings and suspicions expressed by the AO.

The remand report has already earlier been made part of this order. However, since the findings of this report are a pertinent and essential part of the ensuing discussions, the main ingredients and results of the remand report are being reproduced once again for ready reference.

During this 2nd Remand proceedings, the appellant was asked by the AO to produce directors of most of the share applicant companies on various dates as mentioned in the notice u/s 131 dated 09/05/2022

In compliance to the summons issued to the appellant, the director of the appellant company, Shri Pawan Kumar Chandak, appeared and produced the directors of the allottee companies along with requisite documents before the AO on various dates. The details of the enquiries conducted by the AO in remand are as listed below:

SL No	Name of Share applicants	Address	PAN	Remark
1	ANAND SAGAR TRADELINK PVT LTD	10, MULLICK STREET, KOLKAT A- 700007	AAHCA8288N	Director appeared before the under signed on 19.05.2022 along with the authorization from current director and his statements was recorded u/s 131 and submitted copy of Share Application form, Share Allotment Advice, Bank Statement is enclosed. The director also filed copy of letter dated 22.11.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of Source of fund, Share Allotment Advice, Bank Statement, IT Acknowledgement and Audited Financial Statement etc.
2	ARPIT VANIJYA PVT LTD	6A, SAKLAT PLACE, 4TH FLOOR, KOLKATA- 700072	AAICA0722A	Director appeared before the under signed on 12.05.2022 and his statements u/s 131 was recorded and submitted copy of Share Application form and IT Acknowledgement for AY 2011-12 is enclosed. The director also filed copy of letter dated 13.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, Source of fund, Bank Statement, IT Acknowledgement and

				<i>Audited Financial Statement etc.</i>
3	COOPER COMMERCIAL PVT LTD	71, METCALF STREET, 2ND FLOOR, KOLKATA- 700013	AAECC2900N	<i>Director appeared before the under signed on 20.05.2022 along with the authorization from current director and his statements was recorded u/s 131 and submitted copy of Share Application form, Share Allotment Advice, Bank Statement , Source of Fund and IT Acknowledgement of Source of fund and relevant Assessment order u/s 143(3) of the I.T. Act for AY 2011-12 is enclosed. The director also filed copy of letter dated 12.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, Source of fund, Bank Statement, IT Acknowledgement and Audited Financial Statement etc.</i>

4	JUGANTAR MERCANTILES PVT LTD	15 U N BHRAMCHA RI STREET, KOLKATA- 700017	AAACJ6600J	Director appeared before the under signed on 11.05.2022 and his statements u/s 131 was recorded and submitted copy of Bank Statement , and relevant Assessment order u/s 144/147 of the I. T. Act for AY 2011-12 is enclosed. The director also filed copy of letter dated 27.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, NBFC Certificate Share Application, Share Allotment Advice, Source of fund, Bank Statement, IT Acknowledgement and Audited Financial Statement etc.
5	JYOTIKA COMMERCIAL PVT LTD	18/1, MAHARS HI DEVEND RA ROAD, 3RD FLOOR, KOLKATA- 700007	AACCJ5042J	Director appeared before the under signed on 17.05.2022 along with the authorization from current director and his statements was recorded u/s 131 and submitted copy of Share Application form, Bank Statement and relevant Assessment Order u/s 143(3) of the I.T. Act for AY 2011-12 is enclosed. The director also filed copy of letter dated 06.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, NBFC Certificate, Share Application form, Source of fund, Bank Statement etc.

6	RITESHWARI TRADING & INVESTMENT PVT LTD	7/1A, GRANT LANE, 2 ND FLOOR, KOLKAT A- 700012	AABCR3519H	Director appeared before the under signed on 10.05.2022 along with the authorization from current director and his statements was recorded u/s 131 and submitted copy of Share Application form, Share Allotment Advice, Bank Statement is enclosed. The director also filed copy of letter dated 05.09.2019 that in compliance to summons issued u/s 131 earlier.
				This letter included copy of PAN Card, NBFC Certificate, Source of fund, Bank Statement, IT Acknowledgement etc.
7	RITZ AGENCIES PVT LTD	202, JESSORE ROAD, 3 RD FLOOR, BLOCK- D, KOLKAT A- 700089	AAECR5447F	Director appeared before the under signed on 11.05.2022 and his statements u/s 131 was recorded and submitted copy of Share Application form, Share Application receipt,, Bank Statement is enclosed. The director also filed copy of letter dated 16.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, Share Allotment Advice, Source of fund, Bank Statement, IT Acknowledgement. And Audited Financial Statement etc.
8	SHREYAS DISTRIBUTORS PVT LTD	18/1, MAHARS HI DEVEND RA ROAD, 3 RD FLOOR, KOLKATA- 700007	AAPCS2099R	Director appeared before the under signed on 17.05.2022 and his statements u/s 131 was recorded and submitted copy of IT Acknowledgement, Share Application form, PAN Card, Bank Statement, and relevant Assessment order u/s 143(3) of the I.T. Act for the A.Y. 2011-

				12.The director also filed copy of letter dated 06.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, NBFC Certificate Share Application form, Source of fund, Bank Statement, IT Acknowledgement etc.
9	YUGVERI MARKETING PVT LTD	5/1, CLIVE ROW, ROOM 55, KOLKATA- 700 001	AAACY0994L	Director appeared before the under signed on 17.05.2022 and his statements u/s 131 was recorded and submitted copy of Share Application receipt, , Bank Statement and relevant Assessment order u/s 143(3)/147 of the I.T. Act for 2011-12 is enclosed. The director also filed copy of letter dated 19.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, NBFC Certificate Source of fund, Bank Statement, IT Acknowledgement and financial Statement etc.
10	ECONOMY VINTRADE PVT LTD	98/4, D.R.S C BANERJEE ROAD, KOLKAT A- 700010	AACCE4835G	Director appeared before the under signed on 10.05.2022 and his statements u/s 131 was recorded and submitted copy of Share Allotment Advice, Bank Statement and IT Acknowledgement for AY 2011-12 is enclosed. The director also filed copy of letter dated 30.09.2019 that in compliance to summons issued u/s 131 earlier. This letter included copy of PAN Card, Source of fund, Bank Statement, IT Acknowledgement and financial Statement etc.

The AO, in addition to the above observations, however, also submitted that :

“ However, on enquiries conducted and on perusal of documentary evidences furnished by the share applicant companies vis-à-vis the assessee company it is found that these share applicant companies could not adduce any evidence to justify the huge premium of Rs. 990/- paid per share/ the companies do not have any revenue to justify payments of such huge share premium. . An analysis of few companies have been made to conclude that the profits of the share applicant companies did not justify payments of such huge share premium.

Sl. No.	Name of share applicants	Capital	Reserve	Gross Expenditure	Gross Revenue	Net Profit/Loss
1	JUGANTAR MERCANTILES PVT LTD	87,54,170.00	16,67,68,664.00	1,06,25,808.64	94,86,765.57	11,39,04,307
2	JYOTIKA COMMERCIAL PVT LTD	11,36,500.00	20,62,63,873.00	13,140.00	13,680.00	540.00
3	SHREYAS DISTRIBUTORS PVT LTD	11,16,500.00	20,22,83,861.00	13,118.00	13,640.00	522.00
4	YUGVERI MARKETING PVT LTD	1,58,84,500.00	12,60,26,097.00	4,98,058.00	4,99,218.00	1,160.00

*From the above chart it is depicted that the share premium paid by all the share applicants companies are not justified and therefore **although the share capital may be treated as explained but the share premium charged by the assessee seems to be unjustified.***

It is of particular note, as emerging from the findings of the above report as well as the previous remand report, that despite the fact that during assessment, notices u/s 131 were issued to directors of share subscribing companies on the addresses as per MCA database, in remand the appellant provided the correct updated addresses, on which summons were served by post. The reason why the conduct of this enquiry, not only by the production of documents through the issue of summons u/s

131 of the Act, but also through the physical production /examination of the concerned Directors, was considered essential is that it is difficult for a reasonable mind to accept that any person (including a company) who has invested in another company, moneys running into several lakhs of rupees, would, after making this investment, refuse to come before the proper authorities to own up and accept that they had made this investment and to explain why they had done so. This is especially true in the case of share capital/premium investments in private limited companies where, as discussed above,

such investments are made on personal basis rather than through public notices, therefore it is inconceivable that such investors would, after making the investments refuse to appear before the proper authorities to confirm and explain these investments. It has been held by judicial authority that mere production of huge paperwork in support of share capital investment, is not sufficient to accept the transaction as bona fide. If the assessee or the persons who have invested in the assessee show reluctance in the matter of making a personal appearance before the AO, and deposing before him in good faith, without sufficient cause for doing so, then it would be proper for the assessing authority to draw an adverse inference in relation to the genuineness and bona fides of the said transaction. This is on account of the fact that this behaviour rebels against principles human probabilities, as explained above.

The second important point of note in the remand report is that in response to the summons u/s 131, not only the Director of the appellant company, but in fact, ten out of fourteen of the directors of the share applicant companies, attended personally and produced all documents related to the transaction and also made depositions before the AO, u/s 131 of the Act. Out of the Directors who appeared before the AO during remand, in the case of 4 Directors of the share applicant companies, the old directors (whose statements would be relevant for explaining the impugned transactions), who were there at the time of the impugned transactions, appeared before the AO, carrying letters of authorisations from the current directors.

The third significant fact that emerges from the remand report is that not only did the AO conduct his enquiries through the issue of notices u/s 131 of the Act, but in the first remand stage, he went a step further and also deputed the departmental inspector to conduct field enquiries to ascertain and verify the physical presence of share allottee companies. As per the report of the Departmental inspector all the premises of the share applicant companies turned out to be physically present at the said premises. Though, as already stated earlier, the AO has expressed certain suspicions regarding the nature of the premises where the offices of the share applicant companies were situated.

Coming to the findings of the remand report, it is found that the directors of the majority the share applicant companies appeared before the AO u/s 131 and submitted their replies. In the case of all the share applicants, replies were filed. The AO examined these applicants, and recorded their statements. It is noted in the remand report that since this is a very old case, in the case of a few of share applicant companies, the directors had changed over the years; in such cases, the earlier directors who had been present at the time of the impugned transaction, appeared before the AO with authorisations from the current directors. The AO, it is noted, has expressed no dissatisfaction with the results of the enquiries or the depositions made before him. He, after conducting these enquires,

was ultimately satisfied about the genuineness of share capital subscribed by these companies in terms of the identity and creditworthiness of these share applicants as well as the genuineness of the transaction (*vis a vis* share application money only). However, in respect of premium paid by such companies, the AO has analysed the financials of four share applicant companies to conclude that the share premium charged by the appellant company was unexplained, meaning thereby that the said companies did not have the financial wherewithal to pay the claimed share premium.

It is further found that not only did the majority of directors of the share applicant companies appear and depose before the AO, but they also produced supporting evidences to prove the identity of the investing companies, their creditworthiness as well as the genuineness of transactions. In these cases, the directors also produced the copies of the earlier 131 notices that had been issued to them during the first remand proceedings. This was to show that they indeed had received these summons earlier, but had mistakenly complied only by producing evidence. This also showed that the investors indeed had been existing at all times and that they had received the earlier notices u/s 131 (sent during the 1st remand report), and had also complied with them. However, they had not made a physical appearance before the AO at that time. The details and documents so produced and filed with the AO included, *inter alia*, full details of each of the share applicants, who had subscribed to the share capital as well as share premium money raised by the appellant during the relevant assessment year. All these documents have also been submitted during appeal as part of a comprehensive paper book (which, as mentioned earlier, was also forwarded to the AO in remand). The table below summarizes the documents submitted by the appellant and the share applicants before the AO for proving the identity and creditworthiness of the share appellants as well as for proving the genuine of the impugned transactions. Needless to mention that these documents that have been produced by the appellant by way of the discharging of his onus u/s 68 in respect of the impugned transactions, have also been produced in the form of a comprehensive paper book running into over 500 pages.

As per record, in order to establish the identity, creditworthiness and genuineness of share application received from the above parties, the appellant has furnished various documents, as listed below.

Sl No.	Name of Shareholders	Documents submitted	Paper Book Page Nos.
1	M/s. Aadish Commercial Pvt. Ltd.	Order u/s 143(3) for AY 2011-12	1-5

		<i>Share Application Form</i>	6-8
		<i>PAN Card</i>	9
		<i>Confirmation & source of funds</i>	10
		<i>ITR Acknowledgement</i>	11
		<i>Audited Financial Statement</i>	12-24
		<i>List of Investments</i>	25
		<i>Bank statement</i>	26-27
		<i>Reply to summons u/s 131</i>	28-29
2	<i>M/s. Anandsagar Tradelink Pvt. Ltd.</i>	<i>Allotment advice</i>	30
		<i>Share Application Form</i>	31
		<i>Confirmation & source of funds</i>	32
		<i>ITR Acknowledgement</i>	33, 49
		<i>Audited Financial Statement</i>	34-46
		<i>List of Investments</i>	47
		<i>Bank Statement</i>	48, 50
3	<i>M/s. Arpit Vanijya Pvt. Ltd.</i>	<i>Share Application Form</i>	51-54, 71
		<i>Confirmation & source of funds</i>	55
		<i>ITR Acknowledgements</i>	56
		<i>Audited Financial Statement</i>	57-67

		<i>Bank Statement</i>	68-70
		<i>Allotment Advice</i>	72
		<i>Reply to summons u/s 131</i>	73-74
	4 <i>M/s. Avani Infracore Pvt. Ltd.</i>	<i>PAN Card</i>	75
		<i>Share application Form</i>	76
		<i>Confirmation & source of funds</i>	77
		<i>Allotment Advice</i>	78
		<i>Assessment Order for AY 2011-12</i>	79-82
		<i>ITR Acknowledgements</i>	83
		<i>Audited Financial Statement</i>	84-94
		<i>Bank Statement</i>	95
	5 <i>M/s. Cooper Commercial Pvt. Ltd</i>	<i>Share Application Form</i>	96-98
		<i>Confirmation & source of funds</i>	99
		<i>Allotment Advice</i>	100
		<i>Assessment Order for AY 2011-12</i>	101-106
		<i>ITR Acknowledgements</i>	107-109
		<i>PAN Card</i>	110
		<i>Audited Financial Statement</i>	111-121
		<i>List of Investments</i>	122

		<i>Reply to summons u/s 131</i>	123-124
6	<i>M/s. Jugantar Commercial P. Ltd.</i>	<i>Share Application Form</i>	125, 157
		<i>Confirmation & source of funds</i>	126
		<i>ITR Acknowledgements</i>	127
		<i>PAN Card</i>	128, 152
		<i>Bank Statement</i>	129, 153, 155
		<i>Audited Financial Statement</i>	130-151, 158-178
		<i>Allotment Advice</i>	154
		<i>Reply to Summons u/s 131</i>	156
		<i>Assessment Order for AY 2011-12</i>	179-182
7	<i>M/s. Jyotika Commercial Pvt. Ltd.</i>	<i>Share Application Form</i>	183-185
		<i>Confirmation & source of funds</i>	186
		<i>PAN Card</i>	187, 204, 210
		<i>ITR Acknowledgements</i>	188, 205
		<i>Audited Financial Statement</i>	189-198
		<i>List of Investments</i>	199
		<i>Bank Statement</i>	200-203, 206-209, 211-214
		<i>Reply to summons u/s 131</i>	215-216
		<i>Allotment Advice</i>	217

		<i>Assessment Order for AY 2011-12</i>	218-223
8	<i>M/s. Natural Business Pvt. Ltd.</i>	<i>Assessment Order for AY 2011-12</i>	224-228
		<i>Share Application Form</i>	230-234
		<i>Confirmation & source of funds</i>	235
		<i>PAN Card</i>	236
		<i>Relevant Bank Statement</i>	237-240
		<i>ITR Acknowledgements</i>	241
		<i>Audited Financial Statement</i>	242-254
		<i>Reply to summons u/s 131</i>	255-256
9	<i>M/s. Pariwartan Commercial Pvt. Ltd.</i>	<i>Share Application Form</i>	257-259
		<i>Confirmation & source of funds</i>	260
		<i>PAN Card</i>	261, 300
		<i>Relevant Bank Statement</i>	262-267, 299, 301
		<i>ITR Acknowledgements</i>	268
		<i>Audited Financial Statement</i>	269-282
		<i>Assessment Order for AY 2011-12</i>	283-298
10	<i>M/s. Riteshwari Trading & Investment Pvt. Ltd.</i>	<i>Share Application Form</i>	302-303
		<i>Confirmation & source of funds</i>	304

		<i>ITR Acknowledgements</i>	305
		<i>PAN Card</i>	306
		<i>Audited Financial Statement</i>	307-322, 326-339, 343-355
		<i>List of Investments</i>	323-324, 340
		<i>Relevant Bank Statement</i>	325, 341-342
11	<i>Ritz Agencies Pvt. Ltd.</i>	<i>ITR Acknowledgements</i>	356, 375, 441
		<i>Audited Financial Statement</i>	357-367
		<i>Share Application Form</i>	368
		<i>Confirmation & source of funds</i>	369
		<i>Relevant Bank Statement</i>	370-372, 374
		<i>Reply to summons u/s 131</i>	373
12	<i>Shreyas Distributors Pvt. Ltd.</i>	<i>Assessment Order for AY 2011-12</i>	376-380
		<i>Relevant Bank Statement</i>	381 397-398
		<i>Share Application Form</i>	382
		<i>Confirmation & source of funds</i>	383
		<i>ITR Acknowledgements</i>	384
		<i>Audited Financial Statement</i>	385-394, 401-411
		<i>List of Investments</i>	395
		<i>PAN Card</i>	396

		<i>Reply to summons u/s 131</i>	399-400
13	<i>Uphar Trade Enterprises Pvt. Ltd</i>	<i>PAN Card</i>	412
		<i>Share Application Form</i>	413-415
		<i>Allotment Advice</i>	416
		<i>Assessment Order for AY 2011-12</i>	417-422
		<i>ITR Acknowledgements</i>	423, 441, 109
		<i>Audited Financial Statement</i>	424-434
		<i>List of Investments</i>	435
		<i>Relevant Bank Statement</i>	436, 438, 442
		<i>Confirmation & source of funds</i>	437, 439-440
14	<i>Yugveri Marketing Pvt. Ltd.</i>	<i>Share Application Form</i>	443-450, 469-476
		<i>Confirmation & source of funds</i>	451
		<i>ITR Acknowledgements</i>	452, 495, 497, 499, 501
		<i>PAN Card</i>	453, 492-493, 502
		<i>Audited Financial Statement</i>	454-467
		<i>Certificate of Registration</i>	468
		<i>Relevant Bank Statement</i>	477-486, 494, 496, 498, 500, 507
		<i>Assessment Order for AY 2011-12</i>	487-491

		Reply to summons u/s 131	503
		Copy of summons	504-505
		Allotment Advice	506

In making investigations in relation to authenticity of share capital/premium, it is imperative to keep the provisions of section 68 in mind. The initial onus for proving the identity and creditworthiness of the share applicants as well as the genuineness of the transaction lies upon the assessee who is claiming that such an investment was received by him. This can be done through the production of evidence in support of the identity and creditworthiness of such an applicant and also by providing sufficient evidence/ reasoning to establish that the said transaction was genuine and not bogus. This adducing of evidence and providing of cogent reasoning has to be such as to provide a satisfaction in the mind of the AO (a prudent person) regarding the bona fides of the transaction.

Once this onus is discharged by the assessee, the burden shifts to the AO, who can either agree with the evidence /reasoning produced before him, or can disagree with it. In case of disagreement, the onus shifts to the assessing authority to provide cogent reasoning and/or concrete evidence for his reasons for doing so.

In the present case it is found that the corporate share applicants are registered under the companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India and are having Permanent Account Numbers (PAN). They have also been filing their returns with the Income Tax Department. The share applicants had disclosed their PAN along with acknowledgement of submissions of their return of income and furnished audited financial statements. The confirmations and source of funds have been submitted and been examined by the AO in remand. The necessary board resolutions, as well as other material necessary for establishing the identities, creditworthiness and genuineness have also been submitted. In fact it has been pointed out that in as many as in 10 cases of share applicant companies, scrutiny assessments u/s 143(3) or 147 had also been concluded without any adverse inferences, most in the impugned AY and some in the immediately preceding AY. It is also observed that each of the share applicants maintained bank accounts and copies of their respective bank accounts from which they had made payments to the appellant for subscribing to the share issued to them, was filed by each of them before the AO as well as in the Paper Book filed before me. Further each of the share applicants accepted the fact that they had subscribed to the shares issued by the appellant at a premium and

that such transactions were duly reflected in their respective books of accounts, as well as in their audited Balance Sheets.

The AO has accepted all the aspects of the transaction in relation to share capital without pointing out any deficiency. It is found and accepted by the AO that the entire transactions have been through banking channels only, and there are no cash deposits reported in any of the bank statements. The identities of all the parties involved, including the appellant and the investor companies and their directors have undoubtedly been proved. The AO has accepted the appearance of ten directors out of total of fourteen share applicants as being reasonable. This is on account of the fact that almost twelve years have passed since the impugned transactions and this passage of time, necessarily and undeniably, would pose problems in producing the directors. In any case, a majority of the directors undeniably appeared and deposed before the AO in remand. This process, which amounted to much more than a test or sample check, was accepted by the AO in remand. In fact, based upon the above, the AO has accepted the share capital as being genuine. His only objection is that the investing companies did not have the financial wherewithal to invest in the high premium that was claimed to have been paid by them. The basis for this objection has been that in his remand report, he has analysed the financials of four investing companies. He has concluded that they did not show enough profits or taxable income to allow them to invest the large amounts that had been invested as share premium. Therefore, in effect, he has doubted the creditworthiness of these share applicant companies only with respect to this capacity to pay the large share premium. Their creditworthiness in respect of their capacity to pay share application money is no longer considered in doubt as per the remand report.

In this respect, it has to be noted that in order to prove the creditworthiness of a company, it is not always necessary to look only for these investments to have been made from the profits of the company. It is by now an accepted position in law that net profits are not the only indicators of the investment making capacity of an entity. What has to be examined is the net worth of the entity as well the availability of money with it. There are a plethora of judicial decisions that have expounded this proposition. The Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), has observed in this connection that,

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.”

In the case of Carissa Investment (P) Ltd. Vs ACIT (ITAT Delhi) in ITA. No. 6448/Del./2016 dated 22.01.2021 the Hon'ble Tribunal found that the assessee submitted the audited financial statements, bank statements and assessment orders u/s 143(3) of the creditors. It held that,

*“Thus, the assessee-company has been able to prove that both the creditors have availability of sufficient funds to give loan to the assessee-company in assessment year under appeal. **Merely because income was low declared by both the creditors, is no ground to make the impugned addition against the assessee-company.**”*

I find that in ACIT Vs. Brindavan Agencies Pvt. Ltd. (ITAT Delhi) in ITA no. 5272/Del/2016 dated 23.12.2020 for the same AY as the instant one, that is, AY 2012-13, it was held that,

*“.....it is seen that the appellant has filed sufficient documents e.g. Permanent Account Numbers, bank statements, etc. to establish the identities of the four share applicants. The copies of the bank statements of the share subscribers wherein the transactions are reflected as well as the fact that they are assessed to income tax, alongwith copies of their final accounts wherein investments made by them in the appellant company are not only shown but constitute a small portion of their total investments, establish the creditworthiness of the parties concerned. **The incomes of the four shareholders for the year under appeal may have been meagre, as pointed out by the Assessing Officer, but creditworthiness of a party is not gauged merely from income of a particular year. The balance sheets of the four shareholders companies reveal that they had ample share capital to invest in the appellant company.** In fact, the Income Tax scrutiny assessments of all four share subscribers were completed in March, 2015, a few days after the finalization of the impugned assessment order and in three of the four cases, the returns filed by them have been accepted, thereby implying that the Assessing Officer of those three companies have accepted the fact of their investment in the appellant company.”*

The same proposition as stated above, has been underlined in very many other cases, several having been cited by the appellant; in fact the same view has been reiterated by the jurisdictional Tribunal in the case of M/s. Evergreen

Residency Pvt. Ltd vs ITO, Ward - 8(2), Kolkata on 09.08.2019 in ITA no. 416/Kol/2018, in which it was held,

*“A copy of the chart of source of funds, ITR acknowledgment, Annual Accounts for the FY 2011 12 and the relevant Bank Statement are attached at Page 80108 of the Paper Book. **On a perusal of the Balance Sheet, it can be seen that the own funds of the company is Rs. 9,83,20,364/. This very clearly shows the high creditworthiness of the company to make investment in the assessee company.** Further, the entire inflow and outflow of funds was made through regular banking channels as supported by Bank Statements of both the companies.”*

Of particular import is the decision cited by the appellant in the case of ACIT Vs Supreme Placement Services (P) Ltd. (ITAT Delhi) in ITA no. 5259/Del/2013 dated 17.03.2021; wherein it was held that:

*“6.16. **The A.O. merely doubted the financial capacity of the Investors because they have reported low income in their return of income. This cannot be the sole basis to doubt the explanation of assessee.** It may be suspicion of the A.O. only without bringing any evidence on record. Rather the documentary evidences produced on record clearly support the explanation of assessee. The Hon’ble Bombay High Court in the case of **Ami Industries (India) Pvt. Ltd., (supra)** has distinguished the Judgment of **NRA Iron & Steel (P.) Ltd., (supra)** as reproduced above. It may also be noted here that the case of **M/s. Adamine Construction Pvt., Ltd., (supra)** is connected with the case of **Bhushan Steel Group of cases** as is also attributed in the case of assessee and on identical facts the Tribunal has dismissed the appeal of Revenue and the Order of the Tribunal has been confirmed by the Hon’ble Delhi High Court by dismissing the appeal of the Revenue and the Judgment of the Hon’ble Delhi High Court have been confirmed by the Hon’ble Supreme Court by dismissing the SLP of the Revenue. Therefore, **the issue is covered in favour of the assessee by the Judgment of Hon’ble Delhi High Court in the case of M/s. Adamine Construction Pvt., Ltd., (supra).** Considering the totality of the facts and circumstances of the case in the light of documentary evidences on record and the decisions referred to above, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the addition. Accordingly, the appeal of the Department is dismissed.”*

Applying the above discussed propositions of law in this regard, it is found that the creditworthiness of the companies are to be examined with respect to net worth of these companies, which would either justify or not justify the share applicant company's capacity to pay the premium claimed to have been paid by it. Depending upon only one criterion, that of low net profits, could lead to erroneous conclusions, based on inadequate appraisal of facts.

In the above context, it must first be noted that the AO himself has accepted in his order that the share applicants in this case are investment companies, whose basic and primary object is to make investments of the funds available with them,. The appellant has submitted a table of the net worth of the investing companies, derived from the audited balance sheets of these companies. These balance sheets had been duly produced before the AO and in any case are available on the MCA site. This table, depicting net worths of the share applicants, the amount of money invested by them as well as the proportion of such investments in comparison to the their net worth, is reproduced as below:

Name of the allottee	Share Capital, Reserves & Surplus	Application Money	Percentage (%)
Aadish Commercial Pvt. Ltd.	13,72,00,000	2,23,00,000	16.25
Anandsagar Tradelink Pvt. Ltd.	10,70,00,000	1,14,00,000	10.65
Arpit Vanijya Pvt. Ltd.	31,92,00,110	5,29,00,000	16.57
Avani Infracore Pvt. Ltd.	45,25,99,807	2,67,00,000	5.90
Cooper Commercial Pvt. Ltd	48,73,08,900	4,06,10,000	8.33
Jugantar Commercial P. Ltd	17,55,22,834	5,00,000	0.28
JyotikaCommercial Pvt. Ltd.	20,74,00,373	1,77,23,000	8.55

NaturalBusiness Pvt. Ltd.	46,40,46,131	3,81,00,000	8.21
Parivartan Commercial Pvt. Ltd.	53,64,11,095	3,62,50,000	6.76
Riteshwari Trading & Investment Pvt. Ltd.	57,57,55,580	99,00,000	1.72
Ritz AgenciesPvt. Ltd.	21,02,20,118	96,00,000	4.57
Shreyas Distributors Pvt. Ltd.	20,34,00,361	89,00,000	4.38
UpharTrade Enterprises Pvt. Ltd	59,94,26,763	3,46,50,000	5.78
Yugveri Marketing Pvt. Ltd.	14,19,10,596	2,24,00,000	15.78
Total		33,19,33,000	

An analysis of the above table shows that all the investing companies had sufficient net worth of their own to make the investments. In most cases the percentage of net worth so-invested is at a very reasonable level, hovering at a very low percentage of their net worth. Even in the three cases where this percentage is slightly higher, it has gone up to a slightly high, but reasonable level of around 16% of the net worth of the share applicant company - which is not unreasonable and not enough to cause destabilisation of the fund position of the investors. In any case, once it is accepted by the AO that these were investment companies, then their basic objective would be to invest their available corpus into various investment avenues. Therefore, they would be expected to invest sizeable portions of their liquid net worth into various avenues. The important factual issue to examine is whether the said company was in possession of investible money or not. Even though, on this subject, several judicial authorities have already been cited by the appellant in his submissions, while some of them have been discussed supra, I find that it is worthwhile to cite what the Hon'ble jurisdictional Tribunal of Kolkata has stated on this subject in the decision of the Hon'ble ITAT Kolkata in the case of ITO vs. Goodpoint

Commodeal (P) Ltd in ITA No. **1204/KoI/ 2015** for AY 2012- 13, order dated 07.06.2019:

*"6. Thus, we note that we find all the four share subscribers have been assessed by the Department and that too u/s. 143(3) of the Act and the genuineness of the transactions, cannot be disputed since the payments have been made through banking channel and we note that there cannot be any dispute in respect to creditworthiness of the share subscribing companies since they had sufficient net worth/own fund in its kitty to invest in the assessee company. It would be worthwhile to take note of the observation by Hon'ble Justice A. K. Sikri while delivering the judgment in CIT Vs. Mayawati when His Lordship then was in Hon'ble Delhi High court reported in 338 ITR 563 (Del) observed that **"The capacity of any person does not mean how they earn monthly or annually but the term capacity is a wide term and that can be pursued by how wealthy he is. All the formalities, as per the law are made by the assessee and donors as well."***

Therefore, the Hon'ble High Court was pleased to uphold the action of the Tribunal in deleting the addition made by the Department against the assessee Mayawati."

It is therefore a settled principle that the creditworthiness of any share applicant cannot be dismissed only on the basis of its annual profits or income without first discussing the financial "capacity" of the investor to make the impugned investment. This financial "capacity to invest" is a function of the investable wealth of the investor, which, in turn, is reflected in the net worth of such an investor.

In this context, what also has to be examined is whether, given the net worth of an investor, the amount of investment as a percentage of this net worth was reasonable and plausible or not. Even though an investment decision is strictly a business and strategic decision, and not within the province of the AO's investigations, but, during such an examination, what can be and has to be examined by the AO, is the plausibility of a rational prudent person making the said strategic decision for making an investment. In this case, I find that the investment levels, as compared to the net worths of the investing companies are quite low and acceptable and would not pose a risk to the investing company on account of

a significant depletion of its net worth. It is quite clear that the investing companies had sufficient funds of their own to make the impugned investments. The AO has also not made any comment upon this aspect or raised any doubts.

Besides demonstrating their net worths and that they had invested only a very small proportion of their net worths in the appellant company, all the share applicants have also demonstrated their respective sources and their means for arranging funds from genuine sources for making investment in the appellant company. Therefore, in this case the share application money or premium paid by such share applicant companies cannot be treated as unexplained u/s 68 of the Act by holding that the share applicants were not credit worthy since nowhere has it been shown that the share applicants did not have the required financial wherewithal to make the impugned investment in share application as well as premium. This is particularly so when the AO himself has accepted the share capital as genuine and to be fully explained, in terms of the identity of the share applicants, their creditworthiness and the genuineness of the transaction and the mode of the transaction.

The AO has nowhere made a comment regarding the fact that all the share applicants explained the source of funds in their respective replies filed in response to summon u/s 131 of the Act and also by appearing personally before the AO. The facts furnished on record by the share applicants, in the context of the aforesaid discussions, clearly bring on record their capacity for making such payments and accordingly the criteria of their creditworthiness is also explained. As already discussed above that it is uncontroverted that the share applicants in their respective replies furnished copies of their income tax return acknowledgements evidencing filing of income tax return, copies of their audited accounts including Balance Sheet wherein such investments, made by each of them by virtue of the subscription of share capital issued by the appellant, are duly reflected and also copies of their bank statements for the relevant period from which such subscription monies were paid by them respectively and copy of the allotment advise received by them from the appellant in respect of shares allotted to them. Return of allotment as well as the annual return for the AY 2011-12 filed by the appellant with the Registrar of Companies, Ministry of Corporate Affairs, further categorically establishes the fact of allotment

of shares to the share applicants. I notice that despite the fact that all documents running into 507 pages of paper book, were admittedly present before the AO during assessment and during the two remand proceedings, and that the directors of the appellant company as well as a majority of the investor companies made a physical appearance before him, and were examined by him, the AO has not controverted anything produced before him. The AO, despite one assessment and two remand proceedings in which he conducted a thorough examination of the impugned transactions has, it is a matter of record, not controverted or otherwise called into question even a single page out of the over 500 pages of documents produced before him. This is despite the fact that most of the concerned directors of the share applicant companies as well as the director of the appellant company had been physically present before him and had indeed been examined by him. The AO has also not been able to draw any form of correlation between his suspicions - expressed in the form of observations, during the first remand report, related to the amount of furniture present on the companies' business premises or the presence of mostly one employee (though a different employee for each such company) at the premises of the share applicant companies, with his contention that these were sham transactions, especially in view of the fact that the Directors of the share applicant companies were found to be genuine. These Directors were admittedly found to be genuine by virtue of the fact that not only did they make personal appearances and depositions before the AO, but that they were carrying copies of the earlier notices issued u/s 131 of the Act, to which they had earlier sent only documentary responses. It must, in this context, be borne in mind that the time gap between the first and second remand reports is three years. Despite this time gap these directors could demonstrate before the AO, during second remand, that they had indeed received notices u/s 131 issued during the first remand proceedings and had duly responded to them. The suspicions of the AO, as mentioned above, to my mind, therefore, can at best remain uncorroborated suspicions and cannot be relied upon to throw away all the other evidence admittedly present before the AO. In any case, I do not find that the AO has followed up upon any of these observations and brought on record any further corroboration in their respect even when admittedly, he had examined the Directors of the share applicant companies.

*It is further observed that the net worth of each of the share applicants as disclosed in their Balance Sheets, far exceeded the amount of investments (share application as well as premium) made by them in the shares of the appellant company. These discussions clearly prove the creditworthiness of these investing companies. The aforesaid facts, duly supported by concrete evidence, establish the identity of the share applicants, their capacity, source of funds, as well as the genuineness of the transactions in relation to the share capital including the share premium subscribed to by each of them. But before ascertaining if the burden which lay on the appellant, in relation to sec 68 of the Act, has been duly discharged by it, one aspect of this case has also to be considered. This relates to the appellant's contention that even though the statutory requirement for explaining the source of source of share capital/premium was inserted in the statute only from 01.04.2013 and this being the AY 2011-12, there was no statutory onus cast upon the appellant to explain the source of source to the satisfaction of the AO, the appellant had in fact provided the AO with the source of source, during assessment as well as during remand. This is despite the fact that the said proviso to section 68 of the Act, making it incumbent upon the assessee to provide a satisfactory explanation for the source of source was introduced only from 01.04.2013, and therefore this requirement did not exist for the impugned AY. This last issue has been discussed at length in *Kanchan Plywood Products Pvt. Ltd. -vs.- ITO* (order dated 01.05.2019, Kolkata ITAT). In this connection, the Hon'ble Bombay High Court has gone into an in-depth discussion of the matter. In *CIT vs Gagandeep infrastructure (p.) ltd in Income Tax appeal number 1613 OF 2014*, in a decision delivered on 20.03.2017, the Hon'ble Court has examined the issue of retrospectively or otherwise of the amendment to section 68 of the Act via which the proviso to the said section was inserted from 01.04.2013.*

The facts in this decided case were that during the previous relevant to the subject Assessment Year the assessee had increased its share capital from Rs.2,50,000/to Rs.83.75 lakhs. During the assessment proceedings, the Assessing Officer noticed that the respondent had collected share premium to the extent of Rs.6.69 crores. Consequently he called upon the

respondent to justify the charging of share premium at Rs.190/per share. The respondent furnished the list of its shareholders, copy of the share application form, copy of share certificate and Form no.2 filed with the Registrar of Companies. The justification for charging share premium was on the basis of the future prospects of the business of the assessee. The Assessing Officer did not accept the explanation/justification of the respondent and invoked Section 68 of the Act to treat the amount of Rs.7.53 crores i.e. the aggregate of the issue price and the premium on the shares issued as unexplained cash credit within the meaning of Section 68 of the Act. This addition was deleted by the CIT(A) and the Tribunal. Before the High Court, the department contended that the proviso to Section 68 of the Act which was introduced with effect from 1st April, 2013 would apply in the facts of the present case even for A.Y. 2008-09. The basis of the above submission was that the de hors the proviso also the requirements as set out therein would have to be satisfied. HELD by the High Court dismissing the appeal:

“(i) 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 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.

(ii) 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 CIT v/s. Lovely Exports (P)Ltd. 317 ITR 218 in the context to the preamended 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."

The above is then the settled position of law for cases pertaining to AY 2012-13 and earlier assessment years. I find that in the instant case before me, the AO, in his remand report, has not expressed any dissatisfaction with the explanation offered by the appellant, when the latter was explaining the source of source. On the other hand, it is uncontroverted that the investors did produce the sources of their funds even though there was no legal requirement cast upon them to do so. The appellant has provided the AO with the source of source without eliciting any adverse comment from him. A word about the fund trail that supposedly existed in the case of these transactions. It is noted that despite my predecessor asking the AO in remand, to produce a cash trail through which unaccounted cash of the appellant would have been introduced, the remand report has merely reproduced the fund trail that he obtained from the Investigation Wing. There is no evidence adduced of cash having been introduced at any point. It is noteworthy that even after examining the Directors of the share applicant companies and the fact that the Director of the appellant company was also physically present before the AO in remand, the AO has not produced anything adverse in this regard from them, in his remand report. The appellant, has discussed this fund trail in his submissions. In this connection, the appellant has stated that the only thing that can be seen from the alleged fund trail is that it gives merely a list of entities from whom money has been flowing through banking channels. This is not prohibited by Income Tax law. He has stated that nowhere has the AO shown, nor is it apparent from this fund trail that it was the same money that had been flowing from entity to entity until it reached the appellant. It is stated that these entities, as shown in the said finds trails, are independent entities with no business connection with the appellant. The AO has also at no point of time been able to show any form of connection between the appellant and these entities. The appellant received money on account of share/premium application only from those companies that were genuine companies and in the case of which, 10 out of 14 had been scrutinised u/s 143(3)/147 of the Act in

the same assessment year where the no adverse questions had been raised in respect of genuineness of the funds in the hands of these companies.

The AR of the appellant has submitted an analysis of the fund flow that has been referred to by the AO. Some important points that emerge are:

1.) *From page, 160 to 176 there are 14 instances of fund trail. In all the fund trails there are multiple repetition of names, which points out that the funds have originated from same entity and thus explained in their respective hands. For example in layer 1 at page 160 to 162 there is reference to 56 layers of fund movement, but nowhere cash has been said to have been deposited. There are at least 26 instances / layers where the funds have been circulated with common entities therefore, it cannot be alleged that the entities are jamakharchi entities used by assessee to route its undisclosed money as share capital within the entities.*

2.) *In some instances of fund trail - such as 1st instance, 5th instance, 10th instance, 11th instance etc almost same amount of money traded within a very short period such as on the same date or within a period of one day earlier or one day later - which leads to idea of "jamakharchi" companies. This can at best be termed as suspicion, because all the parties are separate and all of them are genuine and they transact through separate cheques and all the transactions are through banking channel. The aforesaid suspicion would have to be corroborated by the AO through some means. I find that the AO has not been able to corroborate or even develop upon these suspicions. There is nothing to refute the AR's assertion that all the transactions are genuine and the same amount is nothing but accidental. The AO, as already discussed, also has not raised any doubts with regard to these in his follow up inquiries and examinations at any point in assessment or remand. This, as already discussed, is despite the fact that the directors of the appellant company and the share applicant companies had been duly examined during remand.*

3.) *In all the 14 fund flows referred to, the assessee having transaction with its share applicants has furnished complete evidences and justification to demonstrate that the share applicant companies are genuine entities and not jamakharchi entities controlled or managed by entry operators. In 2nd instance of fund flow at page 163 prepared by Investigation Wing it is shown that at layer 9 there are 3 entities wherein sum of Rs. 22,00,000/- (5,00,000 + 5,00,000 + 12,00,000) has been shown to have been layered to other entities and surprisingly this Rs. 22,00,000/- has after flowing to 8 layers become Rs. 1,10,00,000/-. The assessee has said that he has not understood as to how the funds have been alleged to be assessee's own funds when the assessee has no transactions with these entities and the assessee has received Rs. 1,10,00,000/- as against Rs. 22,00,000/- reflected in layer 9. How this Rs. 22,00,000/- becomes Rs. 1,10,00,000/- is not explained. There can be no probability that assessee has provided funds to all the entities separately into their bank accounts and then finally got it into his*

bank account when there is no nexus established.

4.) *Similarly, the AR states, that in all other fund flows same inconsistencies are there. Further, it can also be seen that the amounts mentioned at different layers are different and hence the proposition that these are assessee's own fund routed through these alleged jamakharchi companies has remained unsubstantiated and based only on suspicion and cannot be relied upon.*

5.) *At page 163, 3rd instance of layering of funds are mentioned. On perusal of the same, it is noticed that at layer 9 various amounts are mentioned along with Bank name and number, but the name of Account holder is missing. The amounts mentioned at layer 9 do not tally with amounts mentioned at any in between layers. Surprisingly at layer 5 name of assessee appears. Thus going by the allegation of AO also it cannot be said that assessee has used its own account for layering of funds already available and accounted with it.*

6.) *Similar observation is made on the 6th instance of layering mentioned at page 166 wherein it can be seen that at layer 16 name of assessee appears hence it is beyond comprehension that assessee used his own disclosed funds to bring it back as share capital through layering of funds with help of jamakharchi companies.*

7.) *Similar observation is made on the 10th instance of layering mentioned at page 171 wherein it can be seen that at layer 16 name of assessee appears hence it is beyond comprehension that assessee used his own disclosed funds to bring it back as share capital through layering of funds through the help of jamakharchi companies.*

8.) *Similar observation is made on the 12th instance of layering mentioned at page 175 wherein it can be seen that at layer 16 name of assessee appears hence it is beyond comprehension that assessee used his own disclosed funds to bring it back as share capital through layering of funds through the help of jamakharchi companies.*

9.) *In the 13th instance, it can be seen that the entities are mostly active companies even today making complete statutory compliances with Government authorities thus the allegation is not sustainable in law.*

10.) *In 14th instance also the share applicant is assessed to tax and the investments has been accepted as genuine in its hand. Therefore, it cannot be alleged that share capital is raised through accommodation entries.*

On examining this matter, I find that in the entire fund trail there has been no introduction of cash at any point that has been brought on record that could have been said to be, in some way, connected to the appellant's unaccounted money.

instances of the appellants name itself is appearing in between the fund trails at some layer or the other. There are instance of moneys suddenly growing manifold while moving along a fund trail, with no explanation being offered by the AO, whose onus it is to demonstrate that there were circumstances within this fund trail when it could have been asserted that the appellant could have introduced its own unaccounted money so it could be brought back to itself after passing through several layers. I have also examined the other instances of discrepancies pointed out by the appellant in the said find trail. I have not found any form of elaboration from the AO, who undisputedly had been in possession of the said fund trail from the beginning of assessment proceedings of these discrepancies despite the opportunity to do so having been afforded to the AO during assessment as well as during the two remand proceedings. My predecessor in office had, in fact, specifically asked the AO, during first remand proceedings, to elaborate on the fund trail and point out where cash had been introduced. No cohesive explanation has admittedly ben provided or even attempted in remand, in response to my predecessor's queries, to form a tangible link between the fund trails and the proposition that it was the appellant's own money that was being routed back to him thorough several layers. There is also no mention of introduction of cash. It must be kept in mind that this fund trail is evidence sought to be adduced by the AO and therefore the onus for establishing its bona fides lies squarely upon him. The records before me do not indicate any endeavour in that direction. The AO has, at no point of time, tried to conduct enquiries to validate or rationalise these fund trails in order to establish a nexus between the impugned transactions and these fund trails. In the absence of the establishing of this nexus it is difficult to see how this can be relied upon to reject all the other evidence produced by the appellant and to make huge additions based on this. Even the remand report which admits to the examination of the directors of the appellant as well as share applicant companies, is singularly silent upon this issue and nowhere brings on record any adverse results found by the AO with regard to this fund trail, when the directors were examined. Without bringing on record anything adverse, it would not be lawful to cast aside all the other evidence admittedly before the AO and to make large additions. This, in my opinion, is not a valid and lawful procedure for assessment. In these circumstances it cannot be held that the appellant did not discharge the onus cast upon him u/s 68 of the Act.

Per contra, I find that there is no evidence on record to show that the identities of the share applicants are doubted by the AO and / or that anything has been brought on record by him to show that the introduction of share capital by them was not genuine and / or the source of investment was not fully explained by the appellant to the satisfaction of the AO. Once the appellant has duly discharged the onus cast upon him in this context, it was incumbent upon the AO to bring evidence and/or reasoning on record to show that the explanations offered by the appellant were not satisfactory and could not be accepted by a prudent reasonable person. A close perusal of observations and findings recorded in the assessment order as well as in the remand report does not reveal that documents filed by the appellant or investor companies, to establish identity, creditworthiness of share subscribers as well as genuineness of transactions have either been proved to be bogus or false or otherwise shown to be deficient by the AO. It is observed that during assessment, the AO based his premise, that the impugned transactions were bogus, upon only two facts: the first was that the director of the appellant company, who was summoned, did not make a personal appearance. This objection, it has already been noted earlier in this order, has been duly addressed during the remand stage when not only the director of the appellant company but also the directors of the investor companies made personal appearances and depositions before the AO. At this stage the directors of the share applicant companies were examined with reference to the documentary evidences furnished by the appellant as well as by taking into consideration the documents submitted by the directors of the investing companies. Based upon these investigations and enquiries the AO has duly accepted the share capital amount received from the share applicants as being genuine, but has treated only the share premium amount as being unjustified. This latter fact brings us to the second objection of the AO.

The second objection of the AO during assessment has been reiterated by him in remand. This is that the financials of the investing companies did not show that they were capable of paying such high amounts in premiums. What this implies is that while the AO accepts in remand that the investing companies could be considered creditworthy if only the payment of share capital was the question, they were not creditworthy enough for the payment of the premiums, since these amounts were very large. This question has also been discussed at length earlier in this order, and it is found that the creditworthiness of the share applicant companies had to be gauged on the basis of their net worths and the associated money investing capacity and not on the basis only of their net profits. It was therefore

found that the said companies possessed the necessary creditworthiness. Therefore, it is difficult to see how this addition could have been made u/s 68 of the Act.

Coming to another aspect of this matter, which, even though not explicitly raised by the AO, is pertinent in cases like the present one. This pertains to the question whether, since the said amount of share premium could not be added u/s 68, it could have been added u/s 56(2) of the Act; since section 56(2) (viib) envisages a situation where a company receives consideration for issue of shares which is in excess of the fair market value of the shares, then such consideration can be added to his income under this clause as income from other sources. The appellant, in this connection, has explained that although the justification for premium was not a requirement of law during the relevant assessment year but even then the share premium has been justified by the appellant with reference to the explanation filed by it with reference to relevant facts and figures. It has been explained that this premium was paid on account of the anticipated future prospects of the appellant company and the fact that it was felt by the investing companies' Boards that it would be prudent to invest in the appellant company. It has been explained that the appellant company was incorporated on 22.03.1995 with the paid up capital of Rs. 76,25,000/-. This amount of Rs. 76,25,000/- was subscribed by the directors of the company as promoters. In the impugned AY, the appellant was engaged in the business of Investment and Finance. In the financial year 2010-11, the appellant company being a Non-Banking Finance Company was engaged in the business of Investment and Finance to various corporate entities and also dealing in equity shares. It is evident from its Balance Sheet and Profit & Loss Account of the financial year 2010-11 that it was dealing in equity shares. For the financial year 2010-11 it had turnover from sale of shares amounting to Rs. 90,01,687/- and during the Financial Year 2009-10 the turnover was Rs. 72,63,821/-. It was also carrying inventories in the form of equity shares amounting to Rs. 33,03,16,000/- as on 31.03.2011 and stock-in-trade amounting to Rs. 90,92,277/- as on 31.03.2010. The growth in the trading in shares of the appellant company was apparent from the fact that in the immediately preceding AY, the turnover had been Rs 72,63,821/-, while in this AY the turnover had shown a growth of 24%. This was a phenomenal reported growth especially in view of the fact that in the immediately preceding financial year ending 31.3.2009, there was virtually no turnover from sales of shares for the appellant company. It transpires that the appellant company was also carrying impressive inventories of quoted equity shares for a company in such nascent stages of its operations. It had inventories of Rs. 33,03,16,000/- as on 31.3.2011. The appellant company was obviously showing good returns and was showing good prospects for its investors. It was also a very fast growing company in terms of profits and therefore the prospects for any investor would be good on a return on investment criterion. The appellant explained that the above discussed performance of the appellant company led to the formation of a goodwill of the appellant

company, and a good reputation in the market. It is in this backdrop that, in order to expand its business of dealing with quoted equity shares, the appellant persuaded the investing companies to invest in the appellant on the basis of good prospects for growth of their money.

The AO, I again find, has not attempted to visit this area despite the fact that all the book results for the impugned and surrounding years were very much present before him. In fact when he himself has stated that such investments as the impugned ones take place on personal one-to-one contacts and persuasions then he should have tried to analyse the implications of these observations by applying them to the existing facts and circumstances. This is singularly absent at any of the stages at which the appellant was being examined by the AO. The remand report, even after examination of directors, has not objected to the above reasoning, which, as discussed above, is based upon the anticipated prospects of the appellant company. Notwithstanding the above discussion, I find that this case relates to assessment year 2012-13 and clause 56(2) (viib) of the Act was introduced in the statute only from AY 2013-14 onwards. Thus, this matter relates to periods before the introduction of section 56(2)(viib) of the Act. I find that the cases of Green Infra Ltd (supra); CIT-v.- Gagandeep Infrastructure (P.) Ltd.(Bom) (supra) and in the case of TrendInfra Developers Pvt Ltd, ITA-2270/KOL/2016 - which is the jurisdictional Tribunal, along with several other decisions also cited supra, the issue of retrospective application of amendments, both, in section 68 - the insertion of the Proviso to that section, as well as in section 56(2) - the insertion of clause viib, have been discussed and adjudicated upon. It has been held by the judicial authorities that since the said amendments were made from 01.04.2013, they would have prospective effect and that they could not be applied to AYs 2012-13 or earlier, since they were not declaratory clarificatory or were for "the removal of doubts" or were expressly held by the Parliament to be applied with retrospective effect. Therefore, the share premiums could not be added u/s 56(2)(viib) of the Act - even though it may fairly be stated that the AO has not tried to take this view either in his assessment order or in the remand report.

In conclusion, I find that the AO has not doubted the identities, and creditworthiness, nor the genuineness of the transactions. of the same set of share subscribers from whom the appellant accepted share capital, but has doubted the payment of high share premium. In my considered view, as per the discussions above, this is not permissible in law. A transaction cannot be partly accepted and partly held to be unexplained based on the results of the same enquiries conducted by the AO in respect of same entities who have not only furnished documentary evidences but also appeared personally before the AO who examined them u/s

131 by recording their statements. This could only have been done if the AO, either in assessment or in remand would have brought on record that while the investing companies had enough financial wherewithal to invest in the share capital, they did not have the capacity to pay the premium. This has not been done by the AO at any stage and is in any case, as discussed above, not borne out by the net worths and investing capacities of the

investing companies. In my considered view, therefore, where the identity, creditworthiness of the shareholders and the genuineness of the transactions, as far as share capital is concerned, have been established within all the dimensions of legal enquiry, it could not be held to be an unexplained or bogus transaction insofar as it relates to the share premium, without bringing on record compelling reasons for doing so. This last has neither been done in assessment or in remand, nor indeed is it discernible from the entire material on record.

Further the AO's reliance upon the decision of Supreme Court in Principal CIT vs. NRA Iron & Steel (P) Ltd reported in 412 ITR 161 is in my opinion misplaced. Even though the addition made towards cash credit was rendered in favour of the revenue in that case, it is noted that the said decision is factually distinguishable as in the appellant's case a majority of the share applicants appeared personally u/s 131 and filed documentary evidences and the AO after conducting independent enquiries has accepted the share capital from the same set of share applicants. The AO has nowhere expressed any dissatisfaction in this procedure. In the instant case, all the share applicants had confirmed their investment with the appellant and as such, there was no basis for the AO to come to any adverse conclusion and accordingly, the entire amount received by the appellant on account of share application as well as share premium monies could not have been regarded as undisclosed income u/s 68 of the Act. The only question that could have been raised and indeed the remand report had raised this solitary issue, that whether the investors had the financial capacity to pay the premiums that had been claimed to have been paid. This question has already been discussed at length in this order and answered in the affirmative - that is, the investors had indeed demonstrated their financial capacity to pay the premiums before the AO. I also find that the AO has been placing reliance upon the case of CIT vs Nipun Builders & Developers Pvt to add weight to his addition. I find that the facts of this decided case were that in the course of the reassessment proceedings, enquiries were sought to be made by the Assessing Officer (AO); summons u/s. 131 were issued to the companies from whom the share capital was stated to be received and they were returned unserved with the remarks "no such company"; the inspector sent to the addresses for verification confirmed this fact. In view of this, the assessee was asked to produce the principal officers of the companies who had subscribed to the shares along with the relevant details. In response, the assessee filed a letter at the "dak" counter of the office of the AO stating that all the notices of the annual general meeting and call notices for shares were being sent to the same addresses of the share subscribers under certificate of posting and they have not come back unserved, implying that the share subscribers did exist at the addresses given to the AO. It was also submitted that the capital was subscribed through account payee cheques with valid share application forms, copies of the memorandum of association and board resolutions. It was pointed out that the registered offices of the companies could be found in the website www.mca.gov.in. and the AO may visit the site for further verification.

These submissions were not accepted by the AO as constituting satisfactory explanation of the nature and source of the monies as required by Section 68 of the Act. He held that the genuineness of the transactions was not proved by the assessee and brought to tax the share application money of `1,47,00,000/- to tax; commission of 2.5% on the amount, which worked to `3,94,500/- was also added on the ground that the assessee would have paid the same to get the accommodation entries of share capital.

The matter ultimately found its way before the Hon'ble Delhi High Court before whom the revenue preferred an appeal. The following substantial question of law is framed:

"Whether the Tribunal was right in law in upholding the order of the CIT(A) deleting the addition made u/s. 68 of the Act on the ground that the assessee has proved the nature and source of the share subscription amounting to `1,47,00,000/- and has established the identity and creditworthiness of the share subscribers and the genuineness of the transactions?"

The revenue contends that the Tribunal failed to appreciate that the assessee could not establish satisfactorily the nature and source of the monies received as share capital nor could it discharge the onus of proving the identity and creditworthiness of the share subscribers and the genuineness of the transactions which are the fundamental requirements of section 68.

The Hon'ble Court made the following observations in this regard: "....

7. We are in agreement with the contention of the revenue. Under Section 68 the onus is upon the assessee to prove the three ingredients, i.e., identity and creditworthiness of the person from whom the monies were taken and the genuineness of the transaction. As to how the onus can be discharged would depend on the facts and circumstances of each case. It is expected of both the sides - the assessee and the Assessing authority - to adopt a reasonable approach. The assessee here is a private limited company. It cannot issue shares in the same manner in which a public limited company does. It has to generally depend on persons known to its directors or shareholders directly or indirectly to buy its shares. Once the monies are received and shares are issued, it is not as if the share-subscribers and the assessee- company lose touch with each other and become incommunicado. Calls due on the shares have to be paid; if dividends are declared, the warrants have to be sent to the shareholders. It is a

continuing relationship, even granting that it may not be of the same degree in which it exists between a debtor and creditor. The share-subscribers in the present case have each invested substantial amounts in the assessee's shares, as the chart at pages 2-3 of the assessment order would show. Most of them, barring two or three, are themselves private limited companies. It cannot therefore be contended, as was contended before us on behalf of the assessee, that if the summons issued u/s. 131 to the subscribing companies at the addresses furnished by the assessee returned unserved, the AO is duty-bound to enforce their attendance with all the powers vested in him. The unreasonableness of such a general proposition is writ large in the face of the contention. The assessee-company received the share monies; it even says that the communications sent by it at the addresses did not return unserved, yet when the AO requested it - that too only after trying to serve the summons unsuccessfully - to produce the principal officer of the subscribing companies, the assessee developed cold feet and said it cannot help if those companies did not appear and that it was for the assessing officer to enforce their attendance. It needs to be remembered that the AO did not merely stop with issuing summons; he followed it up with a visit by the inspector who confirmed that no such companies functioned from the addresses furnished by the assessee. Let us see the attitude of the assessee towards discharging its onus in such circumstances. It says that the AO may get the addresses from the ROC's website. We do not think that an assessee can take such an unreasonable attitude towards his onus u/s. 68, little realising that when the finding is that the subscribing companies have not been found existing at the addresses given by the assessee, it is open to the AO to even hold that the identity of the share-subscribers has not been proved, let alone their creditworthiness and the genuineness of the transactions. It was not open to the assessee, given the facts of this case, to direct the AO to go to the website of the company law department/ROC and search for the addresses of the share-subscribers and then communicate with them for proof of the genuineness of the share subscription. That is the onus of the assessee, not of the AO."

It is clear from the above pronouncement that an appellant is duty bound to explain the identity, creditworthiness of the share applicants and the genuineness of the transaction. In the circumstances of investments in private limited companies made through private endeavours and personal basis, if any doubt is raised during investigation (as in the decided case, where notices could not even be served), then it is obligatory for the appearance of the share investors to the satisfaction of the AO. In the instant case, there was

admittedly satisfactory compliance by the directors of the appellant as well as directors of investor companies to notices u/s 131 of the Act. In addition, the AO himself found positive results to his field enquiries conducted through the departmental inspector. The source of source was also given to the before the AO. There are was no objection from the AO to any of the above. None of these conditions had been met in the case of CIT vs Nipun Builders & Developers Pvt. (Supra). Therefore the reliance of the AO upon the above citation is misplaced. If anything the said judgement goes in favour of the appellant in the present facts and circumstances.

Similarly, the other citations relied upon by the AO also do not help him since the facts and circumstances in these cases are materially different from the instant case. The AO has relied upon CIT Vs NR Portfolio of the Hon'ble Delhi High Court to buttress his claim that if an assessee does not produce evidence or tries to avoid appearance before the assessing officer then an adverse view would be taken against such an assessee. But this is not true in the present case where all compliances were made along with personal appearances etc.

In view of the above discussions and in the present facts and circumstances of this case, I cannot lend legal support to the impugned additions made by invoking the provisions of sec. 68 by the AO in the facts and circumstances of this case and accordingly, direct that these additions be deleted. Thus, this ground of appeal is allowed."

13. After going through these detailed finding and examining the same in the light of the documents filed before us, we notice that all the 14 shareholder are body corporates and annual returns have been regularly filed on the Ministry of Corporate Affairs portal. All the share applicant companies are regularly assessed to tax and even passed through scrutiny proceedings also. From perusal of the financial statements of the share subscribing companies, we notice that they had sufficient share capital and accumulated Reserves and surplus which are sufficient enough to cover up the share application money invested by them in the equity of the assessee company.

In the above given facts and circumstances, we are inclined to hold that the assessee has successfully explained the nature and source of alleged sum and even the source of source has been proved by providing details of the funds received from other sources through banking channel which has subsequently been used to make investment in the equity capital of the assessee company.

13.1. The ld. D/R has merely given a general statement that these companies are paper/shell companies but no concrete evidence is filed on record which could prove the substance in such submissions failing which the issue in hand can be decided only on the basis of documentary evidence available on record and which clearly states that the assessee has explained the nature and source of the alleged sum thereby proving the identity and creditworthiness of the share subscribers and genuineness of the transactions. So far as the reliance of the Ld. DR on the decision of the Hon'ble Supreme Court in the case of "*PCIT v/s NRA Iron & Steel (P) Ltd.*" (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "*the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.*"

Thereafter the Hon'ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under :

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are :

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

13.2. The Hon'ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound conduct to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share

subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra)*, impugned additions are not warranted in this case.

14(a). Our view is further supported by the following judicial pronouncements:-

a) The Hon'ble Apex Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd. (supra)*, under identical circumstances, has held as follows:-

"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise."

{emphasis ours}

b) The ITAT Kolkata Bench in *ITO vs Cygnus Developers (I) P Ltd* in ITA No. 282/Kol/2012 dated 2.3.2016, held as follows:

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 *Shree Shyam Trexim Pvt. Ltd.*, was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly *Navalco*

Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

c) Further the co-ordinate bench in the case of *ITO vs. Forceful Estates Pvt. Ltd.* in ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023, and for necessary reference, the facts and findings of the Tribunal read as follows:-

"5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

"5. Conclusion:

Ground No.1 & 2

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.

It is observed from the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for Lne AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that the respective Assessing Officers have all verified the accounts and therefore any amount that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not.

When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act.

In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed.

Ground no. 3 is general in nature, which does not require adjudication.

6. In the result, the appeal of the assessee is treated as allowed."

6. A perusal of the above concluding part of the order of the CIT(A) reveals that the ld. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled law, once the addition has been made in the hands of the share subscribers, the investments

by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of "Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata" I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pot. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

“We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding.”

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed.”

14(b). Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal) has held as follows:

“Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are “the assessee offers no explanation”. This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it.

Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

15. Respectfully following the above decisions, which in our view are squarely applicable on the facts of the instant case, we find that the assessee has successfully discharged the burden of proof primarily casted upon it to explain the identity and creditworthiness of all the fourteen share applicants and genuineness of the share transactions and correctness of such details has not been disputed by the Revenue Authorities except making general observations. Therefore, considering the evidences placed by Ld. A/R to explain the nature and source of the alleged share application money, we find no reason to interfere with the findings of the Id. CIT(A) deleting the addition of Rs.33,19,33,000/- made u/s 68 of the Act.

16. Ground No. 2 & 3, are against the deletion of addition of Rs.32,00,000/- (Rs. 29,00,000/- (being bogus income of the assessee + 3,00,000/- being unexplained cash credit) by the Id. CIT(A).

17. The Id. CIT(A) while adjudicating the issue and granting relief to the assessee, has held as under:-

“Ground 4

This ground reads,

“4. That on the facts and in the circumstances of the case, the action of Ld. A.O. to treat the receipt of Rs. 32,00,000/- (3,00,000 + 29,00,000) through banking channel as undisclosed income is arbitrary and bad in law.”

Facts in relation to these grounds are:

1. *The AO noted that the appellant had, during the year, received Rs 3,00,000/- from one Tuhin Bannerjee, whose details have been mentioned by then AO in his order. This Tuhin Bannerjee is the sole proprietor of Shyam Udyog whose account. Number , PAN has also been mentioned by the AO in his order. The AO has further noted certain interesting and suspicious aspects of these transactions, viz.,*
 1. *That the bank accounts of the concern from where the monies have come were part of a larger set of bank transactions in which cash deposits were found while following the fund trails and analysing the entries of the bank accounts.*
 2. *That the concern from where monies had been received were not traceable, nor was there any response to notices. Notices sent by post were not served, nor could the notice server serve the notices upon this or other associated concerns. Even the departmental inspector was unable to trace the parties.*
 3. *That the said accounts from where these transactions were undertaken, had been opened for a very short period and thereafter were closed down.*
 4. *That even though the person from whom the moneys were received as well as the other entities involved in this churning of money, professed to be carrying on some form of business or the other, there was no trace of these parties either before or after the impugned transactions.*

The appellant did not offer any form of an explanation before the AO resulting in the making of addition in the hands of the appellant as his own unaccounted income.

Now, in appeal, the appellant has explained that the said amount was received by the appellant as consideration against the sale of investments already with the appellant, in the shares of one Torrent Commercial Pvt Ltd. He has stated that the AO completely misunderstood the transaction and even the person from whom this amount was received. He has stated that this amount had not been

received from any Tuhin Bannerjee at all, but from one M/S Surya Commotrade. With regard to the Rs. 3,00,000/- received from Surya Commotrade Pvt. Ltd., 32, Ezra Street, Kolkata- 700001 it is submitted that the appellant had sold shares of Torrent Commercial Pvt. Ltd. held as investments to Surya Commotrade Pvt. Ltd. These investments were made in earlier years and were accepted as genuine investments. He has stated that in fact the appellant had applied for 25000 shares of Torrent Commercial Pvt. Ltd. and it was allotted all the shares as per allotment advice dated 19.08.2010. These were not doubted as ingenuine or bogus. The sale bills along with Bank statement etc were furnished before the AO in the course of assessment proceedings. However, the AO ignored this fact and simply relying upon the fact that the notice issued to Surya Commotrade Pvt. Ltd. could not be served by the Inspector made the impugned addition. The appellant stated that although the AO has admitted that Surya Commotrade Pvt. Ltd. has filed return of income for the relevant assessment year but he still did not conduct independent enquiries within the Income Tax Department and concluded that sum of Rs. 3,00,000/- received by the appellant from Surya Commotrade Pvt. Ltd. is unexplained in nature.

ii. As regards the impugned addition of Rs 29 lakh, once more, the AO noted that the appellant had received the said amounts from an entity that was part of a bunch of entities that had merely been rotating moneys around, with there being cash deposits in such a fashion that it was the appellant's own money that had come back to him as a beneficiary of this rotation of funds. The AO has noted that the entire operation of this rotation of funds was under very suspicious circumstances, with the bank account where these transactions were reflected being opened and closed within a very short time period. The entire set of transactions discussed by the AO has been held to be a sham set of transactions. The AO has therefore held that there was no doubt that the appellant had used paper /shell companies with the help of their respective accommodation entry operators for the purpose of routing back his accounted money amounting to Rs 32 lakh (Rs 3 lakh + Rs 29 lakh).

The appellant, during appeal has stated that the AO has completely misread the entire transaction. He has stated that in respect of Rs. 29,00,000/- , the moneys had actually been received from Eureka Suppliers Pvt. Ltd., 32, Ezra Street, Kolkata- 700001. He has said that appellant has sold shares of Torrent Commercial Pvt. Ltd, which had been held as investments, to Eureka Suppliers Pvt. Ltd. These investments were made in earlier years and were accepted as genuine investments. In fact the appellant had applied for 25000 shares of Torrent Commercial Pvt. Ltd. and it was allotted all the shares as per allotment advice dated 19.08.2010. These were not doubted or considered to be not-genuine or bogus. He has stated that the sale bills along with Bank statement etc were furnished before the AO in course of assessment proceedings. However, the AO ignored this fact and simply relying upon the fact that the notice issued to Eureka Suppliers Pvt. Ltd. could not be served by the Inspector,

made the impugned addition. The appellant has pointed out that although the AO has admitted that Eureka Suppliers Pvt. Ltd. has filed return of income for the relevant assessment year but still he did not conduct independent enquiries within the Income Tax Department and concluded that sum of Rs. 29,00,000/- received by the appellant from Eureka Suppliers Pvt. Ltd. was unexplained in nature.

The matter was also sent in remand and duly examined by the AO. In this connection, the AO, in his remand report, has made the following observations:

“In respect of other creditors of Rs. 3,00,000/ and Rs. 29,00,000/- respectively the assessee explained that Rs. 3,00,000/- was received from Surya Commotrade Private Limited and Rs. 29,00,000/- was received from Eureka Suppliers Private Limited on account of liquidation of shares held as investments by the assessee in support of its contention assessee has furnished Bank Statement, Share Invoice containing details of Surya Commotrade Pvt. Ltd. with details of 1500 shares sold and details of Eureka Suppliers Pvt. Ltd. with details of 14500 shares sold. Ledger Copy, Allotment Advice. Share Certificates. Form 2-Return of allotment filed with Registrar of Companies, Form 20B with copy of Annual Return 20B, Annual Return of Torrent Commercial Private Limited to establish that assessee was allotted these shares.

On going through these evidences, it is observed that these were not filed in course of original 147 proceedings. Hence, these are not accepted at this stage.”

I find that the AO has duly confirmed the receipt of all the evidence in support of the above two credit entries in the books of the appellant, viz., that of Rs 3,00,000/- and of Rs 29,00,000/-. I find that the appellant has submitted copies of share invoices containing details of Surya Commotrade Pvt Ltd, with details of 1500 shares and details of Eureka Suppliers Pvt Ltd with details of 14500 shares sold. The AO, in his remand report, has also acknowledged that ledger copies, allotment advice, share certificates, Form-2 Return of Allotment filed with the registrar of companies, Form 20B with copy of annual return 20B, Annual return of Torrent Commercial Pvt Ltd before the AO been submitted before him. These are being admitted as additional evidence that is necessary for a proper adjudication in view of the fact that while the assessment order is silent upon whether these details were produced during assessment proceedings or not, the appellant has insisted that these were produced at that time. In any case, in order to provide substantive justice in this matter, and to determine the actual income in this respect, this evidence is being treated as additional evidence and is being admitted for the above reasons, with the admitted position that the AO has also been given an opportunity, in order to provide natural justice to him, to examine this evidence.

I find that the AO has not raised any questions about the various documents produced before him. He has not doubted the appellant's contentions that these investments were made in the earlier year and that they were accepted as such and genuine. The facts, as they exist in this case are squarely covered by a plethora of judgements which underline the proposition that if the investment in shares were made in an earlier year, for which documents in support were duly furnished, then merely because a notice u/s 131 could not be served upon the person who was claimed to have purchased the said shares, the sale of such shares could not be doubted and added back as the appellant's own income u/s 68 of the Act.

In Brij Resources Pvt Ltd, New Delhi vs Ito Ward - 5(2), New Delhi, ITA No.8835/Del/2019, Assessment Year: 2010-11 in an order pronounced on 7th July, 2021, the Hon'ble Delhi Tribunal has, under very similar facts, held the following,

*"13. So far as the merit of the case is concerned, it is a fact that the assessee, during the impugned assessment year, has sold the shares of M/s Shree Govind Devji Biogenic Pvt. Ltd. to M/s Sunny Cast and Forge Pvt. Ltd. for an amount of ITA No.8835/Del/2019 Rs.10 lakhs. The assessee has purchased the shares of Shree Govind Devji Biogenic Pvt. Ltd. during the F.Y. 2008-09, relevant to A.Y. 2009-10 and were shown in the balance sheet of the assessee company under the head 'Investments' which is discernable from page 17 of the paper book. I find, the assessee, during the year, has sold the investment and has received the amount by cheque and, therefore, **in my opinion, provisions of section 68 of the Act cannot be applied to realization of investment which was duly reflected in the balance sheet of the assessee company in the preceding assessment year. In my opinion, if the sale of share is bogus, then the purchase of the same shares is also bogus. If the case of the Revenue is that assessee's own money has come back to the assessee in shape of accommodation entry, then, the money of the assessee had gone in the preceding year in shape of purchase of the shares which were sold during the year. No action appears to have been taken in the preceding assessment year treating the purchase of the shares as bogus. Therefore, once such bogus purchase is sold then the entire amount, in my opinion, cannot be added u/s 68 of the IT Act, 1961. I, therefore, set aside the order of the CIT(A) on this issue and direct the AO to delete the addition.**" [Emphasis supplied]*

A similar view was taken by the Hon'ble Gujarat High Court in PCIT Vs Ramniwas Ramjiwan Kasat (2017) 410 ITR 540 (Guj), wherein it was held by the Hon'ble Court as under,

"...4. Having heard learned counsel for the Revenue on this issue, we are in agreement with the Tribunal. As facts recorded by the Tribunal would suggest, the shares were purchased by the assessee during the period relevant to the Assessment Year 2005-2006. The

return for the said year was scrutinized by the Revenue. The Assessing Officer did not disturb the investment. It would therefore later on not be open to the Assessing Officer to make addition with the aid of Section

68 of the Act when such shares were sold on the premise that the purchasers themselves were bogus. No question of law therefore arise on this issue."

In the case of ACIT Vs Jotindra Steel & Tubes Ltd [2022] 139 taxmann.com 157 (Delhi Trib), the Honb'le Tribunal has once again endorsed an identical view by making the following remarks,

*" 20. Before us, the ld. DR could not point out any factual error in the findings of the CIT(A). There is no dispute that the purchase of shares of the aforesaid companies has been accepted by the Assessing Officer. **Assuming, yet not accepting that the sale consideration is bogus, then the question which has to be answered by the Assessing Officer is that where did the purchase money go since he has accepted the purchase of shares of two companies?** Considering the facts of the case in hand in totality, we do not find any error in the findings of the CIT(A). This ground is also dismissed. [Emphasis supplied]*

16. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of Maurya Udyog Ltd., therefore, respectfully following the decision of the Tribunal in the case of Maurya Udyog Ltd., we uphold the order of the CIT(A) and the ground raised by the Revenue on this issue is dismissed."

The Hon'ble Delhi Tribunal, once again, in the case of ACIT Vs Navneet Kumar Surekha [2018] 100 taxman.com 439 (Delhi Trib), has endorsed the above proposition of law, that once purchases of the said shares have been accepted by the Department, and admittedly, the AO has not challenged the books of account of the appellant, then it is difficult to see how the sales could be challenged as being bogus and how could it be held that the consideration received upon sale of such shares could be considered to be the appellant's own money rotated back, through various layers, to him.

The facts of the afore-cited case laws are identical to those in the instant case. I find that once it is uncontroverted that the appellant had applied for 25000 shares of Torrent Commercial Pvt. Ltd. and it was allotted all the shares as per allotment advice dated 19.08.2010, in the earlier year, and that this purchase had not been challenged, nor even investigated at any later date by the AO, then it was difficult to see how the sale of the very same shares could be treated as bogus. The books have been duly accepted by the AO without any questions in this regard. The AO has admittedly not uttered even a whisper about the genuineness of the purchases either earlier, or even while discussing the sales. This is notwithstanding and without prejudice to the fact that the appellant has produced all the relevant details related to the sale as already discussed earlier before the AO in remand, without eliciting any adverse comments on the substance of

the transaction from him. Therefore, respectfully relying upon the above discussed judicial authorities, and applying the ratios from the aforesaid decisions to the present case, I cannot endorse the view taken by the AO and the same is deleted."

18. The Id. D/R could not controvert this factual finding given by the Id. CIT(A) by placing any material. Hence, we do not find any reason to interfere with the detailed finding of facts by the Id. CIT(A) and uphold the same. Accordingly, Ground Nos. 2 & 3 raised by the revenue are dismissed.

19. Ground No. 4 raised by the revenue is against the deletion of addition made towards unexplained expenditure in the form of commission of Rs. 16,75,665/-, allegedly paid to brokers for arranging the accommodation entries. The Id. CIT(A) deleted the said addition on the ground that the additions made u/s 68 of the Act has been deleted. While adjudicating the Ground Nos. 1 to 3 raised by the revenue we have dealt with the facts of the case and have confirmed the findings of the Id. CIT(A) deleting the additions made u/s 68 of the Act. Since we have held that the cash credit received by the assessee were genuine then there remains no basis for making addition for unexplained expenditure towards arranging the alleged credits. The findings of the Id. CIT(A) is confirmed and Ground No. 4 raised by the revenue is dismissed.

20. Ground No. 5 is general in nature.

21. In the result, appeal of the revenue is dismissed.

Order pronounced in the Court on 14th December, 2023 at Kolkata.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 14/12/2023

SC Sp.P.

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
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Assistant Registrar
आयकर अपीलीय अधिकरण
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