

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 624/Kol/2023
Assessment Year: 2011-12

M/s Delighted Holdings (P) Ltd. (PAN: AABCE 0588 P)	Vs.	DCIT, Circle-8(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	13.12.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.01.2024
For the Appellant/ निर्धारिती की ओर से	Shri Abhishek Bansal, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT(Sr. D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 23.05.2023 for the AY 2011-12.

2. The issues raised in ground no. 1 and 2 are general in nature and therefore needs no adjudication.

3. The common issues raised in ground no. 3 and 4 are against the order of Ld. CIT(A) upholding the assessment order which has been passed by reopening the

assessment u/s 147 of the Act on the basis of information received without independent application of mind by the AO.

4. Facts in brief are that the assessee filed return of income on 13.09.2011 declaring total income of Rs. 11,10,571/- which was processed u/s 143(1) of the Act on 07.01.2012. The AO received information from the office of ITO(Inv), Unit-I & AIU, Kolkata that the cash was deposited in a number of dubious accounts operated by accommodation entry providers and used to provide accommodation entries to various beneficiaries and the assessee was beneficiary of such accommodation entries. Accordingly the case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 22.03.2018 after obtaining approval from the competent authority. The assessee complied with the said notice by filing return of income on 31.03.2018 showing total income of Rs. 11,10,571/-. Thereafter the AO issued statutory notice to the assessee which was duly served. During the assessment proceedings, the AO called upon the assessee to explain the amounts received to the tune of Rs. 3,80,00,000/- from the following parties:

Name of Entities from Which fund has been Transferred	A/c No., Bank & Branch from which Fund transferred	Name of Beneficiaries	F.Y. 2010-11
M/s Jagmangal Sales Pvt. Ltd.	A/c.No. 017010200024718 Axis Bank Branch H.B.Sarani	M/s Delighted Holdings Pvt. Ltd.	Rs. 1,00,00,000/-
M/s Greenland Tradecom (P) Ltd.	A/c No. 910020034728293	M/s Delighted Holdings Pvt. Ltd.	Rs. 1,80,00,000/-
M/s Rosevally Tradelink Pvt Ltd			Rs. 50,00,000/-
M/s Jagmangal Sales Pvt. Ltd.	A/cNo. 017010200024718 Axis Bank Branch H.B.Sarani	M/s Delighted Holdings Pvt. Ltd.	Rs. 50,00,000/-
		Total	Rs. 3,80,00,000/-

4.1. Thereafter the AO supplied the copy of reasons recorded to the assessee and called upon to explain the transactions mentioned therein. The assessee filed the requisite evidences before the AO qua the said receipt of Rs. 3,80,00,000/- from the above three parties namely:

M/s Greenland Tradecom Pvt. Ltd.	Rs. 1,15,00,000/-
M/s Rosevalley Tradelink Pvt. Ltd.	Rs. 50,00,000/-
M/s Jagmangal Sales Pvt. Ltd.	Rs. 1,00,00,000/-

4.2. It was submitted before the AO the said amount was received as sale consideration from sale of unquoted equity shares of private limited companies which were purchased in the earlier year and have been duly shown in the investments under the head current assets in the balance sheet of the assessee company. The assessee also produced the bills, vouchers and bank statement before the AO. However the AO by relying on the Investigation Report, finally added the sum of Rs. 2,65,00,000/- to the income of the assessee u/s 68 of the Act.

5. In the appellate proceedings the Ld. CIT(A) dismissed the appeal of the assessee on legal issue by observing and holding as under:

“7. I have perused the submission of the and the case laws relied upon and also the assessment order where the Ld AO has dealt with the case. From the assessment order it is observed that the Ld AO received information from the office of ITO (Inv), Unit-1 & AJU, Kolkata, that cash was deposited in a number of dubious accounts operated by accommodation entry providers. These accounts were utilized to provide entries of accommodation of various beneficiaries. In the instant case, it was reported that proprietary account M/s Ma Durga Creation and M/s Om Creation, held in the name of Sri Bal Krishna Joshi as proprietor was utilized to divert funds through a maze of companies and the assessee company also happens to be one of the beneficiaries. The company was in receipts of funds from M/s. Jagmangal Sales Pvt Ltd, M/s Rosevalley Tradelink Pvt Ltd and other entities which were suspect. Information was also received from DIT (Inv.), Unit-8(3), Mumbai in which it is mentioned that the assessee had purchased- & sold a scrip of M/s. Nivyah Infrastructure and Telecom Services Ltd: (formerly M/s. SV Electricals) and the trade value was Rs. 54,50,000/-. The said scrip is a Penny Stock listed on BSE having Scrip Code 517534. Another information on the same lines was received from the office of ADIT(Inv). Unit- II, Nasik regarding trading of shares of M/s Bedmutha Industries regarding Long Term Capital Gain earned in a dubious manner,

8. The details of information have' been discussed -in the body of the assessment order. Keeping in view the above facts necessary approvals for reopening the case were taken from PCIT-3, Kolkata [the competent authority] as per Act. Notice u/s 148 of the I. T. Act, 1961 was issued to the assessee on 22.03.2018. Assessee raised objection vide letter dated 21.05.2018 regarding initiation of proceedings u/s 147 of the Act which was rejected and disposed off 11.09.2018 prior to passing of the assessment order.

9. Thus, from the above facts it is observed that the Ld AO had necessary information in his possession to for forming his satisfaction and believe for re-opening u/s 147 and

accordingly issued notice u/s 148 as per Act after observing all legal procedure. Case laws relied upon by the assessee do not apply in the present case on fact and in law and hence distinguishable. Thus, I find no infirmity in the action of the Ld . AO for initiating action u/s 147 of the Act and therefore, rejects the grounds taken by the appellant on this issue. Ground No. 1 to 6 are thus dismissed.”

6. The Ld. A.R vehemently submitted before us that the assessment has been reopened by the AO on the basis of information received from ITO (Inv) Unit-I & AIU, Kolkata without any independent application of mind. The Ld. A.R submitted that amount mentioned by the AO were not received by the assessee. The Ld. A.R submitted that the AO has stated that the assessee has received Rs. 3,80,00,000/- whereas finally made addition of Rs. 2,65,00,000/- as two of the three cases the amount mentioned were wrong in the reasons recorded which have not been verified by the AO before re-opening the case of the assessee. Therefore the AO has reopened the assessment on the basis of the borrowed satisfaction and without complying with the necessary pre-requisites and principal conditions to be fulfilled for reopening the assessment. In defense of his arguments, the Ld. A.R relied on the decision of Hon'ble High Court of Bombay in the case of Hindusthan Lever Ltd. vs. R. B Wadkar in [2004] 137 Taxman 479 (Bom) and the decision of Co-ordinate Bench of Kolkata in the case of DCIT vs. M/s Pacharia Exports Pvt. Ltd. in ITA No. 558/ Kol/2020 for AY 2011-12 dated 7.3.2022.

7. The Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that at the stage of reopening of assessment, it is sufficient if the reopening is made based on the information received from any quarter after recording reasons to be believe u/s 148(2) of the Act. The Ld. D.R stated that it is only during the course of scrutiny of evidences and examination thereof , the amounts involved or transactions are verified and therefore the arguments of the assessee that reopening is invalidly made are devoid of merit .

8. After hearing the rival contentions and perusing the material on record, we find that the reopening of assessment has been made on the basis of reasons recorded a copy of which is filed at page 63 an 64 of PB. The reasons state that the assessee is

beneficiary of accommodation entries of Rs. 1,50,00,000/- from M/s Jagmangal Sales Pvt. Ltd., Rs. 50,00,000/- from M/s Rosevalley Tradelink Pvt. Ltd. and Rs. 1,80,00,000/- from M/s Green Land Tradecom Pvt. Ltd. and came to the conclusion that income to the tune of Rs. 3,80,00,000/- is unaccounted income and he has reasons to believe that the said amount has escaped assessment and accordingly reopening was made. Whereas as a matter of fact the assessee has only received Rs. 1,15,00,000/- from Green Land Tradecom pvt. LTd., Rs. 50,00,000/- from M/s Rosevalley Tradelink pvt. Ltd. and Rs. 1,00,00,000/- from M/s Jagmangal Sales Pvt. Ltd. aggregated to Rs. 2,65,00,000/-. We note that the AO has not verified the information received from ITO(Inv), Unit-I & AIU, Kolkata. It is abundantly clear that there is total non-application of mind by AO to the information received and it is a case of borrowed satisfaction as the AO has reopened the assessment on the basis of borrowed satisfaction. The AO has to record his own objective satisfaction in the reasons and then reopen the assessment. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case of the Hindusthan Lever Ltd. (supra)The reasons recorded has to be read as they are and cannot be supplemented. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) as the reopening has been made without satisfying the condition as laid down in the proviso to Section 147 of the Act . The assessee's case is supported by the decision of Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. (supra) wherein the Hon'ble High Court has held as under:

“20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the

reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.”

The case of assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata in the case of M/s Pacharia Exports Pvt. Ltd. (supra) wherein the Co-ordinate Bench has held as under:

“9. We have heard rival contentions and perused the material on record carefully. The undisputed facts are that the case of the assessee was reopened u/s 147 of the Act after a period of four years from the end of the assessment year. The proviso to section 147 of the Act which mandates that the reopening beyond four years from the end of relevant assessment year can only be made if under assessment or escapement is by reasons of the failure of the assessee to disclose any material facts. Thus reopening of assessment after expiry of four years can only be made if the condition as laid down in the proviso to Section 147 of the Act are satisfied that is failure on the part of the assessee to truly and fully disclose any material fact or information which ultimately leads to escapement of income. In the present case before us, the assessment was framed u/s 143(3) of the Act vide order dated 24.02.2014. We note that during the course of assessment proceeding, the issue of raising loans has been examined at length by the AO by specifically calling upon the assessee to provide/furnish the details of the loans and advances raised during the year which was duly complied with by the assessee by filing all the details/evidences and the AO, only after examining them, accepted the plea of the assessee as regards the loans raised and accordingly framed the assessment u/s 143(3) of the Act accepting all those transactions. Besides the assessee has made full disclosure of these transactions in the books of account which have been examined at length by the AO during the course of original assessment proceeding. Therefore, the reopening of assessment u/s 147 in the present case, without any reference to failure on the part of the assessee to disclose all facts regarding the said loans in the return of income books of account and also during the assessment proceeding, is not justified and is in violation to proviso to section 147 of the Act. The case of the assessee finds support from the decision of New Delhi Television Ltd. vs DCIT (supra) wherein it has been held that where the assessee has disclosed all material facts qua the issuance of convertible bonds, thus there was no failure on the part of the assessee to disclose material facts and therefore notice issued to the assessee u/s 147 of the Act after a period of 4 years has been quashed. Similarly in the case of CIT vs Multiplex Trading & Industrial (supra), the Hon'ble Delhi High Court has held that since the assessee has disclosed ' all the material facts at the time of making assessment,

initiation of reassessment proceedings after expiry of four years from the end of relevant assessment year on the basis of report of investigation cannot be sustained and has to be set aside. In this case, the assessment was completed u/s 143(3) and thereafter the AO received the information from Investigation Wing that the assessee has received bogus loans in the form of accommodation entries and on that basis the case of the assessee was reopened. In the case of Rajiv raj Ranbir singh Choudhary vs ACIT (supra), the Hon'ble Gujarat High Court as laid down the same ratio. In this case the assessment was framed u/s 143(3) of the Act and the AO accepted the loans taken by the assessee from the family members. The assessment was reopened after a period of more than 4 years on the ground that sources of loan funds were not explained. Considering the facts of the present case before us in the light of the aforesaid decisions, we are inclined to hold that the reopening of assessment is invalid and is accordingly quashed. The cross objection of the assessee is allowed."

Since the facts of the case are quite similar to the facts of the decision as discussed above, we are, therefore, inclined to hold that AO has no jurisdiction to re-open the assessment and accordingly quash reassessment proceedings as well as consequent order. Ground no. 1 raised by the assessee is allowed on legal issue.

9. Even on merit the appeal of the assessee has very strong case in its favour. The assessee has received money from these three parties for sale of equity shares of private limited companies which were purchased in the earlier assessment years and were duly shown in page 28 under the head inventories in the Audited Balance Sheet. We note that the shares purchased by the assessee are appearing the stocks/inventories shown by the assessee in the balance sheet as on 31.03.2010 which have been accepted by the department and has not been doubted in the year of purchases. In the present case also, the assessee has filed all the information qua the buyers of these shares. However the AO has only relied on the report of ITO(Inv) and held these transactions to be bogus and sham transactions without giving any independent finding on the evidence filed by the assessee and also disregarded the fact that these were the investments/inventories which were purchased in the preceding financial year and has not been doubted by the department. In defense of arguments the Ld. A.R submitted that it is not open to the revenue to disbelieve the investments / inventories when these were sold in the subsequent year whereas these were accepted in the year of purchase and duly shown in the books of account of the assessee. The Ld. A.R in defense of argument relied on the following decisions:

- a) Adbhut Vinimay Pvt. Ltd. vs ITO (ITA No. 2404/Kol/2017) dated 24.10.2018
- b) Sarowar Goods Pvt. Ltd. vs. ITO (ITA No. 617/Kol/2020) dated 10.05.2022
- c) ITO vs. MRG Securities Pvt. Ltd. (ITA No. 64/kol/2021) dated 18.01.2023
- d) ITO vs Gemini Commerce Pvt. Ltd. (ITA No. 14/Kol/2021) dated 15.03.2023

10. The Ld. D.R on the other hand relied on the order of authorities below by submitting that these are the accommodation entries as is revealed by the searches and surveys conducted by the investigation wing of the revenue on the hawala operators which revealed the cash deposited into the accounts of the Hawala operators and further issuing cheques for accommodation entries in the name of beneficiary. Since the assessee is a beneficiary of said transactions, the Ld. CIT(A) has rightly confirmed the addition thereby upholding the order of AO.

11. After hearing the rival contentions and perusing the material on record, we find that in this case undisputedly the assessee has sold equity shares of private limited companies which were purchased in the earlier year and duly shown in the books of account on maintained and annual audited accounts for the year ended on 31.03.2010. We have examined the list of investments /inventories and find that these stocks were duly stated in the said list. During the year the assessee has sold a part of the investments and received sale consideration from these three parties. In our opinion, when the investment have been accepted in the preceding year i.e. in the year of purchase, then as to how the same can be treated as sham and bogus when these were sold in the current year. Besides the assessee has filed all the evidences before the AO as well as Ld. CIT(A) to prove this transactions. However the AO has relied on the report of the Investigation Wing and more so by the Ld. CIT(A). In our opinion, the order of Ld. CIT(A) sustaining the addition appears to be incorrect as investments which were accepted in the preceding year and is being doubted in the current year. The case of the assessee is supported by the decision of Co-ordinate bench of Kolkata in the case of MRG Securities Pvt. Ltd. (supra) wherein it was held as under:

“12.1. We also take note of the fact that shares sold by the assessee during the year for which the addition has been made were purchased in the preceding year and formed part of the closing stock of shares as on 31.03.2009, duly reported and reflected in the audited balance sheet of the assessee, details of which have already extracted above. Considering the facts narrated and the observations made above, we are not inclined to interfere with the finding given by the Ld. CIT(A) on the merit of the case whereby the addition made by the Ld. A.O has been directed to be deleted. Accordingly, grounds taken by the revenue in its appeal are dismissed.”

The books of account of the assessee have not been rejected by the AO before treating the investments as non-genuine. The case of the assessee also finds support by the decision of Co-ordinate Bench in the case of Gemini Commerce Pvt. Ltd. (supra) wherein it was held as under:

“9. We have heard rival contentions and perused the record placed before us. The sole grievance of the revenue is that the ld. CIT(A) has erred in deleting the addition made by the ld. Assessing Officer for unexplained sundry creditors amounting to Rs.5.61 Crores. It is not in dispute that the assessee held investments in equity shares in the preceding year and as on 01/04/2013, there was an opening balance of investment in equity shares for a sum of Rs.14,20,92,000/- and it comprised of nine companies. Out of these investments, a part of equity shares were sold during the year and copies of bills for sale of the said equity shares and confirmations form part of the paper book placed before us. Genuineness of the purchases of the equity shares held as investment has not been disputed by the revenue authorities. The only dispute is that the buyers of these equity shares have not been able to prove the source of payments made by them to the assessee in the form of sale consideration. The assessee before the lower authorities and before us filed various details of the alleged loan creditors to prove the identity and creditworthiness of these creditors as well as genuineness of the transactions of sale of equity shares. The relevant part of the index of the paper book containing details filed by the assessee is reproduced below:-

Amarjyoti Commercial Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.
Chin Purni Agencies Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.
Chandra Ghanta Bargain Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements

	<p>(iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Katyani Sales Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Palanhar Merchants Pvt. Ltd.	<p>(i) Bill for sale of Investment.</p>
Peal Tree Dealmark Pvt. Ltd.	<p>(i) Bill for sale of Investment.</p>
Santosh Investment Pvt. Ltd. Capricon Iron and Steel Traders Pvt. Ltd.	<p>(i) Bill for sale of Investment. (i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Chandra Ghanta Commerce Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of investment</p>
Eastern Design Advisory Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>
Gajanand Advisory Pvt. Ltd.	<p>(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.</p>

Jasdeep Agencies Pvt. Ltd.	(i) Bill for sale of Investment.
Kapileshwar Commosales Pvt. Ltd.	(i) Bill for sale of Investment.
Khandelwal Investment Consultant Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Computation of income & tax. (vi) Audited Financial Accounts for F.Y. 2013-14 (vii) Bill for sale of Investment.
Original Tradelink Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Audited Financial Accounts for F.Y. 2013-14 (iii) Bill for sale of Investment.
Rajshree Solutions Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) PAN card (v) Bill for sale of Investment
Shivrashi Distributors Pvt. Ltd.	(i) Bill for sale of Investment
Jeen Mata Dealers Pvt. Ltd.	(i) Acknowledgement of Return of Income (ii) Source of Funds (iii) bank statements (iv) Computation of income & tax. (v) Audited Financial Accounts for F.Y. 2013-14 (vi) Bill for sale of Investment.

10. Further we notice that information called for by the ld. Assessing Officer u/s 133(6) of the Act were duly served upon all the creditors and even in the remand proceedings, most of the loan creditors have again confirmed the transaction and only in some cases, creditworthiness has been doubted by the ld. Assessing Officer based on the small amount of bank balance standing at the opening of the year. Assessee has filed the following details in the case of the alleged sundry creditors:-

- a) Identity of these parties
- b) Bank statement of these parties showing the transactions undertaken by the assessee with them
- c) Annual report of all these parties
- d) Copy of ITR filed by these parties with the Income Tax Department
- e) Computation of income filed by these parties
- f) Sale bill issued by the assessee company to these parties evidencing the sale of shares
- g) Confirmation from these parties sent by them to the AO directly
- h) PAN cards

11. Further, we notice that nowhere in the course of assessment proceedings, any dispute has been raised about the transactions relating to purchase of equity shares made by the assessee during the preceding year. Neither the sale transaction has been disputed and only the consideration received against such sale of equity shares held as investment in current year has been disputed by the ld. Assessing Officer. Since all the details necessary to prove

the identity and creditworthiness of the sundry creditors and genuineness of the transactions for sale of equity shares stands filed, assessee has discharged the primary onus casted upon it and their correctness remains unrebutted by the ld. D/R. We fail to find any infirmity in the finding of fact given by the ld. CIT(A). Our view is further supported by the decision of this Tribunal in the case of *Abdhut Vinimay Pvt. Ltd.* (supra) dealing with similar issue where investments were brought forward from the preceding year and were sold during the year and provisions of Section 68 was invoked by the Assessing Officer this Tribunal decided in favour of the assessee observing as follows:-

“3. After hearing rival contentions, considering the papers on record and orders of the authorities below and case laws cited we hold as follows :-

The assessee during the year sold its investments i.e. shares purchased by it in the earlier years and disclosed by it as its assets/investment in the Balance Sheet, to three companies. The details are as under :-

S.No.	Name	Address	PAN	Total Amount
1.	Kritmaan Tie Up Pvt. Ltd.	P-22, Swallow Lane, Ground Floor, Kolkata-700001.	AADCK7798K	10,00,000
2.	Grade Suppliers Pvt. Ltd.	14/2, Old China Bazar Street, 2nd Floor, Room No.1391A, Kolkata-700001.	AAECG0150E	32,50,000
3.	Jhankar Dealers Pvt. Ltd.	P-22, Swallow Lane, Ground Floor, Kolkata-700001.	AACCJ2416N	20,00,000
		Total		62,50,000

4. In response to the notice issued u/s 142(1) of the Act the assessee furnished the details of "sale of investments" to the AO. In response to the notice u/s 131 of the Act issued by the AO, to the purchasers companies, the following documents/evidence was filed before the AO by all the three companies which purchased the shares of the company.

(a) Copy of Income Tax Return

(b) Copy of Certificate of incorporation

(c) Copy of Audited Accounts

(d) Copy of Share sale Invoice

(e) Copy of the bank account of the share purchaser company The AO wanted the personal appearance of the directors of the purchaser companies. As there was no compliance this addition u/s 68 is made. In our view this is against the proposition of law laid down by the Hon'ble Supreme Court in the case of *CIT vs Orissa Corporation(P)Ltd* (1986)159 ITR 78 (SC). We find that the share purchasers are all income tax assesses and they have filed return of income and the payments were made through account payee cheques and the share purchasers have confirmed purchase of the shares. There is no evidence with the revenue that the sale in question is a bogus sale. Under the circumstances the issue is whether addition can be made u/s 68 of the Act. We are of the opinion that no addition can be made u/s 68 of the Act on the facts and circumstances of this case. The assessee has discharged the burden of proof that is on it. There is no contrary evidence brought on records by the AO to disprove the claim of the assessee. Addition has been made on suspicion and surmises.

5. The Delhi 'G' Bench of the Tribunal in ITA NO.2264/Del/2013 in the case of *ITO vs M/s Srishti Fincap Pvt. Ltd.* Order dated 07.10.2015 held as follows :

"9. From the facts and circumstances of the case, submissions made by the parties and case law cited in this case, we are of the considered view that no ground is made out to interfere into the order passed by Ld. CIT(A) for the following reasons:

i) that in the instant case, A.O. has merely acted upon information supplied by DIT (Inv.) and has not preferred to analyze the previous returns filed by the assessee to make out if he has already disclosed the purchase of shares in question.

ii) that from the perusal of copies of assessment proceedings initiated u/s 147 read with section 143(3) of the Act, pertaining to Assessment Year 2003-04 lying at pages 45-46 of the ledger book, in ledger account showing purchase of shares qua the Assessment Year 2003-04 lying at page 34 which have never been disputed by the A.O., it is abundantly clear that the assessee had purchased the shares in Assessment Year 2003-04.

iii) that when the assessee has sold the shares for Rs.25,10,000/- undisputedly purchased by him in Assessment Year 2003-04, no adverse inference can be drawn against him.

iv) that when purchased shares now sold by the assessee in Assessment Year 2003-04 has been accepted in the preceding Assessment Year, the assessee cannot be put to such a situation to prove the source of buyer in the subsequent Assessment Year. Moreover, the seller can make sale of shares in cash u/s 40A(3) of the Act.

v) that when assessee has shown an amount of Rs.25,10,000/- as sale proceeds of shares as income, there is no ground for making the same as addition in the income which would amount to double addition.

vi) that the books of account maintained by assessee have never been disputed by the A.O. nor he has held that the purchase of shares was bogus transaction or the shares sold by the assessee were bogus one.

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vii) In I.T.O. Vs Jatin Investment Pvt. Ltd. (supra), it is held that when the assessee purchased the shares in earlier year which were shown as investment in the books of account and reflected in the balance sheet then the assessee sold certain investments and accounted for the profit or loss, the provisions of [Section 68](#) of the Act were not applicable.

viii) Similarly, Hon'ble Jurisdictional High Court in the case cited as CIT Vs Vishal Holding and Capital Pvt. Ltd. vide order dated 9th August, 2010 upheld the order dated 30.07.2009 of the ITAT in I.T.A. No. 1788/Del/2007 for the Assessment Year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under:-

"We are of the view that the assessee had produced copies) of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet. In our opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

ix) that the issue in controversy is squarely covered by the judgements: Vishal Holding and Capital Pvt. Ltd. and Jatin Investment Pvt. Ltd. (supra) as the assessee in the instant case has purchased the shares to the tune of Rs.25,10,000/- in the Assessment Year 2003-04 and then credited the receipt on account of sale of shares to the tune of Rs.25,10,000/- to its P & L account, which has already been declared and considered as its income by the appellant / assessee. So Ld. CIT(A) has legally and rightly deleted the addition of Rs.25,10,000/- vide impugned order.

11. As a sequel to the discussion made in the preceding paragraphs and in view of the ratio of judgement in the case of Vishal Holding and Capital Pvt. Ltd. (supra), we are of the opinion that when the assessee has proved to have purchased the shares of Rs.25,10,000/- in the preceding assessment year duly shown in the balance sheet and then sold the same and shown an amount of Rs.25,10,000/- as sale proceeds of the share as income, the provisions contained in [Section 68](#) of the Act are not attracted and holding the same as income would tantamount to double taxation which is not permissible under law and as such, the Ld. CIT(A) has rightly deleted the addition made by the A.O. Consequently, no ground to interfere in the impugned order, the appeal of Revenue is hereby dismissed.

6. The Hon'ble Delhi Bench of the Tribunal in the case of [ITO vs Jatini Investment Pvt. Ltd. In ITA No.4325 & 4326/Kol/2009 order dated 27.05.2015](#) held as follows:-

"11. In his rival submissions, the Ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the ITA No.2404/Kol/2017 Adbhut Vinimay Pvt. Ltd. A.Y.2012-13 5 assessee was having investment in shares etc. which were duly shown on the asset side of the balance sheet, out of those investments some were sold and few new were purchased and if there was any gain on the sale the same was offered for taxation. It was further submitted that in earlier year 13 4325 & 4326/ Del/2009 under similar circumstances, the case was reopened u/s 147 of the Act and the addition made by the AO was deleted by the I.T.A.T. It was further submitted that the assessee sold the shares which were earlier purchased in different years and duly shown in the balance sheet of the respective years and that the assessee had shown the sale proceeds in the books of accounts, the investments were reduced after making the sales. It was contended that there was no obligation under the law that the assessee was required to prove the source of payee. It was further contended that the AO had not rejected the books of accounts and the purchases were duly accepted so there was no reason to doubt the sales. It was submitted that the case of the assessee is squarely covered by the decision of this bench of the Tribunal in the case of [ITO vs. M/s Vishal Holding and Capital Pvt. Ltd.](#) in ITA no. 1788/Del/2009 order dated 17.07.2009 which has been upheld by the Hon'ble Jurisdictional High Court as reported in (2011) 200 Taxman 186 (Delhi). It was further, submitted that the issue is also covered by the order of the ITAT, Delhi Bench in the case of [ITO vs. Goodwill Cresec Pvt. Ltd.](#) in ITA No. 4151/Del./2010 order dated 25.01.2012. Reliance was also placed on the following cases laws :-

14 4325 & 4326/ Del/2009 "1. CIT vs. Sh. Udit Narain Aggarwal, ITA No. 560 of 2009, dt. 12.12.2012

2. CIT vs. Sudeep Goenka, ITA No. 468 of 2009, dt. 3.01.2013.

3. [CIT vs. Anirudh Narain Aggarwal, ITA No. 195 of 2010, dt. 16.01.2013.](#)"

It was pointed out that the same issue has been decided by the I.T.A.T. in assessee's own case in I.T.A.T. No. 1584/Del./2009 for the A.Y. 2002-03 vide order dated 13.11.2009, in assessee's favour (copy of the order was furnished which is placed on record)

12. We have considered the submissions of both the parties and gone through the material available on the record. In the present case, it is noticed that the assessee purchased the shares in earlier years which were shown as investment in the books of accounts and reflected in the "Asset Side" of the "Balance Sheet", out of those investments (copy which is placed at page no. 23 and 24 of the assessee's paper book), the assessee sold certain investments and accounted for the profit / loss and offered the same for taxation. In the present case, the amount in question was neither a loan or the deposit, it was also not on account of share application money, the said

amount was on account of sale of investment therefore the provisions of [Section 68](#) of the Act were not applicable and the AO was not justified in making the addition. In our opinion, the Ld. CIT(A) rightly deleted the addition made by the AO.

13. On a similar issue the Hon'ble Jurisdictional High Court in the case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) vide order dated 9th August, 2010 upheld the order dated 30.7.2009 of the ITAT in ITA no. 1788/Del/2007 for the assessment year 2000-2001 wherein the order of the Ld. CIT(A) making the similar deletion was upheld by observing in para 6 as under :-

"We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd., and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet's. In our opinion, the Assessing Officer has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the Assessing Officer cannot be sustained."

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of 16 4325 & 4326/ Del/2009 assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05.

14. We, therefore, considering the totality of the facts do not see any valid ground to interfere with the findings of the Ld. CIT(A). Accordingly, we do not see any merit in this appeal of the department. In ITA no. 4326/Del./2009 of the assessment year 2004- 05 identical issue having similar facts is involved, the only difference is in the amount of addition which was deleted by the Ld. CIT(A). Therefore, our findings given in former part of this order, in respect of 16 4325 & 4326/ Del/2009 assessment year 2003-04, shall apply mutatis mutandis for assessment year 2004-05."

7. The Hon'ble Delhi High Court in the case of [Principal C.I.T. vs Jatin Investment Pvt. Ltd.](#) [2017] TMI 342 (Delhi) held as follows :-

"4. The ITAT agreed with the conclusions of the CIT (A) upon its independent examination of the record. It also discounted the Revenue's submissions that the investment shown in the book of accounts and reflected as assets in the side of the balance sheet, should have been properly treated and that in the absence of such treatment .Section 68 applies. The ITAT rejected this contention and held - based upon the principles enunciated in [CIT v. Vishaf Holding & Capital Pvt. Ltd.](#) (order of this Court dated 9.8.2010) that the invocation of Section'68 in the circumstances is unwarranted.

5. Learned counsel for the Revenue reiterated the grounds cited in some of the contentions made before the ITAT. Learned counsel especially emphasized on the ITA No.2404/Kol/2017 Adbhut Vinimay Pvt. Ltd. A.Y.2012-13 7 submission that the incorrect reflection of the receipts in the balance sheet belied the true nature of the receipts as a justification for the application of [Section 68](#) .

6. The ITAT in our opinion quite correctly appreciated the law and its application by the first appellate authority, i.e., CIT (A). Having regard to the facts and the nature of the analysis based upon the decisions of this Court, as well as the reliance on various decisions with respect to the true nature of [Section 68](#), we are of the opinion that no question of law arises; the appeals are accordingly dismissed"
8. Applying the proposition of law laid down in the case law to the facts of the case, we delete the addition made u/s 68 of the Act for the reasons cited above."
12. Under identical circumstances, similar view was taken by this Tribunal in the case of *ITO vs. Goodwill Cresec Pvt Ltd.* (*supra*), wherein it was held as under:-

"14. We have carefully considered the rival submissions in the light of the material placed before us. In the present case, the assessee had submitted ample evidence which has already been discussed in the above part of this order to contend that the share transaction entered into by it with MKM Finsec Pvt. Ltd. was a genuine transaction. The shares which were subject matter of sale were standing in the balance sheet of the assessee which were subject matter of sale. The party to whom the sales have been made have confirmed the transactions and the transaction was supported by documentary evidence. It is also the case of the assessee that no material has been brought on record by the revenue that the share transaction of the assessee was not genuine. The addition has been made on the basis of information received by the Assessing Officer from the Investigation Wing. It is found that in respect of the very same party an addition of ` 49,55,300/- was made in the case of [ITO vs. Vishal Holding and Capital Pvt. Ltd.](#) (*supra*) and learned CIT (A) had deleted the addition and the said deletion was contested by the revenue before the Tribunal and it was decided by the Tribunal vide order dated 17th July, 2009 in ITA No.1788/Del/2009 and the order of the CIT (A) was upheld with the following observations:-

"5. We have considered rival contentions and gone through the records. In our view the order of the CIT(A) does not require any interference. First of all the assessee has produced all details in respect of its transactions. Copies of the contract notes and bills, that were issued to it, were all made available. The Assessing Officer has not verified these details and in respect of the material, which has been relied upon by him, he has not provided any findings of the investigation to the assessee. Therefore, in these circumstances, the addition made by the Assessing Officer cannot be said to be on the basis C.O. No.16/Del/2011 of some evidence that was put to the assessee in the course of assessment proceedings. The learned CIT(A) has correctly deleted the addition and we decline to interfere. Accordingly, order of CIT(A) on the issue in question is upheld.

6. In the result, revenue 's appeal is dismissed.

15. The aforementioned order of the Tribunal was considered by Hon'ble jurisdictional High Court in the aforementioned case of [CIT vs. Vishal Holding and Capital Pvt. Ltd.](#) which is now reported at 200 Taxman 186 and the order of the Tribunal was upheld by the Hon'ble High Court with the following observations:-

"6. We are of the view that the assessee had produced copies of accounts, bills and contract notes issued by M/s. MKM Finsec Pvt. Ltd. and had been maintaining books of account as per [Companies Act](#). The assessee had also demonstrated the purchase and sale of shares over a period of time as seen from the balance sheet/s. In our opinion, the AO has simply acted on the

information received from the Investigation Wing without verifying the details furnished by the assessee. The assessee has also produced best possible evidence to support its claim. Consequently the addition made by the AO cannot be sustained.

7. In any event, the factual findings of the final fact finding authority are neither perverse nor contrary to record. Accordingly, we find that no substantial question of law arises in the present appeal which, being bereft of merit, is dismissed in limine but with no order as to costs."

16. In this view of the situation, we find that so far as it relates to issue on merits, the case of the assessee is covered by the aforementioned decision of the Tribunal which has been confirmed by Hon'ble High Court. Therefore, we decline to interfere in the deletion made by the learned CIT (A) and the appeal filed by the revenue is dismissed."

13. We, therefore, under the given facts and circumstances of the case and respectfully following the decision of this Tribunal referred hereinabove, which is squarely applicable on the issue raised before us, find no infirmity in the order of the ld. CIT(A) and uphold the same. Accordingly all the grounds raised by the revenue are dismissed."

Since the issue involved in the present case is similar to one as decided by the coordinate bench ,therefore respectfully following the same, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

12. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 8th January, 2024

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
 Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 8th January, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Delighted Holdings Pvt. Ltd., 12A, Room No. 102, Shyamkunj, Annapurna Apartment, Lord Sinha Road, Kolkata-700071
2. Respondent – DCIT, Circle-8(2), Kolkata

3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata