

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA No.: 843/Chny/2022  
& CO No.: 17/Chny/2023

निर्धारणवर्ष / Assessment Year: 2012-13

Deputy Commissioner of  
Income Tax,  
Central Circle-3(1),  
Chennai – 34.

M/s. Aditya Trading Solutions  
v. Private Limited,  
25 G9, Gems Court,  
Khader Nawaz Khan Road,  
Nungambakkam,  
Chennai – 600 034.

**[PAN: AAFCA-0343-N]**

(अपीलार्थी/Appellant)

(Respondent/Cross Objector)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Nandakumar, CIT  
: Shri. I. Dinesh, Advocate

सुनवाई की तारीख/Date of Hearing

: 28.02.2024

घोषणा की तारीख/Date of Pronouncement

: 27.03.2024

**आदेश /ORDER**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the revenue and cross objection filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 22.06.2022 and pertains to assessment year 2012-13. Since, facts are identical and issues are common, for the sake of convenience, the appeal filed by the revenue

and cross objection filed by the assessee are being heard together and disposed off, by this consolidated order.

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

*"1. The order of the Id. Commissioner of I.T. (Appeals) is erroneous on facts of the case and in law.*

*2. The learned CIT(A) erred in deleting the addition made u/s. 68 of the IT Act, / wen the assessee failed to prove the creditworthiness and genuineness of the transactions and had not discharged its primary onus required u/s. 68 of the IT Act.*

*2.1 The learned CIT(A) erred in holding that no addition can be made u/s. 68 of the IT Act, even though the assessee had not produced the said investors before the Assessing Officer for examination and thus failed to discharge its primary onus.*

*2.2 The learned CIT(A) erred in deleting the addition made u/s. 68 of the IT Act, without appreciating the fact that the investor companies to whom shares were allotted were found to be shell companies and thus the entire transaction is not genuine thereby attracting taxability u/s. 68 of the IT Act.*

*2. 3 The learned CIT(A) erred in not appreciating the fact that mere production of documents such as PAN, Income tax assessment particulars, financial statements and Annual return filed before ROC are not sufficient to establish credit worthiness and genuineness of the transactions under consideration when*

*surrounding and attending facts which were brought on record indicated a cover up and that the documents produced by the assessee at best reflect proper paper work and documentation, but genuineness and credit worthiness are deeper and obtrusive aspects.*

*2.4 The Id. CIT(A) erred in observing that the assessee has discharged the initial onus with reference to the production of PAN, IT Particulars, Annual returns filed before the ROC, disregarding the decision of the Honble Apex Court in the case of M/s. NRA Iron & Steel Limited, wherein the Hon'ble Supreme court upheld that addition u/s. 68 can be made towards un*

*explained share capital / premium , when the initial onus was not discharged.*

**2.5** *The Id CIT (A) erred in deleting the addition made u/s. 68 of the IT Act, without appreciating the fact that in this case, the assessee had not established the identity of the investors, their creditworthiness and genuineness of the transaction in as much as the investors were all shell companies, non functional and was not having any source of income.*

**2.6** *The Id CIT (A) erred in deleting the addition made u/s. 68 of the IT Act on the ground that the proviso to section 68 of the IT Act cannot be applied to the assessment year 2012-13, without appreciating the ratio laid down by the Hon'ble Apex Court in the case of CIT v. Shri. Biju Patnaik, reported in 160 ITR 674 (SC).*

*3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored."*

3. The brief facts of the case are that, the assessee M/s. Aditya Trading Solutions Pvt. Ltd., is a private limited company and claims that it is carrying on the business as Broker of Multi Commodity Exchange and Trading in Shares and Commodities. The assessee company has filed its return of income for the assessment year 2012-13 on 30.09.2012, declaring nil total income, with current year loss of Rs. 9,45,43,678/-. The return of income has been subsequently revised on 26.11.2012, showing nil total income with current year loss of Rs. 9,46,30,950/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing

Officer noticed that the Department had information in its possession with regard to shell companies engaged in the activity of providing accommodation entries of share capital/share premium and accordingly, called upon the assessee to furnish necessary details. The Assessing Officer, further observed that during the financial year relevant to assessment year 2012-13, the appellant has received share application money (including premium) of Rs. 17,08,86,000/-, out of which Rs. 10,68,50,000/- was received from Kolkata based companies. The Assessing Officer, called upon the assessee to file necessary details including identity of the investors, genuineness of the transactions, creditworthiness of the shareholders. The assessee has filed various details including confirmation letter from the parties, who have subscribed to the share capital of the assessee company, along with their financial statements, PAN No., company master details as per website of ROC etc. The Assessing Officer, called upon the assessee to produce directors of those investor companies for verification. But, the assessee could not produce the directors of the assessee company. Therefore, the Assessing Officer on the basis of information with the Department coupled with details filed by the assessee

observed that, the appellant could not establish genuine identity of the shareholders and also failed to prove genuineness of the transactions and creditworthiness of the parties. The Assessing Officer, has discussed the issue in light of each shareholder company and their financial statements and observed that, none of them have sufficient income to establish creditworthiness of huge investments made in appellant company by subscribing share capital along with share premium. Further, all the companies have declared negligible income or loss in their income tax returns. Further, they have routed huge amount of money in their bank account at multiple level before transfers from one account to other account and before transferring funds to assessee bank account. Therefore, the Assessing Officer opined that so called companies from whom the appellant received share application money are only a paper companies existed solely for providing accommodation entries of share application money to various parties and thus, rejected arguments of the assessee and made additions towards share application money received from Kolkata based companies u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") as unexplained cash

credits. The relevant findings of the Assessing Officer are as under:

*“Conclusion :*

- i) In the course of scrutiny proceedings, the assessee was not able to establish the identity creditworthiness and genuineness of the transactions w.r.t. the investment made by the Kolkata Companies. The onus to prove the three factum is on the assessee as the facts are within the personal knowledge of the assessee.*
- ii) The assessee was able to furnish only paper evidences, and not the Directors themselves.*
- iii) The assessee-company was only able to furnish the paper-evidences detailing the transactions, but failed to prove the genuine existence of the investor-companies from Kolkata.*
- iv) The fact that the assessee failed to produce the persons who had invested towards share capital shows that these were people who were completely unrelated to the assessee and as such, all the entries were merely accommodation entries. Otherwise, in a private limited company, it would not have been difficult on the part of the assessee to produce persons who were investing substantial amount of money in the company towards share capital.*
- v) On the question of creditworthiness and genuineness, it is highlighted that the money no doubt was received through banking channels, but did not reflect actual genuine business activity. The share subscribers did not have their own profit making apparatus and were not involved in business activity. They merely rotated money, which was coming through the bank accounts.*

19. In view of above, it is held that the assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction. From the above analysis of the details submitted by the assessee-company it has been proved that :

i) the investor-companies from Kolkata were existing only on paper and did not have the credit worthiness to make the investments in Share-Capital and Share-premium of the assessee-company. Hence, the monies shown to have been invested by the investor-companies from Kolkata into the assessee-company, now become un-explained.

ii) Since the monies introduced by the assessee-company in the names of the investor-companies from Kolkata are now treated as unexplained, they become un-explained credits in the Books of the assessee.

During the previous year relevant to the assessment year 2012-13, the total share application money (including premium) is Rs. 17,08,86,000/- out of which Rs. 10,68,50,000/-are introduced in the names of the Kolkata Companies. Hence, the following monies introduced by the assessee into its books in the names of the investor-companies from Kolkata during the previous year relevant to the assessment year 2012-13 are treated as un-explained Credits and taxed as the assessee's income u/s 68 of the I.T.Act, 1961.

<b>S.No.</b>	<b>Name of the Kolkatta Investor</b>	<b>Amount Invested (Rs.)</b>
1	Aashikiran Commodities Pvt Ltd.	5000000
2	Aastha Tradelink Private Limited	2000000
3	Adinath Creations Pvt Ltd	2000000
4	Alliance Suppliers Pvt Ltd	4700000
5	Brijdham Mercantile Pvt Ltd	5800000
6	BRS Metal Industries Pvt Ltd	2500000
7	Chandrakumar Trading Pvt. Ltd.	2500000
8	Chitrakoot Suppliers Pvt. Ltd.	3000000
9	Ferpo Marketeers Pvt. Ltd.	2000000
10	Girija Vincom Pvt. Ltd.	2500000

11	<i>Inifinite Vinimay Pvt Ltd</i>	2000000
12	<i>Jaivishla Marketing Pvt. Ltd.</i>	1000000
13	<i>Jain Agencies Pvt. Ltd.</i>	5000000
14	<i>Jineshwar Commerce Pvt. Ltd.</i>	1600000
15	<i>Jitesh Finance Pvt. Ltd.</i>	5000000
16	<i>Kautilya Tradecom Pvt. Ltd.</i>	800000
17	<i>KLS Mercantiles Pvt. Ltd.</i>	3000000
18	<i>Lewis Commercial Pvt. Ltd.</i>	1700000
19	<i>Magnolia Vinimay Pvt. Ltd.</i>	1000000
20	<i>Mirania Mercantiles Pvt. Ltd.</i>	2500000
21	<i>Nandankannan Advisory Pvt. Ltd.</i>	2200000
22	<i>Navifast Commercial Pvt. Ltd.</i>	2000000
23	<i>Nippu Commercial Pvt. Ltd.</i>	2500000
24	<i>NSK Commercial Pvt. Ltd.</i>	900000
25	<i>Oasis Vincom Pvt. Ltd.</i>	5500000
26	<i>Prakashnath Suppliers Pvt. Ltd.</i>	2500000
27	<i>RS Grewal and Co. Pvt. Ltd.</i>	2500000
28	<i>Reetal Vyaapar Private Limited</i>	2500000
29	<i>Rishav Merchants Pvt. Ltd.</i>	750000
30	<i>SD Promotors and Developers Pvt. Ltd.</i>	2500000
31	<i>Salesar Dealers Pvt. Ltd.</i>	4000000
32	<i>Santhinath Traders Pvt. Ltd.</i>	2500000
33	<i>Shankar Vincom Pvt. Ltd.</i>	600000
34	<i>Shreyans Commotrade Pvt. Ltd.</i>	700000
35	<i>Silvertoss Vyapaar Pvt. Ltd.</i>	4500000
36	<i>Singhania Stockbroking Pvt. Ltd.</i>	2500000
37	<i>Sprint Marketing Pvt. Ltd.</i>	3000000
38	<i>Sridurga Minerals Pvt. Ltd.</i>	2100000
39	<i>Sunita Suppliers Pvt. Ltd.</i>	2500000
40	<i>Thulasi Tower Pvt. Ltd.</i>	2500000
41	<i>Vazir Vanjiya Pvt. Ltd.</i>	2500000
	<i>Total</i>	<i>10,68,50,000</i>

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has reiterated its submissions made

before the Assessing Officer along with certain judicial precedents including the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports P Ltd (2008) 216 CTR 195 (SC). The sum and substances of arguments of the assessee before the Id. CIT(A) are that, the appellant has filed sufficient evidences to prove identity of the shareholders, genuineness of transactions and creditworthiness of the parties. The Assessing Officer, made additions towards share application money received from the shareholders u/s. 68 of the Act, only on the basis of information received from Investigation Wing of Income-tax Department, Kolkata and report provided by them on certain shell companies, who are involved in providing accommodation entries without their being any allegation to the effect that, the appellant is part of the so called Hawala operations and is a beneficiary of share capital received from said companies.

5. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports P Ltd (Supra), held that the appellant has filed sufficient evidences to prove identity of the

shareholders, genuineness of transactions and creditworthiness of the parties, in order to come out of rigorous of provisions of section 68 of the Act. The Id. CIT(A), has discussed the issue in light of certain judicial precedents and held that, once the appellant discharges its initial burden and proved identity, then the burden shifts to the Assessing Officer to prove that the sum received by the appellant from shareholders is unexplained credit, which is taxable u/s. 68 of the Act. Since, the appellant has filed all details including name and address of the creditors, confirmation letter from them, bank statements of the investors and the appellant company and other details to prove genuineness of transactions, the Assessing Officer is erred in making addition towards share application money u/s. 68 of the Act. The relevant findings of the Id. CIT(A) are as under:

*"12. I have gone through the case law relied upon by the AO in the light of facts of the present case and find that the case law relied upon by the AO is not applicable, because, in this case, the subscribers to the share capital did not establish their financial capacity to subscribe share capital in the appellant company. The bank accounts of all the applicants have been found credited from other sources immediately before transfer of funds to the appellant company. The companies did not have any business activity to establish their financial capacity.*

*Under those facts and circumstances, the Hon'ble Calcutta High Court came to the conclusion that the appellant has failed to establish genuineness of transactions and*

*creditworthiness of the parties and hence confirmed addition made by the AO u/s 68 of the Income-tax Act, 1961. As regards the decision of Hon'ble Delhi High Court, I find that although Hon'ble High Court held that furnishing certificate of incorporation, PAN etc is not sufficient to prove identification of subscriber when there was enough materials to show subscriber is a paper company, but in the present case, the appellant has filed all possible evidences to establish the transactions in light of provisions of section 68 of the Act, and thus, in my considered view, the appellant has satisfactorily, discharged its onus to come out of shadow of section 68 of the Act. Therefore, the case laws relied upon by the Revenue cannot be applied to facts of present case.*

**12.1.** *In a recent case of PCIT vs. Hi-Tech Residency Pvt. Ltd. (2018) 257 Taxman 335, the Hon'ble Supreme Court has considered identical issue and held that where an appellant company had discharged the onus of establishing identity, genuineness of transaction and creditworthiness of investors, no additions could be made u/s. 68 of the I.T. Act, 1961. I, further, noted that although the Apex Court has not expressed any opinion, because of dismissal of SLP filed by the Revenue, the fact of the matter is that this issue has been considered by the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd (supra), where the issue has been thoroughly examined in light of provisions of section 68 of the Act, and held that if the share application money is received by the appellant company from alleged bogus share holders, whose names are given to the AO, then the department is free to proceed to reopen their assessment in accordance with law, but sum received from share holders cannot be regarded as unexplained income of the appellant.*

**12.2.** *In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, I am of the considered view that the appellant, by filing enormous details, has discharged not only Its Initial onus to prove identity, genuineness of transactions and creditworthiness of the shareholders but also had offered explanation for immediate source of investments In the hands of investors. The AO, Without carrying out further inquiries In order to ascertain the claim of the appellant,*

*jumped Into conclusion on the basis of report of Investigation wing, and financial statements of the subscribers that none of the subscribers had enough source of Income to establish creditworthiness. Even though there were circumstances leading to suspicion, yet without making any Independent enquiries in the assessment proceedings, and further without bringing any reliable material on record or evidence to indicate that the share application money as such represented appellant's own undisclosed money brought back in the garb of share capital Merely because of subjective satisfaction that the source of availability of money with the shareholder or their creditworthiness were not established, the AO could not treat the genuinely raised share capital as deemed income u/s.68 of the Act. In the event the intermediary companies were to be taken as conduits or persons without requisite creditworthiness and even if they were to be treated as bogus shareholders, then also nothing stopped the AO to reopen their respective hands. their individual assessments In accordance with law and bring to tax such unexplained money in*

*12.3. It is pertinent to mention here that the Hon'ble Supreme Court Judgment In the cast of PCIT Vs NRA Iron And Steel Pvt. Ltd. arising out of SLP (Civil) No. 29855 of 2018 dated 05.03.2019. In the referred case, the Hon'ble Apex Court has decided the issue by way of. exparte since the respondent has not responded to the various notices issued. The Apex court has held that as the respondent has failed to discharge the onus required u/s. 68 of the Act, the AO is justified in adding back the amounts to the assessee's income.*

*12.4 The facts narrated in the above decided case is entirely different from the facts of the present case where the adjudication is pending. In the above referred case, the AO has conducted the detailed enquiry including conducting of survey and made a conclusion that:the investor companies do not possess sufficient to subscribe. In the present case before me, the appellant has submitted the following details before the AO Names and addresses and IT file number of the creditor Filed a confirmatory letter from such creditor, bank account statements of the investors and the appellant company. Copy of ROC, return copy of allotment of share filed before the Registrar of*

*companies. Audited financials of the investor companies, copies of share certificate, share application forms, Master records of Investor company as per Ministry of Company Affairs, Memorandum and Articles of Association of Investor companies, PAN jurisdiction of investor companies and Reason for non-appearance by some Directors of the Investor companies.*

*It is only the AO who has not made any attempt to cross verify the above details furnished but relied upon the report of the Investigation Wing, Calcutta. The report contains about the general practice adopted by investor companies and it does not speak about the appellant company.*

*12.5 While going through the details of the written submission and arguments submitted by the appellant during the course of appellate proceedings, the appellant company has relied upon various decisions made by many Judicial forums. The Hon'ble ITAT, 'A' Bench, Chennai by its order dated 17.12.2021 in the case of ACIT, Central circle 3(2), Chennai v. M/s. Suryadev Alloys & Power Pvt. Ltd., Chennai in !TA Nos. 1982,1746,1747,1748,1749,1750 & 1751/CHNY/2017 which is the latest decision, wherein the Hon'ble Tribunal has discussed elaborately where the identical issues are involved considered all the decisions relied upon' by the appellant company in the present case and decided that when the assessee has discharged its initial onus to prove the identity, genuineness of the transaction and credit worthiness of the shareholders and the AO without carrying out further inquiries in order to ascertain the claim of the assessee jumped Into a conclusion on the basis of the report of the investigation wing. Accordingly, the Hon'ble ITAT has dismissed the Revenue Appeal and confirmed the order of the CIT(Appeal). The CIT(Appeal) has deleted the addition made by the AO.*

**13.** *In view of the above findings, respectfully following the jurisdictional ITAT decision mentioned above and following the various judicial pronouncements, I am of the considered view that no addition can be made u/s 68 of the Income-tax Act, 1961 in respect of share capita I and share application money or share premium before insertion of Proviso to section 68. Therefore, the AO was erred in making additions towards share capital, including share*

*premium u/s 68 of the Income Tax Act, 1961. Accordingly, the additions made u/s.68 of the Act by the AO for the A.Y 2012-13 in the case under consideration is hereby **deleted**. The appellant succeeded on this ground."*

6. The Id. DR, Shri. V. Nandakumar, CIT, submitted that the Id. CIT(A) is erred in deleting additions made by the Assessing Officer towards share application money received from certain companies from Kolkata, without appreciating fact that the appellant could not establish genuine identity of the creditors, genuineness of transactions and also creditworthiness of the shareholders, even though the Assessing Officer has discussed the issue in light of Investigation report of the Department conducted on alleged Hawala operations of Kolkata based companies. The Id. DR, further submitted that the Assessing Officer has made additions towards share application money u/s. 68 of the Act, on the basis of financial statement of said companies, where it has been thoroughly established that said companies are only paper companies without any business activities to substantiate huge investments in share capital of assessee company. Further, all the companies have declared either nil income or minimal income in their return of income filed for the relevant assessment year, which shows their inability to establish capacity to invest in share capital of

assessee company. The Id. DR, further submitted that on analysis of their bank statements, it was observed that they have made huge cash deposits before transferring funds to appellant company. The Assessing Officer, on the basis of investigation carried out by the Income-tax Department, coupled with financial statements filed by the assessee came to the conclusion that the appellant could not establish identity of the subscriber and also failed to prove genuineness of transactions and creditworthiness of the parties. But the Id. CIT(A), without appreciating relevant facts simply deleted additions made by the Assessing Officer by following the decision of ITAT, Chennai Benches in the case of ACIT vs Suryadev Alloys and Power Pvt Ltd in ITA No. 1982, 1746 to 1750 and 1751/Chny/2017 dated 17.12.2021, even though the said case laws is factually distinguishable to facts of the present case. In this regard he has filed detailed written submissions on the issue, which has been reproduced as under:

*1.1. The assessee's case was selected for scrutiny under CASS. The assessee is a broker of MCE (Multi Commodity Exchange) and trading in shares and commodities. The assessment order u/s.143(3) was completed on 31/3/2015 by making addition of Rs.10,68,50,000/- u/s.68 of the IT Act on the receipt of share premium from various entities, which is mentioned in page 3 & 4 of the assessment order.*

1.2 As per the assessment order, in para 5, it has been mentioned by the AO that information also received from Directorate of Investigation, Kolkata regarding operations of shell company/entry operators to provide entry in the garb of share application money, gifts, loans through their bank accounts in lieu of cash to any persons who is having unaccounted money. These companies were controlled and managed by those Directors and their sworn statements have confirmed their abatement to such fictitious share transactions.

1.3. During the course of assessment, the assessee was asked to provide various details regarding the identity, creditworthiness and genuineness of their shareholders who has subscribed the shares of the assessee company and the AO has also asked to produce the Directors of those investors company during the course of assessment proceedings. But the assessee has failed to produce any Directors of the above mentioned 41 companies from whom the share application money was received but submitted the details like their names and address, PAN, number of shares allotted, return of income filed, and the bank statements. Accordingly, the assessee submitted before the AO that it discharged its onus of proving the identity, genuineness and creditworthiness of the shareholders and it could not produce the Directors before the AO due to paucity of time.

1.4. But the AO has not accepted the contentions of the assessee and conducted further enquiry by way of analyzing the bank statements, IT return of various investors, observed that there was a credit entry into the bank account of the investors company an amount exactly or almost equal to the amount invested in the assessee's company. Further, there was minimal balance just prior to the credit entry, which means that but for that credit entry, the investor company would not have any source for investing in the assessee company. Also, the IT returns filed by these investors company showed either nil income or minimal income in most of the cases which cases (refer para 8 & 9 of the assessment order).

1.5. Further, the AO has found that there was a clear pattern of investment by these investor companies i.e., of the companies who have invested in the shares of assessee's company did not have own source and the source was mainly from investment from other companies in the shares of those investors company (refer para 10 & 11 of the assessment

order). The AO has concluded that there was a clear pattern by which the money were transferred to the above companies and within themselves. Accordingly, the AO has concluded that these transactions are make belief transactions to cover up the source of the cash transferred. One Investor company borrows from other company to invest in assessee's company but the said company also gives loans to another investor company to invest in assessee's company. All the above companies are showing nil income and filed return of income with a refund claim of the TDS effected.

1.6. Accordingly, it is notable that the paper existence of the shareholders was not disputed by the AO but he disputed the genuineness, creditworthiness of these investors. It is also notable that the assessee company has not requested for the cross-examination of those shareholders on the receipt of the information of the Investigation Directorate of Kolkatta with the swam statements of the directors of these investor companies which was handed over to the assessee by the AO vide his letter dt.-4/3/2015. (Para 8 of the Assessment Order)

## **2. The chronology of the events during the course of the assessment proceedings:**

2.1. It is noticed from the Assessment Order that the AO has given sufficient opportunity to the assessee to prove the genuineness of the receipt of share application/premium for the investor companies, which is tabulated as under:

Sl.NO	Details of issuance of notices/opportunity given to the assessee by the AO	Response of the assessee
1	143(2) issued on 19/8/2013	Sought adjournment and not submitted an basic details.
2	142 1 dt.15/10/2014	No response
3	Reminder letter against 142(1) notice dt.3/11/2014	No response
4	Reminder letter dt.6/0112015	No response
5	Another letter to the assessee for the compliance of notice u/s.142(1) dt.9/2/2015	Assessee filed basic details on 16/2/2015 after a gap of 18 months from the issuance of notice u/s.143(2) and almost after 4 months

		<i>from the issuance of notice u/s. 142(1).</i>
6	<i>Letter dt.17/02/2015 was issued to the assessee to produce the directors / shareholders before the AO.</i>	<i>The assessee responded on 18/02/2015 and submitted the details of shareholders and Stated the directors in due course.</i>
7	<i>The AO issued final-show cause notice on 04/03/2015</i>	<i>The assessee responded vide its letter assessee dt. 10/03/2015 responded and filed vide some details and sought time to produce other details.</i>
8	<i>The AO issued letter to the assessee dt.13/03/2015 on the non-compliance of assessee with respect to producing the directors for further examination.</i>	<i>In response, the assessee filed letter on 16/3/2015 stating that the directors of the investor companies could not be produced due to paucity of time and also submitted that the sworn statement which was recorded from the Directors of the investor companies were given by them due to coercion. Hence the assessee requested that there statements cannot be accepted and it relies on various decisions in their favour.</i>

2.2. *From the above chronology of events, it is evident that the assessee has dragged on the proceedings to the fag end of the tirne barring date by way of noncompliance and it had made response only on 16-03-2015 and expressed its inability to produce the directors of the investor companies for the examination before the AO due to paucity of time.*

**Conclusion of the AO:**

3.1. By considering the above facts, the AO has held that the assessee company was trying to prove the existence of the investor company only through paper submission in support of the share capital investments by them. The assessee company has suo-motto taken up the task of proving the genuinity of the transaction and on behalf of these Kolkatta investors by itself.

3.2. It is surprising to note that the assessee company gone out of its way to prove the existence of these Kolkatta investors. Finally, it is taking shelter under the doctrine of onus by stating that it has discharged its duty of proving the existence and genuineness of the transaction. It is also notable that the investor companies are unknown companies which were incorporated in Kolkatta and they have invested in Chennai company (assessee company) without any public advertisement and without adequate knowledge on the financial strength of the assessee company. But still these investors are finding shy of appearing before the AO to own up their investments in spite of investing in lakhs of rupees in the assessee company.

3.3. Based on the above facts, the AO has concluded in para No.18 of the assessment order that the assessee could not establish the genuineness and creditworthiness with reference to the investment made by the above above Kolkatta investor companies. Accordingly, made the addition of Rs.10,68,50,000/- u/s.68 of the IT Act.

**Decision of the CIT(A):**

4.1. Aggrieved on the above addition, the assessee filed appeal before the CIT(A) and the CIT(A) passed order on 22/6/2022 and decided the issue in favour of the assessee based on the following reasons.

a. The AO has merely relied on the Investigation report given by the Directorate of Investigation, Kolkatta (vide para 9.6 of the order) without carrying out independent enquiry.

b. Opportunity of cross examination has not been given to the assessee (para 9.7 of the order).

c. No further enquiry was conducted by the AO by issuing summons u/s.131(1) of the IT Act (vide para 9.8 of the order).

d. Proviso to Sec.68 was inserted by the Finance Act 2012 w.e.f.1/12/2013. Hence, the addition u/s.68 on the receipt of share application money/share premium cannot be done by the AO (para 9.10 of the order).

e. The CIT(A) has relied on the decision of the Hon'ble ITAT, Chennai in the case of ACIT Vs Suryadev Alloys and Power Pvt. Ltd. dt.17/12/2021 and also on the decisions of Hon'ble Supreme Court in the case of Lovely Exports in 216 CTR 195 (SC) and M/s.Steller Investments Lt.d (251 ITR 263).

**5. CIT(A) has erred on the following facts and Legal position:**

5.1 It is clear from the assessment order that the assessee company could not produce the directors of the investment companies due to paucity of time. Hence, it was mandatory on the part of assessee to produce the said directors at least during the course of appellate proceedings. But, the assessee has not produced the directors of the investor companies. Further, CIT(A) also not considered the said fact mentioned by the assessing officer and has not asked the AO to examine the same by way of remand proceedings.

5.2 The CIT(A) in the order in Para 12.3 of Page No.42 has not appreciated the decision of Hon'ble Supreme Court in the case of PCIT Vs NRA Iron and Steel Pvt. Ltd. **which has clearly held that practice of conversion of unaccounted money through cloak of share capital must be subjected to careful Scrutiny.** The assessee is under legal obligation to prove the receipt of share capital to the satisfaction of the AO failing which the addition of said share capital money to the total income of the assessee is justified. It is notable that the facts of the assessee's case and the facts of the NRA Steel & Iron are identical. For better clarity the facts of the both cases are compared as under, in the following tabular form.

Point No	NRA steels	Assessee's case
01	AY pertains to 2009-10, which is prior to the Amendment to section 68 of the I T Act, i.e.01.04.2013.	AY pertains to 2012-13, which is also prior to the Amendment to section 68 of the I T Act, i.e. 01.04.2013.
02	The assessee company received share	The assessee company also received share

	capital/premium from various companies situated Kolkatta, Mumbai and Guwahati (total 19 companies). The assessee provided the name, address of these companies from whom the share capital - received along with bank statements, return of income.	capital/premium from 41 companies situated mainly in Kolkatta. Provided the in details similar to NRA Steels.
03	Analysis of these companies by details AO revealed that these investment companies disclosed 'Nil' income in their Return of Income and has not revealed the reason for high payment of premium.	03 Analysis of the AO on the submitted by the assessee revealed that these companies are having no business activity, filed either NIL return or negligible income. These companies are received funds from other companies just prior to the date of investment. These companies could not justify the reason for payment of high premium in the assessee company which has been situated in Chennai.
04	Subsequently, AO made detailed enquiry by way of survey, which revealed that these shareholders are either non-existent or lacked credit worthiness.	Scrutiny u/s 132 of the Act was conducted by Kolkatta investigation wing and detailed enquiry revealed that these investors are Shell companies.

*5.3. It is also notable that the recent decision of the Hon'ble Kolkatta High Court in the case of PCIT Vs Swathi Bajaj dt.14/6/2022 has clearly held that the direct and circumstantial evidences brought on the record by the AO by way of detailed investigation carried out by the Investigation Directorate, Kolkatta will be a relevant factor to decide the genuineness, creditworthiness of the share transactions.*

*5.4 It is also notable that the decision relied upon by the CIT(A) in the case of Suryadev Alloys was based on the fact that the cross-examination was not. offered to the assessee*

*and the AQ has not carried out independent investigation. This aspect has been considered by the Hon'ble Calcutta High Court in the above stated decision and held that non-offering opportunity of cross examination is not prejudicial to the interest of assessee in the given circumstances (Refer para 5.9 of this written submission). Whereas, in the instant case, it is noticeable that there was a search operation conducted by the Investigation Directorate of Kolkata on the investor companies and it was established that the Investors of the assessee company are shell entities and the statements of the directors were also recorded and those directors during the course of search proceedings had admitted that they are mere entry providers.*

*5.5 Further, the assessee during the course of assessment proceedings has not even requested for cross examination of those investor companies, instead, it was defending the investor companies by way of submission of various paper documents.*

*5.6 It is important to note that , the AO subsequent to the receipt of the investigation report, has carried out independent analysis of the bank statements, return of income and the financials submitted by the assessee on the investors companies and has concluded that these investor companies are shell entities and also established that there was a clear pattern giving accommodation entry within those investor companies in order to establish their financial strength and genuineness of the transactions.*

*5.7 It is also notable that the decision of Hon'ble [TAT relied upon by the CIT(A) in the case of Suryadev Alloys has not considered the decision of the Hon'ble Supreme Court in the case of NRA Steels.*

*5.8 Further, the decision of CIT(A) regarding non-applicability of the decision of Hon'ble Apex Court in the case of NRA steels on the fact it was rendered ex-parte and the AO has not conducted enquiry is factually incorrect due to the fact that even though the decision of Hon'ble Supreme Court was rendered ex-parte, it has clearly considered the relevant facts of the case and considered decisions of various judicial forums on this issue by and finally concluded that the mere establishment of the transactions through the banking network will not suffice to prove the genuineness of the transactions.*

**It is important to note that the SLP (Special Leave Petition) dismissed by the Hon'ble Supreme Court with speaking order is declaration of law as per the decision of Hon'ble Supreme Court in the case of Mr Kunhayammed vs State of Kerala (245 ITR 360)(SC). Hence, not following of the Supreme Court decision by the CIT(A) is blatant violation of law laid down by the Hon'ble Supreme Court.** 5.9 It is also notable that the recent decision of Hon'ble Kolkatta High court in the case of Swathy Bajaj cited supra, has clearly laid down the ratio that the detailed investigation report carried out by the Investigation Wing, Kolkatta is sufficient to establish the bogus entry of the transactions. The ratio laid down by the Hon'ble High Court in the instant case, the same is explained in the following tabular Form.

Point No.	Facts of Swathi Bajaj	Assessee company
01	Investigation report and statement recorded from the Shell companies not furnished to the assessee company (para 19)	In the instant case, the statement recorded from the directors and shell companies were provided to the assessee by AO.
02	Request for cross examination not granted by the AO. High Court has held that there is no need for Cross Examination in these kinds of case. Para 58), since it is not prejudicial to the assessee.	The assessee has not requested for Cross Examination, instead, it filed the reply on behalf of the investor companies.
03	High Court has laid a test (para 69 that surrounding circumstances has to be considered by the Court i.e. proximity, time and prior meeting of minds for the unnatural transactions.	In the instant case, many persons were involved in the transactions, i.e. Entry Provider, assessee, broker, and the amount of investment in the form of premium above market price without any basis.
04	Independent finding of the AO in para 3.4 of the order (para 89)	Relevant analysis of the AO in para 10&11 of the assessment order.

5.10 Further, reliance is also placed on the following decisions of judicial forums:

(i) For the purpose of cash credit, as per section 68 of the Act, "if no explanation offered" means, no proper, unreasonable or unacceptable explanation given as regards the sum found credited in the books maintained by the assessee as per the decision of Hon'ble Supreme Court in the case of CIT vs.P Mohanakala(291 ITR 278) (SC).

(ii) Transactions made by cheque is not sufficient to discharge burden as per the decision of Hon'ble Guahati High Court in the case of Mr Nemi Chand Kothari vs. CIT 264 ITR 254.

(iii) Assessing Officer was justified in making addition u/s 68 of the Act on the bogus share capital received for the A Y 2006-07 as per the decision of Hon'ble Madras High Court in the case of PCIT vs SRM Systems & Software(P) Ltd- 433 ITR 111 (Mad)

(iv) The assessee failed to produce directors of the companies, though they had filed confirmations are sham transactions and make-believe with excellent paper work to camouflage their bogus nature as held by Hon'ble Delhi High Court in the case of PCIT vs. NOR Promoters P Ltd-- [T A No.49/2018 dated 17.01.2019.

6.0 In view of the above facts and legal positions, the assessment order of the AO dt.31/3/2015 by disallowing the receipt of share premium u/s.68 of the IT Act may be upheld and the decision of the CIT(A) on this issue may be reversed."

7. The Ld. Counsel for the assessee, Shri. I. Dinesh, Advocate, on the other hand supporting the order of the Id. CIT(A) submitted that, the case is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in the case of M/s. Lalitha Jewellery Mart Pvt Ltd vs ACIT in ITA No. 3160/Chny/2017 dated 27.05.2022, where the Tribunal

under identical set of facts held that, when the appellant has discharged his onus of identifying the creditors, the onus shifts to the Assessing Officer to prove that the sum credited in the books of accounts of the assessee being share application money is unexplained credit taxable u/s. 68 of the Act. The Ld. Counsel for the assessee, further submitted that the appellant has filed all possible details including name and address and PAN No of the shareholders, their financial statements along with bank account copies to prove genuineness of transactions. The appellant has also furnished confirmation from shareholders along with master data from ROC website to prove that all the companies are active companies and carrying out regular business. The Ld. Counsel for the assessee, further submitted that the Assessing Officer has made additions u/s. 68 of the Act, only on the basis of investigation report from Kolkata, which discussed about the modus operandi of some companies involved in providing accommodation entries, but there is no specific reference in the said report about the assessee company and the shareholders who invested in share capital of assessee company. The Id. CIT(A), after considering relevant facts has

rightly deleted additions made by the Assessing Officer and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has made additions towards share capital received from certain companies from Kolkata as unexplained cash credits u/s. 68 of the Act, on the ground that the appellant has failed to prove identity of the subscriber of share capital, genuineness of transactions and creditworthiness of the parties. The Assessing Officer has discussed the issue at length in light of investigation report received from Income-tax Department, Kolkata, statement recorded from certain individuals who claims to have involved in providing accommodation entries of share capital to various companies and also financial statements of shareholder companies and arrived at the conclusion that none of the investor companies does have sufficient source of income to prove capacity to investment in share capital of assessee company. According to the Assessing Officer, all investor companies are shell companies existed in paper only, but none of the companies are carrying out any credible business

activities with known source of income and also their return of income filed for relevant assessment years clearly shows there is no source of income for them to establish source for investments in share capital of assessee company. The Assessing Officer had also took support from non-production of directors of investor companies by the assessee as advantage to draw an adverse inference against the assessee. It was the argument of the assessee before the Assessing Officer that, share capital received from certain companies is genuine in nature, which is backed by necessary evidences. The appellant further claims that, it has furnished all possible evidences including details of name and address of shareholders, PAN nos., confirmation letter from them, their financial statements along with bank statements for relevant assessment years and also the master data copy obtained from website of ROC to prove active status of companies for the relevant assessment years.

9. The provisions of section 68 of the Income Tax Act, 1961, deals with a case, 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 the assessee, in the opinion of the AO is not satisfactory, then sum found credited may be treated as income of the assessee of that previous year. A plain reading of section 68 of the Act, makes it very clear that in order to bring any credit within the ambit of section 68 of the Act, the AO has to examine three ingredients, i.e., identity, genuineness of transaction and creditworthiness of the parties. But, as per law, under section 68, it is the assessee who is required to offer an explanation about the nature and the source of credit, for which an entry is found in his books and such explanation has to be to the satisfaction of the Assessing Officer. Therefore, it is for the assessee to explain credit with necessary evidences to the satisfaction of the Assessing Officer. Such proof includes proof of the identity of the creditor, the capacity of such creditor to advance the money and lastly, the genuineness of the transaction. Only when the assessee has proper evidence to establish prima facie the aforesaid facts, the onus shifts on to the Department. Once the source of the credit, the genuineness of the remittance and the identity of the sender are established, it would be for the Department to show that the amount in question is not a loan but constitutes income

assessable to tax. In such a case the Departmental authorities are entitled to probe further into the matter and investigate the materials available to them to come to an independent and unbiased finding as to the genuineness of the transaction though they should not reject the assessee's explanation summarily or arbitrarily or without sufficient reason. The duty of the Assessing Officer is to examine all materials carefully and objectively. Therefore, from above discussion what is clear is that as per the provisions of section 68 of the Act, both parties shall discharge their onus one after the other.

10. The question whether such onus has been duly discharged by the assessee or has been shifted to the Revenue can only be determined after the evaluation of all the surrounding circumstances. There cannot be one general or universal proposition of law which could be the guiding yardstick in the matter. Each case has got to be decided on the facts and circumstances of that case. In holding a particular receipt as income from undisclosed source, the fate of the assessee cannot be decided by the Revenue on the basis of surmises, suspicions or probabilities. Where the assessee furnished the names and addresses and IT file

numbers of the creditor and filed a confirmatory letter from him, it is for the Assessing Officer to prove that the cash credit is not genuine. He cannot arbitrarily reject the evidence on the ground that the creditor confessed that he had not invested in any firm without issuing summons under [section 131](#) or taking any other steps in that regard. The, AO while deciding the issue, shall consider evidences on record placed by the assessee and also must consider surrounding circumstances, but he cannot simply reject evidences on summary basis on the basis of surrounding circumstances. As per the well settled principles of law by the decision of various courts, the initial onus is on the assessee. Once, assessee discharges its onus, and then onus shifts to the Assessing Officer. Therefore, in our considered view, the assessee must first file necessary evidences to prove identity, genuineness of transaction and credit worthiness of the parties. The question of proving identity does not mean, just filing certain documentary evidences, but it is establishing real identity of the creditor. Similarly, proving genuineness of transaction does not mean payment/receipt by cheque, but it is establishing real intention of the parties to enter into transactions. Likewise, real meaning of creditworthiness of creditor means, their capacity

to establish source for investments. This aspect has been explained in judgments of various courts, as per which, the courts had interpreted provisions of section 68 of the Act, and its implications on the assessee as well as the Assessing Officer. The Hon'ble Supreme court in the case of CIT v. Lovely Exports P Ltd (SC) – 216 CTR 195, has very clearly held that *If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income u/s.68 of the assessee company.* Therefore, from the above discussion what is clear is that the assessee shall first discharge its onus by filing necessary evidences and once, the assessee files all details, then it is for the AO to disprove what is claimed is not real and sum credited in the books is income from undisclosed sources of the assessee.

11. In light of above settled legal position, if we examine facts of present case, there is no doubt, the assessee has discharged burden cast upon it under section 68 of the

Income-tax Act, 1961 in respect of share capital received from share capital subscribers. The AO has not disputed the fact that the assessee has furnished various evidences to prove identity of the subscribers. The assessee has filed name and address of subscribers, their PAN numbers, details of amount received and allotment made to them, return of allotment filed with Registrar of companies, company master data as available on website of Ministry of Corporate Affairs, Certification of Incorporation along with Memorandum and Articles of Association, ITR acknowledgement, audited financial statements, copies of relevant bank statements and confirmation letters from share applicants along with source of funds for investment in assessee's company. The evidences filed by the assessee clearly satisfy the condition prescribed u/s.68 of the Act. The assessee not only proved identity, but also established credit worthiness of the parties which is evident from the fact that all subscriber companies financial statement shows source of income to explain investments made in Assessee Company which is further supported from the fact that all transfer of funds was through proper bank accounts. It is a well established legal principle of law by the decisions of various courts including the Hon'ble Supreme

Court in the case of CIT vs. Stellar Investments Pvt. Ltd., *supra*, where it was clearly held that once alleged bogus shareholders details are provided to the AO then the AO is free to proceed to reopen the assessments of alleged bogus shareholders but sum received by the assessee cannot be treated as unexplained credit u/s.68 of the Act. In this case, although the assessee has filed various details, but the AO disregarded all evidences filed by the assessee and has made additions solely on the basis of investigation report without confronting those reports and statements recorded from those individuals to the assessee for rebuttal.

12. The sole basis for the AO to draw an adverse inference against assessee is investigation report of Income Tax Department Kolkata and statements of certain persons recorded at the time of investigation. First up all, the AO did not refer investigation report and its contents in his assessment order and further did not share copy of said report to the assessee. Further, even in statement of certain parties, no direct or indirect reference to the assessee. Nowhere the parties stated that the assessee is one of the beneficiaries of alleged transactions. In fact, the director of Assessee Company

denied meeting any of the persons from whom statements were taken by the department. If you go through statement relied upon by the AO, except a general statement of modus operandi of entry providers, there is no direct or indirect reference to Assessee Company in any of statements. From the above, it is clear that the AO totally ignored genuine documents produced before him and passed the Assessment Order on a sweeping statement without any material evidence or fact on record. The AO has merely stated modus operandi of how, the transaction took place without considering the facts of the present case. He had instead passed a general statement on the lines of suspicion and surmises without any vital material evidence against the Assessee. From the above, it is very clear that the observations of the AO in his assessment order on the basis of report of investigation wing, Kolkata is a general observation of modus operandi of certain parties who are involved in alleged activity of entry providing, but it cannot be a conclusive evidence to draw an adverse inference against the assessee of having benefited from so called alleged hawala activity. No doubt, an alleged scam may have taken place, but, it has to be seen whether the assessee is part of an alleged activity and he had any direct or indirect

role in alleged scam. Unless, evidences in the possession of the AO directly or indirectly linked to the assessee, it is difficult to implicate the assessee in the alleged scam. This is because, suspicion however strong, cannot take place of evidence as held by the Hon'ble Supreme Court in the case of Umacharan Shaw & Bros vs. CIT(1959) 37 ITR 271(SC). In our considered view, on the basis suspicion, modus operandi, preponderance of human probabilities, the claim of assessee cannot be discarded, unless specific evidences are brought on record to controvert voluminous evidences filed by the assessee. This view is fortified by the decision of Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151(SC) where it was held that no addition can be made on the basis of suspicion and conjectures. In the case of CIT vs. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC) it was held that the onus to prove that apparent is not real is on the person who claims it to be so.

13. The assessee has relied upon the decision of ITAT, Chennai Benches in the case of M/s. Lalithaa Jewellery Mart Pvt. Ltd., vs ACIT in ITA No. 3160/Chny/2017. The ITAT, Chennai Benches on identical set of facts and also in light of

share capital loans and advances received from certain companies from Kolkata and also in light of the investigation report of Income-tax Department, Kolkata decided the issue in favour of the assessee. The relevant findings of the Tribunal are as under:

*"25. In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various case laws as discussed hereinabove, we are of the considered view that the assessee, by filing enormous details, has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the shareholders. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of report of Investigation wing, and financial statements of the subscribers that none of the subscribers had enough source of income to establish creditworthiness. Even though there were circumstances leading to suspicion, yet having taken an action u/s.132 and enquiries made in the assessment proceedings, the assessing authority had not brought any positive material or evidence to indicate that share application money as such represented assessee's own undisclosed money brought back in the garb of share capital. Merely because of his subjective satisfaction that source of availability of money with the shareholder or their creditworthiness were not established, the AO could not treat the genuinely raised share capital as deemed income u/s.68 of the Act. In the event the intermediary companies were to be taken as conduits or persons without requisite creditworthiness and even if they were to be treated as bogus shareholders, then also nothing stopped the Revenue to reopen their individual assessments in accordance with law and bring to tax such unexplained money in their respective hands. Therefore, we are of the considered view that the AO was erred in making additions towards share capital, including share premium u/s 68 of the Income Tax Act, 1961. The learned CIT(A) after considering relevant facts and also by relied upon various case laws has rightly deleted additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961. Hence, we are inclined to uphold reasons given by the CIT(A) to delete additions and direct the*

*AO to delete addition made towards share capital/share premium u/s 68 of the Income Tax Act, 1961."*

14. Coming back to case laws relied upon by the learned D.R. The learned DR, relied upon decision of the Hon'ble Supreme Court in the case of PCIT Vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48. We find that the Hon'ble Supreme Court in the said case has considered the issue of addition made towards share application money u/s.68 of the Income Tax Act, 1961, and after considering relevant facts held that, when there is a failure of assessee to establish creditworthiness of creditor company, the Assessing Officer was justified in passing assessment order making additions u/s.68 of the Act for share capital / share application money received by the assessee. We have gone through decision of the Hon'ble Supreme Court in light of facts of the present case and we find that case law relied upon by the learned DR has no application to the facts of the present case, because in the said case, first of all, it was an ex-parte decision by the Hon'ble Supreme Court in absence of the assessee. Secondly, the Hon'ble Supreme Court has considered in light of various facts brought on record by the departmental authorities, including receipt of share capital from certain companies, in

light of financials of those companies and find that it was a case of circular trading of entries by depositing cash into one bank account and transferring amount on same day to other accounts and finally, transferred to accounts of the beneficiaries. Further, in the case before the Hon'ble Supreme Court in number of companies, the assessee could not produce banks statements of the share holders to prove genuineness of transactions and further, the assessee could not explain charging such huge premium on issue of shares. In the present case, the assessee has filed complete details, including bank statements of investor companies to prove genuineness of transactions. Further, the assessee had also proved premium charged on issue of shares with the help of its financial statements. Further, the assessee had also paid dividend every year to the shareholders, including share capital received from so called shell companies. From the above, it is very clear that facts of the present case is entirely different from facts of the case considered by the Hon'ble Supreme Court in the said case and thus, case law relied upon by the learned DR is treated as not applicable to the facts of the present case.

15. The learned DR has also relied upon the decision of Hon'ble Calcutta High Court in the case of Rajmandir Estates P.Ltd. Vs. PCIT (2016) 386 ITR 162. We case law relied upon by the Ld. DR in the light of facts of the present case and find that the case law relied upon by the Ld. DR is not applicable, because, in this case, the subscribers to the share capital did not establish their financial capacity to subscribe share capital in the assessee company. The bank account of all the applicants have been found credited from other sources immediately before transfer of funds to the assessee company. The companies did not have any business activity to establish their financial capacity. Under those facts and circumstances, the Hon'ble Calcutta High Court came to the conclusion that the assessee has failed to establish genuineness of transactions and creditworthiness of the parties and hence confirmed addition made by the AO u/s 68 of the Income-tax Act, 1961. As regards the decision of Hon'ble Delhi High Court, we find that although Hon'ble High Court held that furnishing certificate of incorporation, PAN etc is not sufficient to prove identification of subscriber when there was enough materials to show subscriber is a paper company, but in the present case, the assessee has filed all possible

evidences to establish the transactions in light of provisions of section 68 of the Act, and thus, in our considered view, the assessee has satisfactorily, discharged its onus to come out of shadow of section 68 of the Act. Therefore, the case laws relied upon by the Revenue cannot be applied to facts of present case.

16. Be that as it may. In case of PCIT vs. Hi-Tech Residency Pvt. Ltd. (2018) 257 Taxman 335, the Hon'ble Supreme Court has considered identical issue and held that where an assessee company had discharged the onus of establishing identity, genuineness of transaction and creditworthiness of investors, no additions could be made u/s. 68 of the I.T. Act, 1961. We, further, noted that although the Apex Court has not expressed any opinion, because of dismissal of SLP filed by the Revenue, the fact of the matter is that this issue has been considered by the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd (supra), where the issue has been thoroughly examined in light of provisions of section 68 of the Act, and held that if the share application money is received by the assessee company from alleged bogus share holders, whose names are given to the AO, then the department is free to

proceed to reopen their assessment in accordance with law, but sum received from share holders cannot be regarded as undisclosed income of the assessee.

17. In this view of the matter and by following the decision of ITAT, Chennai Benches in the case of M/s. Lalithaa Jewellery Mart Pvt Ltd vs ACIT (Supra), we are of the considered view that, there is no error in the findings recorded by the Ld. CIT(A) to delete additions made by the Assessing Officer towards share application money received from certain Indian companies as unexplained cash credit u/s. 68 of the Act. Thus, we are inclined to uphold the findings of the Id. CIT(A) and dismiss appeal filed by the revenue.

18. In the result, appeal filed by the revenue is dismissed.

19. The assessee has filed cross objection and raised various grounds. Ground nos. 1.1 to 2.4 relates to deletion of addition u/s. 68 of the Act towards share application money received from certain companies, and such grounds are in support of findings of the Id. CIT(A). Therefore, we allow grounds of

cross objection raised by the assessee in relation to issue of additions towards share application money u/s. 68 of the Act.

20. In so far as ground nos. 3.1 to 3.4 is concerned, the appellant has taken certain grounds on loss declared under the head speculative loss in the return of income filed for the relevant assessment year, in light of subsequent development and claimed that said loss is not a speculative loss and not covered by provisions of section 43(5)(d) of the Act. The Id. CIT(A), has discussed the issue in light of provisions of section 43(5)(d) of the Act, along with facts brought on record by the Assessing Officer and finally concluded that the loss declared by the assessee is a speculative loss, which is covered by provisions of section 43(5)(d) of the Act. The assessee could not controvert findings of facts recorded by the Id. CIT(A) with any other evidences. Therefore, we are inclined to uphold the findings of the Id. CIT(A) and reject grounds of cross objection raised by the assessee on this issue.

21. In the result, cross objection filed by the assessee is partly allowed.

22. As a result, appeal filed by the revenue is dismissed and cross objection filed by the assessee is partly allowed.

Order pronounced in the court on 27<sup>th</sup> March, 2024 at Chennai.

Sd/-  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/Judicial Member

Sd/-  
(मंजुनाथा. जी)  
**(MANJUNATHA. G)**  
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 27<sup>th</sup> March, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Assessee
2. Department
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF