

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1199/Ahd/2016  
Assessment Year 2009-10**

Veenita Enterprise Pvt. Ltd. 512/10, Road No.4, Kathwada GIDC, P Phase-2, Kathwada, Ahmedabad-382230  <b>PAN: AACCV2313G (Appellant)</b>	Vs	The DCIT, Central Circle-1(1), Ahmedabad  <b>(Respondent)</b>
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**Assessee Represented: Shri Divyang Shah, A.R.  
Revenue Represented: Ms. Saumya Pandey Jain, Sr.D.R.**

Date of hearing : 19-03-2024  
Date of pronouncement : 14-06-2024

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee as against the order of Commissioner of Income Tax (Appeals)-11, Ahmedabad, in proceeding u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 vide order dated 10/02/2016 passed for the Assessment Year 2009-10.

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

1. *Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has Erred in upholding the addition of Rs. 10,00,000/- under section 68 of the act for share money of Chandrakant V Solanki?*

2. *Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has Erred in upholding the addition of Rs. 15,00,000/- under section 68 of the act for share money of Hitendra V Solanki?*

3. *Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has Erred in upholding the addition of Rs. 30,00,000/- under section 68 of the act for share money of Parshwanath sales Ltd.?*

4. *Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in upholding the addition of Rs. 35,00,000/- under section 68 of the act for share money of Chaturbhai G Patel?*

5. *In view of order passed by Hon'ble Supreme Court in CIT v. Lovely Exports (P.)Ltd. [Application No. 11993 of 2007, dated 11-1-2008], whether Ld. AO has erred in treating the share money as unexplained credit of the assessee when identity of the share applicant is not in doubt?*

5. *Whether, on facts of the case and as per prevailing judicial pronouncements, Ld. CIT(A) has erred by neither accepting nor rejecting the additional ground of Appeal which was purely a question of law?*

3. The assessee has also raised the following additional grounds of appeal:

*“Whether on facts and in circumstnaces of the case and in law, Ld. AO has erred in initiating reassessment u/s. 147 of the Act for A.Y. 2009-10?”*

4. We shall first deal with the assessee's additional ground of appeal, in which the assessee has challenged the issuance of reassessment notice u/s 147 of the Act. The Ld. Counsel for the assessee submitted that the basis for reopening of reassessment proceeding is only on the basis of presumption and no concrete evidence is in possession of the assessing officer so as to come to the conclusion that income has escaped assessment during the impugned year under consideration. The Ld. Counsel for the assessee

submitted that basis for reopening of reasons is that during the course of post search investigation, the Director of the assessee company Shri Mahendra Purohit has admitted that investments to the tune of Rs.85 lakhs in the name of 16 different persons was actually his own investments. However, the Ld. Counsel for the assessee submitted this admission with regard to undisclosed investment to the tune of Rs.85 lakhs pertaining to assessment year 2007-08 and this information/admission made by the Director of the assessee company is not relevant for the impugned year under consideration. Hence, there is no substantial basis for reopening the assessment proceedings.

5. In response, the Ld. D.R. objected to the objections raised by the assessee for reassessment raised by the assessee on two grounds. Firstly, the reasons for assessment year 2009-10 should not be looked on stand-alone basis since on the basis search action conducted, it was found that the assessee has issued shares to 25 parties over the period 25/03/2007 to 31/03/2009 and it was found that above share capital introduced by these persons was the unaccounted investment of the assessee company itself. On the basis of concrete information available with the Department, proceedings u/s. 148 of the Act was initiated for three assessment years i.e. A.Y. 2007-08, A.Y. 2008-09 and A.Y. 2009-10. Out of these 25 parties, Shri Mahendra Purohit, Director of the assessee company in his statement u/s. 132(4) of the Act has admitted that the investments made in the name of 16 parties was actually his own investment and the same was not genuine. Therefore, looking into the totality of facts, the assessing officer had strong reason to believe that even during the impugned year under consideration, the assessee had introduced his own unaccounted money in the garb of issuance of shares at a very high premium to various parties. Secondly, the Ld. D.R. submitted that

it is evident from the assessment order itself that the reasons for reopening the assessment was duly furnished to the assessee and adequate opportunity was given to the assessee to file objections against issuance of notices. However, the assessee did not raise any objection to the issuance of notices and therefore, the assessee cannot raise this objection at this stage of hearing before ITAT for the first time.

6. Looking into the merits of the reasons to believe, it is observed that the reassessment proceedings were initiated by the assessing officer on the basis of search action conducted on the assessee in which it was found that the assessee over a period from 25/03/2007 to 31/03/2009 was engaged in issuing bogus share capital and thereby introducing his own unaccounted money, through this modus operandi. In fact, Mr. Mahendra Purohit, being the Director of the company had admitted that in respect of 16 persons, the investments were actually his own unaccounted money. During the year under consideration, the assessee, by following the same modus operandi had issues shares to person/entity having no creditworthiness at a huge premium of Rs.90 per share. Accordingly, the assessing officer was of the view that there are strong reasons to believe that the share capital issued to the tune of Rs. 90 lakhs is not genuine and hence liable to be added as the unaccounted income of the assessee. Further, on the basis of post survey proceedings, the assessing officer initiated reassessment proceedings in respect of three assessment years i.e. A.Y. 2007-08, A.Y. 2008-09 and A.Y. 2009-10 in which, the entire modus operandi and the scheme of affairs was elaborated and additions were made in the hands of the assessee on the ground that the assessee through the issuance of shares at a high premium to

persons having no creditworthiness had introduced his own unaccounted money in his books.

7. Accordingly, looking into the instant facts, the contents of the assessment orders, we are of the considered view that the assessing officer had valid reasons to believe that income had escaped assessment. It is a well settled principle of law that that while recording the reasons, the AO need not establish the actual escapement of income. The belief at that time is only prima-facie and not conclusive. In the case of **Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)**, the Hon'ble Supreme Court observed that the Court has only to see whether there was prima-facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. On the scope of re-opening u/s 147 of the Act observed as under:

*We have only to see whether there was prima-facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs.*

8. In the case of **Priya Blue Industries (P.) Ltd. v. ACIT [2022] 138 taxmann.com 69 (SC)**, the AO sought to reopen assessment in case of assessee on count that assessee was beneficiary of certain accommodation.

The Assessee challenged impugned notice mainly on ground that jurisdictional facts were not established and hence, revenue could not have assumed jurisdiction and reopened assessment. The ITAT found that exercise of reopening had been made only after due inquiries and recording of statements of concerned persons **and on having found prima-facie material, impugned notice had been issued to assessee.** The Gujarat High Court held that where Assessing Officer had reason to believe that income chargeable to tax had escaped assessment and basis for formation of such belief were several inquiries and investigation by Investigation Wing that there had been escapement of income of assessee from assessment because of his failure to disclose fully and truly all material facts, reopening of assessment was justified, SLP against said impugned order was liable to be dismissed.

9. In the case of **Kottex Industries (P.) Ltd. v. ACIT [2021] 129 taxmann.com 151 (Gujarat)**, the Gujarat High Court held that at the time of recording the reason for satisfaction of Assessing Officer, there should be prima- facie some material on the basis of which, the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. It will be open to the assessee to prove that the assumption of fact made in the notice was erroneous at the time of assessment proceedings.

10. In the case of **Bharatkumar Kalubhai Ghadiya [2021] 129 taxmann.com 306 (Gujarat)**, the High Gujarat Court observed that only a prima-facie belief is required for re-opening of assessment. The High Court made the following observations in this regard:

*5.2 Further, the term "reason to believe", however, is not defined in the Act but it can be gathered and available from the information, leading the Assessing Officer to reopen the assessment. The term itself is suggestive of its prima-facie characteristics and not established or conclusive facts or information. Meaning thereby, it is the Assessing Officer's prima-facie belief, of course, derived from the some material/ information, etc. leading him to reopen the assessment.*

11. In the case of **Purviben Snehalbhai Panchhigar [2019] 101 taxmann.com 393 (Gujarat)**, the Gujarat High Court held that in the instant case the Assessing Officer has heard the material on record which **would prima- facie suggest** that the assessee had sold number of shares of a company which was found to be indulging in providing bogus claim of long-term and short-term capital gain. The company **was prima-facie found** to be a shell company. The assessee had claimed exemption of long-term capital gain of Rs. 1.33 crores by way of sale of share of such company.

12. This was again affirmed by the Gujarat High Court in the case of **Sanjay Baulal Surana [2021] 129 taxmann.com 375 (Gujarat)**.

13. Accordingly, in our view, the Assessing Officer had sufficient material to form a prima facie belief that the assessee had introduced own unaccounted income in term of bogus share capital, thereby leading to escapement of income. Therefore, we find no infirmity in the order of Ld. CIT(Appeals) when he held that issuance of notice under section 147 of the Act was valid in the instant set of facts.

14. **On merits**, the brief facts of the case are that search and seizure action u/s. 132 of the Act was conducted in the case of B.R. Metal group on

21.09.2010. During the course of search/survey, incriminating documents were seized to the effect that the assessee has introduced unaccounted money in the form of share capital with huge premium. The assessing officer observed that the assessee company had allotted its shares to various persons through private placement from 25/03/2007 to 31/03/2009. In the course of search and survey proceedings, various documents were found from which it emerged that shares were never issued to the share applicants and it was merely on paper that the transaction was done. In fact, Shri Mahendra Purohit, Director of the assessee company in his statement u/s. 132(4) admitted that the investments in the name of as many as 16 parties was actually his own investment. During the year under consideration, the assessing officer observed that shares were issued to four parties amounting to Rs. 90 lakhs and the assessee was asked to furnish details regarding the share capital introduced by these four persons, during the impugned year under consideration.

15. In respect of Shri Chaturbhai Patel, the A.O. observed that this person was issued 35,000 shares at the premium of Rs. 90 per share and the assessee company had received a sum of Rs.35 lakhs from such persons. Notice issued u/s. 133(6) of the Act was returned unserved with the remark "LEFT". The assessee also did not provide the new address of such party. Further as per ROC, no shares are reflecting in the name of such party. Therefore though this party had made huge investment of Rs. 35 lakhs, the assessee could not furnish any details or even an iota of evidence to prove identity, capacity and creditworthiness of the party and genuineness of the transaction. Accordingly, a sum of Rs.35 lakhs was added as unaccounted money in the hands of the assessee.

**16. Share capital introduced in the name of Chandrakant Solanki:**

Again, Shri Chandrakant Solanki was issued 10000 shares at a premium of Rs.90/- per share and the assessee had received a sum of Rs.10,00,000/- share capital from this person. On further enquiry, it was found that Mr. Chandrakant Solanki had no idea that the shares were purchased by him at a premium, he was not in possession of original share certificates and he had further subsequently sold the shares of Veenita Enterprises Pvt. Ltd. at cost price. Mr. Chandrakant Solanki submitted that the source of investment of Rs. 10,00,000/- in the shares assessee company funds received from M/s. Solsons Exports Pvt. Ltd., a company in which he is a Director. However the A.O. observed that the bank account from which the payments was made by him for issuance of shares of the assessee company had been opened only shortly before subscription to share capital of the assessee and another group company BMJ Cables Pvt. Ltd. and before issuance of each cheque to the assessee or its group concerns, there is credit of equivalent amount into the bank account of the share applicant. Further, shortly thereafter, Mr. Solanki sold shares to M/s. Parshvanath Sales Ltd. at cost price without any profit. However the A.O. observed that the shares of the assessee company was purchased by M/s. Parshvanath Sales Ltd. from Shri Chandrakant Solanki only out of funds transferred to the bank account of M/s. Solsons Exports Pvt. Ltd. in which Mr. Chandrakant Solanki himself is the Director. Therefore, looking into the transaction like issuance of shares at a high premium, flow of funds into the bank account of Mr. Chandrakant Solanki, subsequent transfer of such shares to a company (M/s.Parshvanath Sales Ltd.) having no creditworthiness, providing of funds by the seller Mr. Chandrakant Solanki himself to the buyer company i.e. M/s. Parshvanath

Sales Ltd. shows that the entire transaction is non-genuine. The mere fact that the applicants have furnished PAN, filing return of income and payments have been made through bank account cannot itself prove the genuineness of the transaction.

**16.1 Share capital introduced in the name of Hitendra V. Solanki:** In this case, Mr. Hitendra Solanki was issued 15000 shares at a premium of Rs. 90/- per share and the assessee has received a sum of Rs.15,00,000/- The assessing officer observed that the precise modus operandi as in the case of Shri Chandrakant Solanki was also followed at the time of issuance of shares to Shri Hitendra Solanki and facts which emerges are that the genuineness of the entire transaction reasons doubtful and the assessee has not able to prove the genuineness of the transaction. In this case, the A.O. noted that Shri Hitendra Solanki who had invested a sum of Rs. 15 lakhs had not filed return of income since A.Y. 2010-11. Further, thereafter Mr. Hitendra Solanki has been filing return of income declaring miniscule amounts as compared to the investment made in the assessee company. Accordingly, a sum of Rs.15,00,000/- was added as undisclosed income in hands of the assessee company.

**17. Share capital introduced in the name of Parshvanath Sales Ltd.:**

During the course of assessment proceedings, the assessing officer observed that Parashvanath Sales Ltd. was issued 30,000 shares of face value of Rs. 10/- at a premium of Rs.90/- per share and the assessee received a sum of Rs.30,00,000/-. Notices were issued to Parashvanath Sales Ltd. and no compliance was made. Further, the assessee also did not produce this party. The A.O. observed that Parashvanath Sales Ltd. also purchased 10000 shares

of assessee company from Shri Hitendra Solanki. Therefore, while Parashvanath Sales Ltd. is holding 60,000 shares of the assessee company, the whereabouts of this party are unknown. Further as per the returns filed by Parashvanath Sales Ltd., this party has declared total income of Rs.6180/- in A.Y. 2009-10, Rs. 14,870/- in A.Y. 2010-11 and Rs.26,540/- in A.Y. 2011-12. Therefore, while Parashvanath Sales Ltd. had no substantial income however, it has still made huge investment in the shares of the assessee company, and the source of such investment remains unexplained. The A.O. further observed that Parashvanath Sales Ltd. purchased shares of the assessee company from Shri Hitendra Solanki and the funds to purchase the shares of the assessee company were provided by company in which Shri Hitendra Solanki itself was a Director. Therefore, all these entities are part of a camouflage created by the assessee/its Directors for introduction of unaccounted income in the form of share capital. Further, the assessing officer also observed that from the bank account have credit entries of equivalent of near amounts before issuance of cheque to the assessee company. Therefore, prima facie, it is evident that the account is used for providing accommodation entries. Further the assessing officer observed that in respect to all the four persons/ parties to whom shares were allotted by the assessee company, the claim of the share applicants is that the purpose of investment in the assessee company was to get good returns. However, it is seen that the assessee company did not declare any dividend or paid any interest to the shareholders. The profit motive, normal in the case of investment, was entirely absent in the assessee's set of facts. More importantly, the assessing officer observed that the parties to whom shares have been issued have all been non responsive to notices issued u/s 133(6) of

the Act and the creditworthiness of the share applicants are under serious doubt. The shares allotted to Shri Chandrakant Solanki and Shri Hitendra Solanki reached the hands of persons/entities who have no creditworthiness or capacity. The flow of funds into their bank accounts and bank account of the company from which these parties have received funds for subscribing to the shares of the assessee company are of doubtful nature. The company in which Shri Chandrakant Solanki and Shri Hitendra Solanki are directors provided the funds to an unknown company for purchase of shares from them. Therefore, considering the returned income, pattern of entries in the bank account, flow of funds into the bank account from the bank account of three related entities clearly suggests that they are providing accommodation entries. Accordingly, the assessing officer held that the aforesaid share capital is the unaccounted money of the assessee company itself and accordingly assessing officer made an addition of Rs. 90,00,000/- by invoking the provisions of Section 68 of the Act.

18. The assessee filed appeal before Ld. CIT(A) and Ld. CIT(A) considering the facts of the case highlighted by the assessing officer, was of the view that looking into the instant facts, even though all the transactions were carried out through banking channels etc, however, from the entire modus operandi as was discussed in detail by the assessing officer, the additions are liable to be sustained in the hands of the assessee company. While dismissing the appeal of the assessee, the Ld. CIT(A) observed as under:

*“4.1 The assessee is the group company of B.R. Metal & Alloys (Guj) P Ltd. It was engaged in the business of dealing in metal scrap and manufacturing of aluminum wires, rods, sheets, ingots etc. Certain registers, share certificates and share transfer forms were found and inventorized as annexure B-1/9. The inventory was having names of 25 applicants, who were allotted shares in the period from March 2007 till 31 March, 2009. The total amount of share subscription including premium was of Rs.23,52,00,00/- for*

235200 shares. During the course of search in the group and survey in the case of the appellant blank share transfer forms signed by the transferees were found. During the course of further investigation the share capital introduced was found to be not genuine investment.

5. The AO made addition of Rs. 35 lakhs as benami investment made by the assessee in the form of subscription for shares in the name of Chaturbhai G. Patel. The AO sent notice u/s 133 (6) of the Act to this party at the address furnished by the assessee calling for relevant details, however, the same was returned. The assessee was asked to provide any new correspondence address of the party, which was also not complied with. On further inquiry from ROC, the AO found that the shares were not reflected in the name of this investor. Therefore, in view of these facts the AO arrived at a conclusion that the assessee failed to prove identity and creditworthiness of the party and genuineness of the transaction.

5.1 Regarding investment of Rs. 10 lakhs and Rs. 15 lakhs by Shri Chandrakant V Solanki and Shri Hitendra V. Solanki respectively, the AO issued summons u/s 131 of the Act asking Shri Chandrakant V. Solanki and Shri Hitendra V. Solanki. Their statements were recorded. The statements of these persons revealed the following facts. They subscribed to the shares through S.S. Dasani, a Chartered Accountant, that they were not aware of the face value and premium of the shares, that they did not receive the original share certificates, that they did not make any investment other than in the assessee company, and BMJ Cables P Ltd, a group concern of the assessee and that the shares were sold to Vineeta Enterprise P Ltd in April 2009 at the cost price. The assessee was provided cross examination of both the parties on 24.2.2015.

After giving exhaustive findings the AO treated investment by this party as non genuine and made addition into income of the assessee.

5.2 Parshwanath Sales Ltd was another investor claimed to have made investment of Rs.30 lakhs in the assessee company. The AO sent notice u/s 133 (6) of the Act to this party at the address furnished by the assessee calling for relevant details, however, the same was returned by the postal authorities. Therefore, the assessee was asked to produce the party or any authorized person on behalf of this party, which was also not complied with. As mentioned above, the AO gave a detailed finding that funds for purchase of the shares to this party were provided by a company in which Shri Hitendra V. Solanki was a director. Shri H.V. Solanki also sold 10000 shares to this party.

For investment in shares the flow of funds moved from following 4 accounts:

Sr. No	Name of the party	A/c No. & bank	
1	Solsons Exports Pvt. Ltd	003010200038836 with Axis Bank	

2	<i>Kishan Tradelink Pvt. Ltd</i>	<i>082102000018586 IDBI Bank Ghatlodia</i>	<i>Director Jagdishchandra is also a director in Parshwanath Sales</i>
3	<i>K.M. Enterprise Prop Minesh K. Shah (HUF)</i>	<i>082102000015464 IDBI Bank C G Road</i>	
4	<i>Mahavir Trading Co, Prop Pradip Shah</i>	<i>082102000013970</i>	<i>Director of Parshwanath</i>

*There was thus continuous rotation of funds as in the case of Parshwanath Sales.*

*6. In the appeal proceedings, the AR of the appellant contended that all the investors were genuine investors. Names of the investors alongwith their addresses, PAN etc. were provided by the appellant to the AO therefore, they were the actual investors. He relied on decisions in the case of Expo Globe India Ltd(2014) 51 Taxmann.com 208 (Delhi), Fair Finvest Ltd (2014) 44 Taxmann.com 356 (Delhi) and Namastey Chemicals (P) Ltd (2013) 33 Taxmann.com 271 (Guj). The facts of these cases were perused and it was found that in the case of Fair Finvest Ltd (supra) the AO made addition only on the basis of investigation report. In the case of Namastey Chemicals (P) Ltd the assessee furnished receipt of share application money, names and addresses of the share applicants, their confirmatory letters, copies of their bank statements and other documents to establish genuineness of those investors. In other words, the requirements of provision of section 68 were fulfilled by the assessee. In the case of Expo Globe India Lid (supra) the assessee company furnished all the details on the lines of the details furnished in the case of Namastey Chemicals (P) Ltd. The fact of the case relied by the appellant were examined and it was observed that none of them was applicable to the facts of the case of the present case as discussed above.*

*7. The facts of the case and submissions of the appellant have been gone through The AO discussed in detail about the facts of the case and the result of investigation conducted and established that the investors were used as conduit to introduce the unaccounted funds of the assessee in the form of share subscription. After having regard to all the facts and circumstances of the case, submission of the appellant and position of law on the issue, in my considered opinion the action of the AO was in order, hence, does not warrant any interference. Therefore, the grounds of appeal are dismissed.*

*8. The third ground of the appeal was related to initiation of penalty proceedings under section 271(1)(c). It may be mentioned that no appeal lies against initiation of penalty under section 271(1)(c) of the I.T. Act Appeal could arise only when penalty under this section is levied. In view of the above, this ground is dismissed.*

19. The assessee is in appeal before us against the order passed by Ld. CIT(A). Before us, the Counsel for the assessee drew our attention to page 41 of the Paper Book and submitted that Shri Chandrakant Solanki has been regularly filing return of income and the identity and creditworthiness of such persons is not unknown. Further, from the return of income submitted of Shri Chandrakant Solanki for the impugned year under consideration clearly, the creditworthiness is also established. Similarly in the case of Shri Hitendra Solanki, the Id. Counsel for the assessee drew our attention to page 45 of the Paper Book and submitted that identity and creditworthiness of Shri Hitendra Solanki is also not in doubt and all details regarding these two persons were furnished to the assessing officer. Regarding M/s. Parashvanath Sales Ltd., the Id. counsel for the assessee drew our attention to page 29 of the Paper Book and submitted that all details regarding M/s. Parashvanath Sales Ltd. were also furnished to the assessing officer. The Ld. Counsel for the assessee drew our attention to page 47 of the Paper Book and submitted that the confirmation of M/s. Parashvanath Sales Ltd. has also been placed on record.

20. In response, the Ld. D.R. submitted that from the facts as has been elaborated in the assessment order Shri Mahendra Purohit, the director of the assessee company in his own statement has admitted that substantial part of share application money is the own unaccounted money of the director of the company itself. In the instant facts, the assessee company has been consistently following a system whereby unaccounted money belonging to the directors/assessee company has been introduced as share application money in the hands of the assessee company through colourable devices. The assessee, in the instant facts has failed to prove the genuineness of the

transaction and creditworthiness of the investors. No reasons have been given as to why Shri Chandrakant Solanki and Shri Hitendra Solanki had sold the shares of assessee company within short span of time at cost price only. Both the parties Shri Chandrakant Solanki and Shri Hitendra Solanki had no idea as to at what premium the shares were purchased by them in the assessee company. Even the original shares certificate were not available with these investors. So far as Shri Chaturbhai Patel is concerned, his whereabouts are absolutely unknown. Neither the address of Shri Chaturbhai Patel available, nor his PAN details were furnished. Even as per ROC records, no shares are reflecting in the name of this party and it was stated that these shares were sold by Shri Chaturbhai Patel before the commencement of assessment proceedings. Therefore neither is the identity of this person known nor his creditworthiness has been proved. Accordingly, the assessee has miserably failed to discharge the onus cast upon it. Accordingly, Ld. D.R. placed reliance on the observations made by the assessing officer and Ld. CIT(A) in their respective orders.

21. We have heard the rival contentions and perused the material on record. On-going through the facts of the instant case and the totality of circumstances including the statement of Shri Mahendra Purohit director of the assessee company, looking into the modus operandi in which investments in the share capital has been done by the assessee, looking into the fact that the identity and creditworthiness of Shri Chaturbhai Patel who has invested a sum of Rs.35,00,000/- is under serious doubt, the fact that with respect to balance two shareholders Shri Chandrakant Solanki and Shri Hitendra Solanki were not even aware about the share premium they had paid for the purchase of share of assessee company, coupled with the fact

that these persons were not in possession of the original shares certificate and had sold shares of the assessee company at cost price without any justifiable reason and further even the identity and creditworthiness of the fourth investor i.e. M/s. Parashvanath Sales Ltd. is also under serious doubt, all leads us to conclude as the Ld. assessing officer and Ld. CIT(A) have correctly held that the assessee has used colourable device/colourable modus operandi to introduce its own unaccounted money as share application money in the assessee company. Merely by furnishing a self-serving confirmation or the fact that the banking channels have been used to introduce the unaccounted money of the assessee company or that some details like return of income etc. have been furnished, would not lead one to conclude/accept that the transaction is genuine. The identity of Shri Chaturbhai Patel is unknown and the creditworthiness of M/s Parashvanath Sales Ltd. Sales is under serious doubt. In order to verify the genuineness of the transaction, the entire facts of the case have to be looked at in totality and if on analysis of the scheme of things, it is evident that the assessee is clearly engaged in dubious activities and is introducing its own unaccounted money through a maze of colourable set of transaction, and hence the additions are liable to be sustained in the hands of the assessee company. In this case, looking into the facts placed before us, we are of the considered view that the assessee has not been able to establish the genuineness of the transaction and in some cases, the identity and creditworthiness of the entities/persons who have been allocated shares of the assessee company is also under serious doubt.

22. In the case of **Sumati Dayal vs. Ld. CIT(A) 214 ITR 801 (SC)**, the Hon'ble Supreme Court has stressed upon the surrounding circumstances

and application of test of human probabilities to the given set of facts in the following words:-

*“The transaction about purchase of winning ticket took place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase had to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. **The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine.** It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence.”*

23. On the issue of circumstantial evidence and in the matters related to the discharge of 'onus of proof' and the relevance of surrounding circumstances of the case, the Hon'ble Supreme Court in the case of **CIT v. Durga Prasad More [1972] 82 ITR 540**, have observed as under:

*“...that though an appellant's statement must be considered real until it was shown that there were reasons to believe that the appellant was not the real, in a case where the party relied on self-sewing recitals in the documents, it was for the party to establish the transfer of those recitals, the taxing authorities were entitled to look into the surrounding circumstances to find out the reality of such recitals. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. **Therefore, the Courts and the Tribunals have to judge the evidence before them by applying the test of human probability.** Human minds may differ as to the reliability of piece of evidence, but, in the sphere, the decision of the final fact finding authority is made conclusive by law.”*

24. The Supreme Court of India in the case of **Sadiq Sheikh v Commissioner of Income Tax, Bangalore [2021] 124 taxmann.com 202 (SC)** dismissed SLP against High Court ruling that where Tribunal deleted

addition under section 68 made to assessee's income on account of cash receipts in its bank account by accepting assessee's explanation that said amount was transferred in his bank account from out of bank accounts of his brother-in-law and a close friend, **since Tribunal ignored vital fact emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount, its order was to be set aside.** The facts of the case were that the Assessing Officer made certain addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores. On appeal, Tribunal accepted assessee's explanation that said amount was transferred into its bank account from out of bank accounts of his brother-in-law and a close friend and, further, **that said creditors confirmed to have made payment to assessee. On basis of above, Tribunal held that identity of source was thus established and requirement of section 68 was proved beyond any doubt by assessee and, therefore, addition made by Assessing Officer was not sustainable.** High Court held that since Tribunal ignored vital facts emanating from record that **said creditors had not produced evidence to establish their capacity to raise such a huge amount** and also that they were not clear about their precise role in transaction involving said amount, its order was to be set aside. **High Court further held that creditors admitting that they had made payments to assessee was not sufficient to discharge burden placed on assessee by section 68. The Hon'ble Supreme Court dismissed the SLP filed against the order of High Court.**

25. Again, the Supreme Court in the case of **Sunil Thomas v, ITO [2021] 127 taxmann.com 275 (SC)** dismissed SLP against High Court ruling that

where donor (creditor) who was assessee's brother, apart from furnishing his employment particulars and confirming gift, couldn't explain genuineness of transactions or his creditworthiness by proving his monetary ability to make such gifts of substantial amount, gift amount was to be treated as undisclosed income. The facts of this case were that assessee claimed to have received gift from his NRI brother. The Assessing Officer treated it as assessee's undisclosed income on ground that same was not real and genuine. **The Assessee's brother, apart from furnishing his employment particulars, confirmed gift that he had made. However, assessee's brother didn't make any endeavour to explain genuineness of transactions or his creditworthiness by producing necessary documents proving his monetary ability to make such gift of substantial amount.**

26 The Hon'ble Supreme Court in the case of **Pr. CIT v NRA Iron & Steel (P.) Ltd [2019] 103 taxmann.com 48 (SC)** held that that where assessee received share capital/premium, **however there was failure of assessee to establish creditworthiness of investor companies**, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company.

27 The High Court of Andhra Pradesh in the case of **Gayathri Associates [2014] 41 taxmann.com 526 (Andhra Pradesh)** has held that Identity, creditworthiness and genuineness of transaction is not established merely by filing bank account details.

28. The High Court of Allahabad in the case of **Sagittarious Builders & Colonisers 2012] 17 taxmann.com 198 (Allahabad)/[2012]** held that not

only the identity of parties, but their creditworthiness also needs to be established by the assessee.

29. The Pune ITAT in the case of **Sanjay Waman & Co. [2002] 81 ITD 1 (Pune) (TM)** held that it is part of the duty of the assessee to furnish evidence regarding the creditworthiness of the creditors.

30. The Delhi ITAT in the case of **Anandtex international (P.) Ltd. v. ACIT [2022] 137 taxmann.com 146 (Delhi - Trib.)** held that where assessee received share application money and claimed that same was invested by its director by taking advance from a company P, however **assessee failed to establish creditworthiness of share applicant** or genuineness of transaction, AO was justified in making additions under section 68 and concluding that assessee routed its own money in books of account through conduit of investor companies.

31. Accordingly, looking into the instant facts where from the totality of facts, it is evident that the assessee has adopted colourable means to introduce its own unaccounted money in the form of share capital and the judicial precedent referred to above, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

32. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 14-06-2024
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 14/06/2024**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद