

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

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 160 & 161/Kol/2024

Assessment Year: 2008-09

Balaka Vinimay Pvt. Ltd. 9/12, Lal Bazar Street Kolkata - 700001 [PAN : AADCB2610B]	Vs	Income Tax Officer, Ward - 2(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri A.K. Tibrewal, A/R and Saurav Gupta, A/R
Revenue by :	Shri Abhijit Kundu, CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 09/04/2024
घोषणा की तारीख /Date of Pronouncement: 21/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The instant appeals are directed at the instance of the assessee against the separate orders of the National Faceless Appeal Centre, Delhi, (hereinafter the "ld. CIT(A)"). ITA No. 160/Kol/2024 is against the order of the ld. CIT(A) dt. 29/11/2023, passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act') arising out of the penalty order passed by the ld. Assessing Officer u/s 271(1)(c) of the Act and ITA No. 161/Kol/2023, is against the order of the ld. CIT(A) dt. 28/11/2023, arising out of the order of the ld. Assessing Officer passed u/s 143(3) r.w.s. 254 of the Act, for Assessment Year 2008-09.

2. Though the assessee has raised various grounds in both these appeals, but the effective issue raised in ITA No. 161/Kol/2024 is against the addition made u/s 68 of the Act for unexplained share capital confirmed by the ld. CIT(A) and in ITA No. 160/Kol/2024 is against the levy of penalty u/s 271(1)(c) of the Act on the addition made

u/s 68 of the Act which is in challenge before us in ITA No. 161/Kol/2023. Since the levy of penalty u/s 271(1)(c) of the Act depends on the outcome of the appeal on quantum addition in ITA No. 161/Kol/2024, we first taken up ITA No. 161/Kol/2024 for adjudication.

3. Facts in brief are that the assessee is a private limited company engaged in business and declared income of Rs.318/- in the original return of income furnished on 29/09/2008. The return was processed u/s 143(3) of the Act. Subsequently, notice u/s 148 of the Act was issued and reassessment proceedings u/s 147/143(3) of the Act were carried out and assessment framed on 30/04/2010 determining total income at Rs.26,340/-. Thereafter revisionary proceedings were carried out u/s 263 of the Act and in the said order dt. 28/03/2013 it was observed that proper inquiries and examinations were not conducted by the A.O. during the course of assessment proceedings in order to verify the genuineness and source of share capital as well as identity and creditworthiness of the shareholders, which rendered the assessment order erroneous and prejudicial to the interest of revenue and thus, order passed u/s 148 of I.T Act was set aside for fresh assessment. Accordingly, assessment in this case was completed u/s 143(3)/263 /143(3)/147 of the Income-tax Act, 1961 on 26.03.2014 by treating share application money as bogus and making addition of Rs. 13,94,00,000/- u/s 68 as 'unexplained cash credit' introduced in the books of accounts. Against the said order, the assessee filed appeal before the CIT(A) who had also decided the Appeal in favour of Revenue vide order dated 09.03.2016 and upheld the additions made by the AO as the assessee

could not bring any material fact to prove the identity, genuineness and creditworthiness of the shareholders during the course of appellate proceedings. Thereafter, the assessee filed appeal before this Tribunal but the same was dismissed for non-prosecution vide order dated 08.01.2018 followed by a Misc. Application before this Tribunal for recall of order dated 08.01.2018. Thereafter this Tribunal, had remanded the case back to the file of the Assessing Officer for making assessment *de-novo* vide order in ITA No. 1701/Kol/2016 dated: 13.11.2019 after affording opportunity of being heard to the assessee with the direction to the Assessing Officer to examine genuineness and source of share capital in respect of all shareholders. In compliance thereto the order of this Tribunal, proceedings u/s 143(3) r.w.s 254 were initiated in the case and notice u/s 142(1) alongwith questionnaire was issued by the Id. Assessing officer. However, that no reply was filed in response to the said notice. Therefore, share application money of Rs. 13,94,00,000/- including share premium of Rs. 13,24,30,000/- received by the assessee during the year was added to the total income of the assessee as 'unexplained cash credit' introduced in the books of the assessee as per the provisions of section 68 of the Act."

4. Aggrieved the assessee preferred appeal before the Id. CIT(A) but failed to succeed. The Id. CIT(A) dismissed the appeal observing as follows:-

"6.2.4. Further, as the assessee is in appeal before us against the above impugned order, appellant was provided sufficient number of hearing opportunities as narrated above in para 5 of this order to substantiate its argument raised in the appeal memo. However, appellant has failed to submit any documents/proofs/evidences in support of its arguments and preferred to remain silent, during the appellate proceedings. Further, it is seen that

appellant has not submitted its reply before AO in response to the notice issued dated 13.02.2020. In view of non-submission of supporting evidences & above facts, it cannot be concluded as to how the order passed by the AO is erroneous and addition u/s 68 of the Act should not be made to the total income of the assessee. In view of this, I hereby, uphold the action of the AO and confirm the addition made in the impugned order u/s 143(3) rws 147, rws 263 rws 254 rws 144B of the I.T. Act, 1961 dated 27.09.2021. Accordingly, grounds of appellant raised on the issue in contention are dismissed."

5. On going through the above finding of the Id. CIT(A), it emerges that though the assessee had filed various details and supporting documents to explain the nature and source of the alleged sum but they fall short of the details which were noted by the Id. CIT(A) and also he observed that the assessee did not respond to the notice of the Id. Assessing Officer dt. 13/02/2020, and accordingly the action of the Id. Assessing Officer making addition u/s 68 of the Act was confirmed.

6. Aggrieved the assessee is now in appeal before this Tribunal.

7. The Id. Counsel for the assessee referred to various details and documents filed in paper book containing four volumes and running into 709 pages in volume 1 to 3 and 332 pages in volume IV which contains the reply u/s 133(6) of the Act by the alleged share applicants/shareholders. He also submitted that the AO has added Rs. 13,94,00,000/- u/s 68 of the Income Tax Act, 1961 towards the share capital money received by the appellant on the issue of equity shares. Such addition has been made by the AO on the pre - conceived notion that the identity and creditworthiness of the shareholders are bogus and hence the genuineness of the transaction could not be established and hence the entire share capital alongwith premium aggregating to Rs. 13,94,00,000/- (Rs. 69,70,000/- + Rs. 13,24,30,000/-) has been added to

the income of the appellant. The AO did not appreciate that fact that the three (3) ingredients required for section 68 i.e., Identity, Source of source and genuinity of the transaction was well established by the appellant. For the identity Copy of the IT return alongwith the Balance Sheet and copy of the Assessment Order was duly submitted to the AO. In regards to the Source of source, copy of the bank Statement of the shareholder companies showing the funds available was duly submitted during the Assessment Proceedings. In regards to the Genuineness of the transaction, confirmation of the transaction by the subscriber and the reflection of such shares subscribed in their Balance Sheet was duly submitted by the appellant. Hence the three ingredients of section 68 was duly satisfied by the appellant. Hence, the action of the AO without taking into regards the above details/documents was unjustified.

7.1. The AO without having any independent enquiry conducted at his end about the existence of the shareholder companies, their creditworthiness and the genuineness of the transactions relating to the share capital on the basis of the information provided by the appellant and without bringing adverse materials on record to disapprove the claim of the appellant company, brushed aside details/documents/explanations and information furnished by the appellant about the existence of the shareholders, their creditworthiness and the genuineness of the transaction relating to the share capital and treated the same as unexplained cash credit u/s 68 merely on the basis of the surmise and conjecture. The AO further doubted the valuation of the premium without appreciating the fact that the law existing in AY

2008-09 did not require any kind of valuation in such respect. The relevant law u/s 56(2)(viib) has been inserted into the Income Tax Act w. e. f 01.04.2013 only and the justification of the premium in such respect for AY 2008-09 cannot be called for by the AO.

7.2. Without prejudice, the shareholders have been assessed by the income tax department vide order u/s 143(3) or 147 and since they have been assessed by the Income Tax Department itself, the revenue cannot challenge such source in the hands of the assessee company and hence the addition made in such respect is liable to be deleted.

7.3. The Identity, creditworthiness and genuineness of the transactions as require by the law is proved beyond doubt and hence the invocation of section 68 by the AO in such respect for adding such amount is bad, illegal, unjustified and uncalled for and in view of the facts and in the circumstances, the addition so made by the AO is liable to be deleted.

8. Further reliance was placed on the following decisions:-

- (i) *Abhay Mineral Pvt. Ltd. vs. ITO ITA No. 727/Kol/2023*
- (ii) *ITO -vs- Rajashree Integrated Cold Chain Pvt. Ltd. ITA No. 40/Kol/2021*
- (iii) *ITO -vs- Express Tradelink Pvt. Ltd. ITA No. 43/Kol/2021*
- (iv) *VSFT Quilts & Pillows Pvt. Ltd. -vs- ITO ITA No. 1215/Kol/2018*
- (v) *True-Man Consultants Pvt. Ltd -vs- ITO ITA No. 1158/Kol/2023*
- (vi) *M/s Brightstar Vincom Pvt. Ltd. -vs- ITO ITA No. 176/Kol/2023*
- (vii) *Cornerstone Property Investments (P) Ltd -vs- ITO [2023] 152 taxmann.com 256 (Karnataka)*
- (viii) *PCIT -vs- Himachal Fibres Ltd. [2018] 98 taxmann.com 173 (SC)*
- (ix) *PCIT -vs- Himachal Fibres Ltd. [2018] 98 taxmann.com 172 (Delhi)*
- (x) *CIT -vs- Dataware Private Limited ITAT No. 263 of 2011 : GA No. 2856 of 2011*

9. On the other hand, the ld. D/R supported the orders of the lower authorities and stated that the assessee failed to bring forth the share applicants for verification and the share applicants which are private limited companies are not have sufficient financial strength to explain the investment and they are in the nature of typical shell/*jamakharchi*/paper companies.

10. We have heard rival contentions and perused the material placed before us. The addition u/s 68 of the Act for unexplained share capital is in challenge before us. During the year under consideration assessee company floated 6,97,000 equity shares of Rs. 10/- each at a premium of Rs.190/- per share. Thus, the total sum of Rs.13,94,00,000/- was received from various shareholders which are listed at page no. 8 to 13 of the assessment order. The ld. Assessing Officer in the second round of assessment proceedings carried out in pursuance to the revisionary order u/s 263 of the Act, asked the assessee to fulfill the conditions of Section 68 of the Act and explain the nature and source of the alleged sum to his satisfaction. The assessee furnished list of shareholders, copies of confirmation, copy of the ITR, audited financial statements of the shareholders. The ld. Assessing Officer also issued notice u/s 133(6) of the Act to which many of the shareholders have replied. However, ld. Assessing Officer considering the fact that the company was newly incorporated and no major business activity was carried out nor any big project was under consideration and, therefore, such huge premium is not commensurate to the business activity of the assessee company and it must be in the form of accommodation entry from various anti-providers/shareholder companies. Directors of the company were

asked to be produced but they did not turn up. The Id. CIT(A) has also summarily confirmed the finding of the Id. Assessing Officer.

11. We note that the issue relates to Assessment Year 2008-09 and the assessee had already passed through reassessment proceedings and revisionary proceedings. It is claimed that the assessee has filed complete details of each of the share subscribers to prove the identity and creditworthiness of the shareholders and genuineness of the transactions and to prove the same, the copies of confirmation, bank statement, audited financial statements, identity proofs, source of funds, investments by the share subscribers in the assessee company, replies to notice u/s 133(6) of the Act and also various other details have been filed to show that most of the alleged share subscribers have also passed through the scrutiny proceedings. All these details are furnished in the paper books in three volumes in the details filed therein are provided in the index which is extracted below:-

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Sl. No.	Description of Document	Page Nos.
Paper Book Volume – 1		
1.	ITR Acknowledgement & Computation of income of the Appellant Assessee Company for the AY 2008-09.	i – ii
2.	Audited Financials for the FY 2007-08 relevant to AY 2008-09 of the Appellant Assessee Company.	iii – xiv
3.	e-filing Acknowledgment Nos.489257131110921; 489269171110921; 489281371110921 & 489290551110921 for the compliances done in response to the notice u/s 142(1) of the for the Assessment Proceedings for AY 2008-09.	1 – 8
4.	Copy of Reply Letter.	9
5.	Copy of the Bank Statement of the Appellant Assessee Company for the FY 2007-08 relevant to AY 2008-09.	10 – 14
6.	The list of the shareholders who have invested in the company.	15
7.	Documents in Relation to Shareholders which inter alia include ITR Acknowledgment; Audited Financials; Bank Statements; Source of Funds & Company Master Data.	16 – 572
	- Aakashdeep Vinimay Pvt Ltd	16 – 32
	- Akashdeep Commodities Pvt Ltd	33 – 48
	- Ambey Goods Pvt Ltd	49 – 64
	- Angel Vanijya Pvt Ltd	65 – 81
	- Avenue Commercial Pvt Ltd	82 – 97
	- Bandhan Distributors Pvt Ltd	98 – 115
	- Binapani Sales Pvt Ltd	116 – 132
	- Bishnu Barter Pvt Ltd	133 – 150
	- Cactus Vinimay Pvt Ltd	151 – 167
	- Candour Dealcom Pvt Ltd	168 – 186
	- Eagle Commotrade Pvt Ltd	187 – 202

	- Jagdamba Barter Pvt Ltd	203 – 220	
	- Jamuna Commercial Pvt Ltd	221 – 237	
	- Krishnakali Distributors Pvt Ltd	238 – 253	
Paper Book Volume - II			
	- Lovely Tie-up Pvt Ltd	254 – 269	
	- Minarva Vyapaar Pvt Ltd	270 – 286	
	- Nature Commercial Pvt Ltd	287 – 303	
	- Nilam Vyapaar Pvt Ltd	304 – 319	
	- Niraj Vinimay Pvt Ltd	320 – 335	
	- Niranjan Vyapaar Pvt Ltd	336 – 351	
	- Pratham Distributors Pvt Ltd	352 – 367	
	- Richfield Goods Pvt Ltd	368 – 384	
	- Rosy Commodities Pvt Ltd	385 – 400	
	- Shakuntala Vyapaar Pvt Ltd	401 – 416	
	- Shark Vanijya Pvt Ltd	417 – 432	
	- Sigma Trade-Link Pvt Ltd	433 – 448	
	- S K Aashray Pvt Ltd	449 – 466	
	- Swarnarekha Vinimay Pvt Ltd	467 – 483	
	- Unnati Tradecom Pvt Ltd	484 – 499	
	- Victory Commotrade Pvt Ltd	500 – 515	
	- Chand Tie Up Pvt Ltd	516 – 529	
	- Indradev Vyapaar Pvt Ltd	530 – 541	
	- Kamakhya Vincom Pvt Ltd	542 – 558	
	- Sanghai Datamatics Pvt Ltd	559 – 572	
Paper Book Volume - III			
8.	e-filing Acknowledgment Nos. 541760181200921; 541774501200921; 541790321200921 & 541807881200921 for the compliances done in response to the Show cause notice during the Assessment Proceedings for AY 2008-09.		573 – 579
9.	Reply letter to the Show cause notice		580 – 623
10.	Assessment Order passed in the case of Shareholders		624 – 709
	- Aakashdeep Vinimay Pvt Ltd	624 – 626	
	- Akashdeep Commodities Pvt Ltd	627 – 629	
	- Ambey Goods Pvt Ltd	630 – 631	
	- Angel Vanijya Pvt Ltd	632 – 633	
	- Avenue Commercial Pvt Ltd	634 – 635	
	- Bandhan Distributors Pvt Ltd	636 – 637	
	- Binapani Sales Pvt Ltd	638 – 640	

- Bishnu Barter Pvt Ltd	641 – 642	
- Candour Dealcom Pvt Ltd	643 – 644	
- Cactus Vinimay Pvt Ltd	645 – 646	
- Jamuna Commercial Pvt Ltd	647 – 649	
- Minarva Vyapaar Pvt Ltd	650 – 651	
- Nature Commercial Pvt Ltd	652 – 654	
- Nilam Vyapaar Pvt Ltd	655 – 656	
- Eagle Commotrade Pvt Ltd	657 – 658	
- Indradev Vyapaar Pvt Ltd	659 – 661	
- Jagdamba Barter Pvt Ltd	662 – 664	
- Krishnakali Distributors Pvt Ltd	665 – 666	
- Lovely Tie-up Pvt Ltd	667 – 669	
- Niraj Vinimay Pvt Ltd	670 – 672	
- Pratham Distributors Pvt Ltd	673 – 674	
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- Unnati Tradecom Pvt Ltd	683 – 684	
- Niranjan Vyapaar Pvt Ltd	685 – 687	
- Rosy Commodities Pvt Ltd	688 – 690	
- Shark Vanijya Pvt Ltd	691 – 692	
- Sigma Trade-Link Pvt Ltd	693 – 695	
- Swarnarekha Vinimay Pvt Ltd	696 – 698	
- Sanghai Datamatics Pvt Ltd	699 – 705	
- Victory Commotrade Pvt Ltd	706 – 709	

Certificate

This is to certify that the Paper-Book contains only those papers and documents which were available with the Assessing officer in the course of 143(3) r.w.s 254 read with section 144B of the Act. These papers and documents were not available with the Ld. CIT(A), since the order was passed ex-parte.

12. Further list of shareholders who have replied to the notices u/s 133(6) of the Act directly to the ld. Assessing Officer and their assessment orders being framed u/s 147/143(3) of the Act have also been placed before us. We find that all these details of the alleged share subscribers have been furnished before the lower authorities on

multiple occasions, however, revenue authorities except indicating a theory of routing of entries of paper companies/shell companies/*jamakharchi* companies, no specific discrepancies have been observed by them in the financials of the alleged cash creditors. We note that all the share subscribers are private limited companies which are governed by the Ministry of Corporate Affairs and are duty bound to furnish the audited financial statements on the portal of Ministry of Corporate Affairs. All are required to maintain regular books of account and also to file income tax returns which they have duly complied. The funds received by the assessee company are through banking channels. It is not the case of the revenue authorities that cash has been deposited prior to the issuing of cheques. The alleged share subscribers have also demonstrated that there was immediate source of funds available in the bank accounts which have been applied for making investments in the equity of the assessee company. We also note that the appeal relates to financial year 2007-08 and the scrutiny proceedings have finally come to an end on 27/09/2021. There is almost a gap of 13 to 14 years in between the actual transactions having taken place and the final assessment proceedings. It is not in dispute that the assessee has filed various details before the lower authorities and one of the allegation of the revenue authorities is that summons u/s 131 of the Act have not been complied and the directors have not appeared. Sometimes it is practically difficult that after a gap of 10 to 12 years, the assessee can call for the share subscribers who invested a long time before and there can be a situation where the shareholder have sold their equities and new shareholders have taken their place. In short whatever best the

assessee could provide to prove the identity and creditworthiness of the share subscribers and the genuineness of the transactions, has been filed. The ld. Assessing Officer though has stated to be not satisfied but had not mentioned any specific reason and nor pointed out any errors. He has also not appreciated the fact that most of the share subscribers have passed through scrutiny proceedings which affirmed that they are regularly carrying out the activity of investing.

13. Before us, the ld. Counsel for the assessee has referred to plethora of decisions wherein also similar type of issues have been adjudicated. We find that in one of the case, namely, *True-Man Consultants Pvt. Ltd - vs- ITO ITA No. 1158/Kol/2023*, almost identical issue of unexplained share capital from various share subscribers came up for adjudication before this Tribunal and after considering the factual aspect and the settled judicial precedents, wherein non-appearance of the directors of the share subscriber/shareholders before the ld. Assessing Officer cannot be taken as a ground to invoke provisions of Section 68 of the Act, relief has been granted to the assessee. Relevant finding of the Tribunal reads as follows: –

“7. We have heard rival contentions and perused the records placed before us. The first issue for our consideration is regarding the addition at Rs. 6.52 Crore confirmed by ld. CIT(A) which has been made by the AO alleging it to be unexplained cash credit received by the assessee in the form of share capital and share premium. The Revenue authorities have alleged that the assessee has merely furnished the documentary evidences but the assessee failed to appear before the Revenue authorities for recording their statements. The AO has also alleged that the assessee has been unable to discharge its primary onus casted under the provisions of Section 68 of the Act to explain the nature and source, in other words, unable to prove the identity and creditworthiness of the share applicants and genuineness of the transaction.

8. Before us, ld. Counsel for the assessee referring to the paperbook and details has submitted that all the share applicant companies are duly registered with the

Ministry of Corporate Affairs and are assessed to income tax. All the share applicants are filing income tax returns and books of accounts are duly audited.

It is also claimed that all the alleged share applicants have sufficient net worth to explain the source of investment made by them in the equity of the assessee company. Before us, various details of share applicants have been filed and they have been tabulated in a chart form reproduced below:

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9. From going through the above details, we notice that whatever best evidence which one can gather to discharge the onus casted u/s 68 of the Act i.e. to explain the nature and source of the sum found credited in the books has been done so by the assessee. The assessee has offered complete explanation to prove the identity and creditworthiness of the share applicants and genuineness of the transaction which have been routed through banking channel. Once the assessee has discharged its onus then it's the turn of the Revenue authorities to examine those details and also consider the explanation offered by the assessee and then to form an opinion about being satisfied with such evidence or not and so as to form an opinion, a proper satisfaction has to be recorded by the AO/CIT(A). This is the mandate of Section 68 of the Act which has two limbs; firstly, the explanation to be offered by the assessee to explain the nature and source and second limb is the opinion of the AO to satisfy the veracity of such explanation offered by the assessee. In the instant case, except for personally not appearing before the AO in few cases against the summons issued u/s 131 of the Act, all the other details and evidences have been filed. These details clearly shows that the investing companies i.e. alleged share applicants are duly registered with the Ministry of Corporate Affairs. Books of accounts and financial statements are duly audited. They are regularly filing the returns with the Income Tax Department as well as on the portal of Ministry of Corporate Affairs. All the transactions have been carried out through banking channel. Source of fund is well explained by the net worth of the share applicant companies. For instance, one of the share applicants namely Aqua Vincom Private Limited which has invested Rs. 25 Lakh in the equity shares of the assessee company has a net worth of approx 11.13 Crore as on the close of the financial year. Another share applicant namely M/s. Champion Advisory Private Limited which has invested Rs. 20 Lakh has a net worth of Rs. 25.48 Crore. Same is the situation for the remaining share applicants. It has been consistently held by the Hon'ble Court including that of Hon'ble Jurisdictional High Court in plethora of judgments that once an assessee discharges its onus to explain the nature and source of the credit entry found in its books of accounts and places evidences on record then the onus shifts on to the Revenue authorities and they have to specifically pin point the errors, defects and inconsistency in such documents and details and if needed they need to conduct further enquiries using departmental machinery and then once they have an evidence against the assessee then the assessee needs to be confronted. But in the case before us, Revenue authorities have failed to discharge their burden of proof and have given general comments about meagre income and rotation of funds.

10. Though the assessee has referred to a plethora of judgments, we take note of the recent decision of this Tribunal in the case of M/s. Inter Securities Pvt. Ltd. vs. ITO in ITA No. 609/KOL/2018 order dated 16.10.2023 wherein this Tribunal under the similar set of facts and circumstances and placing reliance on various judgments including that of the Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC), Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure (P) Ltd. 80 taxmann.com 272 (Bombay), Hon'ble Madhya Pradesh High Court in the case of PCIT vs. Chain House International (P) Ltd. [2018] 98 taxmann.com 47 (Madhya Pradesh) and the recent judgment of Hon'ble Jurisdictional High Court in the case of PCIT vs. Sreeleathers [2022] 448 ITR 332 (Calcutta) has decided in favour of the assessee deleting the addition u/s 68 of the Act observing as follows:

“6. We have heard rival contentions and perused the material placed on record.

7. Addition u/s 68 of the Act at Rs. 3.59 Crores is in dispute before us wherein both the lower authorities have held that the assessee had been unable to explain the nature and source of this share application money which included share capital and share premium totaling to Rs.3.59 Crores, on account of issue of share of face value of Rs.10/- and premium of Rs.90/- received from 14 share subscribers. We notice that the assessee has furnished following documents/information/evidence of all the alleged share subscribers :-

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S.No.	Name of the Party and PAN	Amount invested (appearing in Audited financial statement - investment schedule of concern share applicant)	Net Worth as per audited balance sheet of the concerned share applicant	Copy of documents of concerned share applicants submitted to establish identity, Creditworthiness and Genuineness of the transaction
1.	Akshay Vintrade Private Limited AAICA7109F	30 Lacs	₹50 Lacs (Page no. 52 of the paper book)	Copy of audited balance Sheet (52), Bank statement (59), Incorporation certificate (61), Income Tax Return (62), Master data as appearing on MCA (63), details of directors as appearing on MCA (64), Memorandum and Articles of Association (65), Copy of PAN Card (83) copy of share application form (84), Copy of confirmation of Investment (85)
2.	Aqua Vincom Private Limited. AAJCA0593L	50 Lacs	1112 Lacs (Page no. 92 of the paper book)	Copy of audited balance Sheet (92), Bank statement (99), Incorporation certificate (100), Income Tax Return (101), Master data as appearing on MCA (102), details of directors as appearing on MCA (103), Memorandum and Articles of Association (104),

				Copy of PAN Card (122) copy of share application (123), Copy of confirmation of Investment (124)
3.	Barbarik Estates Private Limited. AADCB5626K	105 Lacs	324 Lacs (Page no. 128 of the paper book)	Copy of audited balance Sheet (128), Bank statement (134), Incorporation certificate (136), Income Tax Return (137), Master data as appearing on MCA (138), details of directors as appearing on MCA (139), Memorandum and Articles of Association (140), Copy of PAN Card (158) copy of share application (159), Copy of confirmation of Investment (160)
4.	Dolphin Commerce Private Limited. AACCD9870A	30 Lacs	1188 Lacs (Page no. 165 of the paper book)	Copy of audited balance Sheet (165), Bank statement (171), Incorporation certificate (173), Income Tax Return (174), Master data as appearing on MCA (175), details of directors as appearing on MCA (176), Memorandum and Articles of Association (177), Copy of PAN Card (195) copy of share application (196), Copy of confirmation of Investment (197)
5.	Fountain Suppliers Private Limited. AABCF5766A	10 Lacs	279 Lacs (Page no. 204 of the paper book)	Copy of audited balance Sheet (204), Bank statement (211), Incorporation certificate (212), Income Tax Return (213), Master data as appearing on MCA (214), details of directors as appearing on MCA (215), Memorandum and Articles of Association (216), Copy of PAN Card (234) copy of

				share application (235), Copy of confirmation of Investment (236)
6.	Keshav Educon Private Limited. AAECK3541R	10 Lacs	26 Lacs (Page no. 241 of the paper book)	Copy of audited balance Sheet (241), Bank statement (250), Incorporation certificate (252), Income Tax Return (253), Master data as appearing on MCA (254), details of directors as appearing on MCA (255), Memorandum and Articles of Association (256), Copy of PAN Card (272) copy of share application (273), Copy of confirmation of Investment (275)
7.	Orchid Commosale Pvt Ltd AAGCP2558P	10 Lacs	662 Lacs (Page no. 282 of the paper book)	Copy of audited balance Sheet (282), Bank statement (291), Incorporation certificate (293), Income Tax Return (294), Master data as appearing on MCA (295), details of directors as appearing on MCA (296), Memorandum and Articles of Association (297), Copy of PAN Card (313) copy of share application (314), Copy of confirmation of Investments (315)
8.	Punam Agarwal AFBPA5779A	10 Lacs	-	Bank statement (316), Copy of PAN Card (318) copy of share application (319) and Copy of confirmation of Investment (320),
9.	Ramawater Agarwal ACPPA6445E	10 Lacs	-	Bank statement (321), Copy of PAN Card (322) copy of share application (323) and Copy of confirmation of Investment (324),
10.	Satellite Infraprojects Pvt Ltd	8 Lacs	2011 Lacs	Copy of audited balance Sheet (331), Bank statement (341),

	AAPCS2265R		(Page no. 331 of the paper book)	Incorporation certificate (342), Income Tax Return (343), details of directors as appearing on MCA (244), Memorandum and Articles of Association (245), Copy of PAN Card (367) copy of share application (368), Copy of confirmation of Investments (369)
11.	Subhmangal Agencies Pvt Ltd AAPCS1630N	8 Lacs	219 Lacs (Page no. 377 of the paper book)	Copy of audited balance Sheet (377), Bank statement (384), Incorporation certificate (385), Income Tax Return (386), Master data as appearing on MCA (387), details of directors as appearing on MCA (388), Memorandum and Articles of Association (389), Copy of PAN Card (407) copy of share application (408), Copy of confirmation of Investments (409)
12.	True Man Consultants Pvt Ltd AAACT9862G	40 Lacs	1051 Lacs (Page no. 416 of the paper book)	Copy of audited balance Sheet (416), Bank statement (423), Incorporation certificate (429), Income Tax Return (430), Master data as appearing on MCA (431), details of directors as appearing on MCA (432), Memorandum and Articles of Association (433), Copy of PAN Card (453) copy of share application (454), Copy of confirmation of Investments (455)
13.	Venky Agencies Pvt Ltd AADCV4942J	29 Lacs	1297 Lacs (Page no. 463 of the paper book)	Copy of audited balance Sheet (463), Bank statement (470), Incorporation certificate (471), Income Tax Return (472), Master data as appearing on MCA (473),

				details of directors as appearing on MCA (474), Memorandum and Articles of Association (475), Copy of PAN Card (493) copy of share application (494), Copy of confirmation of Investments (495)
14.	Winsome Sales Pvt Ltd AAACW9316N	9 Lacs	1418 Lacs (Page no. 502 of the paper book)	Copy of audited balance Sheet (502), Bank statement (510), Incorporation certificate (511), Income Tax Return (512), Master data as appearing on MCA (513), details of directors as appearing on MCA (514), Memorandum and Articles of Association (515), Copy of PAN Card (532) copy of share application (533), Copy of confirmation of Investments (534)

8. All the above details stood furnished before both the lower authorities. As far as assessee is concerned, in terms of provisions of Section 68 of the Act, it has discharged the primary onus by furnishing all the documents and details relevant/necessary to explain the identity, creditworthiness of share applicants and genuineness of the transactions. Once these documents have been filed then, the burden shifts over the revenue authorities and they have to examine those details and find out any discrepancy in such documents and then confront the assessee. Perusal of the impugned order as well as the assessment order reveals that no such discrepancies have been noticed by the assessing authorities except giving general remarks about the income and business turnover. In the paper book, the assessee had filed the confirmation letters and all the share subscribers have stated to have given the share application money and the source of such share application money in the confirmation letter which the share applicants received before making the investment in the assessee company. In other words, source of source has been explained by the assessee company. We also notice that the summons u/s 131 of the Act were issued to the Directors of the assessee company who have appeared before the Assessing Officer and submitted all the documents to establish the identity and creditworthiness of the shareholders and genuineness of the transactions.

8.1. So far as the share premium of Rs.90/- charged by the assessee is concerned, we notice that as on 31/03/2011, the total of share capital & reserve surplus held by the assessee is Rs. 1,00,88,262/-. For computing the book value as on 31/03/2011, we need to divide total of share capital and reserve and surplus with 110000 equity shares issued upto 31/03/2011. Thus the book value as on 31/03/2011 would come to Rs.91.65 (Rs.1,00,81,262/- ÷) Rs.1,10,000/-). The share application money received

during financial year 2011-12 is Rs.100/-, which comprises of share premium of Rs.90/- charged on equity shares of face value of Rs.10/-. Considering the book value, per share as on 31/03/2011 at Rs.91.65, we find that the assessee has not charged any exorbitant share premium from the share applicants and the share premium charged is not highly excessive in comparison to the book value. Therefore, on one hand, the share applicants have sufficient funds to explain the investment, so as to prove the identity and creditworthiness and on the other hand, the genuineness of the transaction is also proved as a fair investment has been made in the assessee company. Therefore, since the criteria to prove all the three ingredients i.e., the identity and creditworthiness of the share applicants and genuineness of the transactions have been fulfilled by the assessee so as to prove the nature and source of alleged sum, no addition is called for u/s 68 of the Act.

9. We find support from the various decisions as referred by the ld. Counsel for the assessee in the list of case-law (supra). We, find that this Tribunal in the case of DCIT, vs. Narsingh Ispat Limited; ITA No. 225/Kol/2023 order dt. 26/07/2023, under identical facts and issue held as under:-

“7. We have heard rival contentions and perused the material available on record. The revenue is aggrieved with the deletion of addition of Rs.19,14,50,000/- made by the assessing officer u/s 68 of the Act. We notice that the assessing officer when called for the details from the respective share applicants, namely, M/s. Honesty Dealers Pvt. Ltd. and M/s Seaview Agencies Pvt. Ltd., for the sum of Rs.10,52,00,000/- and Rs.8,62,50,000/-, received against the issue of equity capital during the year, both the share applicants of replied to the notice under section 133(6) of the Act and have filed complete details including bank statements, income tax returns, audited balance sheets, confirmation of accounts etc.. It was also submitted that the alleged share applicants are part of the assessee’s group. However, when the summons under section 131 of the Act were not complied by the directors of the assessee company, the impugned additions were made under section 68 of the Act. Thereafter when the assessee preferred appeal before the ld. CIT(A), filing complete details and also stating that the source of source of the alleged sum is duly proved with the fact that both the alleged share applicants have received equity share capital and share premium in the preceding years and those years have been assessed to tax and even addition has been made in the hands of M/s. Honesty Dealers Pvt. Ltd., towards unexplained share capital at Rs.14,80,00,000/- in AY 2009-10. Based on these submissions, the ld. CIT(A), deleted the impugned addition by observing as follows:-

“3.1 I have carefully considered the facts of the case and submission of the appellant. I have also gone through the copies of the documents (order sheet etc.) submitted by the appellant. Perusal of the certified copy of the order sheet shows that the authorised representative of the assessee has attended before the AO on 25.07.2014, 05.12.2014, 06.02.2015, 17.02.2015, 25.02.2015 and 03.03.2015. Thus, AO's observation that appellant has not fully cooperated in the assessment proceedings is not correct. Further, appellant has also submitted the certified copy of the details submitted by M/s. Honesty Dealers Pvt. Ltd. and M/s. Seaview Agencies Pvt. Ltd. in the office of the Ld. Assessing Officer. Thus, it is apparent that the appellant and the said two shareholders had filed all the details during the assessment proceedings. AO's allegation that the said shareholders did not attend personally may be a matter of

debate. Appellant submits that the Directors of the two investing companies had attended during assessment proceedings and as per AO's directions, details were filed in DAK. In any case, AO has not raised issue relating to non attendance of the Directors in the note sheet. Another crucial observation of the Assessing Officer that share capital has been received from outsiders is contrary to the facts. M/s. Honesty Dealers Pvt. Ltd., and M/s. Seaview Agencies Pvt. Ltd. are Group companies and the sister concerns of the assessee company. While questioning the motive of investments made by the said two companies, AO has observed that investment made by them were not justified on the basis of the performance of the assessee company. However, AO has overlooked the fact that assessee company had a genuine running business of manufacturing and trading of iron and steel and for the current year it had filed return showing total income of Rs. 1,74,09,340/-. Thus, the assessee company appears to have good performance record. In any case, investment decisions within the group concerns are not purely guided by the performance of the investee company. Rather, these are based on holistic and strategic view for the betterment of all the group concerns. Now coming to the identity and creditworthiness of the two shareholders, it is observed that their identities are not in doubt. These two concerns are companies having common Directors with the assessee company and they have been regularly filing their returns of income. Appellant has submitted assessment order for M/s. Honesty Dealers Pvt. Ltd. for assessment year 2009-10. Similarly, appellant has also submitted the assessment orders in the case of M/s. Seaview Agencies Pvt. Ltd. for AY: 2011-12 and 2012-13. This shows that both these companies have their separate existence and these have been verified independently by their respective AOS. Regarding creditworthiness of the two parties, it is noticed that M/s. Honesty Dealers Pvt. Ltd. had received share capital of Rs. 1,4,80,00,000/- in AY: 2009-10 and in scrutiny order u/s 144/263/143(3)/147 dated 12.03.2015, entire receipt of share capital has been added in the hands of M/s. Honesty Dealers Pvt. Ltd. Further, perusal of the Balance-sheet of M/s. Honesty Dealers Pvt. Ltd. as on 31.03.2012 shows that major chunk of the share capital received in AY: 2009-10 has been invested in the shares of the assessee company in AY: 2012-13. Thus, the investments in the shares of assessee company, amounting to Rs.10,52,00,000/- has been out of the share capital raised in AY: 2009-10 and in AY: 2009-10, entire share capital raised by M/s. Honesty Dealers Pvt. Ltd. has been added in the hands of the party. Thus, the creditworthiness of M/s. Honesty Dealers Pvt. Ltd. vis- à-vis the investments in the shares of the assessee company gets established. There is a clear link between raising of share capital in AY: 2009-10 by M/s. Honesty Dealers Pvt. Ltd. and investing a major part of that share capital into the shares of assessee company in AY: 2012-13. As addition has already been made in the hands of M/s. Honesty Dealers Pvt. Ltd. for the amount received as share capital, another addition for the same amount cannot be sustained in the hands of the assessee company when the linkages between the two are apparent from records.

Now coming to the M/s. Seaview Agencies Pvt. Ltd., it is noticed that this company had also raised huge share capital in AY: 2009-10 and the source of investments in the shares of the assessee company in the current year is the share capital raised by M/s. Seaview Agencies Pvt. Ltd. in AY: 2009-10. Although, there was no scrutiny in its case for AY:

2009-10 but in the subsequent years, i.e., AY: 2011-12 and AY: 2012-13, assessment proceedings were reopened on the basis of information received from the Investigation Wing and orders w/s. 147 read with section 143(3) have been passed on 21.12.2018 and 11.12.2018 respectively for assessment year 2011-12 and assessment year 2012-13. In the assessment year 2011-12 information was received from the Investigation Wing regarding unaccounted income of Rs. 3,00,000/- received by M/s. Seaview Agencies Pvt. Ltd. and accordingly addition of this amount was made by treating the same as unexplained cash credit u/s 68 of the Act. Similarly, for assessment year 2012-13, there was information from Investigation Wing regarding unaccounted income of Rs 20,00,000/- and accordingly this amount was added to the total income. Perusal of the assessment orders for these two years shows that AO has not made any adverse comments on the entries in the Balance-sheet. It also appears that even the Investigation Wing has not found any adverse evidence against share capital raised by M/s. Seaview Agencies Pvt. Ltd. in assessment year 2009-10. Otherwise, it would have informed the AO for necessary remedial measures, as has been done in assessment year 2011-12 and assessment year 2012-13. Thus, the Balance-sheet of M/s. Seaview Agencies Pvt Ltd. cannot be questioned without any adverse evidence. There is nothing on record to suggest that the share capital raised by M/s. Seaview Agencies Pvt. Ltd. in assessment year 2009-10 was not genuine. Under the circumstances, investments made in the shares of the assessee company in assessment year 2012-13 (current year) cannot be questioned, as the creditworthiness of M/s. Seaview Agencies Pvt. Ltd. has been established.

All the investments in the share capital of the assessee company have come through banking channels. The identities and creditworthiness of the investors are not in any doubt and the transactions are genuine. Thus, all the three ingredients of section 68, they are identity, creditworthiness and genuineness of transactions, gets established. Under the circumstances, there is no case for any addition u/s.68 of the Act. Hence, in view of the above discussion, AO is directed to delete the addition of Rs.19,14,50,000/-."

8. On going through the above findings as well as the available records so far as the alleged sum of Rs.10,52,00,000/- received from Honesty Dealers Pvt. Ltd., is concerned, we find that the sum of Rs.14,80,00,000/- was raised by Honesty Dealers Pvt. Ltd., during the financial year 2008-09 towards share capital and share premium. Thereafter, Honesty Dealers Pvt. Ltd., was subjected to scrutiny proceedings and vide order dt. 12/03/2015, passed under section 144/263/143 (3)/147 of the Act, the said sum of Rs.14,80,00,000/- was added. Since the alleged sum has been added in the case of Honesty Dealers Pvt. Ltd., and the sum received by it was invested in the form of loans and advances and investments, during the year under consideration some of the funds have been received backed by Honesty Dealers Pvt. Ltd., and has been utilised for investing in the equity share capital of the assessee company. These details have gone uncontroverted at the end of the revenue authorities and it remains an admitted fact that the source of the source stands proved with the details filed before us and, therefore, making an addition again in the hands of the assessee would tantamount to double addition and, therefore, the addition in the year under consideration is not warranted and the ld. CIT(A) has rightly deleted the same.

9. We find support from the decisions of the ITAT, Kolkata in the case of M/s Happy Structure Pvt Ltd (ITA 1977/Kol/2016) wherein on similar facts it was held that:-
 "Applying the proposition of law laid down in the above referred cases to the facts of this case and keeping in view the fact for the share applicant company have been assessed to tax u/s 143 (3) of the Act and the source of money in question was brought to tax in their hands, we uphold the order of the ld. CIT(A) that no additions can be made in the case of the assessee company"

10. The ld. CIT(A) duly perused the submissions of the assessee and noted that source of share application money received by the assessee from M/s Honesty Dealers Pvt Ltd has already been added in the hands of the share applicant. Hence, in view of the settled legal position, as the source has already been added, we uphold the action of the ld. CIT(A) in deleting the addition.

11. So far as the remaining addition towards alleged share capital of Rs.8.62 cr received from M/s Seaview Agencies Pvt Ltd, is concerned, we find that this company also raised equity share capital during the financial year 2008-09 and it has been assessed to tax u/s 143(3)/147 of the Act for AYs 2011-12, 2012-13 and 2014-15. Even for AY 2012-13, though the case of M/s Seaview Agencies Pvt Ltd., was selected for the limited scrutiny for examining the unaccounted income of Rs.20,00,000/- and for this purpose all the details of M/s Seaview Agencies Pvt Ltd. including audited balance sheet and details of share capital were filed before the AO but except for the addition of Rs.20,00,000/- which was found to be income escaped from assessment, no other addition was made in the assessment order dated 11/12/2018. This proves that the source of funds utilised for making the alleged investment in equity capital of the assessee company was available with M/s Seaview Agencies Pvt Ltd., from AY 2009-10 onwards and that fund has been rotated but it was always available for investment and during the year under consideration part of that fund has been utilised for making investment in the equity capital.

11.1. At this juncture we also notice that the assessee company is having a huge turnover and for financial year 2012-13, the same is amounting to Rs.145.38 Crores and net profit from continuing operations is Rs.1.45 Crores (approx.). In the return of income, total income has been declared at Rs.1.74 Crores. We find that the genuineness of the transactions is proved since the investment which has been made by the alleged share applicants is in a profit making company and, therefore, since the future prospect of investments are good, this decision of the share applicant company to invest in the equity of the assessee company is prudent one and, therefore, the genuineness of the transactions is established.

11.2. So far as the identity and creditworthiness of both the share applicant companies are concerned, as discussed in the preceding paragraphs, it has been established again and again that identity and creditworthiness of both the share applicant companies have been established beyond doubt.

12. Our view is fortified by the decision of this Bench of the Tribunal in the case of ITO vs. Dharmvir Merchandise (P.) Ltd. reported in [2023] 149 taxmann.com 221 (Kolkata- Trib.), wherein dealing with the similar issue, this Tribunal considering the facts of the case and judicial precedents deleted the addition u/s 68 of the Act on similar grounds observing as follows:-

“9. We have heard rival contentions and perused the records placed before us. Addition u/s 68 of the Act for unexplained share capital and share premium of Rs. 1.40 Cr is in challenge before us. We notice that the assessee company issued fresh share capital during the year of face value of Rs. 10/- and premium of Rs. 240/- per share and received 1.40 Cr from following three companies:

Sr No.	Name of the Share Applicant	Amount Received
1	Everlike Projects Pvt Ltd	50,00,000/-
2	Mahashakti Vintrade Pvt Ltd	50,00,000/-
3	Satyam Plywood Merchandise Pvt Ltd	40,00,000/-
	TOTAL	1,40,00,000/-

10. After the case being selected for scrutiny, ld. AO asked the assessee to explain the source of above referred sum of share capital and share application money. In response, the assessee submitted the following documents:

- i. Party Wise details of share capital raised during the year,
- ii. Form 2, Form 5 filed with ROC,
- iii. Memorandum and Article of Association,
- iv. Bank Statement for the year,
- v. Share Application Form,
- vi. Form 18 in support of registered office address of the company,
- vii. Audited accounts for the year,
- viii. Relevant Bank Statement for the year,
- ix. Form 18 in support of registered office address of these companies.

11. Thereafter, summons were issued to the Directors of the share subscriber companies as well as the Directors of the assessee company which were duly served upon the respective persons and the details as called for were filed which included the following:

- i. Photo Identity and Address Proof,
- ii. Narration of all debit and credit entries in relevant Bank statements,
- iii. Copies of all relevant ROC returns,
- iv. Sources of funds and utilisation of funds,
- v. Evidence of creditworthiness along with Income Tax Returns filed and
- vi. Copies of Audited Accounts and Tax Audit Report for the relevant AY.

12. We further, notice that ld. AO has not pointed out any defect and not questioned the correctness of any of the documents filed by the assessee company, share subscriber companies as well as the Directors. The only ground for making the addition is that the Directors of the assessee company as well as the investor companies have not appeared personally before ld. AO in compliance to the summons issued u/s 131 of the Act and applying the decision of this Tribunal in the case of Bisakha Sales Pvt. Ltd. (supra).

13. So far as reliance placed by ld. AO on the decision of this Tribunal in the case of Bisakha Sales Pvt. Ltd. (supra) is concerned, we fail to find any merit as the facts of Bisakha Sales Pvt. Ltd. (supra) are distinguishable from the facts of the present case. Firstly for the reason that the case of Bisakha Sales Pvt. Ltd. (supra) was in connection of the revisionary order passed by ld. CIT(A) u/s 263 of the Act where it was alleged that ld. AO has not made proper enquiries with regard to the transaction of share application money received by the company, which however, is not the fact

of the instant case where the issue relates to assessment proceedings carried out u/s 143(3) of the Act and complete and detailed enquiry has been conducted by ld. AO. In the assessment order, ld. AO has not brought any adverse material which could have remotely suggested that the unaccounted income of the assessee was brought in disguise of the share capital. Therefore, the decision of Bisakha Sales Pvt. Ltd. (supra) is not applicable on the present case.

14. So far as merits of the case are concerned, we find that the assessee has successfully discharged its onus by filing complete details of the share subscriber companies including their bank statement, audited financial statements, Form no. 18 in support of registered office address, source and utilization of funds, copies of ITRs, copies of all relevant company returns. Even the photo identity, address proof of the Directors of the assessee company and the subscriber companies have been filed directly by these Directors to ld. AO. On the basis of these facts undoubtedly the assessee has successfully discharged the onus which lay upon it by producing all the evidences for proving the identity and creditworthiness of the investors and the genuineness of the transaction. Merely non-appearance of the Directors cannot be a basis for treating the share application money as unexplained or non-genuine. We find support from the judgment of Hon'ble Gujarat High Court in the case of Rohini Builders (supra) relying on the judgment of Hon'ble Apex Court in the case of Orissa Corporation Pvt. Ltd. (supra) (relevant extract:

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation (1986) 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69."

15. Our view is supported by Tradelink Carrying (P.) Ltd. vs ITO pronounced on 20.12.2019 reported in [2020] 113 taxmann.com 520 (Kolkata-Trib.), wherein the Hon'ble jurisdictional ITAT held that:

"34. In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the, Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance.

Applying the propositions laid down in these case laws to the facts of this case, we are inclined to allow the appeal of the assessee.

35. To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore we delete the addition of Rs 5,60,000/- and consequently the appeal of assessee is allowed.

36. In the result, the appeal of the assessee is allowed."

16. Similar view also taken in the case of Satyam Smertex (P.) Ltd vs DCIT reported in [2020] 117 taxmann.com (Kolkata - Trib.) pronounced on 29-05-2020 where the Hon'ble jurisdictional ITAT held that:

"30. To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source, it shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record, including that of the directors and share holders of share subscribing entities as discussed supra. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO and confirmed by Ld. CIT(A) are based on conjectures and surmises, so their impugned action cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do allow the appeal of assessee and direct deletion of addition of Rs 16 cr under section 68 of the Act."

17. From the above decision, we note that it has been held again and again by the jurisdictional ITAT, Kolkata that in a case, where the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, the onus shifts on ld. AO to disprove the documents furnished by assessee so as to draw adverse view and in the absence of any investigation, much less gathering of evidence by ld. AO, additions cannot be sustained merely based on inferences drawn by circumstance or made on surmises and conjectures.

18. Therefore, after going through the various details and documents placed before us, we find that assessee has successfully discharged primary onus casted upon it to explain the source of alleged share capital and share premium. Ld. AO did not find

any fault or any shortcoming in the compliances made by the appellant company. It is also an evident fact that the only basis for making the alleged addition by ld. AO was non-appearance of the Directors of the share allotted company but as claimed by ld. Counsel for the assessee, the time allowed for compliance was too short and the assessee filed all the confirmations in respect of such share subscribers which were not doubted by ld. AO. Facts are brought to our notice out of the eight shareholders five have been assessed for the same assessment year u/s 143(3) of the Act and complete details of their financials and bank transactions have been examined by ld. AO in the scrutiny proceedings. This is also an admitted fact that each of the shareholders were duly served notice u/s 133(6) of the Act which is sufficient to prove the identity of such shareholders. As far as the genuineness of the transaction is concerned, the same have taken place through banking channel which is traceable from the origin to the destination of such payments and further confirmed from the documents furnished before us. All these transactions are duly recorded in the respective balance sheets of the shareholder companies. Creditworthiness of the transaction is also proved from the fact that all the shareholder companies were having more than sufficient share capital and reserve and surplus fund for giving share application money. Even otherwise ld. AO has not made the addition for charging of higher share premium and has made the addition of unexplained cash credit but still charging of share premium is a commercial decision and the same can be challenged only with sufficient documentary evidence. It thus brings to a conclusion that since the assessee filed complete details of identity and creditworthiness of the share subscribers and genuineness of the transaction before ld. AO, the onus shifted to ld. AO to disprove the material placed before him and without doing so the additions made by ld. AO are based on conjectures and surmises and the impugned additions cannot be justified and therefore, the impugned action of ld. AO cannot be held to be justified.

19. Our view is further supported by following judicial pronouncements:

"i) CIT vs. Gagandeep Infrastructure (P) Ltd. 80 taxmann.com 272 (Bombay) wherein it was held by High Court that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso.

ii) PCIT vs. Chain House International (P) Ltd. 98 taxmann.com 47 wherein Madhya Pradesh High Court held that "The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a prerogative of the Board of Directors of a company to decide the premium amount and it is the

wisdom of shareholder whether they want to subscribe to shares at such a premium or not and moreover the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants which same has been discharged by the respondent authority and the HIGH COURT OF M.P. BENCH AT INDORE Pg. No.--58-- (ITA No.112/2018 & Other connected matters) same has been accepted by the appellate authorities thus, the same cannot be reconsidered in these appeals as it is a pure question of fact." SLP preferred by revenue was dismissed by Hon'ble Supreme Court and the same is reported in 103 taxmann.com 435(SC).

iii) CIT vs. Kamdhenu Steel & Alloys Limited [ITA No.972 of 2009] dated 23.12.2011 wherein the Delhi High Court in a batch of 11 appeals was required to adjudicate on the very issue of addition made by the A.O u/s 68 in respect of share application monies received by the assessee as alleged unexplained cash credit. In all these cases, the Department had alleged that the share application monies were received from persons who were 'entry operators' and the monies received by way of share application was nothing but was routing of unaccounted money of assessee in the form of subscription to share capital. However, in the assessments made the A.Os had not brought on record any material or evidence to substantiate such finding. Accordingly, on appeal the appellate authorities had deleted the additions made u/s 68 of the Act.

iv) CIT vs. Orissa Corpn (P) Ltd. 159 ITR 78 where the Court held that "In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under [section 131](#) at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

20. We, therefore, respectfully following the judgments referred herein above by the Hon'ble Courts and also considering the facts and circumstances of the case, are of the considered view that since the assessee has placed sufficient documents and materials on record to prove the identity and creditworthiness of the shareholders and the genuineness of the transaction of receiving share capital and share premium, invoking the provisions of Section 68 of the Act was not justified in the instant case. We, therefore, reverse the finding of the CIT(A) and delete the addition of Rs. Rs.1.40 Cr made u/s 68 of the Act and allow all the grounds raised by the assessee.

21. In the result, the appeal filed by the assessee is allowed."

13. Our view is further supported by the judgment of the Hon'ble Jurisdictional Calcutta High Court in the case of Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal) wherein Hon'ble Court held as follows:

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

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

14. We, therefore, respectfully following the ratio laid down in the above case laws and consistent with the view taken in the above referred decision of this Tribunal and also observing the fact that since the assessee has successfully proved the three necessary ingredients i.e., identity and creditworthiness of the share applicants and genuineness of the transactions as provided u/s 68 of the Act, are of the view that no

interference is called for in the order of the ld. CIT(A) deleting the addition made by the Assessing Officer u/s 68 of the Act and the same is upheld.

15. In the result, appeal of the revenue is dismissed."

10. Considering the ratio laid down by the Co-ordinate Bench of this Tribunal in the case of Narsingh Ispat Limited (supra), we are satisfied that the same is squarely applicable on the facts of the instant case as before us, assessee has filed complete documentary evidence to explain the identity and creditworthiness of the share applicants and genuineness of the share transactions. We thus set aside the findings of the ld. CIT(A) and delete the impugned addition of Rs.3,59,00,000/- made u/s 68 of the Act and allow the effective grounds of appeal raised by the assessee.

11. In the result, appeal of the assessee is allowed."

11. Similar view was also taken by this Tribunal in the case of (a) Orthy Impex Pvt. Ltd. Vs. ITO, in ITA No. 855/KOL/2023 dated on 06.11.2023 and (b) Ivy Build Real Pvt. Ltd. Vs. ITO ITA No. 857/KOL/2023 dated 06.11.2023.

12. Respectfully following the above referred judgments and decisions and also considering the facts and circumstances of the case, we find that the assessee carried out a genuine transactions of receiving share capital and share premium duly authorized by its Board of Directors and also proved the identity and creditworthiness and genuineness of the transaction carried out towards receiving share capital and share premium during the year and also has sufficiently proved that all the investing companies were having sufficient net worth to make the alleged investment, and are regularly assessed to tax and active companies carrying out business. Therefore, since the assessee has explained the nature and source of the alleged sum to our satisfaction no addition is called for u/s 68 of the Act. Therefore, finding of ld. CIT(A) is set aside and ground no. 3 raised by the assessee is allowed."

14. Respectfully following the above decisions which interalia referred to plethora of judgment of various Hon'ble High Courts, we are inclined to hold that the assessee had effectively demonstrated and proved the identity and creditworthiness of the alleged share applicants and genuineness of the transactions of investing the share capital and share premium in the equity of the assessee company with sufficient documentary evidence including, replies to notices 133(6) of the Act, assessment orders of share subscribing companies for the very same assessment year and other documents to prove the source of source which in totality brings us to a conclusion that the addition u/s 68 of

the Act is uncalled for in the instant case. Thus, the finding of the Id. CIT(A) is set aside and the addition u/s 68 of the Act is deleted. Accordingly, the effective grounds raised by the assessee against the addition made u/s 68 of the Act are allowed. Other grounds being general and consequential in nature need no adjudication. The appeal of the assessee in ITA No. 161/Kol/2024 is allowed.

15. Now, we take up the assessee's appeal in ITA No. 160/Kol/2024 and the sole grievance is against the levy of penalty u/s 271(1)(c) of the Act arising out of the addition made u/s 68 of the Act for unexplained share capital and share premium. Since we have already deleted the addition made u/s 68 of the Act, while adjudicating ITA No. 161/Kol/2024 (*supra*), there remains no legs for the penalty u/s 271(1)(c) to stand on because such penalty can be levied only on the addition made in the hands of the assessee. Since the addition itself has been deleted, no penalty can be levied. Accordingly, the effective grounds of appeal raised by the assessee in ITA No. 160/Kol/2024 is also allowed.

16. In the result, appeals of the assessee in ITA No. 160 & 161/Kol/2024 for Assessment Year 2008-09 are allowed.

Order pronounced in the Court on 21st June, 2024 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 21/06/2024

Sd/-

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata