

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No.3484/MUM/2023
Assessment Year: 2010-11**

Deputy Commissioner of Income Tax, Central Circle – 6(3), Mumbai	Vs.	Fateh Granite Ltd., 517, Option Primo, MIDC, Andheri (East), Mumbai – 400 093 (PAN : AAACF4425H)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Prakash Jhunjhunwala
Revenue : Ms. Rajeshwari Menon, Sr.DR

Date of Hearing : 22.05.2024
Date of Pronouncement : 09.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A)-54, Mumbai vide order no. ITBA/APL/S/250/2023-24/1054510864(1), dated 21.07.2023 passed against the assessment order by the Deputy Commissioner of Income Tax - 8(1), Mumbai, u/s.143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 30.03.2013 for Assessment Year 2010-11.

2. Grounds taken by the Revenue are reproduced as under:

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs 4,90,00,000/- made in the assessment order despite the fact that the assessee company has raised equity shares capital of Rs 4,90,00,000/- from various companies whose very existence could not be established by the assessee company nor the source of these funds"?*

2. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact, that the assessee company has failed to establish the identity of its 18 shareholders"?*

3. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact, that the assessee company has failed to establish the creditworthiness of its 18 shareholders"?*

4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact, that the assessee company has failed to prove the genuineness of the transactions of the funds"?*

5. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact the addition being done u/s 68 for the credits to books of accounts being unexplained by the assessee and the question of the credit being of revenue or capital nature is of no consequence to the addition being made?"*

3. Brief facts of the case are that assessee is engaged in the business of mining, manufacturing, cutting and polishing of granites, tiles and sales and exports. Assessee company was incorporated on 15.11.1991. During the year under consideration, assessee raised equity share capital of ₹ 4,90,000/- by way of private placement of 49,000 equity shares having face value of ₹ 10/- each on which assessee received share premium of ₹ 990/- per share, aggregating to 4,90,00,000. The said share capital and share premium was received by the assessee from 18 share subscribing companies. Ld. Assessing Officer sought details and explanation on this transaction from the assessee for which summons u/s. 131 of the Act were issued to all the 18 share subscribing companies as well as to the assessee.

4. Share subscribing companies to whom equity shares were allotted is tabulated as under:

Sr No	List of Shareholders alongwith address and PAN	No. of shares allotted	Amount of Investment (10+990)
1	Alka Diamond Industries Ltd	3,500	Rs.35,00,000/-
2	Nozaki Finance & Investment Pvt Limited (Now Known as Maestro Ventures Pvt Ltd.)	5,000	Rs 50,00,000/-
3	Oshin Investments & Finance Pvt Limited	2,500	Rs 25,00,000/-
4	Shantoshi Maa lease finance and Investment (India) Limited	3,000	Rs 30,00,000/-
5	Fairmont Venture Pvt Limited	2,500	Rs 25,00,000/-
6	HPL Multi Trade Pvt Limited	3,000	Rs 30,00,000/-
7	Idor Systems and Solutions Pvt Limited	2,500	Rs 25,00,000/-
8	Kapindra Multitrade Pvt Limited	2,500	Rs 25,00,000/-
9	Kush Hindustan Entertainment Limited	2,500	Rs 25,00,000/-
10	Netformax Information Technology Pvt Limited	3,000	Rs 30,00,000/-
11	Nicco Securities Pvt Limited	2,500	Rs 25,00,000/-
12	Shyam Alcohal and Chemicals Limited	3,000	Rs 30,00,000/-
13	Sidh Housing Development Co. Limited (Now Known as Bhadrawati Ispat & Energy Ltd)	2,500	Rs 25,00,000/-
14	Victory Sales Pvt Limited	1,000	Rs 10,00,000/-
15	Yash-V Jewels Limited	3,500	Rs 35,00,000/-
16	Algorithmic software System Pvt Limited	2,500	Rs 25,00,000/-
17	B.K. Dyeing and printing mills Pvt Limited	1,500	Rs 15,00,000/-
18	Divya Infotech Pvt Limited	2,500	Rs 25,00,000/-
	Total	49,000	Rs. 4,90,00,000/-

5. In the course of assessment, assessee furnished details of the share Applicants which included their registered office address and PAN, which is tabulated as under:

SR. No.	Name of Share holder	PAN	Address
1	ALKA DIAMOND INDUSTRIES LIMITED	AAACA5236D	626, PANCHRATNA, M P ROAD, OPERA HOUSE, MUMBAI Mumbai City MH 400002
2	ALGORITHMIC SOFTWARE SYSTEMS PRIVATE LIMITED	AAACD4122D	102, ATUL APPARTMENT, L T ROAD, BORIVALI (WEST), MUMBAI Mumbai City MH 400091
3	B. K. DYEING & PRINTING MILLS PVT. LTD.	AABC6959M	60, A JARIWALA BLDG, ARTHUR ROAD, TARDEO, MUMBAI-400034
4	DIVYA INFOTECH PVT. LTD.	AABCD3991M	105, SAI SANGAM, B/H TUNGARESHWAR SWEET MART, NAVGHAR, VASAI-401202
5	FAIRMOUNT VENTURE PVT. LTD.	AABCF1538L	105, SAGAR SHOPPING CENTRE, J P ROAD, ANDHERI (W), MUMBAI - 400058
6	HPL MULTI TRADE PVT. LTD.	AABCH6682D	A/42, HIGH RISE BLDG, L. M. ROAD, BORIVALI, MUMBAI
7	IDORE SYSTEMS & SOLUTION PVT. LTD.	AACCT7030N	402, MEHZABEEN ARCADE, 13/A, CHAKLA CROSS LANE, VADGADI, MUMBAI
8	KAPINDRA MULTITRADE PVT. LTD.	AACCK9652R	001-B-65, Sector No 1, Jay Deep CHS. Ltd Mira Road [East] Thane MH 401107
9	KUSH HINDUSTAN ENTERTAINMENT LIMITED	AACCK3597M	CS-2, SILVER ANKLETYARI ROAD, VERSOVA, MUMBAI MH 400061
10	NETFORMEX INFORMATION TECHNOLOGY PVT. LTD.	AAKCS9844D	402, MEHZABEEN ARCADE, 13/A, CHAKLA CROSS LANE, VADGADI, MUMBAI
11	NICCO SECURITIES PVT. LTD.	AABCN1737D	96/98, Dhanji Street, 3rd Floor, Mumba Devi Mumbai 400002
12	NOZAKI FINANCE AND INVESTMENTS PVT. LTD.	AAACN5039R	UNIT NO 81, PLOT NO 14, MAROL CO-OP INDUSTRIAL ESTATE, OFF. ANDHERI-KURLA ROAD, ANDHERI (EAST) MUMBAI Mumbai City MH 400059
13	OSHIN INVESTMENT & FINANCE PVT. LTD.	AAACO9051G	Rajyog Apartments, Dev Chand Nagar, 60 Feet Road, Bhayander West Thane MH 421101
14	SANTOSHI MA LEASE FINANCE & INVESTMENT (I) LTD.	AAJCS2386P	205, A Kapadia Chamber 599, J S S Road Mumbai Mumbai City 400002
15	SHYAM ALCOHOL & CHEMICALS LTD.	AAGCS6595M	A-10, KAVITA APTS, NATAKWALA LANE, BORIVALI, MUMBAI-400092
16	SIDH HOUSING DEVELOPMENT CO. LTD. (Now Known as Bhadrawati Ispat & Energy Ltd)	AAKCS6606H	OPP. BLDG. NO. 157, NAIDU COLONY PANT NAGAR, GHATKOPAR (EAST) MUMBAI Mumbai City 400075
17	VICTORY SALES PVT. LTD.	AAACV7299K	60-A/3, JARIWALA BLDG, ARTHUR ROAD, TARDEO, MUMBAI
18	YASH-V-JEWELS LIMITED	AAACY1119P	OFFICE NO. 501, ADIBABA APARTMENT, GAZDAR SCHEME, 16TH ROAD, NR RAJESH KHANNA GARDEN, SANTACRUZ - W MUMBAI Mumbai City MH 400054 IN

6. Ld. Assessing Officer not being convinced by the details and documentary evidence furnished by the assessee, applied the test of human probabilities and held that identity and creditworthiness of the shareholders is not proved, nor the genuineness of the transaction for introduction of share capital by the assessee is established. According to him, existence of the share subscribing companies and source of their funds for making investment in the assessee could not be established. Accordingly, he completed the assessment by making an addition of ₹ 4,90,00,000/- towards share capital and share premium raised during the year by treating it as unexplained cash credit u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) who after elaborately dealing with the facts of the case on all the three dimensions of section 68 of the Act in respect of identity and creditworthiness of the share subscribers and also the genuineness of the transactions, deleted the addition, so made. Aggrieved, Revenue is now, in appeal before the Tribunal contesting on the aforesaid three dimensions of section 68.

7. Ld. Sr. DR placed reliance on the order of Ld. Assessing Officer. The arguments put forth before us are broadly the repetition of stand taken by the Ld. Assessing Officer in the impugned assessment order.

8. Per contra, Ld. counsel for the assessee submitted that to establish the identity and creditworthiness of the shareholders and genuineness of the transaction, assessee had submitted all the relevant details and documents in the course of assessment as well as at the first appellate stage, details of which is tabulated below for ease of reference. The table below is the index of the paper book placed before us which lists down various documentary evidences in respect of each of the share subscribing company, furnished by the assessee in the proceedings before the authorities below.

Sr. No.	Particulars	Page No.
1	<u>Alka Diamond Industries Ltd - Rs.35,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	1.1 - 1.11
2	<u>Nozaki Finance & Investment Pvt Limited (Now Known as Maestro Ventures Pvt Ltd.) Rs 50,00,000/-</u> a) CIN Master Data (ROC) b) Share Application form c) Share Certificate d) Confirmation of Account e) Reply to notice issued by Ld. AO u/s 131/ 133(6) f) IT Acknowledgement receipt of shareholder g) Bank statement of Shareholder h) Audited Balance sheet of shareholder	2.1 - 2.9
3	<u>Oshin Investments & Finance Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Share Application form d) Share Certificate e) Confirmation of Account f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	3.1 - 3.10
4	<u>Shantoshi Maa lease finance and Investment (India) Limited Rs 30,00,000/-</u> a) PAN card b) CIN Master Data (ROC)	4.1 - 4.10

Sr. No.	<u>Particulars</u>	Page No.
	c) Share Application form d) Share Certificate e) Confirmation of Account f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	
5	<u>Fairmont Venture Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	5.1 - 5.13
6	<u>HPL Multi Trade Pvt Limited Rs 30,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	6.1 - 6.11
7	<u>Idor Systems and Solutions Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) Confirmation of Account h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	7.1 - 7.12
8	<u>Kapindra Multitrade Pvt Limited Rs 25,00,000/-</u> a) PAN card	8.1 - 8.13

Sr. No.	<u>Particulars</u>	Page No.
	b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) Confirmation of Account h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	
9	<u>Kush Hindustan Entertainment Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) Confirmation of Account h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	9.1 - 9.11
10	<u>Netformax Information Technology Pvt Limited Rs 30,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) Confirmation of Account h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	10.1 - 10.11
11	<u>Nicco Securities Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Letter for Approval of Investment d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	11.1 - 11.11

Sr. No.	Particulars	Page No.
12	<u>Shyam Alcohol and Chemicals Limited Rs 30,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Share Application form d) Share Certificate e) Confirmation of Account f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	12.1 - 12.10
13	<u>Sidh Housing Development Co. Limited Rs 25,00,000/- (Now Known as Bhadrawati Ispat & Energy Ltd)</u> a) CIN Master Data (ROC) b) Board Resolution c) Share Application form d) Share Certificate e) Confirmation of Account f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	13.1 - 13.10
14	<u>Victory Sales Pvt Limited Rs 10,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Share Application form d) Share Certificate e) Reply to notice issued by Ld. AO u/s 131/ 133(6) f) Confirmation of Account g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	14.1 - 14.10
15	<u>Yash-V Jewels Limited Rs 35,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) Confirmation of Account h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	15.1 - 15.11

Sr. No.	<u>Particulars</u>	Page No.
16	<u>Algorithmic software System Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	16.1 - 16.11
17	<u>B.K. Dveing and printing mills Pvt Limited Rs 15,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Share Application form d) Share Certificate e) Confirmation of Account f) Reply to notice issued by Ld. AO u/s 131/ 133(6) g) IT Acknowledgement receipt of shareholder h) Bank statement of Shareholder i) Audited Balance sheet of shareholder	17.1 - 17.10
18	<u>Divya Infotech Pvt Limited Rs 25,00,000/-</u> a) PAN card b) CIN Master Data (ROC) c) Board Resolution d) Share Application form e) Share Certificate f) Confirmation of Account g) Reply to notice issued by Ld. AO u/s 131/ 133(6) h) IT Acknowledgement receipt of shareholder i) Bank statement of Shareholder j) Audited Balance sheet of shareholder	18.1 - 18.12

9. Ld. Counsel submitted that the share subscribers are body corporate, registered with ROC and assessed to income-tax. He, further stated that these share subscribing companies had confirmed the transactions, filed relevant papers and documents and also explained the source of their funds for making investment in the assessee company. He thus, emphasised that assessee had discharged its primary onus casted upon it, u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. Assessing Officer to disprove the material placed before him. Without doing so, the addition made by the Ld. Assessing Officer is based on conjectures and surmises and, therefore, cannot be sustained.

9.1. Ld. Counsel also emphasised on the fact that in the submissions made by the assessee which included ITRs, audit reports, share application details, etc., as listed above, ld. Assessing Officer has not found fault in any of the details so submitted and has simply proceeded to make addition in respect of the amount of share capital and share premium. According to him, documents furnished are to be prima facie considered as correct unless evidences brought on record to falsify the claim made therein.

9.2. On the three basic ingredients for section 68 relating to cash credit viz, identity, creditworthiness of the subscribers and the genuineness of transactions, ld. Counsel submitted that all of these are fulfilled by the assessee. In this respect he submitted as under:

- (i) On identity:- all the shareholders are regular income-tax assesseees and have filed their income tax returns. Their PAN details along with copy of ITRs were furnished. One of the share subscribers, i.e., Kush Hindustan Entertainment Ltd from whom a sum of ₹ 25,00,000/- had been received by the as-

assessee was assessed u/s.143(3) by the Department for Assessment Year 2011-12. Ld. Counsel thus, emphasised that identity of all the share subscribers is well established and cannot be doubted. Further, he submitted that the share subscribers are body corporate registered under the Companies Act. It was also submitted that all the share subscribing companies had responded directly to the ld. Assessing Officer by furnishing their respective details in response to summon u/s.131/133(6) by giving all the required details as desired by him.

- (ii) On creditworthiness:- to establish the creditworthiness of the subscribers, details relating to source of fund in the hands of these shareholders represented by their respective net worth were furnished along with their respective bank statements and audited financial statements. It was thus, submitted that details furnished by the assessee unequivocally testifies and proves that the subscribers had sufficient funds for making investment in the share capital of the assessee. Details of source of fund furnished by the assessee are reproduced in the table below:

Sr No	Details of Shareholders	Bank details of Shareholders			Credit worthiness of Shareholders
	Name and PAN of Shareholder	Name of Bank	Date	Amount (Rs)	Share capital and Reserves of Shareholder as on 31/03/2010
1	Alka Diamond Industries Ltd	Axis Bank Ltd	03-06-2009	Rs. 35,00,000/-	8,75,22,132
2	Nozaki Finance & Investment Pvt Limited (Now Known as Maestro Ventures Pvt Ltd.)	HDFC Bank	11-05-2009	Rs 50,00,000/-	8,73,62,166
3	Oshin Investments & Finance Pvt Limited	Kotak Mahindra Bank	15-05-2009	Rs 25,00,000/-	49,99,90,200
4	Shantoshi Maa lease finance and Investment (India) Limited	Bank of Baroda	19-05-2009	Rs 30,00,000/-	5,58,69,918
5	Fairmont Venture Pvt Limited	Kotak Mahindra Bank	09-06-2009	Rs 25,00,000/-	20,17,71,930
6	HPL Multi Trade Pvt Limited	Axis Bank Ltd	16-05-2009	Rs 30,00,000/-	10,16,67,216
7	Idor Systems and Solutions Pvt Limited	Deutsche Bank	22-05-2009	Rs 25,00,000/-	5,85,08,857
8	Kapindra Multitrade Pvt Limited	Kotak Mahindra Bank	08-06-2009	Rs 25,00,000/-	18,67,14,760
9	Kush Hindustan Entertainment Limited	Axis Bank Ltd	22-05-2009	Rs 25,00,000/-	3,68,22,559
10	Netformax Information Technology Pvt Limited	Axis Bank Ltd	21-05-2009	Rs 30,00,000/-	6,43,09,427
11	Nicco Securities Pvt Limited	Kotak Mahindra Bank	11-05-2009	Rs 25,00,000/-	6,10,52,709
12	Shyam Alcohol and Chemicals Limited	Bank of Baroda	08-05-2009	Rs 30,00,000/-	9,07,52,217
13	Sidh Housing Development Co. Limited (Now Known as Bhadravati Ispat & Energy Ltd)	Kotak Mahindra Bank	15-05-2009	Rs 25,00,000/-	99,99,09,700
14	Victory Sales Pvt Limited	Bank of Baroda	08-06-2009	Rs 10,00,000/-	3,35,84,724
15	Yash-V Jewels Limited	Axis Bank Ltd	03-06-2009	Rs 35,00,000/-	8,83,30,744
16	Algorithmic software System Pvt Limited	Deutsche Bank	15-05-2009	Rs 25,00,000/-	16,54,35,437
17	B.K. Dyeing and printing mills Pvt Limited	Bank of Baroda	09-06-2009	Rs 15,00,000/-	4,66,81,407
18	Divya Infotech Pvt Limited	Deutsche Bank	19-05-2009	Rs 25,00,000/-	10,14,49,004
				Rs. 4,90,00,000/-	

(iii) On genuineness of the transaction: - it was submitted that the amounts were invested by the subscribers through proper banking channel which is duly reflected in the respective financial statements of the subscribers. Since the investments reflected in their respective financial statements have been duly reported in their respective returns with the Department, these are genuine transactions which cannot be doubted.

9.3. Ld. Counsel thus summarised the details and documents furnished to establish the discharge of initial onus casted upon the assessee u/s. 68 for proving the identity and creditworthiness of the share subscribing companies and genuineness of the transaction

which is tabulated below:

Sr no.	Identity of Shareholder	Genuineness of transaction	Credit-worthiness of Shareholder
1	<u>Alka Diamond Industries Ltd</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation Ledger Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
2	<u>Nozaki Finance & Investment Pvt Limited</u> (Now Known as Maestro Ventures Pvt Ltd.) PAN/ AO Details CIN Master Data	Share Application form Share Certificate Confirmation of Account	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
3	<u>Oshin Investments & Finance Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
4	<u>Shantoshi Maa lease finance and Investment (India) Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
5	<u>Fairmont Venture Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
6	<u>HPL Multi Trade Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
7	<u>Idor Systems and Solutions Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
8	<u>Kapindra Multitrade Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
9	<u>Kush Hindustan Entertainment Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet

<u>Sr no.</u>	<u>Identity of Shareholder</u>	<u>Genuineness of transaction</u>	<u>Credit-worthiness of Shareholder</u>
10	<u>Netformax Information Technology Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
11	<u>Nicco Securities Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Letter for Approval of Investment Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
12	<u>Shyam Alcohol and Chemicals Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
13	<u>Sidh Housing Development Co. Limited</u> (Now Known as Bhadrawati Ispat & Energy Ltd) PAN/ AO Details CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
14	<u>Victory Sales Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
15	<u>Yash-V Jewels Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
16	<u>Algorithmic software System Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
17	<u>B.K. Dyeing and printing mills Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet
18	<u>Divya Infotech Pvt Limited</u> PAN card CIN Master Data	Share Application form Share Certificate Board Resolution Confirmation of Account Reply to notice issued by Ld. AO	IT Acknowledgement receipt Shareholder's Bank statement Audited Balance sheet

9.4. Ld. Counsel also strongly submitted that even in the remand proceedings undertaken by the ld. Assessing Officer on the direction of the ld. CIT(A) and report issued thereupon, ld. Assessing Officer has not disproved the correctness of the documentary evidences filed by the assessee both, in the course of assessment proceedings as well as the remand proceedings.

10. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the elaborate observations and findings given by the Ld. CIT(A) while giving relief to the assessee.

11. From the perusal of the paper book and documents placed therein, it is noted that all the share subscribing companies are:

- (i) income tax assesseees
- (ii) they are filing their income tax returns
- (iii) share application form and allotment letter is available on record
- (iv) share application money was paid by account payee cheques
- (v) details of the bank accounts belonging to share applicants and their bank statements were furnished
- (vi) in none of the transactions, there are any allegation by the ld. Assessing Officer about deposit of cash before issuing cheques to the assessee
- (vii) all the share subscribers are having substantial creditworthiness represented by their capital and reserves

12. We also take note of the elaborate and well-reasoned findings and decision arrived at, by the Ld. CIT(A) by taking into consideration all the details and documents placed on record. Relevant findings and decision in this respect is extracted as under:

“6.2 On perusing of the documents, it is observed that appellant has received the share capital and share premium money from 18 shareholders of Rs 4,90,00,000/-. The appellant has filed the PAN card, CIN master data (ROC) and Income Tax Return. acknowledgement, receipt to establish the identity of shareholders. The appellant has filed the share application forms, share certificates, confirmations and own bank statements to prove the genuineness of transactions. The appellant has furnished the balance-sheet, Income Tax Return acknowledgement receipt and bank statements of the shareholders to prove the credit worthiness of shareholders. The replies, in response to notice u/s 131, had been filed by the shareholders along with supportive documents. The assessment order u/s.143(3) of one shareholder named M/s. Kush Hindustan Entertainment Ltd for A.Y.2011-12 has also been furnished from whom the share capital/premium of Rs.25,00,000/- is received by the appellant. The AO, in remand report, has not disputed the correctness of such documents and has not brought any contrary documentary evidence to disprove the transaction and involvement of unaccounted money belonging to the appellant. It is observed that the appellant has reasonably discharged its onus to prove the identity and creditworthiness of the shareholders and genuineness of transactions on furnishing the PAN details, CIN master data (ROC), share application forms, own bank statements, share certificates, confirmations, Income Tax returns, bank statements and balance sheet of the shareholders. The AO made the addition of entire share capital/premium mainly for the reason that notice u/s.131 issued to shareholders were not fully complied as the directors of shareholder companies did not appear in person before the AO. However, it is observed that all shareholders had furnished their replies alongwith documentary evidences on assessment record. The AO, in the assessment order in para 6 on page 15, had accepted. that replies of all shareholders had been received. The tabular chart prepared in assessment order and remand report depict that the notice u/s.131 were served to major shareholders. The AO, in assessment order and remand report, had laid much emphasis on partial compliance of notice u/s.131 without establishing any undisclosed funds introduced by the appellant in garb of share capital/premium. The Hon'ble Jurisdictional High Court of Bombay in the case of CIT v. Orchid Industries Pvt Ltd reported in 397 ITR 136 and in case of CIT v. Creative World Telefilms Ltd reported in 333 ITR 100 and in case of CIT vs. Nikunj Eximp Pvt Ltd reported in 35 Taxmann.com 384 had decided that that mere non service and non-compliance of notice u/s 131 would not disprove the transactions, particularly when the transactions are entered through banking channel. The AO had accepted the fact that the money had been received by the appellant through banking channel by A/c payee cheques and bank statements of shareholders had been furnished on record which does not depict as sourced from immediate, cash deposit. Therefore, when all these documentary evidences are available, there seems to be no basis for making the addition u/s 68 of the Act. Even In. remand report, AO has not disproved the correctness of the documentary evidences filed during assessment proceedings and during course of remand proceedings and AO had again emphasised on partial compliance to notice u/s, 131 of the Act. It is seen that the appellant had discharged its onus by furnishing the documentary evidences stated hereinabove which had proved the identity and creditworthiness of the shareholders and genuineness of the transactions and there does not exist contrary material to disprove the

transactions. Thus, the addition made by the AO u/s 68 of the Act deserves to be deleted.

6.3. The documents furnished on record submitted by Ld. AR are analysed and summarised as under:

Sr. No.	Name, Address and Pan of the Share holder	No of Shares and amount (Rs.)	Share capital and Reserves of the Shareholders	Documents filed to prove the Identity of the Shareholders	Documents filed to prove the Genuiness of Transactions	Documents filed to prove the creditworthiness of shareholders	Notice u/s 131 and reply.
1	Alka Diamond Industries Ltd	3500 Equity shares	87,522,132	1. PAN Card 2. CIN Master Data (ROC)	1. Confirmation of Accounts 2. Share Application Form	1. I.T acknowledgment Receipt	Notice was Served. Reply was
	PAN - AAACA5238D Add.- 233, Panchratna, Opera House, Mumbai - 400004	Rs 35,00,000/-		3. IT Acknowledgment Receipt	3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	submitted on 21/03/2013
2	Kush Hindustan Entertainment Ltd, PAN - AACCK3597M Add.- CS - 2, Silver Anklet, Yari Road, Versova, Mumbai - 400 061	2500 Equity shares Rs 25,00,000/-	36,822,559	1. PAN Card 2. CIN Master Data (ROC) 3. IT Acknowledgment Receipt 4. Assessment Order of AY 2011-12	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was unserved, but on the request of appellant reply was submitted on 22/03/2013
3	Yash-V Jewels Ltd, PAN - AAACY1119P, Add.- 14, Alankar Building, 245/247, SVP Road, Mumbai - 400 004	3500 Equity shares Rs 35,00,000/-	88,330,744	1. PAN Card 2. CIN Master Data (ROC) 3. IT Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. IT acknowledgment receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 21/03/2013
4	Nozaki Finance and Investment Pvt Ltd, PAN - AAAAN5039R, Add.- C-7, INDUSTRIAL ASSURANCE BLDG, 6TH FLOOR, VEER NARIMAN ROAD, MUMBAI-400020	5000 Equity shares Rs. 50,00,000/-	87,362,166	1. PAN Card 2. CIN Master Data (ROC) 3. IT Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I. T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 21/03/2013

5	Algorithmic Software Systems Pvt Ltd, PAN - AAACD4122D, Add.:- 102, Atul Apartment, L. T. Road, Vazira Naka, Borivli - west, Mumbai.	2500 Equity shares Rs 25,00,000/-	100,935,437	1. PAN Card 2. CIN Master Data (ROC) 3. IT Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T acknowledgment receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 23/03/2013
6	Divya Infotech Pvt Ltd, PAN - AABCD3991M, Add.:- 105, Sai Sangam, B/h Tungareshwar Sweet Mart, Navghar, Vasai - west.	2500 Equity shares Rs 25,00,000/-	101,450,000	1. PAN Card 2. CIN Master Data (ROC) 3. IT Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice s 131.	1. IT Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 23/03/2013
7	HPL Multi Trade Pvt Ltd, PAN - AABCH6682D, Add.:- A/42, High Rise Bldg, L. M. Road, Borivli - mumbai	3000 Equity shares Rs 30,00,000/-	101,667,216	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013
8	Idor Systems & Solutions Pvt Ltd, PAN - AACCT7030N, Add.:- 402, Mehzabeen Arcade, 13/A, ChaklaCross	2500 Equity shares Rs 25,00,000/-	58,508,857	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013

	Lane, Vadgadi, Mumbai.						
9	Netformex Information Technology Pvt Ltd, PAN - AAKCS9844D, Add.:- 402, Mehzabeen Arcade, 13/A, ChaklaCross Lane, Vadgadi, Mumbai.	3000 Equity shares Rs 30,00,000/-	64,309,427	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013
10	Nicco Securities Pvt Ltd, PAN - AABCN1737D, Add.:- Grace Plaza,B-210,2nd Floor,S V Road, Jogeshwari (W),Mumbai-400012	2500 Equity shares Rs 25,00,000/-	61,052,708	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was unserved, but on the request of appellant, reply was submitted on 21/03/2013
11	Oshin Investment & Finance Pvt Ltd, PAN - AAACO9051G, Add.:- B-501,Pushpak Apt., Ghartan Pada, W E.Highway, Dahisar Mumbai	2500 Equity shares Rs 25,00,000/-	499,990,200	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 21/03/2013
12	Sidh Housing Development Co. Ltd, PAN - AAKCS6606H,	2500 Equity shares Rs 25,00,000/-	999,909,700	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet	Notice was unserved, but subsequently served on 2 nd time and Reply was submitted on 23/03/2013

						and P&L	
	JAdd:- Rajyog apartment 3b bhayendwe road mumbai-1						
13	Fairmont Venture Pvt Ltd, PAN - AABCF1538L, Add:- 105, Sagar Shoping Center, J P Road, Andheri (W) Mumbai – 400058	2500 Equity shares Rs 25,00,000/-	201,771,929	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013
14	Kapindra Multitrade Pvt Ltd, PAN - AACCK9652R, Add:- B-G12, Jaidurga Complex Co-op., HSG Soc. Cabin Road, Bhayander (E),	2500 Equity shares Rs 25,00,000/-	186,714,759	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013
15	B. K. Dyeing & Printing Mills Pvt Ltd, PAN - AABCB6959M, Add:- 60 a jariwalabldgarthur road tardeoMumbai	1500 Equity shares Rs 15,00,000/-	46,795,465	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013
16	Santoshima Lease Finance & Investment (I) Ltd, PAN -	3000 Equity shares. Rs 30,00,000/-	55,869,918	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement	Notice was unserved, but served on 2 nd time and Reply was submitted on

	AAJCS2386P, Add.:- 519 Navjeevan soc lamington road mumbai-8					4. Audited Balance sheet and P&L	22/03/2013
17	Shyam Alcohol & Chemicals Ltd, PAN - AAGCS6595M Add.:- A-10 Kavita Aptsnatakwala lane borivali mum-92	3000 Equity shares Rs 30,00,000/-	127,423,217	1. PAN Card 2. CIN Master Data (ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L.	Notice was Served. Reply was submitted on 22/03/2013
18	Victory Sales Pvt Ltd, PAN - AAACV7299K Add.:- 60-A/3, Jariwala BLDG., S. G. Road, Tardeo, Mumbai	1000 Equity shares Rs 10,00,000/-	34,675,824	1. PAN Card 2. CIN Master Data.(ROC) 3. I.T Acknowledgment Receipt	1. Confirmation of Accounts 2. Share Application Form 3. Board Resolutions 4. Bank Statement 5. Reply to notice u/s 131	1. I.T Acknowledgment Receipt 2. Balance Sheet 3. Bank Statement 4. Audited Balance sheet and P&L	Notice was Served. Reply was submitted on 22/03/2013.

13. We also note that Ld. CIT(A) has distinguished the various judicial precedents relied upon by the Ld. Assessing Officer by making the assessment.

14. We further note that Ld. AO without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance of the directors of the share subscriber companies and of the assessee to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office and also as to what further

investigation was needed by him by way of having physical presence of the directors of the share subscribers and the assessee. We draw our force from the decision of the Hon'ble jurisdictional High Court of Bombay in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Pan) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bom) wherein it was held that mere non-compliance of summon under section 131 would not disprove the transaction and other documents filed on record cannot be brushed aside by the Ld. Assessing Officer. The relevant extract from the said decision is reproduced as under:

"The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares ie allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case."

15. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents of the share subscribing companies,

furnished by the assessee as well as by the share subscribers directly to the ld. Assessing Officer in response to his summons/notices under section 131/133(6) of the Act. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has added the amount of share capital and share premium on the ground that assessee has not produced the directors. Even in the remand report, Ld. Assessing Officer did not dispute the correctness of the additional evidences filed by the assessee. Thus, going by the records placed by the assessee of all the share subscribing companies, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement that all the investing companies have sufficient own funds available with them to make investment in the assessee.

16. It is relevant to quote the decision of Hon'ble jurisdictional High Court of Bombay in the case of *CIT v. Creative World Telefilms P. Ltd.* (2011) 333 ITR 100 (Bom) wherein it was held as under:

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."

16.1. Similar view was taken by the Hon'ble High Court of Madras in the case of Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad) wherein it was held as under:

“In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted.”

17. Further, reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC) wherein it was held as under:

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

The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”

18. On the allegation of the Ld. Assessing Officer in respect of assessee accepting share premium in excess of fair value, we note that provision of section 56(2)(viib) has been inserted with effect from 01.04.2013 and applies from assessment year 2013 – 14 onwards and cannot be applied retrospectively to bring to charge the excess share premium as alleged by the Ld. Assessing Officer. For this, we derive force from the decision of Hon'ble jurisdictional High Court of Bombay

in the case of Gagandeep Infrastructure Pvt. Ltd. in ITA 1613 of 2014 wherein it was held that it is the prerogative of the board of directors of the company to decide the share premium and it is at the wisdom of the shareholders to subscribe to the share premium and further that section 56(2)(viib) inserted with effect from 01.04.2013 cannot be applied retrospectively.

19. Considering the facts and circumstances narrated and analysed above, all the details and documents placed on record corroborating the claim of the assessee, the judicial precedents referred above and the detailed and meritorious findings arrived at by the Ld. CIT(A), we uphold the order of Ld. CIT(A) without any interference. Accordingly, addition made by the Ld. AO towards share capital including share premium of Rs.4,90,00,000/- is deleted. Grounds taken by the Revenue in this regard are dismissed.

20. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 09 July, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09 July, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai