

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 2992/DEL/2012 (A.Y 2003-04)  
I.T.A. No. 2993/DEL/2012 (A.Y 2004-05)  
I.T.A. No. 2994/DEL/2012 (A.Y 2006-07)  
I.T.A. No. 2995/DEL/2012 (A.Y 2007-08)  
I.T.A. No. 2996/DEL/2012 (A.Y 2008-09)  
I.T.A. No. 2997/DEL/2012 (A.Y 2009-10)**

ACIT Central Circle, CGO complex-1, Hapur Chungi Road, Ghaziabad <b>(APPELLANT)</b>	Vs.	Nazar Trading Pvt. Ltd. B-4/71, Lawrence Road New Delhi  <b>PAN No. AABCN6119M</b> <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>None</b>
<b>Department by:</b>	<b>Sh. Subhra Jyoti Chakraborty, CIT DR</b>

<b>Date of Hearing</b>	<b>25.07.2024</b>
<b>Date of Pronouncement</b>	<b>25.07.2024</b>

**ORDER**

**PER BENCH:**

These six Appeals are filed by the Revenue against the common orders passed by the Ld. Commissioner of Income Tax (Appeals)- Muzaffarnagar, dated 22/02/2012 for Assessment Years 2003-04, 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10 respectively.

2. The Grounds of Appeal are as under:-

*“That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 50,00,000/- made as unexplained cash credit u/s 68 of the IT Act, without appreciating the fact that the assessee could not prove with satisfactory details the source of the cash credits found in the Assessee’s account, and thus rendering the provisions of section 68 redundant.*

*2. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 50,00,000/- made u/s 68 of the 1.T. Act 1961 and directing the A.O. to assess the aforesaid cash credit in the hands of the respective beneficiaries, without appreciating the fact that the cash credits were found in the books of account of the assessee company not in the books of account of the respective beneficiaries, and were not satisfactorily explained by the assessee.*

*3. That Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.50,00,000/- made u/s 68 of the IT Act, without appreciating the fact that the A.O. was lawfully justified in treating the cash credit found in the Assessee’s books of account to be the undisclosed income of the assessee company, as the explanation offered by the assessee was not found to be satisfactory in the opinion of Assessing Officer.*

*4. That Ld. CIT (A) has erred in law and on facts in allowing Assessee’s appeal on merit without considering the fact that the addition of Rs. 50,00,000/- made u/s 68 of the Act in the case of the assessee company was as a consequence of failure of the assessee to satisfactorily explain source of the credits in the bank account even after being given various opportunities during the course of assessment proceedings.*

5. That Ld. CIT (A) has erred in law and on facts in allowing Assessee's appeal on merit without appreciating the fact that the onus of proving the source of credits in the Assessee's account was on the assessee which it did not discharge during the course of assessment proceedings.

6. That Ld. CIT (A) has erred in law and on facts in applying the ratio of decision of Hon'ble Supreme Court in the case of Smt. Tara Devi Agrawal Vs. CIT [1972] 88-ITR-323 [SC], even when this income was assessable in the hands of the assessee company as per provisions of section 68 of the IT Act 1961.

7. That the order of the Ld. CIT (A) deserves to be vacated and the assessment order passed by the A.O. be restored.

8. That the appellant craves leave to amend any one or more of the grounds of the appeal as stated above as and when need for doing so may arise.”

3. These are group of six appeals involving common issues and therefore, are being disposed by this common order. For the sake of convenience, we shall adopt the facts pertaining to Assessment Year 2003-04 in question. As per the Grounds of appeal, the Revenue is aggrieved by the reversal of addition of Rs. 50,00,000/- made by the Assessing Officer as unexplained cash credit u/s 68 of the Act. Similar additions have also been made in the Assessment Years except varied in amounts.

4. When the matter was called up for hearing, none appeared for the assessee no adjournment application has been filed either. The Assessee has been represented by the Assessee's Representative in earlier occasions, but even after issuing/serving several Notices by the registry, the Assessee remained absent and no one represented the Assessee. As informed on behalf of Revenue that this is the third round of proceedings and therefore requires to be taken up immediately. In the absence of any representation on behalf of the assessee, we are constrained to precede ex-parte.

5. The Ld. CIT(DR) for the Revenue pointed out that as against the Assessment Order for the Assessment Year 2003-04, 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10 in question, the additions u/s 68 were made by the Assessing Officer towards bogus credit entries appearing in the books for which the onus casted upon the assessee u/s 68 of the Act was not been discharged. The assessee preferred appeal against the respective Assessment Orders before the Ld. CIT(A). The Ld. CIT(A), however, reversed the additions made u/s 68 of the Act and held that the onus contemplated u/s 68 was discharged by the Assessee. Aggrieved by

the relief granted by the Ld. CIT(A) in respect of Assessment Orders, the Revenue preferred Appeal before the Tribunal. However, the Revenue did not find any favourable order from the Tribunal and the relief so granted by the Ld. CIT(A) were sustained by the Tribunal without any interference. Further aggrieved, the Revenue preferred Appeal before the Hon'ble Delhi High Court in ITA No. 989/2015. The Hon'ble Jurisdictional High Court vide Judgment dated 21/12/2015, followed the view taken by the High Court in ITA No. 727/2015 in the case of Principal CIT(A) Vs. Matchless Glass Services Pvt. Ltd. and in *pari-materia*, set aside and remanded the issue to the Tribunal for fresh determination in terms of aforesaid Judgment.

6. The Ld. CIT(DR) referred to the above said Judgments and submitted that in the case of Pr. CIT Vs. Matchless Glass Services (supra) reported in (2016) 380 ITR 370 Delhi, wherein the identical issue was remitted to the Tribunal for fresh determination in terms of observations noted in Para 22 to para 30 of the aforesaid Judgment. The Ld. CIT(DR) thus submitted that the issue involves bogus accommodation entries involving group entities operating

from one common place wherein the entries obtained by Nazar Trading Pvt. Ltd. as well as Matchless Glass Services Pvt. Ltd. Addressing further, the Ld. CIT(DR) submitted that after remanding the matter to the Tribunal by the Hon'ble Delhi High Court, the Tribunal in the case of Matchless Glass Services Pvt. Ltd., reported in (2017) 88 Taxman.com 215 (Delhi Tribunal) and in compliance with the same Judgment of High Court found that further enquiries are necessary and therefore, remanded the matter to Assessing Officer for verification of the factual matrix and determination of the issue in accordance with law. The Ld. CIT(DR) thus submitted that the facts being identical in the Judgment rendered by the Hon'ble Delhi High Court in the case of the assessee dated 21/12/2015 in ITA No. 989/2015 and the conclusion drawn by the Tribunal in the case of Matchless Glass Services Pvt. Ltd. (supra) shall apply *mutatis mutandis* and, therefore, prayed to remand the matter involved in these Appeals to the file of the Assessing Officer for verification of facts and determination of the issue in accordance with law.

7. We have carefully considered the submissions made on behalf of the Revenue and also perused the respective Judgment/Orders placed on records. It is the case of the Revenue that the facts in the case of the assessee in all these captioned Appeals are identical to another Ground Company namely Matchless Glass Services Pvt. Ltd. and, therefore, in tune with the order of the Tribunal in the case of Matchless Glass Services Pvt. Ltd. which in turn has restored the matters to the file of the A.O of the captioned Appeals requires to be restored to the file of the A.O. for verification of factual matrix.

8. It will be appropriate to reproduce the relevant paragraphs of the Judgment delivered by the Hon'ble Delhi High Court in the case of Matchless Glass Services Pvt. Ltd. (supra) which in turn has been followed by the Hon'ble High Court in ITA No. 989/2015 in the case of the assessee i.e Nazar Trading Pvt. Ltd.

*“Reasoning and Conclusion*

*22. The law relating to Section 68 of the Act has been a subject matter of several decisions and the legal position is now well settled. An addition under Section 68 of the Act can be made only where the Assessee either offers no explanation for the credit in its books or the explanation offered by it, is unsatisfactory. In cases where the identity of the source of the funds as well as the creditworthiness of the payer is established by the Assessee alongwith an explanation as to the nature of the transaction leading to the credit entries, the*

*Assessee would have discharged its initial onus and the burden would now shift to the AO to provide reasons for doubting the explanation provided by the Assessee. For the purposes of examining the identity of the payer and the genuineness of the transaction, the Assessee can make such enquiries as are necessary. If on enquires, the AO finds that either the identity of the payer is not established or lacks the means for supporting the transaction or on the basis of some material it is found that the transaction is not genuine or the payer, the AO would have to confront the Assessee with such material and, thereafter, draw an inference as to the merits of the explanation provided by the Assessee. In CIT v. Sophia Finance Pvt. Ltd.: (1994) 205 ITR 98 (Del), a full Bench of this Court had held as under:-*

*"What is clear, however, is that section 68 clearly permits an Income-tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessee. In other words, the truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of account can be gone into by the Income-tax Officer. In the case of Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi), the Income-tax Officer had accepted the increased subscribed share capital. Section 68 of the Act was not referred to and the observations in the said judgment cannot mean that the Income-tax Officer cannot or should not go into the question as to whether the alleged shareholders actually existed or not. If the shareholders are identified and it is established that they have invested money in the purchase of shares then the amount received by the company would be regarded as a capital receipt and to that extent the observations in the case of Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi), are correct but if, on the other hand, the assessee offers no explanation at all or the explanation offered is not satisfactory then, the provisions of section 68 may be invoked. In the latter case section 68, being a substantive section, empowers the Income- tax Officer to treat such a sum as income of the assessee which is liable to be taxed in the previous year in which the entry is made in the books of account of the assessee."*

23. This Court in a recent decision in the case of Commissioner of Income Tax - 3 vs. Five Vision Promoters Pvt. Ltd.: ITA 234/2015, decided on 27th November, 2015 examined and reiterated the law relating to Section 68 of the Act. It is now well established that "the

*AO has jurisdiction to undertake enquiries with regard to the amount credited in the books of the accounts of an Assessee".*

*24. In the aforesaid circumstances, the only issue that needs to be examined is whether the findings of the ITAT are in consonance with the settled law relating to Section 68 of the Act. A perusal of the order passed by the ITAT, insofar as the present Assessee is concerned, indicates that the appeals filed by the Revenue in respect of the Assessee were not taken up for hearing in view of the statement made by the parties that the facts and the issues involved were identical to that in the case of Pranjul Overseas (P) Ltd. Thus, it is apparent that the ITAT did not examine whether the Assessee had established the identity, genuineness of the transaction and the creditworthiness of the persons from whom the Assessee claimed that it had received the funds used by the Assessee for purchasing shares of other companies. The AO also could not examine the explanation of the Assessee during the assessment proceedings since at that stage the Assessee had not provided the necessary evidence to establish the identity of the persons as well as the genuineness of the transactions relating to the credit entries in its books. The AO had, therefore, held that the Assessee had failed to provide the necessary material and had not cooperated in the assessment proceedings. He had, accordingly, made additions under Section 68 of the Act as indicated hereinbefore. The Assessee had assailed the assessment orders, inter alia, on the ground that it had not been provided a reasonable opportunity to furnish the necessary evidence during the assessment proceedings. Before CIT(A), this ground was stoutly disputed by the AO and according to him the Assessee had been provided several opportunities but had failed to comply with the notices and questionnaires issued relating in the additions made by the AO. However, the grievance of the Assessee was allayed as CIT(A) gave sufficient opportunities to the Assessee, during the appellate proceedings, to produce the relevant material in support of the credit entries in its books of accounts.*

*25. The documents filed by the Assessee before the CIT(A) have not been filed in these proceedings except in ITA 362/2015, which relates to the AY 2003-04. A perusal of the documents filed by the Assessee indicates that the Assessee had filed affidavits of several persons who claimed to have made large cash payments to the Assessee as share application money for allotment of shares. It is seen that one Vijay Kumar, Director of M/s Chyris Information Management Services (P) Ltd. had filed an affidavit affirming that M/s Chyris Information Management Services (P) Ltd. had made a*

cash payment of Rs.6 lacs to the Assessee. The registered office of the said company was affirmed as B-4/71A, Lawrence Road, Delhi, which was the same as the registered office of the Assessee Company. A similar affidavit was filed by one Manoj Kumar in his capacity as a Director of M/s Lawrence Distributors (P) Ltd. affirming that Lawrence Distributors (P) Ltd. had made a cash payment of Rs.5 lacs on 6th November, 2006 as share application money to the Assessee. The registered office of Lawrence Distributors (P) Ltd. was also shown as B-4/71A, Lawrence Road, Delhi. Vijay Kumar affirmed another affidavit as a Director of Sharwan Advertising (P) Ltd. affirming that the said company had paid Rs.5 lacs in cash to the Assessee as share application money. The registered office of Sharwan Advertising (P) Ltd. was also reflected at B- 4/71A, Lawrence Road, Delhi-35. One Ghanshyam Dass who was a Director of the Assessee Company at the material time, also furnished affidavits on behalf of the M/s Broad Traders & Finances Pvt. Ltd, M/s Busy Traders and Finances Pvt. Ltd. and Aggarwal Plasto Chem Pvt. Ltd. affirming that the said companies had made cash payments of Rs.5 lacs each to the Assessee Company as share application money. It is also relevant to note that the registered office of all the three said companies was reflected at B-4/71A, Lawrence Road, Delhi. Mr Ghanshyam Dass and Vijay Kumar also affirmed affidavits in their individual capacity of having made large cash payments to the Assessee Company. In addition to the above, one Jasoud Singh and one Manoj Kumar also affirmed affidavits of having made cash payments of Rs.5 lacs each to the Assessee Company as share application money. The affidavits also affirmed them to be residents of B-4/71A, Lawrence Road, Delhi. During the course of the proceedings before us, we pointedly asked Mr Aggarwal whether it was disputed that B- 4/71A, Lawrence Road, Delhi was a Janta Flat and, if so, how was it possible that it housed several residents as well as offices of several companies. While it was not disputed that B-4/71A, Lawrence Road, Delhi which is the registered office of the Assessee was a residential Janta Flat, Mr Aggarwal stressed that it was not unusual for offices to be located in residential buildings and it was also not unusual for a single dwelling unit to be used as a registered office for several companies.

26. We are unable to accept that such affidavits as filed before the CIT(A) could have been accepted to establish the genuineness of the transaction or the creditworthiness of the investors. More so, when the AO had noted that during the search, no office was found to exist at the address and one Bhजारंग Bahadur Dubey who was a resident of the said address had also stated that he had not heard

*of the Assessee Company. The fact that a common address is shared by several companies may not be a ground to doubt the identity or the creditworthiness of the companies; however in the given facts there are several factors, which viewed cumulatively, clearly provide a good reason to doubt the veracity of the Assessee's claims. The address is that of a Janta flat which is normally used as residence by persons of limited means; the said address is also stated to be residential address of several individuals, who are ostensibly not related to each other; large payments have been made in cash; shares are stated to have been subscribed at a premium even though the Assessee company has no track record and for two years (out of six years in question) did not even have a bank account; and even though the Assessee company has not made significant profits, does not employ any qualified personnel (its expense on salary and wages is insignificant) and has not made any investment in traded securities yet it has attracted large subscriptions to its share capital. These factors are required to be considered for ascertaining whether the Assessee has established the creditworthiness of the persons who are stated to have made payments to the Assessee as well as to the genuineness of the transactions.*

*27. At this stage, we must also observe that the stand of the Revenue is somewhat unclear; while the Revenue is contending that the Assessee is liable to pay tax on the amount credited in its books as under Section 68 of the Act. It is also deleted the amount invested by the Assessee in shares of SVP Group companies on the ground that the Assessee is only a conduit. The AO has been influenced by the fact that several companies who had subscribed to share capital of SVP Group aggregating a sum of Rs. 85,48,50,000/- out of which shares subscribed/purchased at an aggregate value of Rs. 81,19,32,000/- had subsequently been sold/transferred to other SVP concerns/promoters for a sum of Rs. 10,38,65,200/-. Resultantly, the shareholders of SVP group had acquired shares corresponding to funds of Rs. 81,19,32,000/- infused in SVP Group of companies for an aggregate consideration of Rs. 10,38,65,200/-. Thus, acquiring hidden capital of 70,80,66,800/- without payment of corresponding taxes required to generate that wealth. This fact had led the AO to believe that all the companies that had subscribed to the share capital of core SVP Group companies and had subsequently transferred them at a fraction of the value, had acted as a conduit for routing the money generated by SVP operational companies by charging 'on money' on booking of flats. Although, the transactions at such scale definitely give rise to suspicion that money generated by SVP Group has been re-routed, the same*

*cannot be established as a fact without other relevant evidence. Thus, the AO cannot be faulted for proceeding on a hypothesis that the funds invested into SVP Group by the Assessee and other such companies were cash funds generated by SVP Group that had been routed through companies such as the Assessee. However, AO needed evidence to establish the hypothesis and without any material to establish the link between the source of funds received by the Assessee company (and such other companies) and the investee companies of SVP Group, it was not permissible for the AO to hold that the Assessee had acted as a conduit. There was no material before the AO which would establish that the funds received by the SVP Group were cash funds generated by the SVP Group and, therefore, the question of deleting any alleged unexplained credit on account of the funds invested with the SVP Group did not arise. In the circumstances, the only issue that could be examined by the AO and the CIT(A) was whether the Assessee had explained the sources of the credit entries in its books. It cannot be disputed that the fact; (a) that the Assessee's registered office was located at a Janta Flat occupied by the persons belonging to lower middle class; (b) that no commercial activity was found at the registered office of the company; (c) that several persons/companies which the Assessee claimed had paid funds to the Assessee for acquiring its share capital or for purchase of shares of other companies held by the Assessee were also stated to be located/residents of the same Janta Flat, it was also the registered office of the Assessee Company; (d) that a large amount of payments received by the Assessee were in cash; (e) that the Assessee did not have a bank account in two years, would certainly be relevant factors in determining whether the credit entries in the books of the Assessee were genuine and from creditworthy sources. However, it was for the fact-finding authorities to finally examine the evidence on record and determine whether the Assessee could satisfactorily explain the credit entry in its books and could establish the genuineness of the transactions claimed to have been entered into by it. Clearly, the ITAT has not examined the facts relating to the Assessee. The ITAT had simply proceeded on the basis of the facts obtaining in the case of Pranjul Overseas (P) Ltd. on the statement of the parties that the facts of that case were similar to the facts in the case of the Assessee. However, an examination of the documents filed before us, it does not appear that the facts in the case of Pranjul Overseas (P) Ltd. were similar to that as obtaining in the present case. While it appears that in the case of Pranjul Overseas (P) Ltd., the Assessee disputed that any search took place at its registered office, the written submissions filed by the Assessee in this case, does not indicate that any such dispute was raised. Even*

*before us it has not been contended that no search took place at the declared registered office of the Assessee.*

*28. In the circumstances, we find it is necessary to remand the matter to the Tribunal to examine the facts relevant to the Assessee for determining whether an addition under Section 68A of the Act was sustainable. Needless to mention that it would also be open for the ITAT to remand the matter for further enquiries if it is so considered necessary.”*

9. Based on the observations of the Hon'ble Delhi High Court in the case of Matchless Glass Services, Pvt. Ltd., the Tribunal in turn remitted the matter to the file of the Assessing Officer in following terms:

*“18. We have perused arguments advanced by both sides in the light of the records placed before us.*

*19. Before proceeding to discuss above submissions, a brief recapitulation of legal position as regards section 68 of the Act is necessary. Under section 68 of the Act, assessee has to offer an explanation in regard to any sum credited in the books of account. This could be any sum whether in the form of sale proceeds or receipt of share capital money. Thereafter, Ld. AO is to enquire whether, explanation offered by assessee is satisfactory or not. Truthfulness of the assertion by assessee regarding the nature and source of credit in its books of account can be examined by Assessing Officer subsequently. Where identity and creditworthiness of depositors along with genuineness of transaction stands established and it is shown that they had in fact invested their own money in the purchase of assessee's shares, such amount received would not be charged to tax. Where no explanation at all or explanation offered is unsatisfactory, provision of*

*section 68 may be invoked and such capital or revenue income may be taxed in the hands of the assessee.*

*20. The entire controversy in present appeals revolves around addition made under section 68 of the Act, where assessee either offers no explanation for the credit entries in the books of account, or explanation offered by it, is found to be unsatisfactory. In cases where identity of creditors has been established by assessee along with explanation about credit entries and genuineness of transaction, as to the nature of transaction, leading to such credit entries in the books of account, assessee is considered to have discharged its initial onus and burden.*

*21. It is observed from the records placed before us that assessee has submitted only copies of statement and Ledger account. During the assessment proceedings Ld. AO, vide various letters had called for details like Bank account details, complete narration regarding the source of fund credited in the accounts and detailed explanation on the entries etc., which has not been produced. In the submissions filed before the Assessing Officer the assessee has submitted that it has been working as Investment Company and was dealing in purchase and sale of investment in shares and other companies. The assessee had also submitted that assessee had received investment from various different sources for fresh shares have been issued and form No.2, has been filed regarding allotment of shares with the registrar of companies, Delhi and Haryana*

*22. On further verification of the paper book and the records it is observed that the assessee has tried to substantiate by way of an affidavit in order to prove credit entries in the bank account being in the nature of share capital. The affidavit of the depositor has been examined. These affidavits do not show any evidence of the creditworthiness and genuineness of the transaction. It merely shows mean, addresses and amount deposited with the assessee. Specific reference is made to page Nos.*

378, which is an affidavit of Sh. Danesh Sadiue, who deposited Rs.25,000/- for funding initial expenses. Likewise most of the affidavits are similarly worded. Therefore according to us, assessee does not discharge the initial onus cast upon, with respect to the cash credit. L.d. Counsel on these affidavits, relied upon the decision of Hon'ble Supreme Court in the case of Mehta Parekh & Co. v. CIT [1956] 30 ITR 181 to submit that, when affidavits filed by assessee are not controverted by Assessing Officer, they should be accepted. We have carefully considered the argument advanced by the Ld. Counsel and are not impressed with that. Had these affidavits been of the nature which discharged the initial onus cast upon the assessee to identify the creditors and also prove creditworthiness and genuineness of the transaction, we could have said that, unless these affidavits are proved contrary by L.d. AO, it would be accepted as it is. However that is not the case in the present facts before us.

23. Apart from these details the assessee has not filed any other documents which could have established genuineness, identity and creditworthiness of creditors neither have assessee produced creditors before Assessing officer. Ld. Counsel has placed reliance upon CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC), wherein it has been held that, if the share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Ld. AO by assessee, then Department can proceed to reopen their individual assessments of alleged shareholders, in accordance with law. Ld. Counsel submitted that assessee therein had submitted affidavits of creditors, and thus initial onus has been discharged. He submitted that Assessing Officer thereafter should have verified all the necessary facts. He submitted that there was no material before Ld. AO to allege that share applicants were bogus.

24. We have carefully perused the decision of Hon'ble Delhi High Court in the case of *Lovely Exports (P.) Ltd.* (*supra*). Hon'ble court has held as under:

"18. In this analysis, a distillation of the proceedings yield the following prepositions of law in the context of section 68 of the Income-tax Act. The assessee has to *prima facie* prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely whether it has been transmitted through banking channel or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or pan identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders registered, share application forms should, share transfer register, etc. It would constitute acceptable proof or acceptable explanation by the assessee. (5) the department would not be justified in drawing an adverse inference only because the creditor/subscriber failed to neglect to respond to blitz notices; (6) the onus would not stand discharge if the creditor/subscriber denies to repudiate the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value to construe it, without more against the assessee; and (7) Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber to the genuineness of the transaction and the veracity of the repudiation." .

25. It is also observed that assessee in the case *Lovely Exports (P.) Ltd* (*supra*) had established by way of confirmation and affidavits of share applicants, containing the details including PAN/IT Ward number, racial card of share applicants, and further the payments were made through proper banking channels. In that particular case all the necessary details, particulars of the creditors were furnished thereby discharging the onus. However in the

*present case assessee has failed to discharge the initial onus. Hence the ratio of the decision of fundable Delhi High Court in the case of Lovely Exports (P.) Ltd. (supra) cannot be construed in favour of assessee whereas it supports the contentions of the revenue.*

*Further it is held that it was in the context of public issue made by the company and not in the case of issue of shares other than public issue.*

*26. During the course of the arguments, Ld. Counsel had also placed heavy reliance upon decision of Hon'ble Delhi High Court in the case of CIT v. Sophia Finance Ltd. [1993] 70 Taxman 69/1994] 205 ITR 98. But on perusal of judgment we observe that in the context of section 68 of the Act, Hon'ble court observed as under:*

*(1) The assessee has to prima facie prove (1) the identity of the creditor/subscriber, (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber.*

*(ii) has also been held that use of words "any sum found credited in the books" in section 68 indicates that the section is very widely worded and the income tax officer is not precluded from making an enquiry as to the true nature and source of sum credited in the accounts books even if it is credited, as receipt of share application money. Hon'ble Court has further held that if an amount is credited as capital receipt, then it could not be taxed but it is for the income tax officer to be satisfied that the true nature of the receipt is that of capital. Merely because the company chooses to show the receipt of money as capital, it does not preclude the income tax officer from going into the question whether it is actually so.*

27. In the facts of present case before, it has been argued by Ld. Counsel that monies credited into books of account of assessee are invested by the respective shareholders and is share capital in the hands of assessee. If that is so the assessee is duty bound to establish the true nature of the credit by providing evidences about identity, creditworthiness and genuineness of the transaction which could discharge the initial onus cast upon the order under section 68 of the act. On perusal of the order passed by Ld. CIT(A), it is observed that he has merely deleted the addition without initial onus being discharged by the assessee as per section 68. 1st that he also erred in holding that assessee is a conduit company without any evidence on record or being placed by assessee, either before the Ld. AO, the Ld. CIT (A) himself. He is on the basis of skanky evidences placed before him dearly paid their respective additions under section 68 for assessment years 2006-07 to 2009-10. The Hon'ble High Court while reminding the issue of cash credits to this Tribunal, has directed that it would be also open to ITAT to remind the matter for further enquiry if it is considered necessary. We are therefore of the considered opinion that might have Ld. AO the Ld. CIT (A) has made any enquiry towards the amount credited in the books of the either as share capital or as sale of shares which is in the profit and loss account. The Ld. Counsel and Ld. CIT. DR, agreed that such enquiries can only be conducted at the level of Ld. AO. Therefore we set aside the issue for examination of cash credits either as share capital and premium or as sale of shares from back to the file of Ld. AO. The Ld. AO shall 1st grant an opportunity to assessee to discharge its initial onus by providing the identity, creditworthiness and most importantly genuineness of the transactions as per section 68 of the act. After the discharge of initial onus by assessee, the Ld. AO may conduct any enquiry that he may deem fit and proper to inquire about the veracity of the evidences/information submitted by the assessee in respect of the credit entries. Ld. AO may take all necessary steps in order to identify, examine the creditors

*and decide the issue on merits nearest say that adequate opportunity may be granted to the assessee to support the case.*

*28. In the site appeals filed by the revenue for the assessment years 2006-07 to 2009-10, are allowed with above directions.*

*As we have already set aside and the appeals filed by the revenue on the issue of section 68, the appeal filed by assessee is allowed in lieu of spectrum ground number. The Ld. AO is directed to site the appeals of revenue on merits. In the result the appeal filed by revenue for assessment years 2006-07 to 2009-10 is allowed.”*

10. As noted from the chequered history narrated in the preceding paragraphs, we find that the facts involved in Matchless Glass Services Pvt. Ltd. (supra) and the case of the assessee are identical. Therefore, the view expressed and the issue determined by the Coordinate Bench of the Tribunal in the case of Matchless Glass Services Pvt. Ltd shall apply mutatis mutandis in consequence with the view expressed in the case of Matchless Glass Services Pvt. Ltd, thus the issue is remitted to the file of the A.O. for fresh determination of issue in all the captioned appeals on identical terms.

11 In the result, all the captioned Appeals of the Revenue are allowed for statistical purposes.

Dictated and pronounced in the Open Court on 25th July, 2024.

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Dated: 25 /07/2024

*R.N, Sr. PS\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI



