

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA Nos. 3611, 3609, 3608/MUM/2023  
Assessment Years: 2010-11 to 2012-13**

DCIT CC, 4(3),  
Room No. 1921, 19<sup>th</sup> floor, Air  
India Building, Nariman Point,  
Mumbai-400021.

**Appellant**

**Vs.**

Nouveau Global Ventures Ltd.,  
401/A Pearl Arcade, Opp. P.K.  
Jewellers, Dawood Baug Lane,  
Off. J.P. Road, Andheri West,  
Mumbai-400058.

**PAN NO. AABCN 0827 A  
Respondent**

**CO. Nos. 66, 65, 64/MUM/2024  
(Arising out of ITA Nos. 3611, 3609, 3608/MUM/2023)  
Assessment Years: 2010-11 to 2012-13**

Nouveau Global Ventures Ltd.,  
401/A Pearl Arcade, Opp. P.K.  
Jewellers, Dawood Baug Lane, Off.  
J.P. Road, Andheri West,  
Mumbai-400058.

**PAN NO. AABCN 0827 A  
Appellant**

**Vs.**

DCIT CC, 4(3),  
Room No. 1921, 19<sup>th</sup> floor, Air  
India Building, Nariman Point,  
Mumbai-400021.

**Respondent**

**Assessee by** : Mr. Ashok Bansal, &  
Mr. Ajay Daga  
**Revenue by** : Mr. S. Srinivasu, CIT-DR &  
Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 30/05/2024  
Date of pronouncement : 31/07/2024

**ORDER**



## **PER BENCH**

These appeals by the Revenue and cross-objection by the assessee are directed against a common order dated 12.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals)-52, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2010-11 to 2012-13 respectively.

2. As common grounds are involved in these appeals and cross-objections, therefore, same were heard together and disposed off by way of this consolidated order for convenience.

3. The grounds raised by the Revenue and cross-objection raised by the assessee in assessment year 2010-11 are reproduced as under:

*1) On the facts & in the circumstances of the case, Ld.CIT(A) erred in deleting addition on account of bogus turnover on estimate basis @ 1% of total turnover of company amounting to Rs. 1,35,02,150, without appreciating the fact that these transactions and figures are fictitious, non genuine and manipulated with sole intention to record desired turnover so as to support the artificial spurt shown in the price of the penny stock at various timelines.*

*2) On the facts & in the circumstances of the case, Ld. CIT(A) erred in deleting addition of Rs. 9,25,68,000/- as unexplained cash credit u/s 68 of the Act in respect of share capital raised during the year.*

## **Cross-objection of the Assessee**

*1. The Id. CIT(A) erred in not adjudicating Gr. No. 1 of Grounds of Appeal challenging the validity of assessment made u/s 153C of the Act.*



2. The ld. CIT(A) erred in holding that there were incriminating material and, therefore, the completed assessment could have been disturbed.

3. The id. CIT(A) erred in holding that opportunity of cross-examination was not necessary.

4. The Id. CIT(A) though allowed the ground challenging the addition based on estimation of incie, however, erred in confirming the action of the AO of rejection of books of account.

*It is submitted that there is delay of about 21 days in filing of cross-objections. This happened as the Mg. Director & the other working directors of the appellant company had gone to Australia on 21 April, 2024 to attend marriage in their family and came back on 3rd May, 2024 and immediately on return, the matter was entrusted to a senior CA who took some time to study the case and have now finalized the cross-objections which are now being fled. It is submitted that the delay in filing of cross-objections is not wilful and that the cross-objector was prevented by reasonable cause as brought out hereinabove and your honors may be pleased to condone the delay and admit the same which will meet with the ends of justice.*

4. The ld counsel for the assessee submitted that cross-objections were filed with delay of 21 days for the reason that during relevant period, managing director of the assessee company had gone abroad for attending marriage function in family. The ld DR did not object seriously for admission of cross-objections. After considering submission of parties, the cross-objections of the assessee were admitted for adjudication in view of decision of Hon'ble Supreme Court in the case of **NTPC Ltd. 229 ITR 283 (SC)** as only legal issues have been raised in cross-objections without requirement of investigation of fresh facts

4.1 Briefly stated, facts of the case are that in the search action carried out u/s 132 of the Income-tax Act, 1961 (in short 'the Act') by the Investigation Wing, Income-tax Departmental, Delhi in the



case of 'sh Rajkumar Kedia' Group on 13.06.2014, it was found that share/scrip of the assessee company had been misused for providing accommodation entries in the form of bogus long term capital gain (LTCG) to beneficiaries and short term capital loss (STCL) to exit providers. The Assessing Officer has referred to various material seized during the course of search including 'tally' accounting data, ledger of beneficiaries etc. Consequent to documents pertaining to assessee company found and seized in search proceedings of Shri Kedia, a satisfaction note as required under the provisions of section 153C of the Act was recorded by the Assessing Officer(s) and notices u/s 153C r.w.s. 153A was issued in the case of the assessee for six assessment years including the three assessment years, i.e. AYs 2010-11;2011-12 and 2012-13, which are before us. In the assessments completed u/s 153C r.w.s. 143(3) of the Act dated 26.12.2016, the Assessing Officer referred to various incriminating material and statements of Shri R.K. Kedia, and Shri Manish Arora ( i.e. associates of sh Kedia) etc. recorded on oath u/s 132(4) of the Act. The Assessing Officer also referred to the statement of other persons including sh Suresh Jajodiya, Mumbai and Shri Anil Kumar Mittal, Mumbai , who were engaged in providing accommodation entries of LTCG in other scrips with the help of Shri R.K. Kedia. The Assessing Officer analyzed artificial raising of the price of the shares of the assessee company by Shri R.K. Kedia. The Assessing Officer further referred to statement of



Shri R.K. Kedia , wherein he admitted that assessee company was under control and management of 'Shri Krishan Kumar Khadaria,, Mumbai who was a close friend of him and was engaged in the business of providing accommodation entries. Shri Manish Arora i.e. the main employee of Shri Rajkumar Kedia who used to keep unaccounted transactions of Shri R.K. Kedia, also admitted that shares of the assessee company were jacked up with involvement of Shri Rajkumar Kedia. The Assessing Officer also referred to statement of Shri Natwarlal Daga, who admitted the role of Shri Rajkumar Kedia in arranging investors of preferential issue. During the course of search, statement of Shri Krishan Kumar Khadaria was also recorded, but he could not explain reason of huge rise in shares of the assessee company. During the course of search enquiries, Shri Rakesh Sahnewal i.e. an employee of Shri Krishan Kumar Khadaria, admitted that various cash transactions of accommodation entries were provided. The Assessing Officer has reproduced the financial statement and concluded that there is no substantial business transaction to support the huge rise in the share of the prices. According to him, the assessee has shown fictitious sale of Rs.135.02 crores in its books of account. He observed that trading transactions are fictitious, non-genuine and manipulated with sole intention to record desired turnover so as to support the artificial spurt in the price of the shares of the company. The Assessing Officer rejected books of account invoking



section 145 of the Act and estimated the profit at Rs.1,35,02,150/- being 1% of the total turnover of the company. The Assessing Officer also held the increase in share capital during the year under consideration amounting to Rs.9,25,68,000/- as unexplained cash credit. In view of his observations that the preferential share allotments/warrants by the company was merely paper transaction arranged for benefitting the beneficiaries as such, the credit entries of capital appearing the books of the assessee company in various names such as preference allotment/warrant etc was held to be non-genuine and unexplained cash credit u/s 68 of the Act.

5. On further appeal, the Ld. CIT(A) upheld the validity of 153C proceedings and the rejection of books of accounts, however deleted the estimated additional profit @ 1% of the turnover and addition of the share capital u/s 68 of the Act.

6. Before us, the assessee has filed a Paper Book containing pages 1 to 249.

7. The ground No. 1 of the appeal of the Revenue relates to addition for estimated profit @ 1% of the turnover of the company amounting to Rs.1,35,02,150/- which has been deleted by the Ld. CIT(A). The fact in brief qua the issue in dispute are that before lower authorities, the assessee submitted that it had carried out trading in computer hardware shares, event management, purchase and sale of Doordarshan Rights of films and telecasting the films on



Doorsarshan Channels. The assessee also provided detail of sundry debtors amounting to Rs.40,46,97,345/- a list of which is available on Paper Book page 83 and 84. For ready reference the said list is reproduced as under:

<b>Nouveau Global Ventures Ltd.</b>		
(Formerly known as Nouveau Multimedia Ltd.)		A.Y. 2010-11
Details of Sundry Debtors		
Name & Present Address of the Party	Nature of Transaction	Amt. (Rs.)
ICSA (India) Ltd. A-601, Elite CHS Ltd., Road No.8, Gandhi Nagar, Near MIG Cricket Club, Bandra (East), Mumbai - 400 051	Sale of Computer Software/Hardware	13119882
Micro Associates Consultancy (1) Pvt. Ltd. 31, Bandal, Dhankude Plaza, Bhusari Colony, Paud Road, Kothrud, Pune - 411 038 PAN: AACCM3346E	Sale of Computer Software/Hardware	31401108
Varadvinayak Properties Pvt. Ltd. 184, Samuel Street, 18, Hazira Mansion, 2nd Floor, Mumbai - 400 009 PAN: AADCV0564A	Sale of Shares	6130000
Nam Technologies Pvt. Ltd. Formerly known as Areva Infosystems Pvt. Ltd. 110, 1st Floor, Vikrant Industrial Estate, Deonar Post Office Road, Govandi (East), Mumbai - 400 088 PAN: AAFC9204L	Sale of Computer Software/Hardware	57261497
Sai InfoSystem (India) Limited 717,7th Floor, Raheja Chambers, Free Press Journal Marg, Nariman Point, Mumbai - 400 021 PAN: AAHCS2059R	Sale of Computer Software/Hardware	440743
Tulip Telecom Limited Tulip House, 32, MIDC Central Road,	Sale of Computer Software/Hardware	294369515



Andheri (Bast), Mumbai - 400 093 PAN: AAAC2717J		
Kashish Multi Trade Pvt. Ltd. A/401, Pearl Arcade, Opp. P. K. Jewellers, Dawood Baug Lane, Off J. P. Road, Andheri (West), Mumbai - 400 058 PAN: AACCK7596A	Sale of Film Rights	360000
Prasar Bharati Broadcasting Corporation of India Directorate General, Doordarshan, Copernicus Marg, New Delhi - 110 001	Sale of Film Rights	1614600
Total		404697345

7.1 The Ld. Assessing Officer however rejected the claim of the assessee and in view of material seized from the premises of Shri R.K. Kedia and statement of Shri R.K. Kedia, Manoj Tiwari (employee of Shri R.K. Kedia) and others held the purchases and sale transactions recorded in the books of accounts of the assessee as fictitious, which were arranged only to give legitimacy to price rise in the shares of the assessee company. In absence of any evidence to support the transaction of purchase and sale shares, the Assessing Officer held same to be fictitious and commission earned on arranging such entries @ 1% of the total turnover was estimated as profit. Before the Ld. CIT(A), the assessee contested genuineness of the business activity. The Ld. CIT(A) called for remand report from the Assessing Officer however in the part of the remand report of the Assessing Officer which has been reproduced by the Ld. CIT(A) in the impugned order, it is observed that enquiries were partly carried in respect of addition of share capital



but no verification or inquiry was carried out with regard to alleged trading activity of the assessee. The Ld. CIT(A) however referred to the finding of his predecessor in other two companies i.e. M/s Mukta Agriculture Ltd. and M/s Mystic Electronics Ltd. who were also being operated by Shri Krishan Khadaria. The Ld. CIT(A) observed that in those two companies, his predecessor upheld commission income @ 1% of the turnover. But in the instant case, the Ld. CIT(A) distinguished the facts of those two cases. The Ld. CIT(A) noted that in those two companies, there were no employees as against six employees in the case of the assessee. The Ld. CIT(A) also observed that in the instant case there was no specific finding of non-existence of the warehousing or business activities. The Ld. CIT(A) further noted that in those two cases inquiries were carried out by the AO with the purchaser and seller and the delivery challans submitted by those assessee's did not bear any transportation and movement of the goods whereas in the instant case he did not find any such observation. The finding of the Ld. CIT(A) on the issue is reproduced as under:

*“6.4. I have considered the facts of the case. Rejection of books of accounts can be made when specific discrepancies and shortcomings are brought out. In any case only the real income can be brought to tax.*

*6.5. I am conscious of the fact that my Id. Predecessor has upheld the rejection of books and estimation of commission income at 1% of turnover (over and above the income from other sources) in the appellant's group cases as under:-*

*i. Order dt. 27.01.2017 in the case of M/s Mukta Agriculture Ltd. for AY 2014-15.*



ii. Order dt. 29.11.2017 in the case of M/s Mystic Electronics Ltd. for AY 2015-16.

6.6. It is also fact that in the cases of Sh. KrishanKhadaria, Director of these entities which are simultaneously being adjudicated, it has been held that the entities namely Nouveau Global Ventures Ltd., M/s Mukta Agriculture Ltd. and M/s Mystic Electronics Ltd. have been used to provide accommodation entries of bogus LTCG. Thus, there has definitely been a sugar coating / manipulation of the financials.

6.7. At the same time, there are few material differences. The statement of Sh. NareshKedia employee of Sh. KrishanKhadaria was recorded under oath. In the appellate order for M/s Mystic Electronics Ltd. for AY 2015-16, my Id. Predecessor had given a finding as follows:-

"7.3. ...it was revealed that the purchase/sale bills of the assessee company (formerly known as Pearl Electronics Ltd.) and of its related company, M/s. Mukta Agriculture Ltd. (formerly known as Pearl Agriculture Ltd.) were not backed by any evidence of transportation. It was further revealed that the purchases made by the assessee company have been made from M/s Unisys Software & Holding Industries Ltd. and M/s JMD Telefilms Industries Ltd which are dummy concerns of one Entry Operator, ShriJagdishPurohit of Kolkata. Moreover, in the case of M/s Pearl Agriculture Ltd., it was found that in a number of instances, the sale as well as the purchase parties were common and bogus circular transactions have been entered into. The parties whose names figured as seller as well as buyer included M/s Krishna Industries Ltd., M/s Nirmal Agro Products, M/s Champion Agro Ltd. and M/s Globe Soya Products Ltd. On being confronted, neither ShriNareshKedia nor ShriKishanKhadaria could give any satisfactory explanation as to why the purchase as well as sale parties are common in M/s Pearl Agriculture Ltd. Further, ShriKishanKhadaria could not give any details of the alleged warehouse of the said related company at Rajkot. Thus, in course of the search action, the assessee company as well as M/s. Pearl Agriculture Ltd. were found to be not carrying out any real business and with extremely weak fundamentals.

7.4. ..Therefore, the action of the AO of rejecting the books of the assessee, cannot be faulted. Moreover, for showing fictitious accommodation transactions etc, the assessee would have surely incurred some unexplained expenses on account of commission payments. It is observed that the AO has been very reasonable in estimating the profits @ 1% of the turnover. Therefore, no infirmity is found in the action of the AO of rejecting the book results and estimating the profits to be of Rs. 41,264/-@1% of the operational turnover...

6.8. In the statement of Sh. KrishanKhadariadt. 13.06.2014, he stated as under, as regards the employees in various entities managed by him:-



"Q10. Please give the details of the number of employees in each of the company mentioned to in reply to question No. 3.

A10. Sir, / would like to state that all the above companies do not have separate employees on the payrolls. The staff is mainly employed for Nouveau Global Venture Ltd. and Khadaria& Co. which have about 6 & 4 employees respectively. Other than for these two companies the work of the other companies is carried out by me alone. There are no employees in the other companies.

6.9. From the above it can be seen that Nouveau Global Ventures Ltd. has 6 employees unlike in the case of other entities cited above. Moreover, unlike in the case of other two entities, there is no specific findings as regards the appellant like non-existence of warehouse or business activities. In those cases, it was also pointed out by the AO that the enquiries made with purchasers / sellers was not fruitful and that the delivery challans submitted by the appellant did not bear transportation and movement details. Hence, to this extent the appellant's has to be treated differently from that of M/s Mukta Agriculture Ltd. andM/s Mystic Electronics Ltd.

6.10. A comparison of the computation of income filed by the appellant for various years is summarised as under:-

AY	Income from House Property	Business Income	Income from other sources	Gross Total income as per ROI	Business income estimated by AO*
2010-11	0	48,52,094	6,55,593	55,05,687	1,35,02,150
2011-12	69,300	37,40,175	43,95,933	82,05,408	1.43,89.328
2012-13	1.38,600	29.75,010	46,74,422	77,88,032	1.97,85,045
2013-14	1,33,056	(23,92,765)	51,94,064	29.34,355	11,37.439
2014-15	0	21.70.401	0	21,70.401	9.51,746
2015-16	15,98.285	(88,91,686)	64,68,643	Nil	6.02.047

\*Besides, other income shown in the P&L Account has been assessed and added to the above by the AO.

From the above, it can be seen that the appellant has indeed offered substantial amounts for taxation barring AY 2015-16. Although the appellant's role in providing accommodation entries in the nature of bogus LTCG is evident from the search action, several other factors (in the form of discrepancies) are of much lesser intensity as compared to its two other sister entities of the same promoter group.

6.11. In the case of ACIT vs Grasim Industries Ltd in ITA No. 1519/Mum/2002 for AY "1992-93 dated 17.11.2006, (<https://indiankanoon.org/doc/874242/>), the Hon'ble ITAT held as follows: "The task of the Tribunal would, therefore, be to analyse the materials relied on by both the sides and evaluate the relative merits and reliability. It is sometimes in the nature of a comparative exercise to measure the degree of



*reliability between the materials relied on by the revenue and the materials relied on by the assessee. This degree of reliability seems to be the crucial test in the present case in applying the principles of preponderance of probability. We think that this is the way to proceed to find a balance of convenience on which alone it might be possible for us to come to a fair decision." Eventually, the Hon'ble Tribunal held that balance of convenience was apparently tilting in favour of the assessee and ruled as such.*

*6.12. Applying the above ratio, given the set of facts before me, I am of the view that balance of convenience lies in favour of the appellant as far as income estimation is concerned. Thus, even while upholding the rejection of books of account of the appellant, I am of the view that no further estimation of income on the basis of turnover is warranted in view of the specific facts of the case. The relief is granted to the appellant in respect of estimation of additional business income."*

8. We have heard rival submission of the parties and perused the relevant material on record. Before us, the issue in dispute is whether the purchase and sales of the software/hardware and other products shown by the assessee are genuine or not. We find that the Ld. CIT(A) has though upheld the rejection of the books of accounts but has deleted the estimation of the profit mainly for the reason that **firstly**, there are six employees working in the company as against no employees in the case of M/s Mukta Agriculture Ltd. and M/s Mystic Electronics Ltd. **Secondly**, there are no observation regarding non-existence of the warehouse or the business activity in the case of the assessee as against such observation in the case of M/s Mukta Agriculture Ltd. and M/s Mystic Electronics Ltd. **Thirdly**, no observation in the case of the assessee to establish whether purchaser or seller are not genuine or the delivery of the goods was actually not carried out as against no evidence of transportation or movement of goods observed in such inquiries carried out in the case of M/s Mukta Agriculture Ltd. and M/s



Mystic Electronics Ltd. We don't agree with the above reasonings given by the Id CIT(A). In our opinion, the Ld. CIT(A) should have issued specific direction to the Assessing Officer during remand proceedings for carrying out inquiries for verification of purchase and sale from the concerned parties and also he should have directed for verification of evidences of the transportation and movement of the traded goods. In the case of Jansampark Advertising and Marketing Pvt. Ltd. in ITA 525/2014, the Hon'ble Delhi High Court has held that if the Assessing Officer has not carried out any inquiry it is incumbent upon the Ld. CIT(A) or the ITAT to carried out such inquiries for bringing truth on records. The relevant finding of the Hon'ble High Court is reproduced as under:

*"38. The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in Section 250 of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:—*

*"The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)."*

*39. The further inquiry envisaged under Section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re-opened on the basis of preliminary satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in Section 68), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party*



making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.

40. The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non- delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.”

8.1 Since in the case, it is not available on record whether any enquiries or verification of the alleged trading transactions has been carried out during remand proceedings, particularly keeping in mind various incriminating observations in search proceedings referred in impugned assessment order, we feel it appropriate to restore this issue back to the file of the Ld. Assessing Officer for carrying out necessary inquiry for verification whether the purchase and sales recorded by the assessee in his books of accounts are



genuine . If required so, the Assessing Officer may ask the assessee to produce those parties for verification or may use authority provided under the Act for carrying out such exercise. Accordingly, the ground No. 1 of the appeal of the Revenue is allowed for statistical purposes.

9. The ground No. 2 of the appeal of the Revenue relates to disallowance of Rs.9,25,68,000/- as unexplained cash credit u/s 68 of the Act in respect of share capital raised during the year. This addition has been deleted by the Ld. CIT(A).

10. Briefly stated facts of the case are that the Assessing Officer on the basis of the observations in search proceedings in the case of Shri R.K. Kedia and others, observed that assessee company has raised share capital by way of the issue of preference share allotments/warrants etc. which were only paper transaction for giving benefit of long term capital gain to the beneficiaries. The assessee on the other hand submitted detail of the share subscribers, copy of which is available on Paper Book page 62 to 77 it was submitted that during the year under consideration increase share capital from Rs.6,17,12,000/- to Rs.15,42,80,000/- by way of issue of 92,56,800 equity shares of Rs. 10 each at par on rights basis in the ratio of 3:2. During the appellate proceedings, remand report was called for from the Assessing Officer, wherein the Assessing Officer made part inquiry by way of issue of notice u/s



133(6) of the Act in case of 29 parties. The Assessing Officer observed that three parties were having Nil income amount and in balance cases, their return of income shown meager income as compared to the share application money invested. However, after taking into consideration rejoinder of the assessee, the Ld. CIT(A), held that identity and creditworthiness of the investors is fully established. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“7.7. I have considered the facts of the case. It is the case of the AO that the subscribers to the share capital of the company are harvesting bogus LTCG. In fact, this aspect has been upheld by this office while adjudicating appeal in the case of Sh. KrishanRaghunath Prasad Khadaria, wherein his commission income on account of such activities has been estimated and restricted to 1%. Unlike in the case of its sister entity M/s Mystic Electronics for AY 2015-16 where a preferential issue was made and part addition u/s 68 was upheld by my Id. Predecessor, the appellant's case is one of rights issue. The appellant has furnished a list of 622 subscribers (some of them are repetitive, may be due to different folios). PAN numbers and addresses are available for all the subscribers. The rights issue was made in the ratio of 3:2 and is available to all existing shareholders. Thus, it would be imprudent to hold that section 68 addition would lie in the case of the appellant.*

*7.8. I concur with the submission of the appellant that "even assuming without admitting if the allegation that the appellant company is in the business of providing long-term capital gain to various beneficiaries is correct still no addition can be made u/s 68 of the Act as the identity & creditworthiness of the investors and genuineness of the transaction is fully established." **The AO's contention that the return income in certain cases is lower than share subscriber amount cannot be the basis for making an addition as subscription can also be made by liquidating other investments /other sources. There is no independent material or evidence to show that these subscriptions are not genuine. Hence, this addition gets DELETED.***

11. We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is in respect of genuineness of share capital of Rs.9,25,68,0000/-, which was



increased during the year. The Assessing Officer has though relied on the statements and material gathered during the search of Shri R.K. Kedia, but made addition mainly for the reason of failure on the part of the assessee in establishing identity, creditworthiness of share subscribers and genuineness of the transaction. The Ld. CIT(A) though referred to finding of his predecessor in the case of M/s Mystic Electronics for assessment year 2015-16 where part addition were upheld, but distinguished the case of the assessee being of the rights issue. Further, the Ld. CIT(A) held that identity and creditworthiness of the investors and genuineness of the transaction are fully established. However, we do not find any evidences referred by the ld CIT(A), which could establish creditworthiness of share subscriber parties. Further, the identity also needs to be established as during the remand proceedings also only replies from share subscriber parties were received only by post. Since the finding of the Ld. CIT(A) are not based on any supporting material, therefore, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Ld. Assessing Officer for examining the credits corresponding to share capital as per the provisions of u/s 68 of the Act. The ground No. 2 of the appeal of the Revenue is accordingly allowed for statistical purposes.

12. Identical grounds have been raised by the Revenue in other two appeals, therefore, following our findings in AY 2010-11, the



grounds raised in other two appeals are also allowed for statistical purposes.

13. As far as ground No. 1 raised by the assessee in cross-objection challenging validity of assessment u/s 153C of the Act is concerned, no finding has been given by the Ld. CIT(A). Before us also, the assessee did not file any documentary evidences to support its contentions, therefore, we are adjudicating on the issue particularly when we have already restored the matter on the merit to the file of the Assessing Officer. Regarding the second ground of cross objection, the Ld. CIT(A) has given detailed finding regarding existence of the 'incriminating material'. The relevant finding of the Ld. CIT(A) is reproduced as under:

*"5.3. I have considered the facts of the case and submissions of the appellant. One of the contention of the appellant is that the assessment could not have been disturbed in the absence of any incriminating material. In this case, it is seen that a search action was mounted on R. K. Kedia Group on 13.06.2014 by Investigation Directorate at New-Delhi. The appellant being an important part of the activities related to the group was also covered. The main allegation against the group was arising that it was engaged in providing various types of accommodation entries to large number of beneficiaries all over the country. One such type of accommodation entry is that of bogus LTCG by prearranged trading in shares of various non-descript listed companies. The recovery of ledger accounts running into 870 number of pages having a total of 224 ledgers of 30 groups from the premises of Sh. R K Kedia has been highlighted by the AO. It is seen that the transactions also depicted cash payments running into hundreds of crores amongst various entry operators. The ledgers highlighted the transactions with Khadaria have been summarized in page 4 and 5 of the assessment order. Sh. R K Kedia has in its statements elaborated the modus operandi and transaction recorded in the ledger accounts and also identified various individuals including the appellant. As per the AO, these transactions are also independently corroborated with the bank statements appearing in the statements / books of account of such other individuals. The linkage of the appellant with Sh. R. K Kedia is also very much visible from the seized records. For instance, in the letter dt. 15.12.2016 addressed by*



*the appellant to the AO while explaining page No. 4 of Annexure A6 (Query No. 30) found at office at Pearl Arcade, the sheet does indicate an offer from Sh. R. K. Kedia to buy stake in M/s Nouveau Global Venture Ltd. for Rs. 40,00,000/-. The fact that the appellant has linkages with Sh. R. K. Kedia is also evident from its reply dt. 15.12.2016 before the AO, "Query No. 8 - The details of my transaction with Mr. RajkumarKedia is already submitted to investigation wing, Delhi and I am not able to recollect and the same is not readily available." The SMS of Sh. Natawarlal Daga and Sh. Rajesh Omprakash Agarwal also corroborate the relationship apart from the cash transactions. The appellant's contention that "the extract of ledger accounts pertain to one Mr. Khadaria which cannot lead to the conclusion that the same belong to me. Merely because the surname is the same it cannot be concluded that the same pertains to me as Krishan Khadaria", cannot be accepted for the reasons stated above*

*5.4. There are sufficient evidences to show that the entire group was involved /complicit in providing accommodation entries and that there is more than enough incriminating material."*

13.1 The Ld. CIT(A) further referred to various decisions and thereafter concluded as under:

*"5.11. It was also held that unlike criminal proceedings where the charge has to be proved beyond doubt, income-tax proceedings are quasi-judicial. Tax liability in cases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of probabilities. Rules of evidence do not govern income tax proceedings and the AO is not fettered or bound by technical rules contained in the Indian Evidence Act and is entitled to act on material which may not be accepted as evidence in a court of law.*

*5.12. In view of the above, the contentions of the appellant that there is no incriminating material cannot be accepted. This part of the ground stands REJECTED."*

13.2 In view of the finding of the Ld. CIT(A), the contention of the Ld. counsel for the assessee of non-existence of the incriminating material are rejected as there are ample instances of ledger accounts of beneficiaries appearing in the books of accounts of Shri R.K. Kedia. Thus, the ground No. 2 of the cross-objection is accordingly rejected.



14. The ground No. 3 of the cross-objection relates to cross-examination. Since, we have already restored the issue of addition u/s 68 of the Act to the file of the Assessing Officer, this ground is rendered academic only. The ground No. 4 of the cross-objection relates to the ground No. 1 of the appeal of the Revenue being interconnected issue which we have already restored to the file of the AO therefore, this ground is only academic at this stage.

15. Identical grounds have been raised in cross-objection for assessment years 2010-11 to 2012-13, therefore, following our finding the assessment year 2010-11, the relevant grounds in assessment years 2011-12 and 2012-13 are adjudicated mutatis mutandis.

15. In the result, the appeals of the Revenue are allowed for statistical purposes whereas cross-objections of the assessee are dismissed.

**Order pronounced in the open Court on 31/07/2024.**

**Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 31/07/2024  
Rahul Sharma, Sr. P.S.



**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**