

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A Nos.2693/Del/2016

निर्धारणवर्ष/Assessment Year: 2010-11

ACIT Central Circle, Meerut.	बनाम Vs.	Subharti Media Ltd., Subhartipuram, NH-58, Delhi Haridwar Bypass Road, Meerut.
		PAN No.AALCS49697Q
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A No.1715/Del/2018

निर्धारणवर्ष/Assessment Year: 2009-10

Subharti Media Ltd., Subhartipuram, NH-58, Delhi Haridwar Bypass Road, Meerut.	बनाम Vs.	ACIT Central Circle, Meerut.
PAN No.AALCS49697Q		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Assessee by	Shri K. Sampath, Adv. & Shri V. Rajakumar, Adv.
Revenue by	Ms. Nidhi Singh, CIT DR

सुनवाईकीतारीख/ Date of hearing:	09.05.2024
उद्घोषणाकीतारीख/Pronouncement on	07.08.2024

आदेश / O R D E R

PER C.N. PRASAD, J.M.

These two appeals are filed by the Revenue as well as Assessee for the assessment years 2010-11 and 2009-10 respectively against different orders of the Ld. Commissioner of Income Tax (Appeals) dated 26.02.2016 and 02.01.2018.

2. We first take up the appeal of the Revenue for the AY 2010-11, wherein the following grounds have been raised: -

“1. That Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,19,91,020/- ignoring the facts that assessee had failed to furnish evidences to prove the identity, creditworthiness and genuineness of the transactions as has been held in the following cases:

(i) CIT vs. Durga Prasad more. 82 ITR 540(SC)

(ii) Commissioner of Income Tax v. Nova Promoters & Fin lease Pvt. Ltd. (2012) 18 taxmann.com 217 (Delhi).

2. That the Ld. CIT(A) has erred in law and on facts in holding the share application money of Rs. 2,19,91,020/- as genuine though it was found by AO after making detailed enquiry that either cash was deposited in bank accounts of share applicant or amount was transferred in their accounts just before the payments made by share applicants to assessee and the share applicants could not satisfactory explain the sources of credits in their bank accounts.

3. That the Ld. CIT(A) has erred in law and on facts in not making enhancement of addition made u/s 68 by Rs. 93,61,960/- as during the course of appeal proceedings,

it was admitted by assessee that receipt of share application was Rs. 3,65,52,980/- as against Rs. 2,19,91,020/- taken by AO.

4. That the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,19,86,960/- by accepting the additional evidences of confirmation of Share Capital ignoring the facts that assessee had failed to furnish necessary details & evidences to prove the identity , creditworthiness and genuineness of the transaction, even after being provided ample opportunity.

5. That the Ld. CIT(A) has erred in law in deleting the addition of Rs. 3,00,000/- ignoring the facts that assessee has failed to furnish the bill/vouchers in support of claimed expenses.

6. That the order of the Ld. CIT(A) being erroneous in law and on facts which needs to be vacated and the order of the AO be restored .

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

3. Briefly stated the facts are that a search and seizure operation u/s 132(1) of the Act was conducted on 12.11.2010 in M/s Subarti KKB Charitable Trust and Dr. Atul Krishan group of cases. Pursuant to documents found relating to the assessee M/s Subarti Media Ltd. proceedings u/s 153C of the Act were initiated and notice was issued u/s 153C r.w.s. 153A of the Act. Pursuant to the said notice the assessee filed return declaring loss of Rs.69,13,928/-. In the course of assessment proceedings u/s 153C of the Act the AO on perusal of the balance sheet noticed that the assessee received share

application money of Rs.4,39,77,980/-. The AO further based on the documents seized from Subarti KKB Charitable Trust, wherein certain filled up unsigned share application forms for issue of shares in assessee company, the assessee was asked to file confirmed copies of accounts, copies of ITR and bank statements of share applicants to prove the identity, creditworthiness and the genuineness of the creditors. Since the information called for was not forthcoming the AO issued summons u/s 131 of the Act to the following shareholders which appeared on pages 3 to 34 of Annexure A-15 of the seized material:

Page No.	Name	Amount (Rs.) AY 2010-11
1.	Gaurav Singhal	3,00,000
2.	Garima Singhal	3,00,000
3.	Asha	10,20,020
4.	Rajeev Kumar Agrawal	5,50,000
5.	Ankur Agrawal	1,50,000
6.	Hans Kumar & Sons	12,01,000
7.	Virendra Kumar	2,50,000
8.	Hans Kumar	1,76,60,000
9.	Shalini Singhal	8,00,000
10.	Anil Kumar Verma	5,00,000
11.	Poonam	5,00,000
12.	Dayawati	18,50,000
13.	Megha Jain	3,00,000
14.	Sudha Rani	13,00,000
15.	Usha Garg	5,10,000
	TOTAL	2,19,91,020

4. In response to the summons issued u/s 131 of the Act the shareholders appeared before AO and the AO recorded statements from the above shareholders. The shareholders furnished information

before AO regarding their share application money. On perusal of the bank statement of the above shareholders the AO found that before making advances, the amounts to the assessee company the shareholders either deposited in cash or transferred amounts from some other accounts, or either sourced from sale of investment, gold ornaments, realization of loans, etc. The AO on analyzing the statements recorded and the documents placed on record by the shareholders he was of the view that the shareholders could not prove their creditworthiness to advance the share application money to the assessee. The AO, therefore, treated the share application money of Rs.2,19,91,020/- from the above said parties as an unexplained credit u/s 68 of the Act holding that the assessee has not proved the identity, creditworthiness and genuineness of the shareholders.

5. Similarly, an addition of Rs.2,19,86,960/- was made in respect of the share applicants where the assessee has not filed any confirmed copies of accounts, copies of ITRs and bank statement of the shareholders.

6. In the course of appellate proceedings before the Ld.CIT(A) the assessee in so far as the addition of Rs.2,19,91,020/- was concerned submitted that all the 15 shareholders mentioned by the AO at page

2 of the assessment order have furnished all the documents required by the AO i.e. bank statements, confirmations, Income tax returns. It was contended that the copies of statements recorded by the AO u/s 131 of the Act from the shareholders, the same were not provided to the assessee. It was contended that the evidences clearly show that all these persons are regular Income Tax assesseees and in the knowledge of the Income tax Department and they satisfy the test of creditworthiness. It was contended before the Ld.CIT(A) that in spite of the shareholders filing their PAN, copies of ITR, etc. the AO still holds that the identity of the shareholders was not proved. It was therefore contended that the share application money cannot be added to the income of the assessee company.

7. It was further contended that when the AO admittedly had on record the Income tax return filing receipts and the PAN Number he could have safely investigated into the affairs of the investing companies because it was difficult for the assessee to procure the same as the companies generally do not like to share insider information in respect of the affairs. It was also contended that simply because the assessee could not bringing the balance sheet of the shareholder companies there is no justification in unilaterally arriving at the conclusion that these companies were bereft of any

financial standing especially when a bare perusal of the bank statement itself could reveal huge transactions running into several lakhs being exchanged on the credit and on the debit side of the bank accounts. The assessee also placed reliance on the following decisions in support of the above submissions:

1. CIT Vs. Lovely Exports Pvt. Ltd. (299 ITR 269) (Del.) SLP dismissed by Supreme Court 319 ITR (St) 5;
2. CIT Vs. Stellar Investments Ltd. (251 ITR 263) (SC);
3. CIT Vs. Victor Electrodes Ltd. (329 ITR 271) (Del.);
4. CIT Vs. Arunnanda Textiles Pvt. Ltd. (333 ITR 116) (Ker.);
5. CIT Vs. JD Security and finance Ltd. (350 ITR 220) (All.);
6. CIT Vs. Mishra Preservers Pvt. Ltd. (350 ITR 222) (All.);
7. CIT Vs. Value Capital Services Pvt. Ltd. (304 ITR 334) (Del.);
8. CIT Vs. AKJ Granites Pvt. Ltd. (301 ITR 298) (Raj.);
9. CIT Vs. G.P. International Ltd. (325 ITR 25) (P&H).

The Ld.CIT(A) considering the submissions of the assessee and the evidences placed on record deleted the addition of Rs.2,19,91,020/- made by the AO.

8. Coming to the addition of Rs.2,19,86,960/- the assessee furnished additional evidences before the ld.CIT(A) in terms of Rule

46A(1)(b) of the IT Rules. In the additional evidences the assessee furnished confirmations of the shareholders, bank statements, copies of demand draft, copies of Income tax returns, etc. The additional evidences were forward to the AO and on obtaining the remand report the Ld.CIT(A) based on the findings of the AO and the evidences furnished by the assessee deleted the addition of Rs.2,19,86,960/-.

9. The Ld. DR strongly supported the orders of the AO. On the other hand, the Ld. Counsel for the assessee strongly placed reliance on the orders of the Ld.CIT(A). The Ld. Counsel for the assessee further submits that the ld.CIT(A) deleted the addition of Rs.2,19,86,960/- based on the remand report of the AO, wherein the AO accepted that the share applicants have sufficient balances in the accounts to apply for shares and all the transactions have done through the banking channels. Therefore, the Ld. Counsel for the assessee submits that the Ld.CIT(A) has rightly deleted the addition made by the AO based on the remand report in the absence of any adverse finding by the AO.

10. Coming to the addition of Rs.2,19,91,020/- the Ld. Counsel submits that the share applicants in their statements recorded u/s 131 of the Act confirmed that they have advanced money to the

assessee, they have filed their copies of Income tax returns, bank statements, cash flows, etc. and explained the sources for advancing monies to the assessee and, therefore, considering the evidences and submissions the Ld.CIT(A) has rightly deleted the addition.

11. The Ld. Counsel further submits that in the case of CIT Vs. Nav Bharat Duplex Ltd. (35 taxmann.com 289) (All.) the Hon'ble Jurisdictional High Court held that since share applicants were identified and they had submitted the bank statements, cash extracts and returns filing receipts impugned addition made u/s 68 of the Act by the AO on plea that assessee could not prove that share applicants had enough money on date of purchases of shares was not justified.

12. Ld. Counsel further referring to the decision of the Hon'ble Allahabad High Court in the case of CIT vs. J.D. Securities and Finance Ltd. (350 ITR 220) (All.) submits that the Hon'ble High Court held that if the assessee produces the names, addresses and permanent accounts numbers of the shareholders the onus on the assessee to prove the source of share application money stands discharged. Ld. Counsel submits that the Hon'ble High Court further held that if the Assessing Authority is not satisfied with the

creditworthiness of the shareholders it is opened to the AO to verify the same in the hands of the shareholder is concerned.

13. Placing reliance on the decision of the Hon'ble Allahabad High Court in the case of CIT Vs. Mishra Preservers P. Ltd. (350 ITR 222) the Ld. Counsel submits that if the shareholders are identified and they are not fictitious persons, the payments are made by cheques and were assessed to Income tax there cannot be any addition u/s 69 of the Act.

14. Heard rival submissions, perused the orders of the authorities below. In so far as the addition of Rs.2,19,91,020/- is concerned we observe from the assessment order that the AO issued summons u/s 131 of the Act to the shareholders and the shareholders appeared before the AO and their statements were also recorded, wherein the shareholders have deposed having advanced monies to the assessee company towards share application money. The shareholders have submitted the source of investments, either their own money, from out of sale of gold, jewellery, savings, loans taken from HUF, repayment of loans, etc. to prove their creditworthiness in lending the money to the assessee. However, we find that the AO records a finding that assessee has failed to prove the identity of the share applicants. We failed to understand as to how the AO

came to this conclusion that the identity of the share applicants was not proved even though all the shareholders have responded to the summons u/s 131 of the Act, appeared before the AO and the AO also recorded statements from all the shareholders. In our opinion the assessee proved the identity and the genuineness of the transactions. In so far as the creditworthiness of the shareholders is concerned, we observe that all the shareholders have deposed in their statements giving the sources for investments in the assessee company. If at all if the AO had any doubts for the creditworthiness of the shareholders he could have proceeded against the shareholders.

15. We find that the Hon'ble Allahabad High Court in the case of CIT Vs. J.D. Securities and Finance Ltd. (supra) which is the jurisdictional High Court held that if the Assessee produces the names, addresses and permanent account number of the shareholders the onus on the assessee to prove the source of share application money stands discharged. We further observe that the Hon'ble High Court held that if the assessing authority is not satisfied with the creditworthiness of the shareholders it is opened to the AO to verify the same in the hands of the shareholder and not in the hands of the assessee company. Similar view has been taken

by the Hon'ble Allahabad High Court in the case of CIT Vs. Nav Bharat Duplex Ltd. (supra).

16. We also find that the Hon'ble Allahabad High Court in the case of CIT Vs. Mishra Preservers Pvt. Ltd. (supra) the Hon'ble High Court held that if the shareholders are identified and they are not fictitious persons, the payments are made by cheques and were assessed to Income tax there cannot be any addition u/s 69 of the Act.

17. Coming to the addition of Rs.2,19,86,960/- we observe that in the course of proceedings before the Ld.CIT(A) the assessee filed additional evidences in the form of confirmations by shareholders, bank statements, copies of demand draft, copies of Income tax returns of the shareholders, etc. and the Ld.CIT(A) based on the remand report and the observations therein deleted the addition observing as under: -

“From the facts and details filed by assessee in appeal proceedings, case laws relied upon by the assessee following facts emerge:-

- 1. That assessee has had a reasonable cause for not filing the details before assessing officer and additional evidences under rule 46A(1)(b) have accordingly been admitted (supra).*
- 2. That in remand proceedings, Assessing Officer has appraised the facts and records and he submitted*

that “The assessee company in the form of additional evidence has filed confirmation of share application money during the appeal proceeding. From the perusal of the copy of ITR/Bank Statement of all the parties who have applied for shares in the assessee company, it has been observed that the applicants have sufficient balance in their account to apply for shares and all the transactions have been done through banking channel”.

- 3. That assessee filed the details in the form of confirmation, ITR, Bank statements, PAN details to prove the identity, capacity to invest and genuineness of the transaction which too have been accepted by the AO in remand proceedings.*
- 4. That no documents were found/ seized during the search, on the basis of which proceedings under section 153C were initiated against the assessee, to suggest that share capital received by assessee company was bogus or that the assessee had paid cash in exchange of receiving the cheque.*

On merits of the case the various judicial pronouncements on the above facts/ issues relied upon by me also are as under:

In the case of Commissioner of Income-tax v. Jay Dee Securities & Finance Ltd 350 PPR | IFIED ITR 220 Hon'ble Allahabad High Court (jurisdictional High Court) has held that Section 68 of the Income-tax Act, 1961 - Cash credits [Share application money]-Whether where assessee had produced return of income filed by relevant shareholders who had paid share application money and had also produced confirmation of shareholders indicating details of addresses, PANs and particulars of cheques through which amount was paid towards share application money, Tribunal was justified in treating deposits in shape of share application money as genuine - Held, yes [Paras 6 & 7] [In favour of assessee]

In the case of Commissioner of Income-tax v. Misra Preservers (P.) Ltd 350 ITR 222 Hon'ble Allahabad High Court (jurisdictional High Court) has held that:

Where assessee brought evidence on record establishing that share applicants were not fictitious persons and, moreover, they paid money by cheques, no addition could be made to assessee's income in respect of share application money.

In the case of Commissioner of Income-tax (Central) v. Vacmet Packaging (India) (P.) Ltd. [2014] 45 taxmann.com 204 (Allahabad) it has been held that No addition could be made under section 68 on account of share application money received, where assessee had established identity and creditworthiness of applicant companies and genuineness of transaction.

In the case of Commissioner of Income-tax, Meerut v. Nav Bharat Duplex Ltd [2013] 35 taxmann.com 289 (Allahabad) it has been held that Where Assessing Officer made addition in income of assessee-company under section 68 on plea that it could not prove that share applicants had enough money on date of purchase of its shares, since share applicants were identified and they had submitted their bank statements, cash extracts and returns filing receipts, impugned addition was not justified.

Assessee also placed the reliance of other case laws and CIT Vs Lovely Exports Pvt. Ltd 299 ITR 2698 (Del), wherein the departmental SLP was dismissed by the Supreme Court and is reported in 319 ITR (St) 5 (SC) by holding that If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company.

The case laws relied upon by the assessee and mentioned here in above squarely covers the case of assessee and Allahabad High Court, being the jurisdictional HC, have the binding force on this office. I am in respectful agreement with the Allahabad High Court and Supreme Court as stated above, and in the background of facts and law narrated above, hold that the assessing officer had wrongly made the addition and the identity, creditworthiness and transactions' genuineness should have been investigated properly in the first instance itself and had onus would have been discharged properly then, it would not have resulted in the current proceedings:

<i>Share application money u/s 68</i>	<i>Rs. 2,19,91,020/-</i>
<i>Share application money u/s 68</i>	<i>Rs. 2,19,86,960/-</i>

Hence I delete the addition of Rs.4,39,77,980/- (Rs.2,19,91,020/- + Rs.2,19,86,960/-)"

18. On perusal of the findings of the AO in the remand report, we observe that the AO had commented on the additional evidences, wherein the AO stated that “the assessee company in the form of additional evidence has filed confirmation of share application money during the appeal proceedings. From the perusal of the copy of ITR/Bank statement of all the parties who have applied for shares in the assessee company, it has been observed that the applicants have sufficient balance in their account to apply for shares and all the transactions have been done through banking channel”. We observe that the Ld.CIT(A) on examining the information filed by the assessee in the form of confirmation, ITR, Bank statements, PAN

details and also since there was no adverse material in the course of search to prove that the share application money is bogus and also following the decisions of the Jurisdictional Allahabad High Court held that the assessee has proved the identity, genuineness and creditworthiness of the shareholders and deleted the addition made by the AO in respect of share application money from shareholders amounting to Rs.4,39,77,980/- (2,19,91,020 + 2,19,86,960).

19. On careful perusal of the findings of the Ld.CIT(A) and the evidences placed on record, we do not see any valid reason to interfere in the findings of the Ld.CIT(A) in deleting the addition of Rs.4,39,77,980/-. The ground nos. 1 to 4 of grounds of appeal of the Revenue are rejected.

20. Coming to ground no. 5 of grounds of appeal of the Revenue which is in respect of deletion of addition of Rs.3 lakhs made by the AO, we observe that an *ad hoc* disallowance of Rs.3 lakhs was made by the AO while completing the assessment observing that the expenses were not supported by proper bills and vouchers on various expenses incurred under various heads. On appeal the Ld.CIT(A) deleted the *ad hoc* disallowance made by the AO.

21. The Ld. DR placed reliance on the orders of the AO and the Ld. Counsel for the assessee placed reliance on the order of the Ld.CIT(A).

22. Heard rival submissions. Perusal of the assessment order shows that the AO made an *ad hoc* disallowance of expenses on the ground that certain expenses incurred on various heads were not supported by proper bills and vouchers except stating that the expenses were not supported by bills and vouchers the AO failed to pinpoint any particular expenses for which bills and vouchers were not present. On perusal of the Ld.CIT(A) order, we observe that the *ad hoc* disallowance was deleted observe that the AO did not point out any defect in the books of account, the books were not rejected and, therefore, there is no justification for making *ad hoc* disallowance.

23. We further observe that the assessee placed reliance on the decision of Delhi Bench of the Tribunal in the case of ACIT Vs. Ganpati Enterprises Ltd. (154 TTJ 1), wherein the coordinate bench held that when the assessee is following mercantile system of accounting and maintaining books of account the AO can reject the book results and assessed the income to his estimate or best judgment. The AO is required to point out the defects in the

accounts of the assessee and seek his explanation qua the defects. It was held that if the assessee fails to explain the defects then the AO can compute the income according to his estimation. The coordinate bench held that the scheme of Act does not authorize the AO to make a disallowance according to his wishes rather it provides that he should point out the defects of the assessee. It was held that the AO nowhere indicated the total amount of expenditure claimed by the assessee and which specific voucher was not in accordance with law. It was held that AO has not pointed out as to which expenses were found to be unverifiable. With these observations the Tribunal deleted the *ad hoc* disallowance made by the AO. More or less the facts in hand are identical to the facts of the coordinate bench in ACIT Vs. Ganpati Enterprises Ltd. (supra).

24. In view of the above discussion, we do not see any infirmity in the order of the Ld.CIT(A) in deleting the *ad hoc* disallowance made by the AO in support of unverifiable vouchers. This ground of Revenue is rejected.

25. Now we take up the appeal of the Assessee for the AY 2009-10. The only issue in the appeal of the Assessee is in respect of the addition of Rs.22,02,620/- made by the AO u/s 68 of the Act in

respect of the share application money which was sustained by the Ld.CIT(A).

26. Brief facts are that during the assessment proceedings for AY 2009-10 the AO noticed that the assessee received share application money to the extent of Rs.1,31,42,820/-. The assessee was required to file the necessary documents to prove the identity, genuineness and creditworthiness of the share applicants and the assessee furnished the relevant documents as required by the AO. We observed that out of share application money of Rs.1,31,42,820/- the AO accepted Rs.1,10,92,98,200/- from various shareholders as proved and no addition was made. The AO, however, treated share application money to the extent of Rs.22,02,620/- as unexplained credit u/s 68 of the Act observing that the assessee has not filed confirmations from the share applicants, it was also the observation of the AO that no bank statements and ITRs were filed. Before the Ld.CIT(A) the assessee produced additional evidences and after obtaining the report from the AO the Ld.CIT(A) sustained the addition observing that in the appellate proceedings copies of the share application forms and the receipts issued to the shareholders have been furnished and these

documents are not sufficient to establish identity or creditworthiness of the shareholders.

27. The Ld. Counsel for the assessee submits that the total share application money received during this year is Rs.1,49,42,820/- and in the course of assessment proceedings the AO required the Assessee to furnish details in desired format in respect of subscribers exceeding Rs.1,50,000/-. In compliance there of Assessee furnished the list of persons who have subscribed to shares exceeding Rs.1,50,000/- from six parties totaling to Rs.1,10,98,200/-. However, the AO was kind enough to consider total share capital and premium for examination of Rs.1,31,42,820/- out of which the AO accepted Rs.1,10,98,200/- and the balance share application money stood at Rs.20,44,620/-. AO restricted herself to enquire the share capital to Rs.1,31,42,820/-. However, the AO made addition of Rs.22,02,620/- as an unexplained credit of the assessee. The Ld. Counsel submits that the assessee furnished share application forms duly signed by the investors and also the receipts for the amounts invested which proves that the assessee did receive the share application money from the shareholders and the transaction is genuine.

28. The Ld. Counsel further submits that the shareholders are all small time investors who had invested in shares of the assessee company and the amount involved is very meager as could be seen from the list of shareholders as extracted by the AO at pages 2 & 3 in the assessment order. The Ld. Counsel further submits that the AO had made addition of share capital and such a course of action is not available to the Ld. AO because the share application money cannot be added to the income of the assessee which is a limited company. Reliance was placed on the following decisions:

1. CIT Vs. Lovely Exports Pvt. Ltd. 299 ITR 2698 (Del)
2. CIT Vs. Steller Investments Ltd. 251 ITR 263 (SC)
3. CIT Vs. Victor Electrodes Ltd. 329 ITR 271 (Del)
4. CIT Vs. Arunananda Textiles Pvt. Ltd. 333 ITR 116 (Kar)
5. CIT Vs. Jay Dee Securities & Finance Ltd. 350 ITR 220 (All)
6. CIT Vs. Misra Preservers Pvt. Ltd. 350 ITR 222 (All)

29. Ld. Counsel further submits that in the following cases it was held that once the identity is established it is for the department to prove with evidences that funding was done by the assessee company itself. Ld. Counsel submits that it was held that once the assessee has identified the shareholders the burden to prove the creditworthiness was not on the assessee but was on the Department to enquire it from the investors and take appropriate remedial action in their hands:

1. *CIT Vs. Dwarkadhish Investments Pvt. Ltd.* 330 ITR 298 (Del)
2. *CIT Vs. Winstral Petrochem Pvt. Ltd.* 330 ITR 603 (Del)
3. *CIT Vs. Jay Dee Securities & Finance Ltd.* 350 ITR 220 (All)
4. *CIT Vs. Misra Preservers Pvt. Ltd.* 350 ITR 222 (All)
5. *CIT Vs. Nav Bharat Duplex Ltd.* ITA No.270/2010 (All) (HC)

30. On the other hand, the Ld. DR strongly supported the orders of the Ld. CIT(A) and AO.

31. We have heard rival submissions, perused the orders of the authorities below. On perusal of the assessment order, we find that the AO listed out the share applicants and the amount received by the assessee from them in a tabular form which is appearing at page 2 & 3 of the assessment order and the total share application money listed out for examination was at Rs.1,31,42,820/-. Out of the said share application money of Rs.1,31,42,820/- the AO accepted Rs.1,10,98,200/- received from six shareholders as genuine and the balance remains is Rs.20,44,620/-. However, the AO made an addition of Rs.22,02,620/- without specifying the shareholders and the amounts received from them as not genuine.

32. On perusal of the assessment order, we observe that it is the finding of the AO that the assessee field confirmation and share application in the following cases:

1.	Satish Dhamija	6,000/-
2.	Daya Shankar	18,000/-
3.	Garg Light House	1,20,000/-

4.	Anil Sharma	6,000/-
5.	Rajendra Kumar	6,000/-
6.	Sanjiv Sarin	6,000/-
	TOTAL	2,16,000/-

33. Therefore, as the assessee filed confirmations and share applications in respect of these parties their identity and genuineness cannot be doubted. We further observed that in the case of the shareholders referred to above confirmations, share application Forms, PAN details were filed by the assessee and the AO could have examined the shareholders based on these evidences. The AO treated the shareholders as not genuine as the assessee did not produce the ITRs and bank statements without making further enquiries.

34. We further observe that most of the shareholders invested in the company are all small time investors, wherein they have invested amounts ranging from Rs.480/- to Rs.60,000/- and it cannot be said that the small time investors have no source to invest such a small amounts ranging from Rs.480/- to Rs.60,000/-. It is observed that the AO accepted share application money to the extent of Rs.1,10,98,200/- out of Rs.1,31,42,420/- and what was remained was Rs.20,44,620/- and most of this amount came from all small time investors who have invested small amounts ranging

from Rs.480/- to Rs.60,000/-. Therefore, the creditworthiness of the small time investors who have invested in the limited company of the assessee ranging from Rs.480/- to Rs.60,000/- cannot be doubted on the ground that the Assessee did not file bank statements and ITRs of these investors ignoring the share application forms and copy of receipts filed by the Assessee. As already observed earlier the Jurisdictional High Court in various decisions held that once the assessee proves the identity of the shareholder the onus on the assessee to prove the source of share application money stands discharged.

35. Therefore, in view of the above discussion, we hold that the AO should have accepted the investment made by the small time investors in the assessee which is a limited company. Thus, we are of the view that the assessee has proved the identity, creditworthiness and genuineness of the transactions of the shareholders and, therefore, direct the AO to delete the addition of Rs.22,02,620/-. Grounds raised by the assessee are allowed.

36. In the result, appeal of the Revenue is dismissed and the appeal of the Assessee is allowed.

Order pronounced in the open court on 07/08/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 07/08/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi