

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1113 and 1114/MUM/2024
Assessment Year: 2011-12

Leading Age Developers Pvt. Ltd., Mohammedi No.1, Commercial Peru Chawal, Dr. B A Road, Shree Ganesh Nagar, Lalbaug, Parel, Mumbai – 400012 (PAN : AABCL5948G)	Vs.	Assistant Commissioner of Income Tax, Central Circle 2(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Vimal Punmiya, CA
Revenue : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 08.08.2024
Date of Pronouncement : 17.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are against the order of
Ld. CIT(A)-48, Mumbai vide order no.
ITBA/APL/M/250/1060260880(1), dated 30.01.2024 passed against
the assessment order by the Deputy Commissioner of Income Tax,
Central Circle-2(2), Mumbai, u/s.143(3) r.w.s. 147 of the Income-tax
Act (hereinafter referred to as the "Act"), dated 19.07.2017 for
Assessment Year 2011-12.

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

ITA No.1113/MUM/2024

1. The Ld CIT(A) failed to appreciate that reopening is bad in law as CIT(A) had no reason to believe that any income had escaped assessment as reopening was done on the basis of wrong fact that the investor companies were paper companies and belonged to Mr Praveen kumar Jain and hence, reopening is bad in law.

2) The Ld CIT(A) erred in making addition u/s 68 of Rs.9,80,00,000/- being share capital of Rs 3900000/- and share premium of Rs 94100,000/- without appreciating that Assessee had proved the identity of the Share applicants by providing PAN details, money was received through banking channels, all details of Share applicants including name of their directors were filed and quantum of share premium was supported by valuation report and hence, addition u/s 68 ought to be deleted.

3) The Ld CIT(A) erred in observing that shares were forfeited even though only balance call money of Rs 4980000/- was not received whereas balance call money not received was Rs 79600,000/- and hence addition u/s 68 ought to be deleted.

4) The Ld CIT(A) initiated penalty proceedings u/s 271(1)(c) of the I.T.Act.

ITA No.1114/MUM/2024

“1) The Ld CIT(A) failed to appreciate that reopening is bad in law as A.O. had no reason to believe that any income had escaped assessment as reopening was done on the basis of wrong fact that the Bogus Accommodation entries from Mahalaxmi Impex and hence, reopening is bad in law.

2) The Ld CIT(A) failed to appreciate that reopening is bad in law as recorded reasons do not record escaped income. NO ADDITION CAN BE MADE U/S 68 2 The Ld CIT(A) erred in making addition u/s 68 of Rs 45,00,000/- being Loan creditors without appreciating that Assessee had proved that money was received through banking channels and repaid the money of Rs.45,00,000/- through banking channels , bank statement were filed during the Assessment Proceeding u/s.143 rws 147 hence, addition u/s 68 ought to be deleted.

3) The Ld CIT(A) initiated penalty proceedings u/s 271(1)(c) of the I.T.Act.

3. We first take up appeal in ITA No.1113/Mum/2024. Brief facts of the case are that assessee is a company engaged in the business of real estate. Assessee filed its return of income on 20.09.2011 reporting a total income as loss of Rs 28,034/-. A notice u/s. 153A was issued on 21.08.2015. However, proceedings u/s. 153A were dropped being void ab initio. Subsequently, notice u/s 148 dated 30.12.2016 was issued invoking the proceedings for reopening of assessment. As per recorded reasons for the said proceedings, assessee was beneficiary of accommodation entries from 11 companies to the tune of Rs.9,80,00,000/- which are alleged by the ld. Assessing Officer to be paper companies of one Mr. Praveen Kumar Jain.

3.1. During the year under consideration, assessee issued 8,88,000 number of equity shares with face value of Rs. 10/- and premium of Rs. 190/- per share, aggregating to Rs. 17,76,00,000/- which was subscribed as partly paid. Assessee received Rs. 39,00,000/- towards face value and Rs. 9,41,00,000/-, totalling to Rs. 9,80,00,000/-. Assessee furnished details in respect of total share capital and premium raised, amount received and receivable from each of the investor companies which is tabulated below:

M/s Leading Age Developers Pvt. Ltd.

ASSESSMENT YEAR 2011 - 2012

Details of total Shares Money & Share Premium received and Receivable

Sr. No.	Name & Address of the Applicant	Pan No.	Amount Received on	No. of Shares Issued	Total amount Receivable (Rs.10/- + share Premium Rs.190/-)	Share Capital Application Amount Received	Share Premium Amount Received	Total Amount Received	Total Amount Received Per Share	Balance Share Capital money receivable	Balance Share Premium Amount Receivable	Total Balance Amount Receivable
1	Ajilt Securities Private Limited R. No 4A, Bombay Hospital Trust Bldg., 2nd Floor, 134, Meadows Streets Fort, Mumbai 400 023	AABCS4462Q	15.05.2010 23.07.2010 25.01.2011	80,000		2,00,000 1,00,000 1,00,000	48,00,000 24,00,000 24,00,000	50,00,000 25,00,000 25,00,000	62.50 31.25 31.25		56,00,000	50,00,000
2	King Merchants Pvt. Ltd. 67, Gopal Mantion, Station Road, Gurunank Road, Bandra (W), Mumbai 400 050	AADCK0285F	15.05.2010 23.07.2010 25.01.2011	80,000		2,00,000 1,00,000 1,00,000	48,00,000 24,00,000 24,00,000	50,00,000 25,00,000 25,00,000	62.50 31.25 31.25	4,00,000	56,00,000	60,00,000
3	Parmatma Tours & Travels Pvt. Ltd. 104, Auto Commerce House, 1st Floor, Nana Chowk, Mumbai-400 007	AAACP3762B	15.05.2010 23.07.2010	80,000		2,00,000 1,00,000	48,00,000 24,00,000	50,00,000 25,00,000	62.50 31.25	5,00,000	80,00,000	85,00,000
4	Seatrans Dan Shipping Pvt. Ltd. 10, Hornby Building, 2nd Floor, 172/174, Dr. D. N. Road, Mumbai 400 001	AACCS0822X	15.05.2010 23.07.2010 25.01.2011	80,000		2,00,000 1,00,000 1,00,000	48,00,000 24,00,000 24,00,000	50,00,000 25,00,000 25,00,000	62.50 31.25 31.25	4,00,000	56,00,000	60,00,000
5	Shree Pawan Edm Pvt. Ltd. 67, Prakash Chambers, 77, N. M. Road, Fort, Mumbai - 400 023	AACCS7675L	25.10.2010 23.07.2010	80,000		2,00,000 1,00,000	48,00,000 24,00,000	50,00,000 25,00,000	62.50 31.25			
6	South East Asia Packaging Pvt. Ltd. 103-104, Sagar Shopping Centre, 76, Jaiprakash Road, Andheri (W) Mumbai 400 058	AAKCS6768C	15.05.2010 23.07.2010 25.01.2011	80,000		2,00,000 1,00,000 1,00,000	48,00,000 24,00,000 24,00,000	50,00,000 25,00,000 25,00,000	62.50 31.25 31.25	4,00,000	56,00,000	60,00,000
7	Starford Textile Specialities Ltd. 104, Auto Commerce House, 1st Floor, Nana Chowk, Mumbai-400 007	AANCS66616A	25.10.2010 23.07.2010	80,000		2,00,000 1,00,000	48,00,000 19,00,000	50,00,000 20,00,000	62.50 25.00			
						3,00,000	67,00,000	70,00,000	87.50	5,00,000	85,00,000	90,00,000

For LEADING AGE DEVELOPERS PRIVATE LIMITED

8	Terry Towel Industries Ltd. R. No. 4/A, 2nd Floor, Birla Mantion, Nagindas Master Road, Fort, Mumbai 400 023	AACCT2642I	15.05.2010 23.07.2010 25.01.2011	80,000	1,60,00,000	2,00,000 1,00,000 1,00,000 4,00,000	48,00,000 24,00,000 24,00,000 96,00,000	50,00,000 25,00,000 25,00,000 1,00,00,000	62.50 31.25 31.25 125.00	4,00,000 56,00,000	60,00,000	
9	Yamroosh Investment Pvt. Ltd. R. No. 4/A, 2nd Floor, 134, Birla Mantion, Nagindas Master Road, Fort, Mumbai 400 023	AAACT1193P	15.05.2010 23.07.2010 25.01.2011	80,000	1,60,00,000	2,00,000 1,00,000 1,00,000 4,00,000	48,00,000 24,00,000 24,00,000 96,00,000	50,00,000 25,00,000 25,00,000 1,00,00,000	62.50 31.25 31.25 125.00	4,00,000 56,00,000	60,00,000	
10	Poorvi Realty Pvt. Ltd. 131-133, Sheikh Memon Street, Zaveri Bazar, Mumbai 400 002	Ad: MAAC14358	25.10.2010 27.12.2010	72,000	1,44,00,000	1,80,000 1,80,000 3,60,000	43,20,000 53,20,000 96,40,000	45,00,000 55,00,000 1,00,00,000	62.50 76.39 138.89	3,60,000 40,40,000	44,00,000	
11	Rajul Infotech Pvt. Ltd. 104, Auto Commerce House, 1st Floor, Nana Chowk, Mumbai-400 007	AADCR5771M	03.06.2010	96,000	1,92,00,000	2,40,000 2,40,000	57,60,000 57,60,000	60,00,000 60,00,000	62.50 62.50	7,20,000 1,24,80,000	1,32,00,000	
	Total			8,88,000	17,76,00,000	39,00,000	9,41,00,000	9,80,00,000		49,80,000	7,46,20,000	7,96,00,000

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

S. N	Name & address of the Applicant	PAN	Director Name	No. of Shares applied	No. of Shares Allotted	Consideration Recd in cash in kind	Total payment Recd.(Rs.)
1	Kings Merchants Private Limited- Address- 67,Gopal Mainslon,Gurunanak	AADCK0285F	1.Laxmi Prajpat 2.Jamnalal C.Joshi	80000	80000	RTGS	1,00,00,000

	Road,Bandra(w),Mumbai-400050						
2	Yamroosh Investments Private Limited-Address- R.No.4A,Birla Mainslon,134,N M Road,Fort,Mumbai-400023	AAACY1193P	1.Ghanshyam Parihar 2.Manekch and Prajapat	80000	80000	RTGS	1,00,00,000
3	Pamatma Tours & Travel Private Limited- Address- 104,Auto Commerce House,1 st Floor,Nana Chowk,Mumbai-400007	AAACP3762B	1.Ranjeet Jat 2.Anilkumar B.Jain	80000	80000	RTGS	75,00,000/-
4	Poorvi Realty Private Limited- Address- 131-133,Sheikh Memon Street,3 rd Floor,Zaveri Bazar,Mumbai-400002	AAACP4173A	1.Ghanshyam Parihar 2.Surendra Jain 3.Mahavir Jain	72000	72000	RTGS	1,00,00,000
5	Rajul Infotech Private Limited Address-104,Auto Commerce House,1 st Floor,Nana Chowk,Mumbai-400007	AADCR9771M	1.Rajiv Gupta 2.Romit Nitin Solanki	96000	96000	RTGS	60,00,000/-
6	Seatrans dan Shipping Private Limited- Address-10 Hornby Building,2 nd Floor,172/174,Dr.D.N. Road,Fort,Mumbai-400001	AACCS0822K	1.Kamlesh Dadech 2.Ansuman Kumawat	80000	80000	RTGS	1,00,00,000
7	Shree Pawan Exim Private Limited- Address- 67,Prakash Chambers,77 N M Road,Fort,Mumbai-400023	AACCS7675L	1.Ramesh Agarwal 2.Yogesh Agarwal 3.Rajiv Gupta	80000	80000	RTGS	75,00,000/-
8	South East Asia Packaging Private Limited- Address- 103-104,Sagar Shopping Centre,76 Jaiprakash Road,Andheri(W),Mumbai-400058.	AAKCS6768C	1.Laxmi Prajpat 2.Jamnalal C.Joshi	80000	80000	RTGS	1,00,00,000

9	Stafford Textiles Specialities Limited Address-104,Auto Commerce House,1 st Floor,Nana Chowk,Mumbai-400007	AANCS6616A	1.Romit Nitin 2.Juglesh 3.Ravikumar Jaiswal	8000 0	80000	RTGS	70,00,000/-
10	Terry Towel Industries Private Limited ,Address- R.No.4A,Birla Mainsion,134,N M Road,Fort,Mumbai-400023	AACCT2642J	1.Mukesh Jain 2.Jamanala I Joshi	8000 0	80000	RTGS	1,00,00,000
11	Arjit Securities Private Limited Address-104,Auto Commerce House,1 st Floor,Nana Chowk,Mumbai-400007	AABCS4462Q	1.Radhakishan Gujjar 2.Vipin C.Mehta 3.Dinesh Jain	8000 0	80000	RTGS	1,00,00,000/-

3.3. Ld. Assessing Officer called for details and documents for the aforesaid transaction. Assessee vide letter dated 16.06.2017 filed detailed submission with respect to each share applicant and also submitted that no additions can be made u/s 68. Ld. Assessing Officer being not convinced by the details and documentary evidence furnished by the assessee, applied the test of human probabilities and held that identity and creditworthiness of the shareholders is not proved, nor the genuineness of the transaction for introduction of share capital by the assessee is established. According to him, existence of the share subscribing companies and source of their funds for making investment in the assessee could not be established. Accordingly, he completed the assessment by making an addition of ₹ 9,80,00,000/- towards share capital and share premium raised during the year by treating it as unexplained cash credit u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) who confirmed the addition so made. Aggrieved, assessee is in appeal before the Tribunal contesting on the aforesaid three dimensions of section 68.

4. Ld. Sr. DR placed reliance on the order of Ld. Assessing Officer. The arguments put forth before us are broadly the repetition of stand taken by the ld. Authorities below in the impugned orders.

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

18	Details of all 11 share applicants along with their Name, Address, PAN No. and share application money received along with their evidences proving – Identity, Creditworthiness and Genuineness of the transaction.	
	<p>18.1 Shri Pawan Exim P. Ltd.(PAN:AACCS7675L)</p> <p>I. Copy of Share application Form along-with covering letter 48-50 51-51</p> <p>II. Certificate for investment in appellants shares</p> <p>III. Copy of board resolution for making investment in appellants shares 52-52</p> <p>IV. Copy of PAN 53-53</p> <p>V. Copy of Bank Statement 54-54</p> <p>VI. Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts. 55-71</p> <p>VII. Copy of Notice for Shares Forfeited by appellants 72-73</p> <p>VIII. Copy of ITR Acknowledgement 74-74</p> <p>IX. Copy of Balance Sheet with Schedules and Audit Reports 75-86</p> <p>X. Memorandum of Association & Articles of Association. 87-110</p> <p>XI. Copy of Company Master data exerted from Registrar of Company regarding Share applicants</p>	
	<p>18.2 Kings Merchant P. Ltd.(PAN:AADCK0285F)</p> <p>I. Copy of Share application Form along-with covering letter 111-116</p> <p>II. Copy of board resolution for making investment in appellants shares 117-118</p> <p>III. Certificate for investment in appellants shares 119-120</p> <p>IV. Copy of Bank Statement 121-124</p> <p>V. Copy of PAN 125-125</p> <p>VI. Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts. 126-140</p> <p>VII. Copy of Notice for Shares Forfeited by appellants 141-142</p>	

VIII.	Copy of ITR Acknowledgement	143-143
IX.	Copy of Balance Sheet with Schedules and Audit Reports	144-152
X.	Memorandum of Association & Articles of Association.	153-157
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	158-158
18.3 Permatma Tours & Travels P. Ltd.(PAN:AAACP3762B)		
I.	Copy of Share application Form along-with covering letter	159-161
II.	Copy of board resolution for making investment in appellants shares	162-162
III.	Certificate for investment in appellants shares	163-163
IV.	Copy of Bank Statement	164-164
V.	Copy of PAN	165-165
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	166-177 178-179
VII.	Copy of Notice for Shares Forfeited by appellants	180-180
VIII.	Copy of ITR Acknowledgement	181-191
IX.	Copy of Balance Sheet with Schedules and Audit Reports	192-197
X.	Memorandum of Association & Articles of Association.	198-198
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	
18.4 Arjit Securities P. Ltd.(PAN:AABCS4462Q)		
I.	Copy of Share application Form along-with covering letter	199-201
II.	Copy of board resolution for making investment in appellants shares	202-202
III.	Certificate for investment in appellants shares	203-203
IV.	Copy of Bank Statement	204-204

V.	Copy of PAN	205-205
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	206-226
VII.	Copy of Notice for Shares Forfeited by appellants	227-230
VIII.	Copy of ITR Acknowledgement	231-231
IX.	Copy of Balance Sheet with Schedules and Audit Reports	232-242
X.	Memorandum of Association & Articles of Association.	243-246
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	247-247

18.5 Rajul Infotech P. Ltd (PAN:AADCR9771M)		
I.	Copy of Share application along-with covering letter	248-253
II.	Copy of board resolution for making investment in appellants shares	254-255
III.	Certificate for investment in appellants shares	256-257
IV.	Copy of Bank Statement	258-259
V.	Copy of PAN	260-260
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	261-268
VII.	Copy of Notice for Shares Forfeited by appellants	269-270
VIII.	Copy of ITR Acknowledgement	
IX.	Copy of Balance Sheet with Schedules and Audit Reports	

X.	Memorandum of Association & Articles of Association.	271-280
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	281-281
18.6 Seatransdant Shipping P. Ltd.(PAN:AACCS0822K)		
I.	Copy of Share application along-with covering letter	282-284
II.	Copy of board resolution for making investment in appellants shares	285-285
III.	Certificate for investment in appellants shares	286-286
IV.	Copy of Bank Statement	287-287
V.	Copy of PAN	288-288
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	289-301
VII.	Copy of Notice for Shares Forfeited by appellants	302-305
VIII.	Copy of ITR Acknowledgement	306-306
IX.	Copy of Balance Sheet with Schedules and Audit Reports	307-316
X.	Memorandum of Association & Articles of Association.	317-321
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	322-322
18.7 Poorvi Realty P. Ltd.(PAN:AAACP4173A)		
I.	Copy of Share application along-with covering letter	323-328
II.	Copy of board resolution for making investment in appellants shares	329-330 331-332
III.	Certificate for investment in appellants shares	333-333
IV.	Copy of Bank Statement	334-334
V.	Copy of PAN	335-343
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	344-345 346-346

VII.	Copy of Notice for Shares Forfeited by appellants	347-355
VIII.	Copy of ITR Acknowledgement	356-362
IX.	Copy of Balance Sheet with Schedules and Audit Reports	363-363
X.	Memorandum of Association & Articles of Association.	
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants.	
18.8 South East Asia Packaging P. Ltd.(PAN:AAKCS6768C)		
I.	Copy of Share application along-with covering letter	364-366
II.	Copy of board resolution for making investment in appellants shares	367-367
III.	Certificate for investment in appellants shares	368-368
IV.	Copy of Bank Statement	369-369
V.	Copy of PAN	370-370
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	371-382
VII.	Copy of Notice for Shares Forfeited by appellants	383-384
VIII.	Copy of ITR Acknowledgement	385-385
IX.	Copy of Balance Sheet with Schedules and Audit Reports	386-395
X.	Memorandum of Association & Articles of Association.	396-400
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	401-401
18.9 Statford Textiles specialties P.Ltd.(PAN:AANCS6616A)		
I.	Copy of Share application along-with covering letter	402-404
II.	Copy of board resolution for making investment in appellants shares	405-405

III.	Certificate for investment in appellants shares	406-406
IV.	Copy of Bank Statement	407-407
V.	Copy of PAN	408-408
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	409-420
VII.	Copy of Notice for Shares Forfeited by appellants	421-422
VIII.	Copy of ITR Acknowledgement	423-423
IX.	Copy of Balance Sheet with Schedules and Audit Reports	424-437
X.	Memorandum of Association & Articles of Association.	438-443
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	444-444
18.10 Terry Towel Industries P. Ltd.(PAN:AACCT2642J)		
I.	Copy of Share application along-with covering letter	445-447
II.	Copy of board resolution for making investment in appellants shares	448-448
III.	Certificate for investment in appellants shares	449-449
IV.	Copy of Bank Statement	450-450
V.	Copy of PAN	451-451
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	452-465
VII.	Copy of Notice for Shares Forfeited by appellants	466-469
VIII.	Copy of ITR Acknowledgement	470-470
IX.	Copy of Balance Sheet with Schedules and Audit Reports	471-482
X.	Memorandum of Association & Articles of Association.	483-492
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	493-493

18.11 Yamroosh Investment P. Ltd.(PAN:AAACY1193P)		
I.	Copy of Share application along-with covering letter	494-496
II.	Copy of board resolution for making investment in appellants shares	497-497
III.	Certificate for investment in appellants shares	498-498
IV.	Copy of Bank Statement	499-499
V.	Copy of PAN	500-500
VI.	Copy of Call Money letter along-with Bank statement & Postal Acknowledgement Receipts.	501-517
VII.	Copy of Notice for Shares Forfeited by appellants	518-521
VIII.	Copy of ITR Acknowledgement	522-522
IX.	Copy of Balance Sheet with Schedules and Audit Reports	523-531
X.	Memorandum of Association & Articles of Association.	532-539
XI.	Copy of Company Master data exerted from Registrar of Company regarding Share applicants	540-540

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

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

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

I. To prove the identity

A. Assessee submitted the addresses, PAN and certificate of incorporation of the above subscribers who subscribed to the shares alongwith:-

- a. Company's Master Data like company name, Company Identification Number (CIN), date of incorporation, registered address, e-mail ID downloaded from www.mca.gov.in;
- b. Name, Address, PAN, Income-tax Jurisdiction;
- c. Certificate of Incorporation;
- d. Form of application for equity shares filled;
- e. Copy of Audit Report and Balance Sheet.

B. Company's Master Data, Income-tax Jurisdiction details and financials of the investor companies proved their identity as well as financial capacity i.e. creditworthiness.

II. To prove the creditworthiness of the subscribers: Assessee submitted Balance Sheet, Profit & Loss a/c and Return of Income of the share applicants. Further, details of share capital, reserve and surplus, net worth of the investor companies were furnished as under to demonstrate the positive net worth available with all the investor companies for making investment in the share capital of the assessee:

Sr. No.	Name of investor's companies	Amount of Share application received	Amount of Premium received	Total Amount (Share application Plus Premium) received	Share Capital of Investor's companies	Reserves of Investor's companies	Networth of Investor's companies	% (Investment / Net worth)
1	Arijit Securities P. Ltd.	4,00,000	96,00,000	1,00,00,000/-	99,00,000	4,35,12,470	5,32,52,150	18.77%
2	Kings Merchant P. Ltd.	4,00,000	96,00,000	1,00,00,000/-	82,90,000	7,11,00,000	7,92,00,000	12.63%
3	Permatma Tours & Travels P. Ltd	3,00,000	72,00,000	75,00,000/-	70,94,000	5,94,83,795	6,65,77,795	11.27%
4	Poorvi Realty P. Ltd.	3,60,000	96,40,000	1,00,00,000/-	1,00,00,000	6,50,00,000	7,50,00,000	13.33%
5	Rajul Infotech P. Ltd.	2,40,000	57,60,000	60,00,000/-				
6	Seatransdant Shipping P. Ltd.	4,00,000	96,00,000	1,00,00,000/-	1,00,00,000	4,53,37,574	5,53,37,574	18.07%
7	Shri Pawan Exim P. Ltd.	3,00,000	72,00,000	75,00,000/-	34,00,020	2,97,00,000	3,31,00,020	22.66%
8	South East Asia Packaging P. Ltd.	4,00,000	96,00,000	100,00,000/-	73,90,000	6,30,00,000	7,03,90,000	14.21%
9	Statford Textiles specialties P. Ltd.	3,00,000	67,00,000	70,00,000/-	41,50,000	3,28,50,000	3,70,00,000	18.92%
10	Terry Towel Industries P. Ltd.	4,00,000	96,00,000	1,00,00,000/-	1,00,00,000	8,64,61,590	9,64,61,590	10.37%
11	Yamroosh Investment P. Ltd.	4,00,000	96,00,000	1,00,00,000/-	71,10,000	6,32,63,486	7,03,73,486	14.22%
	TOTAL	39,00,000	9,41,00,000	9,80,00,000/-				

III. To prove the Genuineness of the above share transaction: Assessee submitted extract of bank statement of all the share subscribers, duly highlighting the entries of share capital and premium money paid by them to the assessee along with copy of board resolution, resolving the decision of investment into assessee company.

6. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the

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

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

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

7.1. For the aforesaid observations, we draw our force from the decision of the Hon'ble jurisdictional High Court of Bombay in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Bom) wherein it was held that once the assessee has

produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish its case.

7.2. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Orchid Industries Pvt. Ltd. 397 ITR 136 (Bom) wherein it was held that mere non-compliance of summon under section 131 would not disprove the transaction and other documents filed on record cannot be brushed aside by the Ld. Assessing Officer. The relevant extract from the said decision is reproduced as under:

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

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

7.3. Ld. Assessing Officer has not bothered to discuss or point out any defect or deficiency in the documents of the share subscribing companies, furnished by the assessee. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the

addition made by him. Ld. AO has added the amount of share capital and share premium on the ground that assessee has not produced the directors. In para 9.B. of the impugned assessment order, ld. Assessing Officer observed that notice u/s 133(6) issued on the address provided by the assessee, the same were received unserved. To this effect, reasons to believe recorded prior to issuing notice u/s 148 was referred to point out that this fact is stated in the reasons so recorded, meaning thereby that such an exercise of issuing notice u/s 133(6) was undertaken prior to the invocation of impugned proceedings and not during the course of reassessment proceedings. Going by the records placed by the assessee of all the share subscribing companies, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement that all the investing companies have sufficient own funds available with them to make investment in the assessee.

7.4. Our attention was invited to the decision of coordinate bench of ITAT Mumbai in the case of *Abhijavala Developers (P) Ltd v. ITO* [2021] 124 taxmann.com 72 (Mum) wherein similar issue was dealt with and one of the investor companies viz., Kings Merchants Pvt. Ltd. was an investor in this case also for which addition made was deleted.

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

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons

which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."

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

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

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

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

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

9. On the allegation of the Ld. Assessing Officer in respect of assessee accepting share premium in excess of fair value, we note that

provision of section 56(2)(viib) have been inserted with effect from 01.04.2013 and applies from assessment year 2013 – 14 onwards and cannot be applied retrospectively to bring to charge the excess share premium. For this, we derive force from the decision of Hon'ble jurisdictional High Court of Bombay in the case of Gagandeep Infrastructure Pvt. Ltd. in ITA 1613 of 2014 wherein it was held that it is the prerogative of the board of directors of the company to decide the share premium and it is at the wisdom of the shareholders to subscribe to the share premium and further that section 56(2)(viib) inserted with effect from 01.04.2013 cannot be applied retrospectively.

10. We also note that in the reasons recorded, in one of the paragraphs, ld. Assessing Officer as noted that *“During the course of search in the case of Praveen Kumar Jain (PKJ hereafter) it was revealed that all these companies were paper companies of PKJ who admitted that he was engaged in providing accommodation entries through web of companies.”* Contrary to this, when assessee asked for supplying the copies of admission statements of PKJ, ld. Assessing Officer in his notice u/s 142(1) dated 04.04.2017 stated that no reliance is placed on the statement of PKJ. Assessee placed on record copy of affidavit by PKJ dated 25.04.2014 whereby he had retracted the statement so made by him. According to the assessee, reference to statement of PKJ made by the ld. Assessing Officer in the reasons recorded is not justifiable, vitiating the impugned proceedings.

11. In respect of reliance placed by the revenue on the decision of Hon'ble Supreme Court in the case of PCIT v. NRA Iron & Steel Pvt. Ltd. 412 ITR 161 (SC), we note that Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:

"8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.

The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P) Ltd. [1995] 82 Taxman 31/[1994]208 ITR 465 (Cal.):

Proof of Identity of the creditors;

Capacity of creditors to advance money; and

Genuineness of transaction

This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source."

11.1. Further, in para 9 of the said decision, Hon'ble Supreme Court has observed as under:

"9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.

In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness."

11.2. Thereafter, Hon'ble Supreme Court summed up the principles which emerged by deliberating upon various case laws as under:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Office is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of namelenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

11.3. Hon'ble Supreme Court, thus, held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then, AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, ld. AO in this case has not made any independent enquiry in the course of impugned reassessment proceedings to verify the genuineness of the transactions. Assessee, having furnished all the details and documents before the ld. AO and the ld. AO has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged its initial burden casted upon it to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, it shifted on the ld. AO to examine the evidences furnished and make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee by confronting with the same to the assessee. In view of this, the aforesaid decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., in our humble view, is not applicable to the facts and circumstances of the case in hand.

12. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies and the genuineness of the transactions. Accordingly, considering these facts and in the light of the judicial precedents referred above, we delete the addition made by the Ld. AO towards share capital and share premium u/s. 68 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

13. In the result, appeal of the assessee in ITA No. 1113/Mum/2024 is allowed.

14. Now, we take up appeal in ITA No. 1114/Mum/2024, wherein only issue involved is in respect of addition of Rs.45,00,000/- towards unsecured loan taken by assessee from M/s. Mahalaxmi Impex which has been alleged by the ld. Assessing Officer as bogus accommodation entry and added u/s. 68 of the Act.

14.1. Case of the assessee was reopened on the basis of information received from the Investigation Wing, Surat about assessee taking bogus accommodation entry from M/s. Mahalaxmi Impex amounting to Rs.45,00,000/- for which notice u/s. 148 was issued on 28.03.2018. Ld. Assessing Officer called for details relating to the said transaction which assessee could not furnish owing to change in its management. Assessment was completed ex-parte u/s. 144 r.w.s. 147 of the Act.

15. Aggrieved, assessee went in appeal before the ld. CIT(A) and made all the required submissions. Assessee furnished loan

confirmation letter, PAN, bank statement, ITR to establish the identity, credit worthiness of the lender and genuineness of the transaction. It was also submitted that the said loan is a genuine borrowing, since it was paid off during the same year through proper banking channel. Acceptance and repayment of this loan within the same year is duly reflected in the bank statement for the year under consideration which is placed on record. To demonstrate this, assessee has placed on record a paper book containing the corroborative documentary evidences which have been perused.

16. It is an undisputed fact that assessee has received a loan of Rs.45,00,000/- through RTGS on 21.06.2010 in its bank account and the said amount has been repaid in two parts through RTGS from its bank account to the lender on two dates, i.e., 18.10.2010 for Rs.25,00,000/- and on 19.10.2010 for Rs.20,00,000/-. Further, assessee has placed on record the necessary documents as stated above to establish the identity and credit worthiness which have not been disproved. Assessee has discharged initial onus cast upon it under section 68 of the Act which has not been discredited by the Id. Assessing Officer by making adequate enquiries. It is a case where the unsecured loan has been received and repaid by the assessee in the same year.

16.1. In this respect, decision in the case of Hon'ble jurisdictional High Court of Bombay in case of *Pr. CIT v. Skylark Build in IT Appeal No. 616 of 2016, dated 24-8-2018* observed on the repayment aspect of the unsecured loans as "*In addition, there is a subsequent development and namely that each of these creditors from whom the assessee borrowed moneys or who advanced it the moneys, were repaid the sums borrowed. This would establish that there were*

indeed real creditors; that they had indeed the funds available with them and that the transactions were genuine.”

17. Considering the facts on record corroborated by documentary evidences which have not been disproved, loan having been repaid during the year of its receipt and judicial precedents discussed above, we delete the addition of Rs.45,00,000/- made under section 68 of the Act towards unsecured loan. Accordingly, grounds taken by the assessee in this respect are allowed.

18. In the result, appeal of the assessee in ITA No. 1114/Mum/2024 is allowed.

19. In the result, both the appeals of assessee are allowed.

Order is pronounced in the open court on 17 October, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17 October, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai