

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 621/JP/2024  
निर्धारण वर्ष/Assessment Year : 2011-12

Samarth Lifestyle Retailing Private Limited, 601, 6 <sup>th</sup> Floor, Ganga Heights SB-154, Lal Kothi Tonk Road, Jaipur	बनाम Vs.	DCIT, Circle-06, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACV 7598 M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P. C. Parwal, CA  
राजस्व की ओर से/ Revenue by : Shri Sanjay Nargas, Addl. CIT

सुनवाई की तारीख/ Date of Hearing : 11/09/2024  
उदघोषणा की तारीख/ Date of Pronouncement : 17/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

On being aggrieved by the order of the National Faceless Appeal Centre, Delhi dated 21/03/2024 [ for short CIT(A)] the captioned assessee preferred the present appeal. The dispute relates to the assessment year 2011-12. The said order of the Id. CIT(A) arises because the assessee has challenged the assessment order dated 29.12.2018 passed under section 143(3)

r.w.s 147 of the Income Tax Act, [ for short “AO”] by DCIT, Circle-06, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

*“1. The Id. CIT(A), NFAC has erred on facts & in law in upholding the validity of order passed by AO u/s 147 of IT. Act.*

*2. The Id. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs. 2,68,00,000/- u/s 68 of the Act by treating the share capital received from following parties as bogus:- (i) Arijit Securities Pvt. Ltd.- Rs. 81 lacs (ii) Seatrans Dan Shipping Pvt. Ltd.- Rs. 90 lacs (iii) Parmatma Tours & Travels Pvt. Ltd.- Rs. 72 lacs (iv) Yamroosh Investment Pvt. Ltd.- Rs. 25 lacs.*

*3. The appellant craves to alter, amend and modify any ground of appeal.*

*4. Necessary cost be awarded to the assessee.”*

3. Succinctly, the fact as culled out from the records is that the return of income was filed on 30.09.2011 declaring a total income of Rs. 1,96,00,340/-. The case was assessed u/s 143(1) of the Income Tax Act, 1961. Thereafter, the case was reopened u/s 148, after recording reasons and obtaining due permission. Notice u/s 148 was issued on 28.03.2018, which was duly served upon the assessee. In response to the statutory notices issued during the proceedings, details were submitted from time to time by the

assessee. Assessee Company is engaged in running retail chains of branded clothes.

Ld. AO noted that the information has been received from the Investigative Directorate, Mumbai from Dy Director of Income Tax(Investigation), Unit 6(4) Mumbai that the assessee company has managed and received accommodation entry in form of share premium and introduced unaccounted cash in the books of account. The information was based on a search operation carried out on Shri Pravin Kumar Jain and group whose statements were recorded for this purpose. Ld. AO analyzed that information which contains a brief report on the modus operandi of the entry provider, details of bank account from which cheque / RTGS was made to the assessee company. The assessee company received amount of Rs. 47,00,000/- from Axis Bank Ac No. 233010200020970 of M/s Parmatma Tours and Travels Pvt. Ltd on 21.06.2010 as share premium amount. The modus operandi of accommodation entry has been admitted by Shri Pravin Kumar Jain in his statement dated 18.02.2013 wherein reply to Question No. 13 to 16, he has admitted that he was engaged in providing accommodation entries to the willing beneficiaries in lieu of cash and earning commission

on such entries. The modus operandi of this scam was that the entry operators would receive unaccounted cash from the beneficiaries companies and provide them accommodation entry in form of share premium by rotating the money in various dubious bank accounts managed and controlled by the entry operator. The entry providers charged commission on these entries.

Based on these information Id. AO verified Return of income filed by the assessee company which shows a share premium of Rs. 3,90,60,000/- and share application money of Rs. 5,59,00,000/- in the Balance Sheet of the assessee company as on 31.03.2011. Further, list of allottees of share premium by the assessee company has been downloaded from the website of Ministry of Company Affairs, [www.mea.gov.in](http://www.mea.gov.in) and it shows that share were allotted to M/s Parmatma Tours and Travels Pvt Ltd on a premium of Rs. 90/- per share against total amount of share premium of Rs. 47,00,000/-. Thus, after analyzing the information provided by the Investigation Wing, Mumbai and all the relevant material available with Id. AO and on the basis of this analysis do by him he was satisfied that the assessee has taken accommodation entry in form of bogus share premium and

introduced its own unaccounted and unrecorded income by way of such bogus entry in its books of accounts without paying tax. The assessee has also paid commission at 1.5% to the entry providers in unaccounted cash as admitted by the entry provider in his statement. Amount of unaccounted commission payment comes to Rs. 70,500/- at the rate admitted by the entry provider. By such accommodation entry assessee has introduced his own unaccounted income in his books of accounts without paying tax and also made expenses from unexplained sources for payment of commission to the entry provider. In view of these facts, Id. AO has reasons to believe that income of Rs. 47,70,500/- has escaped assessment within the meaning of Section 147 of the Income-tax Act 1961. As no assessment u/s 143(3) was made in this case, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. As in this case, more than four years have lapsed from the end of assessment year under consideration, necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax-2, Jaipur

as per the provisions of section 151 of the Act. Accordingly notice u/s. 148 of the Act was issued on 28.3.2018 to the assessee and was duly served.

Thereafter, notice u/s 142(1) and u/s 143(2) were issued in response to which the assessee furnished the details called for. The assessee filed ITR in response to notice u/s 143(2) on 27.04.2018 shown income of Rs. 1,96,00,340/. The assessee requested for supply of reasons for reopening which were duly provided to it on 11.10.2018. The assessee did not raise any objections to the reasons of reopening. The assessee was issued a show cause notice in response to which submissions were made by the assessee. The details furnished by the entity were considered. Based on the information available on record the Id. AO noted that the assessee has claimed to have received share application money from various entities during the year including the four entities being Arjit Securities Pvt. Ltd of Rs. 81 Lacs. Seatrans Dan Shiroma Pvt. Ltd. of Rs. 90 Lacs, Parmatma Tours and Travels Pvt. Ltd of Rs. 72 Lacs and Yomroosh Investment Pvt. Ltd, of Rs. 25 Lacs.

In respect of those companies investigation was carried out by the revenue wherein it was revealed that these entities were not engaged in any real business but were merely paper companies operated by entry operators and formed for the sole purpose of providing bogus entries of share premium / share application money or loans or expenses. The Id. AO then discussed the detailed modus operandi, details of the directors of these companies, Share capital of those investor companies and their income and assets owned, present status on the ROC records, statement recorded of Shri Praveen Kumar Jain and others etc. and various cases laws as discussed in the order Id. AO held that Rs. 2,68,00,000/- obtained from Arjit Securities Pvt. Ltd of Rs. 81 Lacs. Seatrans Dan Shiroma Pvt. Ltd. of Rs. 90 Lacs, Parmatma Tours and Travels Pvt. Ltd of Rs. 72 Lacs and Yomroosh Investment Pvt. Ltd, of Rs. 25 Lacs are bogus share application money and added as per provision of section 68 of the Act.

4. Aggrieved from the order of the National Faceless Assessment Center, assessee preferred an appeal before NFAC.

Apropos to the grounds so raised the relevant finding of the NFAC is reiterated here in below:

“8. Ground No.2 is relating to the addition of Rs.2,68,00,000/- as unexplained cash credit u/s.68 of the Act. The facts of the case are that there was Search U/s.132 of the Act in the Mr. Praveen Kumar Jain group of cases. During the course of said Search, it was found that Mr. Praveen Kumar Jain was engaged in the providing accommodation entries including accommodation loans to various business entities. It was also found that the appellant was the beneficiary of the said accommodation loans given by the entities of Mr. Praveen Kumar Jain. The appellant was found have received accommodation entries of loans from four companies totalling to Rs.2,68,00,000/-. All these four companies were managed and controlled by Shri Praveen Kumar Jain, through his relatives, agents, accountants, etc. During the course of search, it was found that Mr Praveen Kumar Jain was not doing any actual business but was engaged in providing accommodation entries to the businessmen including the appellant. The companies controlled and managed by Mr Praveen Kumar Jain were only on paper, and had no place of business and did not have any fixed assets to carry on the business. The activity carried on by these companies was to give the loans to various companies by receiving cash and commission in return. This was confessed by Mr Praveen Kumar Jain during the course of search before the Investigation Wing, Mumbai.

8.1 The appellant in its submission merely stated that the parties are genuine and that are identifiable having PAN and address. And the share application money was received through banking channels. However, the appellant has not been able to give any other information beyond these facts. During investigation, it was found that none of the investor companies which had invested amounts ranging between Rs.25 lacs to Rs.85 lacs as share capital and share premium in the appellant Company during the impugned A.Y. could justify making investment at such a high premium of Rs.90 for each share, when the face value of the shares was only Rs.10. All of the investor companies were found to be non-existent. Almost none of the companies produced the bank statements to establish the source of funds for making such investment in the shares, as they were declaring a very meagre income in their returns. None of the investor-companies appeared before the A.O.. The AO held that the appellant had failed to discharge the onus by cogent evidence either of the credit worthiness of the so-called investor-companies, or genuineness of the transactions.

8.2 On the basis of the above facts, the issue which arises for determination is whether the appellant had discharged the primary onus

to establish the genuineness of the transaction required under Section 68 of the said Act.

Section 68 of the I.T. Act (prior to the Finance Act, 2012) read as follows:

"68. Cash credits- Where any sum is found credited in the book of an Assessee maintained for any previous year, and the Assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the Assessee of that previous year"

8.3 The use of the words "any sum found credited in the books" in Section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium. As per settled law, the initial onus is on the Appellant to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act. The appellant is expected to establish to the satisfaction of the Assessing Officer as held in the case of CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.) the following aspects:

- Proof of Identity of the creditors,
- Capacity of creditors to advance money, and
- Genuineness of transaction

8.4 Hon'ble Supreme 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. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge.

8.5 The Delhi High Court in CIT v. Oasis Hospitalities (P) Ltd. [2011] 9 taxmann.com 179/198 Taxman 247/333 ITR 119, held that:

"The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise.

8.5 It has been held that merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established. In *Shankar Ghosh v. ITO* [1985] 13 ITD 440 (Cal.), the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The loan amount was rightly held to be the assessee's own undisclosed income. Reliance was also placed on the decision of *CIT v. Kamdhenu Steel & Alloys Limited* [2012] 19 taxmann.com 26/206 Taxaman 254 [2014] 361 ITR 220 (Delhi) wherein the Court that:

"38. Even in that instant case, it is projected by the Revenue that the Directorate of Income Tax (Investigation) had purportedly found such a racket of floating bogus companies with sole purpose of lending entries. But, it is unfortunate that all this exercise if going in vain as few more steps which should have been taken by the Revenue in order to find out causal connection between the case deposited in the bank accounts of the applicant banks and the assessee were not taken. It is necessary to link the assessee with the source when that link is missing, it is difficult to fasten the assessee with such a liability."

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

8.8 In the present case, the Assessing Officer made an independent and detailed enquiry. including Search of the so-called investor companies from Mumbai 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. This has been elaborately dealt by the AO in the assessment order. The AO has also given details about the earning capacity of the companies, their share capital, their assets etc, and came to the conclusion that the said companies do not have creditworthiness to invest in the share capital of the appellant company.

8.9 On the issue of unexplained credit entries /share capital, the following judgments are analysed.

i. In *Sumati Dayal v. CIT* [1995] 80 Taxman 89/214 ITR 801 this Court held that

"if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory, there is prima facie evidence against the assessee, vis, the receipt of money, and if he fails to rebut the same, the said evidence being unrebutted can be used against him by holding that it is a receipt of an income nature While considering the explanation of the assessee the department cannot. however, act unreasonably."

ii. In CIT v. P. Mohankala [2007] 161 Taxman 169/291 ITR 278 this Court held that

"A bare reading of section 68 of the Income-tax Act, 1961. suggests that (i) there has to be credit of amounts in the books maintained by the assessee (ii) such credit has to be a sum of money during the previous year, and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to Income-tax as the income of the assessee of that previous year The expression "the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee.

The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature."

(emphasis supplied)

iii. The Delhi High Court in a recent judgment delivered in PR.CIT v. NDR Promoters (P.) Ltd. [2019] 102 taxmann.com 182/410 ITR 379 upheld the additions made by the Assessing Officer on account of introducing bogus share capital into the assessee company on the facts of the case.

iv. The Courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors, but also the capacity of the creditors to advance money, and establish the genuineness of the transactions. The initial onus of proof lies on the assessee. This Court in Roshan Di Hatti v. CIT [1992] 2 SCC 378, held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

v. The Guwahati High Court in Nemi Chand Kothari v. CIT [2004] 136 Taxman 213/2003] 264 ITR 254 held that merely because a transaction

takes place by cheque is not sufficient to discharge the burden. The assessee has to prove the identity of the creditors and genuineness of the transaction.

"It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors, the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-a-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself"

(emphasis supplied)

vi. In one of the judgments the Delhi High Court in CIT v. N.R. Portfolio (P.) Ltd. [2014] 42 taxmann.com 339/222 Taxman 157 (Mag) (Delhi) held that the credit-worthiness or genuineness of a transaction regarding share application money depends on whether the two parties are related or known to each other, or mode by which parties approached each other, whether the transaction is entered into through written documentation to protect investment, whether the investor was an angel investor, the quantum of money invested, credit-worthiness of the recipient, object and purpose for which payment/investment was made, etc. The incorporation of a company, and payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus

vii. Other cases where the issue of share application money received by an assessee was examined in the context of Section 68 are Lovely Exposes (P) Ltd. Divine Leasing & Financing Ltd. (supra), and CIT v. Value Capital Service (P.) Ltd. [2008] 307 ITR 334 (Delhi)

8.10 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 Officer 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 name-lenders"

iii. If the enquires 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 appellant would not have discharged the primary onus contemplated by Section 68 of the Act.

8.11 that: In the present case, the A.O. had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The Search in Mr Praveen Kumar Jain Group revealed that the investor companies were non-existent, and had no office at the address mentioned by the appellant. The AO has given a detailed finding about the same in the assessment order. The genuineness of the transaction was found to be completely doubtful.

ii. The enquires revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs 25,00,000 to Rs. 85,00,000 in the Assessment Year 2011-12, for purchase of shares of such a high premium.

iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 90 per share, even though the face value of the share was Rs. 10/- per share.

iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.

8.12 Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. reported in 103 taxmann.com 48 (SC) held as under:-

"The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee."

8.13 Thus, the Hon'ble Supreme Court finally concluded that the company by filing all primary evidence, it could not be said that onus on appellant to establish credit worthiness of investor companies stood discharged u/s 68 of the Income Tax Act, 1961. In view of the above Supreme Court decision in the case of PCIT v/s NRA Iron and Steel Company Private Limited, (supra) I am of the opinion that the appellant has not discharged the onus of proving the credit worthiness of the companies which had invested in share application money and share premium with the appellant company. All the four companies were managed and controlled by Mr Praveen Kumar Jain who has been proved to be an entry provider as per the report of DGIT investigation, Mumbai, In view of all these facts, it is proved beyond doubt that the appellant took the help of Mr Praveen Kumar Jain to get investment in his company by paying cash and commission. Therefore, the addition made by the AO of Rs.2,68,00,000/- under section 68 of the act, is sustained. Ground number 2 is dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A) / NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has filed the written submissions in respect of the grounds so raised by the assessee and the same is reproduced herein below:

1. The assessee company is engaged in running retail chains of branded clothes. It filed its return declaring income of Rs.92,36,335/- on 31.10.2017.

2. The AO issued notice u/s 148 on 28.03.2018 (reproduced at Pg 1-3 of the assessment order) on the basis of information received from Investigation Directorate, Mumbai that assessee has received Rs.47 lacs from M/s Parmatma Tours & Travels Pvt. Ltd. on 21.06.2010 as share premium amount as per modus operandi of accommodation entry admitted by Sh. Praveen Kumar Jain in statement u/s 131 dt. 18.02.2013 (PB 143-149) and on the basis of this information the return filed by the assessee was analysed which shows share premium of Rs.3,90,60,000/- which includes the premium on shares allotted to M/s Parmatma Tours & Travels Pvt. Ltd. as per the information downloaded from the website of

Ministry of Company Affairs. Accordingly the AO at Point No.6 of the notice observed as under:-

*"I have analyzed the information provided by the Investigation Wing, Mumbai and all the relevant material available with me and on the basis of this analysis, I am satisfied that the assessee company has taken accommodation entry in form of bogus share premium and introduced unaccounted cash and unaccounted income by way of such exempt LTCG entry in the books of account without paying tax. The assessee has also paid commission at 1.5% to the entry providers in unaccounted cash as admitted by the entry provider in his statement. Amount of unaccounted commission payment comes to Rs.70,500/- at the rate admitted by the entry provider. By such accommodation entry assessee has introduced his own unaccounted income in his books of account and also made expenses from unexplained sources for payment of commission to the entry provider.*

*In view of the above facts, I have reasons to believe that income of Rs.47,70,500/- has escaped assessment within the meaning of section 147 of the IT Act, 1961."*

3. The assessee filed the return in response to notice u/s 148 on 27.04.2018 and requested to supply the copy of reasons recorded for reopening. The same was provided on 11.10.2018 (PB 134-137). Thereafter the assessee vide letter dt. 06.12.2018 (PB 22-26) objected to the issue of notice u/s 148 and also filed the reply on merit. The AO, however, mentioned that assessee did not raised any objection to the reasons of reopening and proceeded to frame the assessment order by treating share application money of Rs.2,68,00,000/- as unexplained cash credit u/s 68 of the Act and made addition for the same.

4. The Ld. CIT(A), NFAC at Pg 24-25, Para 7 of the order held that notice issued is valid as the same is issued after recording reasons on the basis of credible information from the investigation wing of the department.

*Submission:-*

1. At the outset it is submitted that AO has incorrectly stated that assessee has not raised any objection to the reasons of reopening ignoring that assessee vide letter dt. 06.12.2018 (PB 22-24) has specifically raised objections to the issuance of notice. However, the objections raised were not disposed of which is against the law laid down by Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19. Thus when no order is passed disposing the

objections raised by the assessee, the entire proceedings is illegal & bad in law. For this reliance is placed on the following cases:-

M/s K.C. Mercantile Ltd. Vs. DCIT DBIT Appeal No.292/2016 order dt. 07.11.2017 (Raj.) (HC)

In para 8 of the order it was held as under:-

*"8. Before proceeding with the matter, it is not out of place to mention that the law declared by the Supreme Court in GKM Driveshafts (supra) clearly held that the preliminary objection is to be decided as the first, it cannot be decided subsequently. The argument which has been canvassed by the assessee is required to be considered very seriously more particularly in view of the observations made by the Supreme Court in the case of KS Petron Private Ltd. (supra) which is followed in Hotel Blue Moon (supra), the law declared by the Supreme Court is taken in true spirit whether it will open a second inning in his own. Section 153(3) is to be read very cautiously as 153 powers are given to the Department, the Court has to look into whether the law declared by the Supreme Court is given away or protected. In the present case, as the Assessing Officer has clearly ignored the law declared by the Supreme Court, in that view of the matter, the issues which are raised in the matter, the Tribunal ought not to have remitted back for reassessment since period of limitation has already expired as the authority will get extended time of limitation beyond 9 months which is not the object of Income Tax Act."*

PCIT Vs. Sanjay Mehta (2024) 298 Taxman 673 (Cal.) (HC)

Where AO issued on assessee a notice u/s 148 seeking to reopen his assessment and passed assessment order without disposing of objections raised by assessee, Tribunal rightly quashed reopening of assessment.

Sh. Jaideep Singh Vs. ITO ITA No.1030/JP/18 order dated 02.06.2021 (Jaipur) (Trib.)

Where AO without disposing off the objections raised by the assessee by way of passing any specific order proceeded ahead by way of issuing a show cause calling for further information/ clarification and passing the reassessment order, the said act of the AO is in clear violation of the law declared by the Hon'ble Supreme Court in case of GKN Driveshaft India and the decision of the Hon'ble Rajasthan High Court in case of K.C Mercantile Ltd.

PCIT Vs. Tupperware India Pvt. Ltd. (2015) 127 DTR 161 (Del.) (HC)

Assessee raised objection to the action of AO in reopening the assessment. Although the CIT(A) accepted that the AO in fact did not dispose of the assessee's objections by a speaking order, he committed an error in holding that the said defect did not make the assessment

order illegal & that it is a technical mistake which is curable and in not quashing the reopening of assessment and the consequent assessment.

CIT Vs. Pentafour Software Employees Welfare Foundation (2019) 183 DTR 385 (Mad.) (HC)

Filing of objections to the reasons for reopening is not an empty formality. If this is so, passing a speaking order on the objections cannot be treated as an empty formality and to be brushed aside as a procedural error. The purpose for passing a speaking order on the objections is to afford an opportunity to the assessee to question the same in the event the assessee is aggrieved by such an order. Therefore, to state that it would be sufficient for the AO to deal with the objections in the assessment order and thereafter, if the assessee is aggrieved he can file a statutory appeal is a proposition which would be against the principles of natural justice. Therefore objections not disposed of by a speaking order would not be only a procedural error but would lead to abuse of power conferred under sec. 147.

2. From the plain reading of the reasons recorded, it can be noted that notice u/s 148 is issued on the basis of information received from Investigation Wing, Mumbai with reference to the search operation in case of Sh. Praveen Kumar Jain & group wherein the statement of Praveen Kumar Jain was recorded on 18.02.2013. However, there is no reference in the reasons recorded that Praveen Kumar Jain has provided accommodation entry to the assessee. The primarily condition for initiating action u/s 147 is that AO must have reason to believe that any income chargeable to tax has escaped assessment. This satisfaction must be of AO himself and not a borrowed satisfaction. Reason to belief cannot be at instance of the audit party or investigation conducted by others or third party statement etc. In the present case the AO on analysis of the information has recorded that assessee has taken accommodation entry in the form of bogus share premium and introduced its own unaccounted & unrecorded income by way of such bogus long term capital gain entry in the books of account without paying any tax. Thus the reasons recorded is contradictory in itself as to whether the amount received is bogus share premium or bogus exempt LTCG. In fact AO blindly relied on the information received from the Investigation Wing, Mumbai and the statement of Praveen Jain without applying his own mind to the information received to arrive at the belief that income of the assessee has escaped assessment. He has not considered the fact that subsequently a search was carried out on Praveen Kumar Jain between 01.10.2013 to 09.10.2013 where similar statement recorded u/s 132(4) was retracted by him by filling an affidavit dt. 15.05.2014 (PB 129-133). Hence, the reopening of assessment is illegal & bad in law. For this reliance is placed on the following cases:-

Bhaijee Commodities (P.) Ltd. Vs. ACIT (2023) 202 ITD 757 (Delhi) (Trib.)

Where assessee had sufficiently demonstrated that there was no relevant material to make wide ranging allegations towards accommodation entry in form of share capital and earning fictitious profits and so called belief formed by AO towards escapement of chargeable income was without availability of relevant or tangible material and merely following opinion expressed by investigation wing, reassessment was bad in law and hence liable to be quashed.

Rajshree Realtors (P) Ltd. Vs. Union of India (2023) 294 Taxman 228 (Bom.) (HC)

Assessment was sought to be reopened in case of assessee on ground that AO had received information from Deputy Commissioner that pursuant to search and seizure operation conducted at business and residential premises of one 'A', in his statement recorded 'A' had accepted that he had registered a large number of paper companies for providing various accommodation entries, that SCPL and SHPL were two such paper companies floated by 'A' and assessee company was one of the beneficiaries who has taken accommodation entry in the form of bogus share capital/premium from bogus paper companies, viz. SCPL and SHPL. However it did not mention anywhere what was that material that assessee was required to disclose truly and fully which it had failed to disclose. Assessee had already made available the shareholding agreement with SHPL and SCPL and same has been examined by AO, who also in fact, did not accept assessee's explanation and added the amount of Rs.3 crore to assessee's income. That addition was deleted by CIT(A) and the order of CIT(A) has been upheld by Tribunal. All these only go to prove that there was no failure on the part of assessee to truly and fully disclose material facts. Even assuming that assessee should have disclosed that these were bogus or accommodation entries, still there was nothing on record to indicate that assessee was aware that these were bogus shares capital/premium from bogus paper companies, viz., SHPL and SCPL and were accommodation entries. Therefore, notice issued u/s 148 as well as assessment order were to be quashed and set aside.

Smt. Anshita Vimal Jain Vs. ITO (2023) 199 ITD 168 (Surat) (Trib.)

Where AO merely on basis of information received from Investigation wing, Mumbai with reference to search carried out in case of one 'GJ' reopened assessment on ground that assessee had taken accommodation entries of bogus purchase bills from 'GJ', since AO had not recorded his own satisfaction and had not made any effort to examine and to discuss material received from Investigation wing, reassessment so made was to be quashed.

Smt. Sudesh Rani Vs. ACIT (2023) 225 DTR 1 (Chd.) (Trib.)

For assumption of jurisdiction u/s 147 the AO has to form a prima facie opinion on the basis of tangible material that there is an escapement of income. Reasons recorded and/or the documents available on record must show a nexus and relevancy to the opinion formed by the AO regarding escapement of income. In the instant case, information was received from Principal Director of IT (Inv.) regarding entry of bogus long-term capital gains at platform of Calcutta Stock Exchange and basis the same the AO recorded the reasons to believe that income of the assessee has escaped assessment. What information is available with the AO is neither stated nor enclosed with the reasons so recorded by him and thus not discernible from the reasons so recorded. Mere fact that the assessee sold certain shares with certain value on the stock exchange cannot by itself be held as tangible material. Further the AO has not just recorded a reason to believe rather recorded a conclusive finding that assessee is involved in manage trading of penny stock to convert his undisclosed income into exempt income. AO has to record reasons as to why the transaction reflected in the return of income and claimed exempt is liable for taxation which has escaped assessment and such reasons to believe must be based on tangible material. Whole exercise shows a predetermined mind on the part of the AO to issue notice u/s 148 and complete lack of application of mind. AO has simply relied upon the report and conclusion drawn upon by Investigation Wing without carrying out any preliminary enquiry and investigation and establishing the necessary nexus between material and formation of belief that income has escaped assessment. There is clearly no independent application of mind by the AO. Thus, the notice issued u/s 148 and consequent reassessment proceedings are set aside.

Nishant Kantilal Patel Vs. ITO (2022) 214 DTR 209 (Surat) (Trib.)

General information received by the AO from the Investigation Wing that share prices of large number of penny stock companies were artificially raised/manipulated on the stock exchange in order to book bogus claims of long term capital gains/losses is not a tangible material which can suggest that assessee's income chargeable to tax has escaped assessment. After considering the information/material received from other source, the AO is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion that income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment. Reason for the formation of the belief must be held in good faith and should not be a mere pretence. In this case, the reasons recorded by the AO fall in the zone of "reason to suspect" and not "reason to believe". Therefore, reassessment proceedings are quashed.

South Yarra Holdings Vs. ITO (2019) 104 CCH 0584 (Bom.) (HC)

The head note of the order is as under:-

*“Reassessment—Income escaping assessment—Assessee filed return of income which was taken up for scrutiny assessment by AO—Assessment was completed after enhancing assessee’s income—Thereafter, AO received an information from DDIT(Inv) revealing that M/s N was a penny stock listed do in BSE and this company was used to facilitate introduction of unaccounted income of members of beneficiaries in form of exempt capital gain or short term capital loss in their books of accounts—Both purchase and sale of shares were concentrated within few person/entities— Assessee was one of beneficiary who availed accommodation entries by way of traded in shares in M/s N with a view to ultimately reduce tax liability and or to bring capital in form of equity or debt or tax exempt income or a combination of such transaction—Thus, AO issued notice seeking to re-open assessee’s case—AO was of view that income for relevant AY had escaped assessment because of failure on assessee’s part to disclose fully and truly all material facts necessary for his assessment for year under consideration—Held, impugned notice was issued based on information received from Deputy Collector Income Tax (Investigation) alleging that M/s N was a penny stock listed on BSE and that assessee had dealt with same leading to escapement of income—On receipt of information, least that was expected of AO was to examine same in context of facts of this case and satisfy himself whether information received does prima facie lead to a reasonable belief that income chargeable to tax had escaped assessment—In present case, reasons indicate that AO had not carried out such exercise and accepted report of Deputy Collector of Income Tax (Investigation) to conclude that assessee had dealt with M/s. N during PY relevant to AY 2011-12— There was no company by name M/s. N in existence during that year for consideration—This clearly shows that AO acted on satisfaction of Deputy Collector of Income Tax (Investigation) that income chargeable to tax had escaped assessment—Impugned notice was issued beyond period of four years from end of relevant AY in a case, where assessment was completed u/s 143(3)—Therefore, AO would have to examine information received in context of facts on record—If such an exercise were to be done, it was likely that AO would have come to conclusion that there was no failure to disclose truly and fully all material facts necessary for assessment—Thus, hit by proviso to s. 147— However, AO had not applied his mind to information received in context of facts on record—Impugned notice was bad-in-law, as it had not been issued by AO on his satisfaction that there was reason to believe, that income chargeable to tax had escaped assessment—Assessee’s Writ petition allowed.”*

Future Tech IT Systems (P) Ltd. Vs. ITO (2021) 190 ITD 52 (Chd.) (Trib.)  
Where AO issued reopening notice against assessee merely on basis of information of Director (Investigation) that assessee had received share

premium of huge amount during year which was not justifiable considering its lesser income during year without making any independent investigation, impugned reassessment proceedings were not valid and deserved to be quashed.

The Ld. CIT(A), NFAC has not distinguished as to how the case laws relied before him are not applicable to the facts of the case of assessee and therefore, the order passed by him upholding the issue of notice u/s 148 and the consequent order passed u/s 147 is illegal & bad in law.

In view of above, order passed u/s 147 in consequence to the reasons recorded u/s 148 is illegal and bad in law and the same be quashed.

### Ground No.2

*The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.2,68,00,000/- u/s 68 of the Act by treating the share capital received from following parties as bogus:- (i) Arijit Securities Pvt. Ltd.- Rs.81 lacs (ii) Seatrans Dan Shipping Pvt. Ltd.- Rs.90 lacs (iii) Parmatma Tours & Travels Pvt. Ltd.- Rs.72 lacs (iv) Yamroosh Investment Pvt. Ltd.- Rs.25 lacs.*

#### *Facts:-*

1. During the year under consideration assessee received share application money along with share premium of Rs.4,32,00,000/- from various parties which includes share application money along with share premium of Rs.2,68,00,000/- (equity shares of Rs.10 each issued at premium of Rs.90) from the following four companies:-

S. No.	Name of the Company	No. of shares	Equity capital	Equity share premium	Amount received (Rs.)
1.	Arijit Securites Pvt. Ltd.	81,000	10	90	81,00,000
2.	Seatrans Dan Shipping Pvt. Ltd.	90,000	10	90	90,00,000
3.	Parmatma Tours and Travels Ltd.	72,000	10	90	72,00,000
4.	Yamroosh Investments Pvt. Ltd.	25,000	10	90	25,00,000
Total					2,68,00,000

2. The AO on the basis of the information received from Deputy Director of Income Tax (Investigation), Unit 6(4), Mumbai observed that assessee has received accommodation entry in form of share

application money and introduced unaccounted cash in the books of account. The information was based on the investigation carried out by the income tax department, Mumbai where it was revealed that these entities are not engaged in any real business but were merely paper companies operated by entry operators and Sh. Praveen Kumar Jain is one of such entry operator who is found associated with the above 4 companies. In assessment proceedings the assessee filed complete details of share application money along with supporting documents comprising of affidavit, share application form, Board resolution, bank account, Balance Sheet, etc. The AO after considering the details observed as under:-

(i) Investigation was carried out by the Income Tax Department on these companies wherein it was revealed that these entities were not engaged in any real business but were merely paper companies operated by operators and formed for the sole purpose of providing bogus entries and Sh. Praveen Jain is found associated as Director of these companies. He also specified modus operandi of these jama kharchi companies.

(ii) The above entities are seen to have disproportionately high amount of share capital, premium and reserves as compared to their actual income, tangible asset or net worth which is more than 100 times of the income of these companies.

(iii) These entities have no fixed tangible or intangible asset but asset in the form of unsecured loans or advances to other entities which shows that these entities do not have any creditworthiness to provide the share capital claim to have been received by the assessee. Thus these entities have 'very meager income and hardly any tangible assets' to make such huge amount of investment.

(iv) The assessee received the funds from these companies which are located almost 1000 km from assessee.

(v) As per MCA records the two entities namely Arjit Securities Pvt. Ltd. and Yamroosh Investments Pvt. Ltd. have been deregistered or struck off by the Registrar of Companies.

(vi) Sh. Praveen Kumar Jain & Sh. Anil Kumar Babulal Jain in their statement recorded u/s 131 admitted of providing bogus accommodation entries.

(vii) When the very nature of a racket is that it provides a veil of legitimacy to otherwise bogus transactions, the value of documents pales in comparison to the material on record which reveals the actual nature of the transactions.

(viii) The assessee demanded cross examination of Praveen Kumar Jain but since the assessee is close to these companies, he should produce these persons for cross examination.

Accordingly the AO after relying on certain decisions referred in Para 4.15 to 4.25 held that amount of Rs.2,68,00,000/- received are accommodation entries provided by bogus companies of Sh. Praveen Kumar Jain and made addition of Rs.2,68,00,000/- u/s 68 of the Act.

2. The Ld. CIT(A), NFAC at Pg 25-31 by referring to the various decisions as mentioned in Para 8.4 to 8.12 held that assessee has not discharged onus of proving the creditworthiness of the companies which had invested in the share application money & share premium of the assessee. All these 4 companies were managed & controlled by Sh. Praveen Kumar Jain who has been proved to be an entry provider as per the report of DGIT(Inv.), Mumbai. Accordingly addition made by the AO u/s 68 is confirmed.

*Submission:-*

1. The AO made addition u/s 68. Section 68 provides that if any sum is found credited in the books of accounts then the assessee has to prove the identity, creditworthiness of the party and the genuineness of the transaction. In the present case, assessee has proved the identity, creditworthiness of the parties and the genuineness of the transaction. The Ld. CIT(A) has accepted the identity and genuineness of the transaction in as much as in Para 8.13 of the order he has opined that assessee has not discharged the onus of proving the creditworthiness of the companies who invested in share application money and share premium of the assessee. This is factually incorrect. In fact assessee by filing share application form, Board Resolution, confirmations, affidavit, income tax return, bank statement and financial statement have proved all the three ingredients of section 68 of the Act. It has been intimated by all these parties that they have directly sent confirmation to the AO. The summarised position of the various evidences filed in respect of the share capital are tabulated as under:-

Name, Address & PAN	Amount of Share Capital & Share Premium received	Evidences filed before the AO
<p>Arjit Securities Pvt. Ltd.</p> <p>PAN: AABCS4462Q</p> <p>Address: 104, Auto Commerce House, 1<sup>st</sup> Floor, Near Kennedy Bridge, Nana Chowk, Mumbai - 400 007</p>	81,00,000/-	<ul style="list-style-type: none"> <li>• Share Application Form (PB 38-41)</li> <li>• Board Resolution (PB 42-43)</li> <li>• Affidavit (PB 44-45)</li> <li>• ITR of AY 2009-10 (PB 46)</li> <li>• Audited Financial Statements (PB 47-55)</li> <li>• Bank Statement (PB 56-58)</li> <li>• PAN Card (PB 59)</li> <li>• Master data of the company (PB 60)</li> </ul>
<p>Seatrans Dan Shipping Pvt. Ltd.</p> <p>PAN: AACCS0822K</p> <p>Address: 10, Horn by building, 2<sup>nd</sup> Floor, 172/174 Dadabhai Navroji road, Fort, Mumbai- 400 001</p>	90,00,000/-	<ul style="list-style-type: none"> <li>• Share Application Form (PB 61-64)</li> <li>• Affidavit (PB 65-66)</li> <li>• Board Resolution (PB 67-68)</li> <li>• ITR (PB 69)</li> <li>• Audited Financial Statements (PB 70-79)</li> <li>• Director's Report (PB 80-81)</li> <li>• Certificate of incorporation (PB 82)</li> <li>• PAN Card (PB 83)</li> <li>• Master data of the company (PB 84)</li> </ul>
<p>Parmatma Tours and Travels Ltd.</p> <p>PAN: AAACP3762B</p> <p>Address: 104, Auto Commerce House, 1<sup>st</sup> Floor, Near Kennedy Bridge, Nana Chowk, Opera House, Mumbai - 400 007</p>	72,00,000/-	<ul style="list-style-type: none"> <li>• Share Application Form (PB 85-88)</li> <li>• Board Resolution (PB 89-90)</li> <li>• Affidavit (PB 91-92)</li> <li>• ITR (PB 93)</li> <li>• Audited Financial Statements (PB 94-103)</li> <li>• Director's Report (PB 104-105)</li> <li>• Bank Statement (PB 106)</li> <li>• Certificate of incorporation (PB 107)</li> <li>• PAN Card (PB 108)</li> <li>• Master data of the company (PB 109)</li> </ul>
<p>Yamroosh Investments Pvt. Ltd.</p> <p>PAN: AACY1193P</p> <p>Address: 134, Nagindas Master Road, Birla</p>	25,00,000/-	<ul style="list-style-type: none"> <li>• Share Application Form (PB 110-111)</li> <li>• Board Resolution (PB 112)</li> <li>• Affidavit (PB 113)</li> <li>• Audited Financial Statements (PB 114-123)</li> </ul>

Mansion, 2 <sup>nd</sup> Floor, Fort, Mumbai – 400 023		<ul style="list-style-type: none"> <li>• Director's Report (PB 124-125)</li> <li>• Bank Statement (PB 126)</li> <li>• PAN Card (PB 127)</li> <li>• Master data of the company (PB 128)</li> </ul>
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From the above table it can be noted that assessee has discharged its initial burden of proof in as much as evidence is filed that the above companies are assessed to tax, their PAN No. is provided and the transaction is through banking channel. It is a settled law that once the identity of shareholder is established, then the department is free to proceed against them as per law but the same cannot be treated as undisclosed income of the assessee. For this reliance is placed on the decision of Hon'ble Supreme Court in case of CIT Vs. Lovely Exports (P) Ltd. 216 CTR 195 where it is held that if the share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law but it cannot be regarded as undisclosed of the assessee company.

2. It may be noted that AO considered the investment made by M/s Parmatma Tours and Travels Ltd. as bogus ignoring that in case of M/s Bhriugu Traders Pvt. Ltd. where notice u/s 148 dt. 17.03.2016 was issued for the reason that Parmatma Tours and Travels Ltd. have invested in its share capital (PB 152-155) on the basis of statement of Sh. Praveen Kumar Jain & Sh. Anil Kumar Babulal Jain (PB 156-170), the AO after considering the reply filed u/s 133(6) dt. 19.12.2016 by Parmatma Tours and Travels Ltd. (PB 174-178) accepted that investment made by Parmatma Tours and Travels Ltd. is genuine in order u/s 143(3)/147 dt. 27.12.2016 (PB 179). Hence when the department has accepted Parmatma Tours and Travels Ltd. as a genuine investor in case of M/s Bhriugu Traders Pvt. Ltd., considering the same as non-genuine investment in case of the assessee is unjustified.

3. The Ld. CIT(A) has held that assessee has not discharged the onus of proving the creditworthiness of these companies which is based on the observation of AO that these entities have very meager income to make huge investment of more than 100 times of income in the assessee company which are located at a far distance. These observations are not relevant in as much as it is not necessary that there should be comparable income in the year in which investment is made. The investment can be made from the past funds. From the Balance Sheet of these companies (PB 52, 75, 99 & 110) it can be noted that these companies have sufficient shareholder funds & loan funds to make investment in the shares of assessee company. Further distance of these companies has no relevance more so when the assessee company is having its outlets all over India.

4. It is observed by the lower authorities that the two entities, namely Arjit Securities Pvt. Ltd. and Yamroosh Investments Pvt. Ltd. have been deregistered or strike off by the registrar of companies. It is submitted that these entities have been strike off for the purpose of e-filing much after they invested in the shares of the assessee (PB 60 & 128). Therefore, only because in the company master data, company status (for e-filing) is mentioned as strike off would not mean that these companies have not made investment in the share capital of the assessee.

5. The lower authorities have relied on the statement u/s 131 dt. 18.02.2013 (PB 143-149) of Praveen Jain. It is submitted that subsequently there was a search between 01.10.2013 to 09.10.2013 on Sh. Praveen Kumar Jain where he made similar statement u/s 132(4) of the Act. However he retracted from this statement by filing an affidavit dt. 15.05.2014 (PB 129-133) containing 22 paras in five pages. In the affidavit he explained the nature of business carried out by him and circumstances & pressure in which his statement was taken during the search. He explained that his entire business and investment were genuine. The retraction was made nearly after 7.5 months of date of search only because he was not provided with the copy of his statement despite several requests made by him. Once statement is retracted by filing affidavit, such statement loses its evidentiary value and therefore, only because search & seizure operation was carried out in case of Praveen Jain Group can be no reason to make addition in the hands of assessee. The AO has not stated anything on the affidavit filed by Sh. Praveen Kumar Jain. This apart the AO has also not confronted/provided opportunity to the assessee to cross examine Praveen Jain and Anil Kumar Babulal Jain whose statements has been referred/relied in the assessment order by simply holding that these persons are more connected with the assessee. This is against the principle of natural justice. Hon'ble Supreme Court in its order dt. 02.09.2015 in case of Andaman Timber Industries Vs. CCE 127 DTR 0241 has held that denial of opportunity to the assessee to cross-examine the witnesses whose statements were made the sole basis of the assessment is a serious flaw rendering the order a nullity in as much as it amounted to violation of principles of natural justice. The AO has also provided list of companies controlled by Praveen Kumar Jain whose books of accounts were found by him. Once the books of accounts of these companies are found from him, it establishes that all these companies are identified and therefore the transaction recorded in these books of accounts cannot be considered as bogus more particularly when in course of assessment proceeding assessee has filed share application form of all these companies who have invested in the share capital of the assessee.

6. Reliance is placed on the following cases:-

PCIT Vs. Adamine Construction (P) Ltd. (2019) 264 Taxman 279 (SC)  
Where High Court upheld Tribunal's order deleting addition made u/s 68 in respect of share application money received by assessee on ground that assessee had brought on record sufficient documentary evidence to prove identity and creditworthiness of share applicants, SLP filed against said order was to be dismissed.

PCIT Vs. Ami Industries (India) Pvt. Ltd. (2020) 271 Taxman 75 (Bom.) (HC)

AO noted that assessee had disclosed funds from three Kolkata based companies as share application money. But since whereabouts of above companies were doubtful and their identity could not be authenticated, AO treated aforesaid funds as money from unexplained sources and added same to income of assessee as unexplained cash credit u/s 68. However, it was found that assessee company had furnished PAN, copies of income tax returns of creditors as well as copy of bank accounts of three creditors through which share application money was deposited in order to prove genuineness of transactions. Further, in so far as creditworthiness of creditors were concerned, Tribunal recorded that bank accounts of creditors showed that creditors had funds to make payments for share application money and in this regard resolution were also passed by Board of Directors of three creditors. Thus, first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of creditors, genuineness of transactions and creditworthiness of creditors which finding of fact stood affirmed by Tribunal. Revenue had not been able to show any perversity in aforesaid finding of fact by authorities below. Therefore, Tribunal was right in confirming order passed by CIT(A) and holding that no addition could be made u/s 68.

CIT Vs. Supertech Diamond Tools Pvt. Ltd. 229 Taxman 62 (Raj.) (HC)

AO made addition u/s 68 on account of amount received for share capital, its premium and amount paid as commission for arranging it on basis of statement made by third parties who were related to purchasing companies stating that these companies were engaged in providing accommodation entries in lieu of commission. It was held that the said third party statement was made behind back of assessee and no opportunity of being heard or cross-examining third parties was provided to assessee. Further, AO could not bring any material to disapprove genuineness of confirmation and affidavits filed by assessee. All transactions were through account payee cheques. All these companies had PAN numbers, were regularly assessed to tax, were registered under Companies Act and Form No.2 for allotment was also filed. Therefore, appellate authorities have rightly deleted the addition.

PCIT Vs. Laxman Industrial Resources Ltd. (2017) 397 ITR 0106 (Delhi) (HC)

Fact that the investigation wing's report alleged that the assessee was beneficiary to bogus transactions and that the identity of shareholders, genuineness etc. was suspect is not sufficient. The assessee had provided several documents that could have showed light into whether truly the transactions were genuine. It was not a case where the share applicants are merely provided confirmation letters. They had provided their particulars, PAN details, assessment particulars, mode of payment for share application money, i.e. through banks, bank statements, cheque numbers in question, copies of minutes of resolutions authorizing the applications, copies of balance sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee as well as their master debt with ROC particulars. The AO strangely failed to conduct any scrutiny of documents and rested content by placing reliance merely on a report of the Investigation Wing. This reveals spectacular disregard to an AO's duties in the remand proceedings which the revenue seeks to inflict upon the assessee in this case. No substantial question of law arises.

M/s Lalitha Jewellery Mart Pvt. Ltd. Vs. DCIT (2017) 399 ITR 425 (Madras) (HC)

The findings of Hon'ble High Court at Para 41 & 42 are as under:-

*"41. However, the main theme, upon which, the Assessing Officer as well as the Tribunal proceeded to discredit the investors of the assessee is completely erroneous. They are both looking for proof beyond doubt. They are proceeding on an element of suspicion that the amounts of investments are really those of the assessee, which have been ploughed back by the assessee, whereas the settled principle of law is that any amount of suspicion, however strong it might be as well, is no substitute for proof. Suspicion is not sufficient enough to lead to a conclusion that the investments received by the assessee company are all manipulated receipts and on that basis, recorded a finding that the explanation of the assessee is not satisfactory.*

*42. On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee company would still be the money available and belonging to the investors. The consistent principle followed is that the investors' sources and credit worthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures*

*that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee company. That is clearly a perverse view, as the assessing officer is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee company, as such investors cannot gain any controlling stake.”*

Movefast Automobiles (P.) Ltd. Vs. ITO (2023) 201 ITD 766 (Delhi) (Trib.)

Where AO made addition to income of assessee u/s 68 on account of unexplained share premium and share capital, since assessee had furnished copy of ITR, balance sheet of investors including PAN, address, amount invested, number of shares issued, confirmation of accounts, bank statement, valuation report under rule 11UA(2)(b) of Rules, addition made u/s 68 was to be deleted.

DCIT Vs. BDR Builders & Developers (P) Ltd. (2023) 199 ITD 757 (Delhi) (Trib.)

Where AO made addition to income of assessee on account of unexplained source of share capital and share premium, since assessee had furnished names and addresses of shareholders and proved their identity, creditworthiness and genuineness of transaction by filing copies of their confirmations, bank statements from where share application had been received and even in search carried out at premises of assessee no adverse material was found to establish that assessee had received any bogus share capital or share premium, addition made u/s 68 was to be deleted.

Jagati Publications Ltd. Vs. ACIT (2022) 210 DTR 137 (Hyd.) (Trib.)

Assessee company having filed documentary evidences in the form of copies of share application forms, PAN cards, board resolutions, bank statements, annual reports with audited statements of accounts of all the investor companies and six of the eight companies having confirmed the fact of having made investment in the shares of the assessee at a premium, the onus to prove the identity and creditworthiness of the investors and the genuineness of the transaction stands duly discharged by the assessee and therefore, no addition can be made u/s 68 simply on the basis of the report of the Investigation Wing.

Moongipa Dev. & Inf. Ltd. Vs. DCIT (2021) 189 ITD 388 (Mum.) (Trib.)  
Where assessee company received share capital/ share premium from various entities and assessee had submitted share application form, copy of share certificates, copy of board resolution, certificate of incorporation, etc. with respect to all investor entities and all investor entities had sufficient net worth to make investment in assessee company, additions made to income of assessee as unexplained cash credit u/s 68 were to be deleted.

Bini Builders Pvt. Ltd. Vs. DCIT (2021) 203 DTR 334 (Mum.) (Trib.)  
Assessee company having produced copies of certificate of incorporation, financial statements, share application forms, share certificates and copies of board resolutions of the investor entities to whom shares were issued which prove the identity and creditworthiness of these entities as well as genuineness of the transactions, addition cannot be sustained in the absence of anything on record to show that assessee's unaccounted money has been routed in its books in the garb of share capital.

M/s Balaji Health Care Pvt. Ltd. Vs. ITO(E) ITA No.566 & 567/JP/2018 order dt. 30.01.2019 (Jaipur) (Trib.)

Where assessee company has produced evidences like share application form, board resolution, bank statement evidencing payment through banking channel, income tax return duly containing PAN, audited financials, Memorandum of Association, assessment order u/s 143(3) wherein investment in the assessee company has been accepted by the revenue and investor company in respond to notice u/s 133(6) has confirmed the amount invested by way of share capital, assessee has discharged the initial onus cast on it in terms of identity, creditworthiness and genuineness of the transaction and hence, no addition could be made u/s 68.

DCIT & Ors. Vs. Acro Exports Trade Pvt. Ltd. (2019) 56 CCH 446 (Mum.) (Trib.)

The relevant finding at Para 15 is as under:-

*“15. The provision of section 68 of the Income Tax Act, 1961 deals with a cases, where any sum found credited in the books of accounts of an assessee, in any previous year, for which the assessee offered no explanation about the nature and source, thereof or the explanations offered by the assessee, in the opinion of the AO is not satisfactory, then sum so found credited may be charged to income tax, as income of the assessee of that previous year. In order to fix any credit within the ambit of section 68 of the I.T Act, 1961, the AO has to examine three ingredients i.e., identity, genuineness of transactions and creditworthiness of the parties. In this factual and legal background, if you examine, the present case in the light of various evidences filed by*

*the assessee, in order to prove credit found in the form of share capital and share premium, one has to see, whether the assessee has discharged its initial onus cast upon u/s 68 of the I.T. Act, 1961 or not. In this case, the assessee has filed various details, including share application form, copy of declaration, board resolution, bank statement of Investor Company, PAN card, acknowledgment of return of income, financial statement of Investor Company, form No. 2 for allotment of equity shares and bank statement reflecting, the amount received through banking channels. Once, the assessee has discharged its initial onus by filing various details, then the onus shift to the AO to carry out further verification, in the light of evidences filed by the assessee to ascertain true nature of transactions between the parties before, he come to the conclusion that the transactions between the parties are genuine or not. In this case although, the AO has issued 133(6) notices to the parties, no further enquiry has been conducted, including issue of summons u/s 131. No doubt, none of the investors companies have responded to 133(6) notices issued by the AO, but fact of the matter is when, assessee has filed complete set of documents, including name and address of the parties, it is for the AO to carry out further investigation by exercising all possible options available to him, but non attendance of parties in response to 133(6) cannot be attributed to the assessee, because due to time lag certain persons might have left the place and for this no responsibility can be fastened upon the assessee. In this case, the assessee done what best it could do and filed, whatever information available with it, in order to satisfy the AO. In case, the AO is not satisfied with documents furnished by the assessee, then he is free to carry out his own investigations by exercising powers conferred u/s 131 or u/s 133(6) of the I.T. Act, 1961. In this case, the AO, except issue of 133(6) notices nothing has been done to find out, the nature of transactions between the parties. Therefore, we are of the considered view that when, assessee has filed complete details to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for the AO to come to the conclusion that share capital and share premium is unexplained only for the reason that during the survey proceedings, the director of the company had admitted that those five companies are shell companies ignoring the fact that such admission has been retracted by filing affidavit along with letter explaining reasons for such admission during survey proceedings.”*

Thereafter in Para 18 the Hon'ble ITAT considered the decision of Supreme Court in case of PCIT Vs. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 and referring to decision of Coordinate Bench of ITAT in its order dt. 03.05.2019 in case of Sh. Laxmi Estate Pvt. Ltd. in ITA No.6557/Mum/2017 for AY 2013-14 where the decision of Supreme Court was distinguished gave following findings at Para 20 of the order:-  
“20. In this view of the matter and considering the facts and circumstances of this case and also taking into consideration various

*case laws as discussed hereinabove, we are of the considered view that the assessee has discharged its initial onus to prove identity, genuineness of transactions and creditworthiness of the parties by filing various documents. The AO, without carrying out further inquiries in order to ascertain the claim of the assessee, jumped into conclusion on the basis of financial statements of the subscribers that none of them had enough source of income to establish creditworthiness. Therefore, we are of the view that the AO was erred in making additions towards share capital u/s 68 of the Income Tax Act, 1961. The learned CIT(A) after considering relevant facts and also by relied upon various case laws has rightly deleted additions made by the AO towards share capital u/s 68 of the Income Tax Act, 1961. Hence, we are inclined to uphold order of the Id. CIT(A) and direct the AO to delete the additions made towards share capital u/s. 68 of the Act.”*

DCIT Vs. B.P. Edible Oil Pvt. Ltd. (2019) 56 CCH 351 (Agra) (Trib.)  
The head note of the decision is as under:-

*“Income—Cash credit—Assessee filed return of income which was selected for scrutiny—During assessment proceeding, AO noted that assessee had shown income of Rs.5,32,602/- even when gross receipts of company was increased from 7,16,66,316/- to Rs.12,79,02,891/- which required detailed verification—On being asked, assessee had submitted copy of bank account of assessee, names and addresses of share applicants, PAN details of those entities— However, assessee had not filed copy of bank account as well as return of income as sought by AO—AO send notice u/s 133(6) to ascertain identity, genuineness and creditworthiness of 10 share applicants—However, notices sent to 10 share applicants were returned un-served—Amount received by assessee company, during the year under consideration, in form of share application money and share premium were treated as unexplained credits of assessee u/s 68 and were added to assessee’s total income—Before CIT(A), assessee had filed various written submissions and also filed documents—During remand proceedings, all share applicants were confirmed to have share applications except Shree BSBPL—It was further reported that share applicants were in existence which was confirmed ITO for AY—Held, CIT(A) sent letter to AO along with documents and written submissions for submitting remand report—AO had submitted remand report and in remand report, it was mentioned that letters were sent to all 10 share applicants and all applicants had confirmed to have confirmed to have made share application except one M/s. BSBPL as notice sent was received un-served—Confirmations received were also placed on record by AO in assessment file—AO in remand report had not brought on record or otherwise after issuing notices u/s 133(6) to said share applicants that companies were having sufficient funds in their account before making application for allotment of shares—AO had not brought on record that*

*cash amount was deposited in bank account by those share applicants before applying for allotment of shares—AO had also not brought on record that money belonging to assessee have been routed by way of share application money through conduit of those share applicants—Once share applicants (9) were traceable, their PANs, bank accounts, returns of income were available with AO and also available before ITAT, where specific share transactions were entered and shown by applicants, in that eventuality, assessee was able to discharge his onus—For purpose of bringing home, addition u/s 68, it was necessary that onus shifted to AO was required to be discharged by AO, as primary onus had already been discharged by assessee—There was one more reason that besides confirming by way of remand report, the Assessing Officer in the assessment year 2012-13 in the assessment order had again confirmed that after issuance of notices u/s 133(6), share applicants, their confirmations, ITRs etc. were examined/verified and kept on record—Nothing was brought on record by AO or by DR which shows that share applications made were not in accordance with law—Therefore, addition deleted by CIT(A) was required to be declared void—AO was bestowed with ample powers u/s 133(6) as well as s. 142(2)—AO should have exercised all his powers at his ends and should have made enquiries and brought on record some cogent material contradicting confirmations made in remand report as well as subsequent assessment order for AY 2012-13—Nothing was brought on record and therefore, no perversity or illegality was found in order passed by CIT(A)—Revenue's appeal dismissed.”*

Arceli Realty Ltd. Vs. ITO (2017) 50 CCH 154 (Mum.) (Trib.)

The facts in brief are that the assessee company is engaged in the business of building and developing various projects. As per the Revenue, an information was received from the investigation wing that Mr. Pravin Jain along with his related concerns was indulged in providing Hawala entries. The statement of Shri Pravin Jain and Ors was recorded wherein they admitted that they are engaged providing accommodation entries in lieu of cash which are routed through the companies under his control. The assessee company has taken share application money from M/s Yash V-Jewel Ltd. and M/s Alka Diamonds Industries Ltd. In response to notice u/s 133(6) of the Act, M/s Alka Diamonds Industries Ltd. submitted details whereas the notice issued M/s Yash V-Jewels Ltd. was returned unserved as 'unclaimed'. The assessee claimed that the payments on account of share application money was received through banking channel, board resolution was passed for investing the funds in the assessee company as share application, ROC return was filed, details of allotted shares were duly filed with the Ministry of Corporate Affairs and confirmation was obtained. It was pleaded that in spite of asking by the assessee, cross examination was not provided to the assessee. The Ld. AO, however, was of the view that the money received through banking channel is not sacrosanct as it does not prove

the credit worthiness of the assessee company and accordingly made addition u/s 68 which was confirmed by the Ld. CIT(A).

The Hon'ble ITAT after relying on the various case laws held that the AO has not brought any evidence on record that the amounts received from M/s Alka Diamond Industries Ltd. and M/s Yash V-Jewels Ltd. are merely accommodation entries. The Ld. Assessing Officer merely relied upon the information received from the investigation wing and did not make any independent enquiry. The Assessing Officer was expected to disprove the claim of the assessee with the help of evidence, if any, received from the investigation wing, as has been claimed by the Revenue. The Revenue has nowhere proved that any malafide is done by the assessee. Failure to do so, vitiates the addition made under the set of facts. In the present case, the Assessing Officer has not brought any evidence on record that the amounts received from M/s Alka Diamond Industries Ltd. and M/s Yash-V-Jewels Ltd. are merely accommodation entries. As mentioned earlier, the Ld. Assessing Officer has acted merely on the basis of information received from the Investigation wing. The ratio laid down by Hon'ble Delhi High Court in CIT vs. Vrindaban Farms Pvt. Ltd. squarely gives shelter to the assessee, wherein, it was held that if the identity and other details of share applicant are available, the share application money cannot be treated as undisclosed income in the hands of the company. In the present case, the assessee even has proved the source of source, therefore, the creditworthiness was also proved, consequently, no addition made u/s 68 of the Act can be said to be justified. assessee duly furnished the proof of identity like PAN, bank account details from the bank, other relevant material, genuineness of the transaction, payment through banking channel and even the source of source, therefore, the assessee has proved the conditions laid down u/s 68 of the Act. It is also noted that in spite of repeated request, the Ld. Assessing Officer did not provide opportunity to cross examine the concerned persons and even the relevant information and allegation, if any, made therein, which has been used against the assessee, was not provided to the assessee. At this stage, Tribunal add here that mere information is not enough rather it has to be substantiated with facts. The information may and may not be correct. For fastening the liability upon anybody, the Department has to provide the authenticity of the information to the person against whom such information is used. The principle of natural justice, demands that without confronting the assessee of such evidence, if any, or the information, no addition can be made. Even otherwise, as per Article-265 of the Constitution of India, only legitimate taxes has to be levied and collected. The assessee has duly discharged the onus cast upon it u/s 68 and accordingly, the addition so made is deleted.

7. The AO at Para 4.18, 4.19, 4.20 & 4.22 has relied on certain decisions of ITAT, Delhi Bench and Hon'ble Delhi High Court. The Ld.

CIT(A) at Para 8.4 to 8.12 has also referred to the decision of Hon'ble Delhi High Court in case of Oasis Hospitality Pvt. Ltd., Kamdenhu Steel & Alloys Ltd. NDR Promoters Pvt. Ltd., NR Portfolios Pvt. Ltd. and the observation of Hon'ble Supreme Court in case of Kalekhan Mohammed Hanif, Roshan D. Hatti, Sumati Dayal, P. Mohankala and NRA Iron & Steel Pvt. Ltd. It may be noted that the decisions of Delhi Bench and Delhi High Court referred by AO/ CIT(A) were pronounced prior to 2018. The facts of these cases are different from the assessee. Similarly the principal laid down in the decisions referred by Hon'ble Supreme Court are not applicable to the facts of the assessee's case. As against this the assessee has relied upon the various decisions including of Delhi High Court, Bombay High Court and of various Tribunals which were delivered in 2019 and thereafter. The cases relied by the assessee have not been distinguished by Ld. CIT(A). The decision of Hon'ble Supreme Court in case and NRA Iron & Steel Pvt. Ltd. 412 ITR 161 has been considered and distinguished by ITAT, Mumbai Bench in case of DCIT Vs. Acro Exports Trade Pvt. Ltd. (supra). Therefore, the decisions relied by the AO & CIT(A) are not applicable to the facts of the case of assessee.

In view of above, addition confirmed by the Ld. CIT(A) be directed to be deleted.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	Particulars	Pg No.	Filed before AO/CIT(A)
1.	Copy of submission filed before Ld. CIT(A)	1A-17A	CIT(A)
2.	Copy of index of paper book filed before Ld. CIT(A)	18A-19A	CIT(A)
3.	Copy of acknowledgment of return along with computation of total income filed in response to notice issued u/s 148 of Act	1-3	Both
4.	Copy of audit report along with Balance Sheet & Profit & Loss account for A.Y. 2011-12	4-19	Both
5.	Copy of replies filed by assessee during assessment proceeding:  i. Dated 28/11/2018	20-21	

	<ul style="list-style-type: none"> <li>ii. Dated 06/12/2018</li> <li>iii. Dated 14/12/2018</li> <li>iv. Dated 18/12/2018</li> <li>v. Dated 19/12/2018</li> <li>vi. Dated 13/02/2019</li> </ul>	<p>22-29</p> <p>30-32</p> <p>33-34</p> <p>35</p> <p>36-37</p>	Both
6.	<p>Copy of documents in respect of share capital:-</p> <ul style="list-style-type: none"> <li>I. Arjit Securites Pvt. Ltd.: <ul style="list-style-type: none"> <li>i. Copy of Share Application Form</li> <li>ii. Copy of Board Resolution</li> <li>iii. Copy of Affidavit</li> <li>iv. Copy of ITR of A.Y.2009-10</li> <li>v. Copy of audited Financial Statements</li> <li>vi. Copy of Bank Statement</li> <li>vii. Copy of PAN Card</li> <li>viii. Copy of Master data of the company</li> </ul> </li> <li>II. Seatrans Dan Shipping Pvt. Ltd.: <ul style="list-style-type: none"> <li>i. Copy of Share Application Form</li> <li>ii. Copy of Affidavit</li> <li>iii. Copy of Board Resolution</li> <li>iv. Copy of ITR</li> <li>v. Copy of audited Financial Statements</li> <li>vi. Copy of Director's Report</li> <li>vii. Copy of Certificate of incorporation</li> <li>viii. Copy of PAN Card</li> <li>ix. Copy of Master data of the company</li> </ul> </li> <li>III. Parmatma Tours and Travels Ltd.: <ul style="list-style-type: none"> <li>i. Copy of Share Application Form</li> <li>ii. Copy of Board Resolution</li> <li>iii. Copy of Affidavit</li> <li>iv. Copy of ITR</li> <li>v. Copy of audited Financial Statements</li> </ul> </li> </ul>	<p>38-41</p> <p>42-43</p> <p>44-45</p> <p>46</p> <p>47-55</p> <p>56-58</p> <p>59</p> <p>60</p> <p>61-64</p> <p>65-66</p> <p>67-68</p> <p>69</p> <p>70-79</p> <p>80-81</p> <p>82</p> <p>83</p>	Both

	vi. Copy of Director's Report	84	
	vii. Copy of Bank Statement		
	viii. Copy of Certificate of incorporation		
	ix. Copy of PAN Card	85-88	
	x. Copy of Master data of the company	89-90	
		91-92	
	IV. Yamroosh Investments Pvt. Ltd.:	93	
	i. Copy of Share Application Form	94-103	
	ii. Copy of Board Resolution	104-105	
	iii. Copy of Affidavit	106	
	iv. Copy of audited Financial Statements	107	
	v. Copy of Director's Report	108	
	vi. Copy of Bank Statement	109	
	vii. Copy of PAN Card		
	viii. Copy of Master data of the company		
		110-111	
		112	
		113	
		114-123	
		124-125	
		126	
		127	
		128	
7.	Copy of affidavit dt. 15.05.2014 of Sh. Praveen Kumar Jain retracting from his statement	129-133	Both
8.	Copy of reasons recorded for re-opening assessment u/s 147	134-137	Both

**Case laws relied upon:**

S. No.	Particulars	Pg No.
1.	Copy of decision of Hon'ble Supreme Court in case of GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19	1-2
2.	Copy of decision of Hon'ble Rajasthan High Court in case of M/s K.C. Mercantile Ltd. Vs. DCIT DBIT Appeal No.292/2016 order dt. 07.11.2017	3-33
3.	Copy of decision of Hon'ble Calcutta High Court in case of PCIT Vs. Sanjay Mehta (2024) 298 Taxman 673	34-35
4.	Copy of decision of Hon'ble ITAT, Jaipur Bench in case of Yashpal Agrawal Vs. ITO ITA No.268/JP/2023 order dt. 30.06.2023	36-46
5.	Copy of decision of Hon'ble ITAT, Jaipur Bench in case of Sh. Jaideep Singh Vs. ITO ITA No.1030/JP/18 order dated 02.06.2021	47-70
6.	Copy of decision of Hon'ble Delhi High Court in case of PCIT Vs. Tupperware India Pvt. Ltd. (2015) 127 DTR 161	71-76
7.	Copy of decision of Hon'ble Madras High Court in case of CIT Vs. Pentafour Software Employees Welfare Foundation (2019) 183 DTR 385	77-86
8.	Copy of decision of Hon'ble ITAT, Delhi Bench in case of Bhaijee Commodities (P.) Ltd. Vs. ACIT (2023) 202 ITD 757	87-101
9.	Copy of decision of Hon'ble Bombay High Court in case of Rajshree Realtors (P) Ltd. Vs. Union of India (2023) 294 Taxman 228	102-109
10.	Copy of decision of Hon'ble Supreme Court in case of CIT Vs. Lovely Exports (P) Ltd. (2008) 6 DTR 308	110
11.	Copy of decision of Hon'ble Supreme Court in case of Andaman Timber Industries Vs. CCE (2015) 127 DTR 241	111-113
12.	Copy of decision of Hon'ble Supreme Court in case of PCIT Vs. Adamine Construction (P) Ltd. (2019) 264 Taxman 279	114
13.	Copy of decision of Hon'ble Bombay High Court in case of PCIT Vs. Ami Industries (India) Pvt. Ltd. (2020) 271 Taxman 75	115-120
14.	Copy of decision of Hon'ble Rajasthan High Court in case of CIT Vs. Supertech Diamond Tools Pvt. Ltd. (2015) 229 Taxman 62	121-125
15.	Copy of decision of Hon'ble Delhi High Court in case of PCIT Vs. Laxman Industrial Resources Ltd. (2017) 397 ITR 106	126-129
16.	Copy of decision of Hon'ble ITAT, Jaipur Bench in case of M/s Balaji Health Care Pvt. Ltd. Vs. ITO(E) ITA No.566 & 567/JP/2018 order dt. 30.01.2019	130-147

17.	Copy of decision of Hon'ble ITAT, Mumbai Bench in case of DCIT & Ors. Vs. Acro Exports Trade Pvt. Ltd. (2019) 56 CCH 446	148-174
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7. The Id. AR of the assessee in addition to the written submission so filed vehemently argued on the technical ground challenging reopening of the assessment as per provisions of Section 147 of the Act, he stated that Id. AO incorrectly stated the fact that the assessee has not raised any objections to the reasons of reopening of the case. In fact, the assessee vide letter dated 16.12.2018 (APB 22 -24) raised objection to the issue of notice u/s 147 of the Act. The Id. AO did not dispose of the objections so raised and therefore, considering the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19, the entire proceeding is illegal and bad in law and require to the quashed.

Even Ld. CIT(A) did not dispose of these ground and he has simply sustained the reopening without dealing with this aspect of the matter and therefore, ground No. 1 raised by the assessee is required to be allowed.

So far as ground No. 2 is concerned, the Id. AR of the assessee stated that the assessee has proved the identity,

genuineness and capacity by providing requisite details as appearing from at page no. 22 to 128 of the paper book so filed. None of the information so filed were proved to be false thus, even on merit of the case, the addition is required to be deleted as they were made merely relying on the statement of the Shri Praveen Kumar Jain. That statement has been retracted by filing an affidavit on 15.05.2024 (APB 129-133). Considering this aspect of the matter the addition is required to be deleted.

8. Per contra, Ld. DR appearing on behalf of the Revenue stated that letter so relied for contending that they have raised an objection for reopening of the assessee is not proper and does not deal with that subject and therefore, the assessee has not raised any objection to the issue of notice u/s 148 of the Act and thus, the contention is incorrect. Based on these arguments, Ld. DR supported the orders of the lower authorities as the assessee failed to prove the genuineness of the credit.

9. We have heard the rival contentions and perused the material placed on record. Ground no. 2 raised by the assessee challenges the confirmation of addition of Rs. 2,68,00,000/-.

Brief facts of the disputes are that the assessee filed the return of income on 30.09.2011, declaring income of Rs. 1,96,00,340/-. That return was processed u/s 143(1) of the Act. Thereafter, the case was reopened u/s 148, after recording reasons and obtaining due permission. Notice u/s 148 was issued on 28.03.2018, which was duly served upon the assessee. In response to the statutory notices issued during the proceedings, details were submitted from time to time by the assessee. Assessee Company is engaged in running retail chains of branded clothes. Based on the information received from the Investigative Directorate, Mumbai from Dy Director of Income Tax(Investigation), Unit 6(4) Mumbai that the assessee company has managed and received accommodation entry in form of share premium and introduced unaccounted cash in the books of account. The information was based on a search operation carried out on Shri Pravin Kumar Jain and group whose statements were recorded for this purpose.

Ld. AO analyzed that information which contains a brief report on the modus operandi of the entry provider, details of bank account from which cheque / RTGS was made to the assessee

company. The assessee company received amount of Rs. 47,00,000/- from Axis Bank Ac No. 233010200020970 of M/s Parmatma Tours and Travels Pvt. Ltd on 21.06.2010 as share premium amount. The modus operandi of accommodation entry has been admitted by Shri Pravin Kumar Jain in his statement dated 18.02.2013 wherein reply to Question No. 13 to 16, he has admitted that he was engaged in providing accommodation entries to the willing beneficiaries in lieu of cash and earning commission on such entries. The modus operandi of this scam was that the entry operators would receive unaccounted cash from the beneficiaries companies and provide them accommodation entry in form of share premium by rotating the money in various dubious bank accounts managed and controlled by the entry operator. The entry providers charged commission on these entries.

Based on these information Id. AO verified Return of income filed by the assessee company which shows a share premium of Rs. 3,90,60,000/- and share application money of Rs. 5,59,00,000/- in the Balance Sheet of the assessee company was there as on 31.03.2011. Further, list of allottees of share premium by the assessee company has been downloaded from the website

of Ministry of Company Affairs, [www.mea.gov.in](http://www.mea.gov.in) and it shows that share were allotted to the company based on the information received from the investigation wing Mumbai. As in this case, more than four years have lapsed from the end of assessment year under consideration, necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income Tax-2, Jaipur as per the provisions of section 151 of the Act. Accordingly notice u/s. 148 of the Act was issued on 28.3.2018 to the assessee and was duly served.

Thereafter, notice u/s 142(1) and u/s 143(2) were issued in response to which the assessee furnished the details called for. The assessee filed ITR in response to notice u/s 143(2) on 27.04.2018. The assessee requested for supply of reasons for reopening which were duly provided to it on 11.10.2018. The assessee did not raise any objections to the reasons of reopening as noted by the Id. AO whereas the assessee contend that they have raised the objections which were not disposed off by the AO and therefore, the assessment was challenged on that ground also. The assessee was issued a show cause notice in response to which submissions were made by the assessee. The details

furnished by the entity were considered. Based on the information available on record the Id. AO noted that the assessee has claimed to have received share application money from various entities during the year including the four entities being Arjit Securities Pvt. Ltd of Rs. 81 Lacs. Seatrans Dan Shiroma Pvt. Ltd. of Rs. 90 Lacs, Parmatma Tours and Travels Pvt. Ltd of Rs. 72 Lacs and Yomroosh Investment Pvt. Ltd, of Rs. 25 Lacs., totaling to Rs. 2,68,00,000/-.

In respect of those companies investigation was carried out by the revenue wherein it was revealed that these entities were not engaged in any real business but were merely paper companies operated by entry operators and formed for the sole purpose of providing bogus entries of share premium / share application money or loans or expenses. The Id. AO then discussed the detailed modus operandi, details of the directors of these companies, Share capital of those investor companies and their income and assets owned, present status on the ROC records, statement recorded of Shri Praveen Kumar Jain and others statement after discussing that Id. AO relied upon the various case laws as discussed in the order Id. AO and he held that Rs.

2,68,00,000/- obtained from Arjit Securities Pvt. Ltd of Rs. 81 Lacs. Seatrans Dan Shiroma Pvt. Ltd. of Rs. 90 Lacs, Parmatma Tours and Travels Pvt. Ltd of Rs. 72 Lacs and Yomroosh Investment Pvt. Ltd, of Rs. 25 Lacs are bogus share application money and added as per provision of section 68 of the Act.

While dealing with the appeal of the assessee the Id. CIT(A) relying on the decision of the NRA Iron and Steel Private Limited dismissed the appeal of the assessee contending that the assessee has not proved the identity, genuineness and credit worthiness of these companies and therefore, the addition made by the Id. AO was sustained. Ld. CIT(A) also emphasized that even the addition is based on the statement recorded during the search carried out at the premises of Shri Praveen Kumar Jain.

The assessee before us challenged the order of the Id, CIT(A) contending that the case laws relied upon by the revenue is not applicable as the assessee has already placed on record all the details regarding the identity, genuineness of the transaction and capacity of the investor at page 20 to 128 of the paper book filed by the assessee. Even the Id. AO at this stage though Id. DR did not challenge the records so produced by the assessee. Thus,

once the identity of the share holder is proved then revenue is free to proceed against those investor as per law but the same cannot be treated as undisclosed income of the assessee. We get support for this contention from the decision of the apex court in the case of Lovely Exports(supra) where it is has been held that if the share application money is received by the assessee company from alleged bogus share holders whose name are given to the AO, the department is free to proceed to re-open their individual assessment in accordance with law but it cannot be regarded as undisclosed income of the assessee company.

The bench also noted that the revenue has starting from the re-opening of the case relied upon the statement of Shri Praveen Jain who has retracted from this statement and filed an affidavit to this effect ( page 129-133) there is no other material to that effect has been placed on record and therefore, in addition to the decision of the apex court in the case of Lovely Exports we also get support from the decision of our Rajasthan High Court in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 stating that the merely based on the

retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

6. In the background of the aforementioned facts, Mr. K.K. Bissa, the learned standing counsel submits that the findings recorded by the Tribunal are ex-facie erroneous and contrary to the materials on record. The learned counsel for the appellant submits that on examination of the soft data seized and impounded in course of the search proceeding, it was detected that Shirish Chandrakant Shah had provided one-time entry of Rs.3,00,00,000/- to the assessee-company through a broker named Hiren Shah and such transaction was not genuine.

7. After having considered the materials on record, we are of the opinion that the Tribunal has rendered the findings on the basis of the materials on record. The Tribunal held as under:

" .....

12. From the record, it is evident that the appellant has furnished each and every document required for proving the identity, creditworthiness of the share applicants and genuineness of the transactions whereas the AO or the DR has not been able to brought on record any evidence to show that cash was paid by the appellant company to Shri Shirish Chandrakant Shah or any other person for obtaining accommodation entries from M/s Ganesh Spinners Ltd., M/s Emplis Projects Ltd., M/s Speciality papers Ltd., M/s Dhanus Technologies Ltd. And M/s Sanguine Media Ltd. in the form of share application money of Rs. 3,00,00,000/- either in the assessment proceeding or remand furnished before the CIT(A) or before us. On similar facts, the Ld. CIT (A) has rightly relied on the decision delivered by the ITAT Jodhpur *vide* its order dated 08.02.2018 in the case of M/s PSM Realmart Pvt. Ltd. (ITA No.321/Jodh/2017) on and the Coordinate bench of ITAT Delhi in the case of *CIT v. Nishit Fincop. P.Ltd.* (ITA No.15/Del./2010) where the addition made u/s 68 has been deleted. The Id. CIT(A) further relied upon the decision of Jurisdictional ITAT in the case of PSL Relmart and decision of Supreme Court in the case of Andman Taubar Industries (Civil Appeal No.4228 order dated 02.09.2015) while deleting the addition of Rs.3,00,00,000/- made by the AO u/s 68 is hereby deleted.

.....

14. That the Ld. CIT(A) on a very detailed examination was satisfied about identity, creditworthiness and genuineness of the investor companies and held that the assessee had discharged the primary onus to prove their identity, creditworthiness, and genuineness. We, therefore, concur with the finding of the Ld. CIT(A) that the AO has made an addition under section 68 of the Act without any basis. In our view, the CIT(A) has analyzed the transaction with each share holder and

assigned reasons as to why share capital have to be treated as genuine and has rightly deleted the addition. There is no reason to interfere in this finding of fact particularly since nothing has been shown by the department to conclude that the finding of fact was perverse in any manner whatsoever. In view of that matter, we hold that the impugned order it did not suffer from any legal infirmity or perversity to the facts on record."

**8.** In "*Pankaj Bhargava and Anr. v. Mohinder Nath and Anr.*" AIR 1991 SC 1233, the Hon'ble Supreme Court held that if a question of law has been settled by the highest Court of the country that question, however important and difficult it may have been regarded in the past and however large may be its effect on any of the parties, would not be regarded as substantial question of law. The expression 'substantial question of law' has been explained by the Hon'ble Supreme Court in "*Sir Chunilal V. Mehta and sons Ltd. v. Century Spinning and Manufacturing Co. Ltd.*" AIR 1962 SC 1314 wherein the Hon'ble Supreme Court held that the proper test for determining whether a question of law raised in the case is substantial would be to find out whether it directly and substantially affects the rights of the parties and if so whether it is either an open question or is not free from difficulty or calls for discussion of alternative views.

**9.** Applying the aforesaid test, we find that the question sought to be raised in this Income Tax Appeal is not even a question of law. The ground taken by the appellant that the findings recorded by the Tribunal are contrary to records seems to have been raised just for the sake of creating a ground; nothing has been shown to this Court on this point. The findings recorded by the appellate Authority and the Tribunal are in consonance with the law of evidence and the Income Tax Act, in particular. On a glance at materials on record, we find that the Assessing Officer assessed M/s Esspal International Pvt. Ltd. under section 143(3) of the Income Tax Act, 1961 only on the basis of the statement given by Shirish Chandrakant Shah; though he has recorded that the assessment order is being passed after considering the "totality of the facts and circumstances the case".

**10.** The Assessing Officer held as under:

"....."

5. Thus, it is clear from above discussion that M/s. Esspal International Pvt. Ltd. Has received accommodation entries of Rs. 3.00 crores from Shri Shirish Chandrakant Shah.

6. In view of the above, it is crystal clear that the transactions made with the concerns owned or operated by Shirish Chandrakant Shah are not genuine and there are only paper transaction took place instead of actual transactions. Although the transactions are completed through banking channel after getting commission in case. Therefore, share

application money of Rs. 3,00,00,000/- shown by the assessee is treated as diversion of profits to evade the tax liabilities. Therefore, the amount of Rs. 3,00,00,000/- is added to the total income of the assessee. Penalty proceedings u/s.271(1) (c) are initiated for concealing income by furnishing inaccurate particulars of income.

Addition: Rs. 3,00,00,000/-

7. Shirish Chandrakan Shah in his statement has admitted that "rate of commission varying between 2.5% to 5% on the total benefits provided to the beneficiaries in form of LTCG, STCG, Sharge Application Money or unsecured loans. Therefore, on the basis of admission by Shirish Chandrakant Shah, commission of @2.50% for bogus accommodation entries of Rs. 3,00,00,000/- which amounts to Rs. 7,50,000/- is added to the total income of the assessee being undisclosed income. Penalty proceedings u/s.271(1)(c) are initiated for concealing income by furnishing inaccurate particulars of income.

Addition: Rs. 7,50,000/-

8. Subject to the above remarks and after considering the totality of the fact and circumstances of the case, the submissions of the assessee and the material available on the record the total income of the assessee is computed as under :-

Total income as per order u/s.143(3) dated 24.03.2014	6756612
Add: (1) On account of Bogus share application money as discussed in Para-6 as above	3,00,00,000
(2) On account of bogus share application money as discussed in para-7 as above	750000
Total Income f	37506612
Rounded off of Income u/s.288A	3,75,06,610/-

Assessed u/s.143(3) of the Income Tax Act, 1961 at total income of Rs. 3,57,56,610/-. Demand Notice, Challan & other forms are also hereby issued as per ITNS-150 which is forming part of this assessment order. Penalty Notice u/s.271(1)(c) of the Income Tax Act, 1961 is being issued separately for concealing income by furnishing inaccurate particulars of income."

11. Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court;

one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.

**12.** Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

**13.** For the foregoing reasons, D.B. Income Tax Appeal No.25/2024 is dismissed.

Respectfully following the finding of apex court in the case of Lovely Export and our High Court decision that the addition cannot be made on the retracted statement, ground no. 2 raised by the assessee is allowed.

Since we have considered the appeal of the assessee on merits ground no. 1 raised by the assessee being challenging the order of the AO on technical ground becomes educative in nature and the same is not required to be adjudicated.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 17/10/2024.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 17/10/2024

**\*Ganesh Kr., Sr. PS**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Samarth Lifestyle Retailing Pvt. Ltd.,  
Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-06, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 621/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar