

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.252/Nag./2018
(Assessment Year : 2012-13)

Dy. Commissioner of Income Tax
Circle-2, Nagpur Appellant

v/s

M/s. N. Kumar Construction Co. Pvt. Ltd.
7th Floor, Poonam Plaza, Palm Road Respondent
Civil Lines, Nagpur 440 001 AABCN9937H

Appellant by : Shri Manoj G. Moryani
Revenue by : Shri Vikash Agrawal

Date of Hearing – 06/11/2024

Date of Order – 06/12/2024

ORDER

PER K.M. ROY, A.M.

The appeal filed by the Revenue is against the impugned order dated 01/08/2018, passed by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, [*learned CIT(A)*], for the assessment year 2012-13.

2. The Revenue has raised the following grounds in its appeal:-

"1. On the facts and circumstances of the case the Ld. CIT(A)-2, Nagpur has erred in deleting the addition of Rs. 6,58,12,500/- made in assessment under the provisions of section 68 of the Income Tax Act, 1961 by not appreciating the correct facts of the case as emerged during the course of Investigation which yielded that the entries obtained were accommodating entries using the vicious cycle using various accounts.

2. On the facts and circumstances of the case, the Ld. CIT(A)-2, Nagpur erred in not appreciating the larger vicious cycle wherein larger network was created to provide accommodation entries.

3. Any other ground which may be raised during the course of hearing."

3. Fact in Brief :- The assessee is engaged in the business of construction and for the year under consideration filed its return of income on 11/10/2010. The case was re-opened and notice under section 148 of the Income Tax Act, 1961 ("*the Act*") was issued on 11/03/2016. The assessee has raised objections against issue of notice under section 148. Since it was mandatory to file the return of income electronically in response to notice under section 148, the assessee has again filed the return of income electronically on 15/07/2016 declaring net taxable income at ₹ 10,89,807. Notices under section 143(2) and 142(1) were issued to the assessee. The case was re-opened on the basis of information received from DCIT, Central Circle-1(1), Ahmedabad, that the assessee company had obtained accommodation entries worth ₹ 6,58,12,500, from various companies. The assessee submitted copies of audited Balance Sheet, PAN details, and Memorandum and Articles of Association. The assessee received advance against booking of property through proper banking channel in the earlier years and the same were duly shown in the books of accounts of the assessee. Later on the aforesaid bookings were cancelled and the assessee has allotted shares against the said amount during the previous year relevant to assessment year 2012-13. The assessee has also submitted all the details of allotment of share and other relevant details called from time to time during the course of assessment proceedings. In view of a search and survey action carried out at the residence and office premises of one Shri Shirish Chandrakant Shah, at Mumbai, who is allegedly engaged in providing accommodation entries of share premium to various clients and against this

cash provided these accommodation entries, statement was recorded during the course of search and post-search proceedings. Such statement was used as material evidence in the case of the assessee. During the course of assessment proceedings, the learned Counsel for the assessee requested that summons under section 131 of the Act may be issued to Shri Shirish Chandrakant Shah, and opportunity to cross-examine may be granted. The Assessing Officer, for the reasons discussed in Para-4 and 5 of the assessment order, made the addition of ₹ 6,58,12,500 to the total income of the assessee. While framing the assessment order, the Assessing Officer has made addition on account of seven companies though the addition on account of two companies out of seven companies were already been made in the assessment year 2010-11. Being aggrieved, the assessee preferred appeal before the first appellate authority.

4. On appeal before the learned CIT(A), following submissions were made by the assessee, which were also reproduced by the learned CIT(A) in its order vide Page-4 to 26.

"The assessee has e-filed return of income on 31/03/2014 vide acknowledgment No. 173102581310314 declaring net taxable income at Rs. 10,89,807/- alongwith Audit Report and audited Profit & Loss Account and Balance Sheet and schedules. The assessee has submitted the copy of acknowledgment of return, computation of income alongwith Audit Report and audited Profit & Loss Account and Balance Sheet and schedules, which is on Page-1 To 23 of the Paper Book and same were submitted during the course of assessment proceedings before the assessing officer.

Notice U/s. 148 has been issued to the assessee on 11/03/2016 and in response to notice U/s. 148 the assessee submitted the reply. The assessee encloses herewith copy of notice U/s. 148 and reply, which is on Page-24 & 25 of the Paper Book. Since it was mandatory to e-file the return of income in response to notice U/s. 148 the assessee has again e-filed the return of income on 15/07/2016 declaring total income at Rs. 10,89,807/-.

Notice U/s. 142(1) has also been issued to the assessee on 15/07/2016 alongwith reasons for re-opening of case. In response to notice the assessee has submitted the reply and raised objection for issuing of notice U/s. 148. The assessee encloses herewith copy of notice U/s. 148 and reasons alongwith objection reply, which is on Page-26 To 35 of the Paper Book. In the reasons for reopening the assessing officer has stated that the basis of information received from DCIT, Central Circle-1(1), Ahmadabad that the assessee has obtained accommodation entries worth of Rs. 6,58,12,500/- from various companies.

A search and survey action was carried out at the residence and office premises of Shri Shirish Chandrakant Shah at Mumbai, who is engaged in providing accommodation entries of shares premium from various clients and against this cash provides these accommodation entries. The statement was recorded behind the back during the course of search and post search proceedings. During the course of assessment proceedings the counsel for the assessee requested that summon U/s. 131 may kindly be issued to Mr. Shirish Shah and opportunity to cross examine may kindly be granted but the learned assessing officer has not accepted the contention of the assessee and without giving opportunity to cross examine Mr. Shirish C. Shah made addition of Rs. 6,58,12,500/-.

The assessee has received share premium of Rs. 6,58,12,500/- from various parties & allotted shares accordingly. The same is duly shown in the return of income filed by the assessee. Earlier assessee has received notice in the year 2014 and assessee has duly complied and submitted all the details regarding the share premium received and also submitted all the details of the various parties to whom the shares were issued alongwith premium details. The assessee encloses herewith the copy of the reply filed by the assessee in the year 2014 for your kind perusal.

The assessee further respectfully submits as under

The assessee has received total share premium of Rs.6,58,12,500/- from various parties & allotted shares accordingly. The details are as under :

1. Aadhar Ventures India Ltd at Rs.48,75,000/-
2. Prabhav Industries Ltd at Rs.1,46,25,000/-
3. Dhanus Technologies Ltd at Rs.1,45,25,000/-
4. Avance Technologies Ltd at Rs.63,37,500/-
5. Venmax Drugs & Pharmaceutics Ltd at 4875000/-
6. Yantra natural Resources Ltd. at 1,07,25,000/-
7. L.N. Ind. India Ltd at Rs.97,50,000/-

The same were duly shown in the return of income filed by the assessee. Earlier assessee has received notice in the year 2014 and assessee has duly complied and submitted all the details regarding the share premium received and also submitted all the details of the various parties to whom the shares were issued alongwith premium details.

The assessee specifically mentions that assessee has received advance against booking of property in earlier years & shares on premium were allotted

during the previous year relevant to Asstt Year 2012-2013. The details of the various parties were as under :

- A) The assessee has also entered into agreement to sale dated 31/03/2010 with M/s. Avance Technologies Limited through its director Mr. Deepak Satyaprakash Goyal and decided to sale Showroom No. 22A, admeasuring about 6835 Sq. Ft. situated on ground floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 65,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-76 To 79 of the Paper Book.
- B) The assessee has entered into agreement to sale dated 31/03/2010 with M/s. Prabhav Industries Ltd. through its director C.S. Gaikwad and decided to sale Showroom No. 22B, admeasuring about 11867 Sq. Ft. situated on ground floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 1,50,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-168 To 174 of the Paper Book.
- C) The assessee has entered into agreement to sale dated 31/07/2011 with M/s. Dhanus Technologies Limited through its director Mr. Darshan Shah and decided to sale Showroom No. 22B, admeasuring about 11867 Sq. Ft. situated on first floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 1,50,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-212 To 218 of the Paper Book.
- D) The assessee has entered into agreement to sale dated 31/03/2010 with M/s. Shri Ganesh Spinners Limited through its director Mr. Vijay H. Devlekar and decided to sale Showroom No. 22C, admeasuring about 9714 Sq. Ft. situated on ground floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 1,10,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-226 To 230 of the Paper Book.
- E) The assessee has entered into agreement to sale dated 31/07/2011 with M/s. L.N. Polyster Ltd. through its director Mr. S.S. Mistry and decided to sale Showroom No. 22A, admeasuring about 8750 Sq. Ft. situated on ground floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 1,00,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-319 To 325 of the Paper Book.
- F) The assessee has entered into agreement to sale dated 31/07/2011 with M/s. Venmax Drugs & Pharmaceuticals Ltd. through its director Mr. Hansa Jogadia and decided to sale Showroom No. 22D, admeasuring about 6250 Sq. Ft. situated on First floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 50,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee

submitted herewith copy of agreement to sale, which is on Page-381 To 387 of the Paper Book.

G) The assessee has entered into agreement to sale dated 31/07/2011 with M/s Adhar Venture India Limited through its director Mr. R.S. Sharma and decided to sale showroom No. 22 Cadmeasuring about 6000 Sq. Ft. situated on First floor in Shopping Mall cum Multiplex Complex constructed by the assessee and received sum of Rs. 50,00,000/- towards booking advance and shown in the books of account of the assessee. The assessee submitted herewith copy of agreement to sale, which is on Page-129 To 135 of the Paper Book.

There are dispute arises between assessee and aforesaid companies as per terms and condition of agreement to sale and failed to make payment of balance within stipulated time limit and also unable to make the payment in future alongwith interest due thereon. The assessee was also not in position to return booking advance after deduction of interest due to the seven company, since the assessee had already invested the aforesaid sum in its project. In order to avoid any further litigation in the matter it was amicably decided between assessee and directors of aforesaid companies that assessee will issue equity shares of the assessee company to said companies. In respect of said transaction seven the parties entered in to modification agreement from time to time. The assessee submitted herewith copy modification agreement of M/s. Avance Technologies Limited, which is on Page-69 To 71, M/s. Prabhav Industries Ltd., which is on Page-175 to 177, M/s. Dhanus Technologies Limited, which is on Page-219 to 221, M/s. Shri Ganesh Spinners Limited, which is on Page-231 to 233, M/s. L.N. Polyesters Limited, which is on Page-326 to 328, Venmax Drugs and Pharmaceuticals Limited, which is on Page-388 To 390, Adhar Venture India Limited, which is on Page-396 To 398 of the Paper Book. Thereafter the assessee has allotted the equity shares by applying formalities for issuing of equity shares.

The assessee has submitted all the details with respect of aforesaid transactions during the course of assessment proceedings before the assessing officer, the same are as under

1. With respect to Avance Technologies Limited, the assessee submits the following :

- i. The Avance Technologies Limited is assessed to tax vide PAN-AAECA5763B. The assessee encloses herewith the copy of PAN card of Advance Technologies Limited, which is on Page-57 of Paper Book. The postal address of company is #505, Midas Chambers, Off. Link road, Andheri-West, Mumbai-400053. The jurisdictional assessing officer of Avance Technologies Limited is ITO Company Circle - 8(1).
- ii. The assessee already submitted the copy of Memorandum of association and Article of association of Avance Technologies Limited alongwith copy of certificate of incorporation.
- iii. The assessee already submitted the copy of ITR - V of Avance Technologies Limited for the A.Y. 11-12 & 2012-13 and Copy of auditor report & Balance Sheet of Avance Technologies Limited for the A.Y.2010 -11, Form 23AC which is on Page-58 to 64 of Paper Book.

- iv. *So far as the bank statement of Avance Technologies Limited showing the transfer of funds is concerned, the assessee encloses herewith the copy of Bank Statement of Avance Technologies Limited, which is on Page-75 of Paper Book alongwith Copy of account of Avance Technologies Limited, which is on Page-68 of Paper Book.*
- v. *The assessee respectfully submits that all the shares allotted to Avance Technologies Limited were amount received earlier in F.Y. 2010-11 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2010 alongwith modification agreement, which is on Page-80 to 82 & 69 to 71 of Paper Book.*
- vi. *The assessee encloses herewith the copy of share application form of Avance Technologies Limited alongwith board resolution & copy of confirmation, which is on Page-72 To 74 of the Paper Book.*

2. *With respect to Aadhar Ventures India Limited, the assessee submits the following :*

- i. *The Aadhar Ventures India Limited is assessed to tax vide PAN – AABCP4155F. The assessee encloses herewith the details of PAN card of Aadhar Ventures India Limited which is on Page-395 of paper book. The postal address of company is 574/577, Belgium Square, opp. Liner bus stand, Ring road, Surat. The jurisdictional assessing officer of Aadhar Ventures India Limited is DC/ACIT, Circle -1.*
- ii. *The assessee encloses herewith the copy of Memorandum of association and Article of association of Aadhar Ventures India Limited alongwith copy of certificate of incorporation which is on Page-83 To 102 of paper book.*
- iii. *The assessee encloses herewith the copy of ITR-V of Aadhar Ventures India Limited for the A.Y. 11-12 and Copy of auditor report & Balance Sheet of Aadhar Ventures India Limited for the A.Y.2011-12 which is on Page 103 to 127 of paper book.*
- iv. *So far as the bank statement of Aadhar Ventures India Limited showing the transfer of funds is concerned, the assessee encloses herewith the copy of bank statement of Aadhar Ventures India Limited alongwith Copy of account of Aadhar Ventures India Limited which is on Page-128 of paper book.*
- v. *The assessee respectfully submits that all the shares allotted to Aadhar Ventures India Limited were amount received earlier in F.Y. 2010-11 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2010 and modification agreement which is on Page 129 to 135 & 395 To 398 of paper book.*

3. *With respect to Prabhav Industries Limited, the assessee submits the following :*

- i. *The Prabhav Industries Limited is assessed to tax vide PAN – AAACE4247Q. The assessee encloses herewith the copy of PAN card of Prabhav Industries Limited, which is on Page-136 of the Paper Book. The*

postal address of company is 902, Galav Chamber Opp. Sardar Patel Statue, Sayaji Gunj, Vadodara, Gujarat-390005. The jurisdictional assessing officer of Prabhav Industries Limited is Income Tax Officer, Ward-4(2) BRD/GUJ/W/304/02.

- ii. The assessee encloses herewith the copy of Memorandum of association and Article of association of Prabhav Industries Limited alongwith copy of certificate of incorporation, which is on Page-137 To 157 of Paper Book.
- iii. The assessee encloses herewith the copy of ITR – V of Prabhav Industries Limited for the A.Y. 11-12 and Copy of auditor report & Balance Sheet, Form 23AC of Prabhav Industries Limited for the A.Y.2010 -11, which is on Page-160 to 165 of Paper Book.
- iv. So far as the bank statement of Prabhav Industries Limited showing the transfer of funds is concerned, the assessee already submitted the copy of Bank Statement of Prabhav Industries Limited alongwith Copy of account of Prabhav Industries Limited, which is on Page-159 of Paper Book.
- v. The assessee respectfully submits that all the shares allotted to Prabhav Industries Limited were amount received earlier in F.Y. 2010-11 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2010 alongwith modification agreement, which is on Page-168 To 177 of Paper Book.
- vi. The assessee encloses herewith the copy of share application form of Prabhav Industries Limited alongwith board resolution & copy of confirmation which is on Page-166 & 167 of paper book.

4. With respect to Dhanus Technologies Limited, the assessee submits the following :

- i. The Dhanus Technologies Limited is assessed to tax vide PAN – AABCD3429L. The assessee encloses herewith the copy of PAN card of Dhanus Technologies Limited, which is on Page-181 of Paper Book. The postal address of company is 2AB, GEE GEE Emerald, 151, Village Road, Nungambakkam, Chennai-600034. The jurisdictional assessing officer of Dhanus Technologies Limited is DCIT COY CIR – I(4) CN/CHE/C/251/04.
- ii. The assessee encloses herewith the copy of Memorandum of association and Article of association of Dhanus Technologies Limited alongwith copy of certificate of incorporation, which is on Page-186 To 204 of Paper Book.
- iii. The assessee already submitted the copy of ITR – V of Dhanus Technologies Limited for the A.Y. 11-12 and Copy of auditor report & Balance Sheet of Dhanus Technologies Limited for the A.Y.2011 -12 during the course of assessment proceedings. The assessee encloses

herewith FORM 23AC reflecting the Balance sheet which is on Page-205 To 211 of Paper Book.

- iv. *So far as the bank statement showing the transfer of funds is concerned, the assessee already submitted the copy of Bank Statement of Dhanus Technologies Limited alongwith copy of account, during the course of assessment proceedings, which is on Page-182 of the Paper Book.*
 - v. *The assessee respectfully submits that all the shares allotted to Dhanus Technologies Limited were amount received earlier in F.Y. 2010-11 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2010 alongwith modification agreement, which is on Page-212 To 221 of Paper Book.*
 - vi. *The assessee encloses herewith the copy of share application form of Dhanus Technologies Limited alongwith board resolution & copy of confirmation, which is on Page-178 To 180 of Paper Book.*
5. *With respect to Yantra Natural Resources Limited earlier known as Shri Ganesh Spinners Limited, the assessee submits the following :*
- i. *The Yantra Natural Resources Limited is assessed to tax vide PAN – AACCS4221Q. The assessee encloses herewith the copy of PAN card of Yantra Natural Resources Limited, which is on Page-225 of the Paper Book. The postal address of company is H. No.8-3-678/66, First Floor, Pragati Nagar, Yousfguda, Hyderabad – 500045.*
 - ii. *The assessee encloses herewith the copy of Memorandum of association and Article of association of Yantra Natural Resources Limited alongwith copy of certificate of incorporation which is on Page-235 To 294 of Paper Book.*
 - iii. *So far as the bank statement of Yantra Natural Resources Limited showing the transfer of funds is concerned, the assessee already submitted the copy of Bank Statement of Yantra Natural Resources Limited and Copy of account and Form 23AC of Yantra Natural Resources Limited, which is on Page-234 & 295 To 301of Paper Book.*
 - iv. *The assessee respectfully submits that all the shares allotted to Shri Ganesh Spinners Limited were amount received earlier in F.Y. 2010-11 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2010 alongwith modification agreement, which is on Page-226 To 233 of Paper Book.*
 - v. *The assessee already submitted the copy of share application form of Yantra Natural Resources Limited alongwith board resolution & copy of*

confirmation during the course of assessment proceedings, which on Page-222 To 224 of Paper Book.

6. With respect to L. N. Industries India Limited, the assessee submits the following :
- i. The L. N. Industries India Limited is assessed to tax vide PAN – AAACL4102B. The postal address of company is 924/A Road No. 18, Jubilee Hills, Hyderabad-500033. The Jurisdictional Assessing Officer of L. N. Industries India Limited is 16(1).
 - ii. The assessee encloses herewith the copy of Memorandum of association and Article of association of L. N. Industries India Limited alongwith copy of certificate of incorporation, which is on Page-302 To 318 of Paper Book.
 - iii. The assessee already submitted ITR – V for the A.Y. 2011-12 and copy of auditor report & Balance Sheet of L. N. Industries India Limited for the A.Y.2011-12 during the course of assessment proceedings.
 - iv. So far as the bank statement of L. N. Industries India Limited showing the transfer of funds is concerned, the assessee already submitted the copy of Bank Statement of L. N. Industries India Limited alongwith copy of account.
 - v. The assessee respectfully submits that all the shares allotted to L. N. Industries India Limited were amount received earlier in F.Y. 2011-12 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2011 alongwith modification agreement, which is on Page 319 To 328 of Paper Book.
 - vi. The assessee already submitted the copy of share application form of L. N. Industries India Limited alongwith board resolution & copy of confirmation, for your kind perusal.
7. With respect to Venmax Drugs and Pharmaceuticals Limited, the assessee submits the following :
- i. The Venmax Drugs and Pharmaceuticals Limited is assessed to tax vide PAN – AAACV1037C. The assessee encloses herewith the copy of PAN card of Venmax Drugs and Pharmaceuticals Limited, which is on Page-380 of the Paper Book. The postal address of company is Plot No.35, Opp. Bhaspan Hospital Shivbagh Colony Back Side of SR Nagar, Ameerpet, Hyderabad-500016.
 - ii. The assessee encloses herewith the copy of Memorandum of association and Article of association of Venmax Drugs and Pharmaceuticals Limited alongwith copy of certificate of incorporation, which is on Page-331 To 369 of Paper Book.

- iii. *The assessee already submitted Copy of auditor report & Balance Sheet of Venmax Drugs and Pharmaceuticals Limited for the A.Y. 2011-12, for your kind perusal. The assessee encloses herewith Form 23AC, which is on Page-370 To 376 of the Paper Book*
- iv. *So far as the bank statement of Venmax Drugs and Pharmaceuticals Limited showing the transfer of funds is concerned, the assessee already submitted the copy of Bank Statement of Venmax Drugs and Pharmaceuticals Limited alongwith Copy of account of Venmax Drugs and Pharmaceuticals Limited, which is on Page-329 of the Paper Book.*
- v. *The assessee respectfully submits that all the shares allotted to Venmax Drugs and Pharmaceuticals Limited were amount received earlier in F.Y. 2011-12 towards advance against booking of property and later on booking were cancelled and allotment of shares were made against the said amount during the previous year relevant to Asstt. Year 2012-13. The assessee encloses herewith the copy of agreement to sale executed in the year 2011 alongwith modification agreement which is on Page-381 to 390 of the paper book.*
- vi. *The assessee encloses herewith the copy of share application form of Venmax Drugs and Pharmaceuticals Limited alongwith board resolution & copy of confirmation, which is on Page-377 To 379 of Paper Book.*

The assessee has already submitted aforesaid all the details alongwith supporting documents during the course of assessment proceedings before the assessing officer. The learned assessing officer without going into merits of the case held that the amount received were accommodation entries.

The assessee further submits that so far as providing of accommodation entries from Prabhav Industries Ltd. & Avance Technologies Limited and all other companies were concerned the assessee submitted that

a. *The assessee denied the allegation made in notice that the share premium received were nothing but the accommodation entries. The assessee company received share premium at Rs.6,58,12,500/- from the companies as under :*

Sr. No.	Name of the companies	Amount of Premium
1.	Aadhar Ventures India Ltd., Surat	48,75,000/-
2.	Prabhav Industries Ltd. Vadodara	1,46,25,000/-
3.	Dhanus Technologies Ltd., Chennai	1,46,25,000/-
4.	Advance Technologies Ltd. Mumbai	63,37,500/-
5.	Venmax Drugs & Pharmaceuticals Ltd. Hyderabad	48,75,000/-
6.	Yantra Natural Resources Ltd., Hyderabad	1,07,25,000/-
7.	L.N. Ind. India Ltd., Hyderabad	97,50,000/-
	Total ...	6,58,12,500/-

The assessee has received advance against booking of property (Showroom) from above mentioned parties & the same were duly shown in the books of accounts of the assessee as well as in Audited Balance Sheet of the assessee as Advance received from Booking. Later on the booking were

cancelled and shares were allotted as per the modification agreements between the companies and assessee company. Therefore reason stated in notice that the share premium received above were nothing but the accommodation by Shri Shirish Chandrakant Shah to the assessee is totally denied. As per notice it was stated that it was admitted by Shri Shirish Chandrakant Shah in various statement recorded during the search and post search proceedings.

b. The assessee also denied the allegation made in notice that during the course of search and seizure action there were various material impounded by the department which mentioned that assessee company has obtained accommodation entries worth Rs.1,50,00,000/- from Prabhav industries Ltd. But while issuing the notice to assessee, details has not been provided to the assessee for proper adjudication of the matter. As per details stated in the notice there are no incrementing documents found in respect of the assessee company. Therefore allegations made in the notice are totally denied.

c. Shri Shirish C. Shah in his statement he stated and accepted that companies named M/s. Prabhav Industries Ltd and M/s. Avance Technologies Limited from whom assessee received share premium were being managed and controlled by Shri Shirish Shah and were used for providing accommodation entries of share capital/premium, share application, unsecured loan etc but The department has not provided the copies of statement recorded of Mr. Shirish C. Shah during the course of search for proper adjudication of the matter nor Shri Shirish C. Shah have stated to whom he has provided the accommodation entries.

d. The assessee also specifically denied all allegation made by Shri Shirish Shah. The assessee once again request that all the statement were recorded behind the back of the assessee. The assessee not aware of any statement even assessee do not know to Shri Shirish Chandrakant Shah. The assessee has requested several times that summons U/s. 131 may kindly be issued to Shri Shirish Chandrakant Shah and opportunity to cross examine Shri Shirish Chandrakant Shah may kindly be provided in the interest of justice. All the statements were recorded behind the back of the assessee and the same were not binding on the assessee. Therefore allegation made in the notice are totally denied.

e. Shri Jayesh Raichand Thakkar, the Director of M/s. Prabhav Industries from whom assessee have received share premium amounting to Rs.1,50,00,000/- on his statement on oath dated 10/02/2014 before DDIT(Inv), Unit-3, Ahmedabad stated and accepted that the activities of M/s. Prabhav Industries Ltd. were controlled and managed by Shri Shirish Shah Since F.Y. 2009-2010 but The department has not provided the copies of statement recorded of Shri. Jayesh Raichand Thakkar for proper adjudication of the matter. The assessee also request that summons U/s. 131 many kindly be issued to Shri. Jayesh Raichand Thakkar and opportunity to cross examine Shri Shirish Chandrakant Shah may kindly be provided in the interest of justice. Neither Shri Jayesh Raichand Thakkar accepted that he has provided accommodation entries and nor have stated to whom he has provided the accommodation entries. Therefore allegation made in the notice are totally denied.

Therefore, the allegations made are totally denied since transactions were made through proper banking channel and confirmations were also submitted regarding the said transactions.

The assessee has already submitted that the assessee is not known Shri Shirish C. Shah and the assessee has not provided any opportunity to cross examine to Shri Shirish C. Shah, therefore, all allegation made in aforesaid notice in various dates are totally denied.

The assessee also respectfully submitted that the transaction made with respect of advance received and later shares allotted is genuine transaction and made through proper banking channel. The department has not provided copies of the statement of the concerned parties and without affording an opportunity to the assessee to cross examine them. In view of the above all the allegations made in the notice are unjustified, unwarranted and excessive. The amount of share premium amounting to Rs. 6,58,12,500/- is genuine transaction and not to be added to total income of the assessee.

When the assessee has himself proposed for issuing summon U/s. 131 to called for cross examine, even though the assessee has submitted the all the details of company during the course of assessment proceedings. The learned assessing officer has failed to grant opportunity being cross examine the directors and has also failed to verify the documents submitted by assessee are genuine or not and made addition on assumption and presumption basis. When all transactions were made through proper banking channel as well as duly reflected in the books of account as well as shown in audited balance sheet of the assessee. The assessing officer has not been found any defect in the books of account as well as documents submitted by the assessee during the course of assessment proceedings.

The assessee also draws attention to the following points on the basis of which appeal filed by the assessee may kindly be allowed

1. The assessee has received advance against booking of property (Showroom) from various companies in the earlier years & later on booking were cancelled and shares were allotted to companies and the same were duly shown in the books of accounts of the assessee as well as in Audited Balance Sheet of the assessee also which was evidence from the details submitted by the assessee.
2. The assessee has received advance against booking by cheque though proper banking channel. The details of cheque amount were reflected in the bank statement of the assessee, which is evidence from bank statement.
3. The assessee has filed confirmation, PAN card, copies of income Tax returns, name & address, Memorandum of Association, Certificate of Incorporation, Auditor Report, Balance Sheet and Bank statement, copy of agreement to sale and modification agreement showing the genuineness of the transaction and creditworthiness and identity of the company.
4. The assessing officer has relied on the statement of Shirish Shah and on the basis of impounded material found during the course of search and survey action carried out at the residence and office premises of the Shirish Shah.

The assessing officer issue notices U/s. 133(6) to L.N Industries, Prabhav Industries Ltd., Yantra Natural Resources Ltd, Venmax Drugs & Pharmaceuticals, Avance Technologies Limited & Adhar Ventures India Ltd. to confirm the transaction. All the companies had confirmed the transaction, copy of the confirmation, which is on Page-74, 167, 180, 224, 379 & 394 of the Paper Book

5. The assessee denies the allegation that amount received were accommodation entries. The assessing officer did not cross examine Shri Shirish Shah and not provided any opportunity to cross examine Shri Shirish Shah. The assessee were not allowed to cross examine Jayesh Thakar D/o. Prabhav Industries. Though the assessee has made several request for the same. Hence the amount cannot be assessed as undisclosed income of the assessee in the absence of positive material brought by Revenue to prove that the amount in fact belonged to assessee as the burden lies on the Revenue.

6. The assessee further submitted the details of the companies from whom advance against booking were received and no share on premium were allotted during the previous year relevant to Asstt. Year 2010-2011, therefore there is no question of providing any accommodation entries arises at all.

7. The assessee has established identity of depositor then therefore, addition U/s. 68 could not be made on the ground that assessee failed to explain the source of credit.

8. Once the authorities have got all the details including the names and addresses of the company, their PAN, Name of bank from which received the money, confirmation of the companies, then it cannot be termed as bogus. The issue is covered by the judgment in case of CIT -Vs.- Creative World Telefilms Ltd. (2011) 333 ITR 100 (Bom). In such circumstances there is no justification in addition making the under section 68 of the Income Tax Act, 1961.

9. There is no evidence that the entire transaction was sham and bogus transaction. The assessee has submitted that assessee company has established identity and creditworthiness of the entities as well as proved the bonafides and genuineness of transaction beyond doubt.

10. The amount of share premium cannot be treated as income U/s. 68. Issue covered by the case of green Infra Ltd. by ITAT, Mumbai bench.

11. Once the authorities have got all the details including the names and addresses of the Company/Shareholders, their PAN , Name of bank from which the alleged investor received money as share application then it cannot be termed as bogus. The issue is covered by the Hon'ble Supreme Court Judgment in the case of Lovely Exports Pvt. Ltd. (2008) 216 CTR (SC) 195, as also in CIT vs Creative World Telefilms Ltd (2011) 333 ITR 100 (Bom). In such situation there is no justification in making addition made under section 68 of the Income Tax Act 1961 neither suffers from any perversity nor gives rise to any substantial question of law.

12. It is settled law that once the identity of shareholders are established the addition on account of share application/ Share premium & share capital has to be considered in the hands of the shareholders.

13. *It was wrong on the point of the learning assessing officer transaction was treated as unexplained credit U/s. 68 of the Income Tax Act;*
14. *The whole assessment is based on suspicion and surmise on the basis of statement recorded during the search and survey action of Shri Shirish Chandrakant Shah which were not confronted to the assessee;*
15. *The order of the assessing officer is arbitrary and without affording the reasonable opportunity to the assessee. There is violation of principles of natural justice to the assessee;*
16. *Suspicion cannot be a good evidence for the purpose of assessment unless it is corroborated by clinching evidence brought on record after affording reasonable opportunity to the assessee;*
17. *These facts which emerge from the assessment order in no way have been disputed by the assessing officer. No direct evidence has been brought on record by the assessing officer to show that the transaction was an arranged/bogus transaction;*
18. *The assessing officer has not been able to bring any evidence on record to show that the transaction made by the assessee are factious;*
19. *Transactions having been regularly accounted in the books of account of seven the parties even the transaction has been confirmed by the party. This fact has been confronted to the assessing officer;*

On the above mentioned preposition assessee placed reliance on following judgments

- 1) *Judgment of Income Tax Appellate Tribunal, "C" Bench, Mumbai dated 07/02/2014 vide ITA No. 1867/Mum/2012 in case of M/s. Orchid Industries Pvt. Ltd. -Vs.- DCIT, CC-22, Mumbai*
- 2) *Judgment of High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction dated 20/03/2017 vide ITA No. 1613 of 2014 in case of Commissioner of Income Tax-1 -Vs.- M/s. Gagandeep Infrastructure Pvt. Ltd.*
3. *(2011) 60 DTR 0018 (HC Gujrat)
Hindustan Inks & Resins Ltd. -Vs.- Deputy Commissioner of Income Tax
Assessee having established identity of shareholders, addition under s. 68 could not be made on the ground that assessee failed to explain the source of credit; Department was free to proceed against shareholders in accordance with law.*
4. *(2011) 333 ITR 0269 (MP HC)
Commissioner of Income Tax -Vs.- STL Extrusion (P) Ltd.
Assessee having duty furnished the name, aged, address, date of filing the application of shares, number of shares of each subscriber, there was no justification for the AO for making the addition under s. 68.*
5. *(2010) 327 ITR 0560 (Delhi HC)*

Commissioner of Income Tax -Vs.- Orbital Communication (P) Ltd. Income-Cash credit-Share application money-Tribunal upheld the order of CIT(A) deleting addition made by the AO on account of share application money following the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Exports (P) Ltd. 2008) 219 CTR (SC) 195 as the assessee produced substantial evidence to establish the identity and creditworthiness of share applicant-Tribunal justified in holding that the share application money cannot be regarded as undisclosed income of the assessee under s. 68.

In view of the decision of the Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195, the Tribunal was justified in upholding the order of the CIT(A) deleting addition made on account of share application money when substantial evidence was produced by the assessee to establish the identity of share applicant.

6. (2010) 325 ITR 0025 (P&H HC)

Commissioner of Income Tax -Vs.- GP International Ltd.

AO having not doubted the identity of the persons from whom the assessee company has shown receipt of share application money, impugned transactions cannot be treated as non-genuine merely because some of the applicants did not respond to the notice issued by the AO under s. 133(6) and, therefore, addition was not sustainable.

7. (2008) 216 CTR 0195 (SC)

Commissioner of Income Tax -Vs.- Lovely Exports (P) Ltd.

If the share application money is received by the assessee company from alleged bogus shareholders, whose name are given to the AO, then the department is free to proceed to reopen their individual assessment in accordance with law, but it cannot be regarded as undisclosed income of assessee company.

8. *Judgment of Income Tax Appellate Tribunal, Nagpur Bench, Nagpur dated 25/11/2016 vide ITA No. 403, 413-414, 422-423 & 431/ Nag/2016 in case of Dy. Commissioners of Income Tax, Circle-4, Nagpur -Vs.- M/s. Inex Infotech Pvt. Ltd. Nagpur & Others*

9. (2014) 98 DTR 0187 (Mum. ITAT)

Green Infra Ltd. -Vs.- Income Tax Officer

Capital receipts-Share Premium-Addition U/s. 68-Valid-Assessee was incorporated in current A.Y.-Assessee had credited share premium collected on allotment of shares-AO was of opinion that funds introduced by assessee through share holders under guise of premium-AO held that share premium received was taxable under head income from other sources and made U/s. 56(1)-CIT(A) upheld AO's view-Held, according to revenue, it was beyond any logical reasoning that a company with zero balance sheet could garner premium of Rs. 490 per share from its subscribers-98 percent equity shares had been subscribed and allotted to IDFC Pe Fund-II, Front Manager of IDFC Ltd., in which company Government of India was holding 18 percent of shares-Contributors of IDFC PE Fund-II were all public sector undertakings-Therefore, to raise doubt to a transaction where there was so much involvement of Government directly or indirectly did not make any sense-It was a prerogative of Board of Directors of a company to decide premium amount and it is wisdom of share holders whether they want to subscribe to such a heavy premium-Revenue could not question charging of such of premium without

any bar from any legislated law-Board of Directors contained persons who were associated with IDFC group of companies, therefore their integrity and credibility could not be doubted-Capital receipts, unless specifically taxed under any provisions of the Act, are excluded from income-Expenditure and receipts directly relating to share capital of a company are of capital in nature and therefore cannot be taxed u/s. 56(1)-Share premium realized from issue of shares is of capital in nature and forms part of share capital of company and therefore cannot be taxed as a Revenue receipt-As per Section 68, initial onus was upon assessee to establish identity, genuineness of transaction and capacity of lender or depositor-Confirmation of transaction had been received by AO by issuing notice U/s. 133(6), therefore, identity had been established-Genuineness of transaction could be safely concluded since entire transaction had been done through banking channel duly recorded in books of assessee-Assessee company had invested fund in its three subsidiary companies, wherein assessee was holding 99.68 percent of share capital which meant that funds had not been diverted to an outsider—No single evidence was found leading to entire transaction as sham-Revenue erred in treating share premium as income of assessee U/s. 56(1)

Conclusion- Share premium realized from the issue of share is of capital in nature and forms part of the share capital of the company and therefore cannot be taxed as a Revenue receipt.

The assessee has further placed reliance on following judgments during the appellant proceedings

1. (1980) 125 ITR 0713 (SC)

Kishanchad Chellaram -Vs.- Commissioner of Income Tax

T, an employee of Madras office of assessee making a telegraphic transfer of an amount of Rs. 1,07,350 to N, an employee of assessee in Bombay office, the amount cannot be assessed as undisclosed income of in the absence of positive material brought by Revenue to prove that the amount in fact belonged to assessee as the burden lay on the Revenue.

2. (2008) 303 ITR 0095 (Del. HC) *Commissioner of Income Tax -Vs.- Pradeep Kumar Gupta*

Reassessment-Validity-Reopening on the basis of third Party's statement-Assessee showing agriculture income-Deposition by A that he was involved in bogus transaction with the assessee and provided 'accommodation entries' in the form of agriculture receipts-Same would constitute reason to believe that income chargeable to tax had escaped assessment-However, it was mandatory for the Revenue to produce A for cross-examination by the assessee on their specific demand in this regard-AO must first discharge the burden of showing that income has escaped assessment-Opportunity to cross-examine A denied to assessee-Reopening of assessment not therefore valid.

Failure of the Revenue to produce A for cross-examination, by the assessee, assumes fatal consequences. It is true that the assessee's failure to produce K had the consequence of not providing that the said person was tilling the land on their behalf. This failure cannot inexorably lead to the conclusion that no agriculture income had been generated by the assessee. Such an inference can only be drawn from the statement of A to the effect that the transaction between him, and the assessee were bogus. Therefore, it was mandatory for the Revenue to produce A for cross-examination by the assessee on their specific demand in this regard. There may well be instances

where the reopening may pass muster in light of some facts, but those facts by themselves may turn out to be insufficient to preserve the assessment itself. Once ss. 147 and 148 are resorted to, the AO must first discharge the burden of showing that income has escaped assessment. It is only thereafter that the assessee has to provide all the answers. There is no reason why the initial burden of proof should not rest on the AO even whether the assessment has gone through under s. 143(1). The Tribunal has, therefore, arrived at the correct conclusion.

3. (2001) 247 ITR 0274 (SC)

Prakash Chand Nahta -Vs.- Union of India & Ors.

High Court having wrongly proceeded to dispose of the reference upon the basis that the questions challenging the validity of assessment arose upon an order passed by Tribunal in a rectification application, the impugned order is set aside and reference is restored to the High Court to be decided afresh.

4. (1991) 192 ITR 0287 (Del. HC)

Commissioner of Income Tax -Vs.- Steller Investment Ltd.

Notwithstanding that Assessing Officer failed to enquire into genuineness of shareholders, assessment of company could not be revised to assess the amount of share capital in the hands of company.

5. *Judgment of High Court of Delhi at New Delhi, dated 14/03/2017 vide ITA No. 169/2017 in case of Pr. Commissioner of Income Tax-5 -Vs.- Laxman Industrial Resources Ltd.*

6. *Judgment of Income Tax Appellate Tribunal, "J" Bench, Mumbai dated 08/02/2018 vide ITA No. 1091/ Mum/2016 in case of M/s. Jasamrit Constructions Private Ltd. -Vs.- Income Tax Officer-6(3)(2), Mumbai*

7. *Judgment of High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, dated 05/07/2017 vide ITA No. 1433 of 2014 in case of Commissioner of Income Tax-8 -Vs.- M/s. Archid Industries Pvt. Ltd.*

8. *Judgment of Income Tax Appellate Tribunal, Mumbai Bench "A", Mumbai dated 21/04/2017 vide ITA No. 6492/ Mum/2016 in case of Arceli Realty Limited -Vs.- Income Tax Officer-15(1)(1), Mumbai*

9. *Judgment of High Court of Punjab-Haryana, dated 02/08/2016 vide ITA No. 386 of 2010 in case of The Commissioner of Income Tax, Patiala -Vs.- M/s. K.C. Pipes Pvt. Ltd.*

10. (2011) 330 ITR 0298 (Del. HC)

Commissioner of Income Tax -Vs.- Dwarkadhish Investment (P) Ltd.

Tribunal having confirmed the order of the CIT(A) deleting the impugned addition under s. 68 holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques, no question of law arises.

11. (2000) 245 ITR 0160 (MP H.C.)

Commissioner of Income Tax -Vs.- Metachem Industries

Once the firm has satisfactorily explained that the credit entries in the name of its partners represent the amount invested by them the burden of proof stood discharged and the amount cannot be treated as income of the firm under s. 68.

12. *Judgment of High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, dated 12/10/2009 vide ITA No. 2182 of 2009 in case of Commissioner of Income Tax -Vs.- M/s. Creative World Telefilms Ltd.*

13. *(2008) 307 ITR 0334 (Del. HC)
Commissioner of Income Tax -Vs.- Value Capital Services (P) Ltd.
CIT(A) having accepted the existence of the share applicants and the Revenue having not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company, addition was rightly deleted by the Tribunal; no substantial question law arises.*

14. *(2014) 368 ITR 0001 (Bom. H.C.)
Vodafone India Services Pvt. Ltd. -Vs.- Additional Commissioner of Income Tax
Provision of chapter X are not applicable to international transaction of issuance of equity share by resident company to its non-resident holding company at certain value, since neither capital receipts received by resident company on issuance of equity shares to its non-resident holding company nor short-fall between the fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act.*

In the circumstances assessee humbly request that transaction made by the assessee are genuine transaction and details submitted by the assessee are true and correct. In view of the above assessee humbly request that addition made by the assessing officer may kindly be deleted and appeal filed by the assessee may kindly be allowed."

5. During the course of appellate proceedings, the learned counsel for the assessee has also furnished written submission expressing grievance that cross-examination of Shri Shirish Chandrakant Shah, was not provided despite clear requests, and that the Assessing Officer has made the addition on the basis of statement of Shri Shirish Chandrakant Shah which was recorded during the course of search and seizure action and also behind the back of the assessee. During the course of assessment proceedings, the counsel for the assessee specifically requested that summon under section 131 of the Act may be issued to Shri Shirish Shah & others and opportunity to

cross-examine Shri Shirish Chandrakant Shah may be provided. The Assessing Officer, however, did not accept the request of the assessee and without granting such opportunity has made the addition of ₹ 6,58,12,500. The assessee drew attention to the fact that the issue is covered in favour of the assessee by the following case laws:-

- 1) *Judgment of Hon'ble Supreme Court of India dated 28/03/2018 vide Special Leave petition (Civil) Diary No(s) 9432/2018 in case of Commissioner of Income Tax -Vs.- Sunita Dhadda*
- 2) *Judgment of Hon'ble High Court of Judicature for Rajasthan, Bench of Jaipur dated 31/07/2017 vide D.B. Income Tax Appeal No. 197-199/2012 in case of Commissioner of Income Tax-Central -Vs.- Smt. Sunita Dhadda and others*
- 3) *Judgment of Hon'ble Income Tax Appellate Tribunal, Jaipur bench "A" Jaipur dated 30/12/2011 vide ITA No. 751 & 852/JP/2011 in case of Smt. Sunita Dhadda -Vs.- Deputy Commissioner of Income Tax, Central Circle-2, Jaipur*

6. During the course of appellate proceeding, the learned Counsel for the assessee also made written submission with respect of applicability of the provisions of section 68 of the Act and contradicted the case laws relied upon by the Assessing Officer and the submissions of the assessee are reproduced as under:-

"The learned assessing officer has invoked provisions of section 68 of the Income Tax Act, 1961 while passing the order in case of the assessee and made addition of Rs. 6,58,12,500/- U/s. 68 of the Income Tax Act, 1961. The provision of Section 68 is speak that -

"Where any sum is found credited in the books of an assessee maintained 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 income-tax as the income of the assessee of that previous year:

Inserted by the Finance Act, 2012 w.e.f. 01/04/2013 [Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum of credited consists of share application money, share capital, share premium or any such amount by

whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –

(a) the person, being a resident in whose name such credit is recorded the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory;

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10J”

7. The learned Counsel for the assessee drew attention by submitting that the provisions of section 68 of the Act are not applicable to the facts of the present case. Following submissions have been made.

"1. The assessee has received an amount from the parties at Rs. 6,58,12,500/- through proper banking channel;

2. The aforesaid amounts were received by the assessee against booking of property showroom. The assessee has received aforesaid amount from (1) Aadhar Ventures India Ltd. at Rs. 48,75,000/-, (2) Prabhav Industries Ltd. at Rs.1,46,25,000/-, (3) Dhanus Technologies Ltd at Rs.1,46,25,000/-, (4) Avance Technologies Ltd at Rs. 63,37,500/- (5) Venmax Drugs &Pharmaceuticals Ltd at 48,75,000/-, (6) Yantra natural Resources Ltd. at 1,07,25,000/- and (7) Rs. 97,50,000/- from L.N. Ind. India Ltd. and the same were duly shown in the books of account of the assessee as well as in Audited Balance Sheet of the assessee. The agreement to sell was also executed between the assessee and authorized representative of said companies vide agreements dated 31/03/2010 & 31/07/2011. The assessee has already submitted copies of agreement of sell which is on Page-73 To 79, 129 To 135, 168 To 174, 212 To 218, 226 To 230, 319 To 325 & 381 To 387 of the Paper Book. As all the companies failed to make the payment of balance amount within the stipulated time limit, therefore, modification agreement was executed between the assessee and authorized representatives of the said companies from time to time and the assessee has allotted equity shares to all the companies during the previous year relevant to Asstt. Year 2012-2013. The assessee has already submitted copies of modification agreement alongwith the submission which is on Page-69 To 71, Page-175 to 177, Page-219 to 221, Page-231 to 233, Page-326 to 328 Page-388 To 390 and Page-396 To 398 of the Paper Book. In view of the above there is no question of share application money as well as involving of Section 68 is applicable in the case of the assessee. On the above mentioned proposition assessee placed reliance on following judgments

1) *Order of the Hon'ble Income Tax Appellate Tribunal, Delhi Bench 'SMC' New Delhi dated 25/06/2018 vide appeal ITA No. 3133/Del/2018 in case of Moti Adhesives P. Ltd. -Vs.- Income Tax Officer, Ward 17(2), New Delhi*

2) *Order of the Hon'ble Income Tax Appellate Tribunal, Delhi Bench "B" Delhi dated 01/01/2018 vide appeal ITA No. 453/Del/2016 in case of the Assistant Commissioner of Income Tax, Circle-17, New Delhi -Vs.- M/s. TRN Energy Pvt. Ltd.*

3) *Order of the Hon'ble Income Tax Appellate Tribunal, Nagpur Bench, Nagpur dated 09/05/2018 vide appeal ITA No. 407, 425, 430, 412, 427, 416, 421, 402, 429, 418, 406, 424, 420/N/2016 & ITA No. 34 & 32/N/2017 in case of Assistant Commissioner of Income Tax, Circle-4, Nagpur -Vs.- M/s. Swiftsol (I) Pvt. Ltd. and Others*

3. *Amount received were duly reflected in the books of account of the assessee as well as books of accounts of parties;*

4. *The assessee also draw attention that the department has not provide the copies of statement, whose statement were recorded during the course of search for proper adjudication of the matter nor whose stated to whom they have provided the accommodation entries;*

5. *The assessing officer has not issued summon U/s. 131 to the persons, whose statements were recorded as required by the assessee during the course of assessment proceedings and also not provided any opportunity to cross examine to the assessee;*

6. *All the statements were recorded behind the back of the assessee and the same were not binding on the assessee;*

8. The Assessing Officer while passing the assessment order has placed reliance on following judgments. The judgments cited by the Assessing Officer in the assessment order are totally difference as compared to case of the assessee. The assessee contradicts the case laws, which are as under:-

1) (2012) 342 ITR 0169

Commissioner of Income Tax -Vs.- Nova Promoters & Finlease (P) Ltd.

In the aforesaid case share applicant companies which are said to have subscribed to the share capital of the assessee company were found to be non-existent at all the address given to the department and the assessee failed to produce any of the directors or employees of these share applicants, and therefore, there identity is not proved and the onus cast upon it by s. 68 has not been discharged by the assessee and, therefore, addition under s. 68 in respect of share application money was justified; mere submission of share application form, PAN, names and address and RoC registration, etc. was not sufficient in view of the fact that these companies were found to be non-existent.

But in the case of the assessee has proved the genuineness of the transaction with the companies. The assessee has not introduced monies through existing companies through proper banking channel. The assessee has explained and produced the each and every details during the course of assessment proceeding before the assessing officer. During the course of assessment proceedings the learned assessing officer has issued notice U/s. 133(6) to both companies regarding transaction and all the parties have confirmed the transaction by submitting the written reply. The learned assessee officer has also mentioned the said aspect in Para-2, Page-2 of the assessment order. The assessee company itself also requested to the assessing officer for issue summons U/s. 131 and also requested to provide the copies of statement recorded behind the back of the assessee. The assessee requested for opportunity to cross examine but the assessing officer has not granted any opportunity to cross examine. In view of the above said judgment not applicable in case of the assessee. On the above mentioned preposition assessee placed reliance on following judgments

2) (2011) 63 DTR 0201 (Indore ITAT)
Agrawal Coal Corporation (P) Ltd. -Vs.- Additional Commissioner of Income Tax

In the said case the assessee has submitted only identity of both these companies and details of the ROC as well as their returns but failed to submit explanation regarding transaction. The assessing officer has issued summons/notices to the companies, which were returned back. In the said case assessee did not comply with the directions of the bench regarding production of any of the directors or employees of the share applicant. The assessee companies has also not been explained the nature and source of the receipt

But in the case of the assessee, the assessee has submitted each and every detail of the companies, from whom the assessee has received amounts towards advance against booking of property and not towards share application money. The assessee has already submitted the copies of agreement of sell, which is on Page-73 To 79, 129 To 135, 168 To 174, 212 To 218, 226 To 230, 319 To 325 & 381 To 387 of the Paper Book. When the terms and conditions were not fulfilled thereafter the assessee has converted the booking advance by allotting equity shares executing modification agreement and the said aspects were clearly mentioned in the said agreement as well as modification agreement. The assessee has already submitted copies of modification agreement, which is on Page-69 To 71, Page-175 to 177, Page-219 to 221, Page-231 to 233, Page-326 to 328 Page-388 To 390 and Page-396 To 398 of the Paper Book. The assessee has submitted the PAN, addresses, Memorandum of Articles alongwith incorporation certificate, copy of return alongwith audit reports of the both companies. The assessee has also submitted the bank statement of the both companies, in which transaction were duly reflected and the transaction of the assessee were against the advance received by the assessee towards sale of property. In the case of the assessee both the companies have also confirmed the transaction by submitting the reply. In view of the aforesaid judgment cited by the assessing officer is not applicable in the case of the assessee.

3) (2008) 306 ITR 0414 (P & H HC)

*Som Nath Maini –Vs.- Commissioner of Income Tax**The aforesaid case is with respect of the short term capital gain from sale of shares in view of astronomical difference between the share price of a company with a short span of 6-7 months and made addition to the income of the assessee.**But in the case of assessee, the assessee has received the amounts towards booking advance against the sale of property and not received towards share application money. The assessee has already submitted the agreement of sell during the course of assessment proceedings. When the terms and conditions were not fulfilled thereafter the assessee has converted the booking advance in share application money by executing modification agreement after 1 to 1½ year, since the assessee was already invested the said amount in its project and was unable to return back said advance to the said companies and the said aspects were clearly mentioned in the said agreement. In view of the above facts of the above judgment are totally different, therefore the said judgment is not applicable in case of the assessee.*

9. In the circumstance, the assessee humbly requested that facts of the judgments cited by the Assessing Officer were totally different which are not applicable to the facts of the present case.

10. The learned CIT(A), considering the submissions of the assessee, allowed the appeal filed by the assessee by directing the Assessing Officer to delete the addition made by him under section 68 of the Act for ₹ 6,58,12,500. The observations so made by the learned CIT(A), vide Page-6.9 to 6.20, on the issue of deletion of addition under section 68 of the Act are reproduced herein below:-

"6.9 I have considered the submission made by the learned counsel with respect of providing of opportunity to cross examination to the appellant, since the addition was made on the basis of statement recorded during the course of search and seizure action in a difference case and also behind the back of the appellant. I find that the AO has not issued summon u/s. 131 to the person whose statement was used against the appellant, as requested, and opportunity to cross examine was not provided to the appellant before making the impugned addition. I also find that the AO rather than made independent enquires as the assessing authority has in turn asked the appellant to produce the Directors of the seven companies before the AO! Therefore, the AO expected the appellant to produce in person the Directors of the companies

that had advanced monies. In fact, the AO failed to make any effort in that direction. He did not take to the logical end the half-hearted attempt at getting the Directors to appeal before him. He did not even seek the assistance of the AOs of the concerned companies whose ITRs and PAN card copies had been produced. I find that the AO failed to come up with the material to disprove what had been produced by the appellant. Once the appellant had placed before the AO all the relevant and best documents in its possession to establish its burden u/s. 68 of the Act qua cash credit (here advance payment for purchase of showroom which was later converted to share capital received), the appellant had discharged the onus that lay on it and the burden to prove the appellant incorrect was on the AO. Simply because there is no personal appearance from directors of said cash creditors (shareholder/ purchaser of property), no adverse inference u/s. 68 of the Act. In my view, once all important and crucial documents are filed by appellant to prove its case qua share capital received u/s. 68 of the Act, then simply harping on non-production of director person by the appellant before AO cannot be a justified ground to draw adverse inference without adequate discharge of secondary burden lying on AO u/s. 68 of the Act. Burden u/s 68 of the Act, as it is settled law, keeps shifting.

6.10 In the present case under consideration the appellant has denied the knowledge of any statement recorded Shri Shirish Chandrakant Shah of Mumbai. The appellant has also stated that Shri Shirish Chandrakant Shah is not known to the company. The AO has not established his identity and capacity in respect of his relationship either with the M/s. Prabhav Industries Ltd. or M/s. Avance Technologies Ltd. or with the appellant company. From the information made available to the appellant by the AO, it can be construed that, the impugned statement given by Shri Shirish Chandrakant Shah was in his individual capacity and not on behalf or related to the appellant. Therefore the appellant's contention, that the said Shri Shirish Chandrakant Shah has no capacity or connection with the appellant company to make any statement on behalf of the appellant company is found to be correct and justified. The same holds true for the statement given by Shri Jayesh Thakkar, of Prabhav Industries wherein no mention of the appellant company was made, but merely that Shri Shah was organizing accommodation entries for Prabhav Industries Ltd. Apart from this, the AO has also not provided the copy of statement of Shri Shirish Chandrakant Shah to the appellant, and has not given any opportunity to the appellant to cross-examine Shri Shirish Chandrakant Shah, or of Shri Jayesh Thakkar even though the appellant repeatedly requested the AO for cross examination of Shri Shirish Chandrakant Shah and Shri Jayesh Thakkar. If some depositor or any other person with whose evidence cash credit in question can be proved, does not cooperate in the assessment proceedings with the assessee concerned, then the assessee can also take assistance of Section 131 of the Act wherein ample powers have been given to the A.O. for compelling the attendance of witnesses.

6.11 The advances for purchase of showroom which was later converted to allotment of shares in FY 11-12, were paid by the companies by account payee cheques and copy of the bank statements have been filed on record. The entries of advances paid to the appellant are appearing in the statement of accounts of the seven companies. The PAN and TAN of the companies have been intimated to the AO. The appellant also submitted the Share allotment

forms issued in FY 11-12 (AY 2012-13), Balance sheet in which the said allotment is duly recorded, in respect of share allotted to the seven companies. The AO has not carried out any enquiries that disproves the above transactions.

6.12 I have carefully verified the evidences produced the appellant company and the facts of the case and found that the addition of Rs. 6,58,12500/- is made merely on the basis of statement of third party, Shri Shirish Chandrakant Shah. The AO failed to establish his connection either with the appellant company or with the investing companies. The AO disregarded all the evidences and documents produced before him or could be called for him for verification of the appellant's claim. At the cost of repeating, the AO also has not provided a cross verification of Shri Shirish Chandrakant Shah to the appellant even after various request by them. In view of all of the above fact, the addition could not be made in the hands of the appellant without allowing opportunity to cross-examine the said person and in the absence of any corroborative evidence to establish the truthfulness of the statement of the third party. To reiterate, the appellant has proved the genuineness of the transaction with the afore-stated seven companies. The amounts were received from these seven companies as advances for booking/purchase of showrooms in the project under construction in the year 2010 and thereafter. These transactions are backed by Agreement to Sell and the amounts were received through banking channels. The appellant has explained and produced each and every details during the course of assessment proceedings before the AO.

6.13 During the course of assessment proceedings, the AO himself has issued notice u/s. 133(6) to seven the companies regarding the said transaction and five out of seven companies confirmed the transaction as under

1. Prabhav Industries Ltd. – received on 08.08.2014 and 24.11.2016
2. Avance Technologies Ltd–letter dated 26.11.2016/received 28.11.2016
3. Yantra natural Resources Ltd-letter dated 25.11.2016/received 28.11.2016
4. L. N. Polyester0undated/reply submitted 09.08.2016
5. Adhar Venture-reply submitted 30.11.2016

The AO has admitted the same in Para-2 (Page-2) of the assessment order. Therefore, it is an uncontroverted fact the appellant received amounts towards advance against booking of property and not towards share application money, initially. When the terms and conditions were not fulfilled, the appellant converted the booking advance by allotting equity shares executing modification agreement and the said aspects were clearly mentioned in the said agreement as well as modification agreement. Besides in any case, the shares were allotted in the year 2012, and not in the year of receipt of advance monies. The appellant has already submitted copies of Modification Agreements as evidence of the same which has not been controverted by the AO. The appellant has submitted the PAN, addresses, Memorandum of Articles alongwith Certificate of incorporation, copy of return alongwith audit reports of all 7 companies including their confirmations vide submission dated 29.11.2016. The appellant has also submitted the bank statement of all 7 companies, in which transaction were duly reflected and the transaction of the appellant were against the advance received by the appellant towards sale of

property. In the case of the appellant, 5 out of 7 companies have also submitted the reply in response to notice u/s 133(6) issued by the AO and confirmed the transaction, which is evident from the assessment order. All these facts have not been denied or disproved by the AO. The AO has simply brushed aside all the evidences, and relied on the statement given by one of the Directors of Prabhav Industries, before the investigation wing, which in any case makes no mention whatsoever of the appellant company or any dealings of the purported nature with the appellant company. It is my view that the statement of which the AO has based the finding of unexplained cash credit in the hands of the appellant was a general statement, of the modus operandi followed by one Shri Shirish Chandrakant Shah, and had no bearing on the business transactions with appellant company. Unless the AO obtained direct evidences to controvert the documents provided by the appellant, there is no case for unexplained credits and the AO could not have made the addition u/s. 68

6.14 In the issue under dispute, the money was received through the banking channel in the financial years 2009-10 and 2010-11, and these were towards advance for purchase of showroom at Poonam Mall, Khamla. All the documents in respect of issue and allotment of share to the investor companies in the subsequent year were submitted to Registrar of companies (ROC), including the Audited Balance Sheet of the company after the said entire allotment of shares, its Form No. 2 for allotment of shares, Board Resolution and the challan for the filing fees of these documents filed by the appellant. There was no query in the year of issue of shares for any default in this transaction. It is worth to mention here that the ROC has never objected to this issue of shares or treated the share transaction as invalid till this date.

6.15 It is observed that the AO has stated that the investment made by the seven companies are bogus, even after all the documents in support were available on record, or it could have been called by the AO from various Govt. Departments (including ROC/Income Tax authority of the investor company etc.) Even after these submissions were made of all the relevant documents to justify the appellant's stand, the AO simply disagreed with the contentions of the appellant without mentioning any concrete reason for his disagreement. I find that the AO has not demanded any other documents that could have been produced by the appellant that were required for his satisfaction. The AO has also not mentioned in his order about any contrary findings or the existence of any adverse documents that were available with him that proved the transaction as bogus. The AO has also provided no findings that the advances received by the appellant company were its own cash rerouted through accommodation entries, or even that the advances were accommodation entries of any other person. Therefore, merely on the basis of Third Party statements, the actual facts and evidences available cannot be denied or rejected. Moreover all the seven entities are Companies (and not unidentified persons) which are duly registered with Registrar of companies and have filed all their details as statutorily required. Even if, for argument's sake, the AO had any adverse information or suspicions regarding the investor companies, he could have obtained all the information about the companies if he wished so. However, I find that no corroborative documents, other than a statement of an unconnected person was used against the appellant and the AO has held that the identity was not proved. Therefore the stand of the AO in this regard is not justified.

6.16 On perusal of the documents and submission pertaining to the said share allotment transactions, it is found that the appellant has discharged its onus of establishing the identity of the purchaser/investor and genuineness of the transaction. Taking into consideration of all the above, I find merit in the argument of the counsel for the appellant that the primary burden cast on the appellant was duly discharged. The issue of primary onus is to be weighed on the scale of evidence available on the record and the discharge of burden by the appellant and facts and circumstances of the case and on that basis a reasonable view is to be taken as to whether the appellant has discharged the primary onus of establishing the identity of share applicant, its creditworthiness and genuineness of the transaction. In this regard, the Hon'ble Delhi High Court in *Commissioner of Income Tax Vs Divine Leasing & Finance Ltd. 2008 (299) ITR 268 (Del)* had held as under

"13. There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessee it should not be harassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The Company must, however, maintain and make available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of section 68 and 69 of the It Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out through investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company.

16. In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the Income Tax Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely; whether it has been transaction, namely whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness of financial strength of the creditor/subscriber; (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee (5) The department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices: (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take repudiation at face value and construe it, without more, against the assessee, (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation:

6.17 The preceding enumeration of the circumstances of the case show that the appellant had furnished all relevant data before the AO, which, however, were not inquired into by the AO. Instead he obdurately adhered to his initial

understanding that the entire transaction was neither creditworthy nor genuine. The appellant has relied upon the documents to prove that the monies had been received through banking channel from all the investor related companies; it had produced copy of bank statement, copy of Form 2 filed before ROC etc. for the year 2012-13 and the confirmation given by the remitters towards remittance of share capital etc. It could not be expected to prove the negative that the monies received by it were suspicious or not genuine infusion of capital etc. The appellant had discharged its burden of proof in terms of the settled dicta in Divine Leasing (Supra). It is only logical to expect that if the AO was not convinced about the genuineness of the said documents, he would have inquired into their veracity from the bank(s) to ascertain the truth of the appellant's claims. Having not done so, he was not justified in disregarding the appellant's contentions that the infusion of advance/capital into its accounts was legitimate. Where the appellant adduces evidence in support of the advances received, it is open to the AO to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, or some statement of an unconnected party, some meaningful enquiry ought to be conducted by him to establish a link between the appellant and the alleged accommodation entry providers. Consequently, the AO was not justified in making additions of the amounts under Section 68 of the Act.

6.18 In the assessment order, the AO has cited the following judgments, the basic facts of these case is found to differ from the appellant's case, as found below :

*1) CIT -Vs.- Nova Promoters & Finlease (P) Ltd. (2012) 342 ITR 0169
In the aforesaid case share applicant companies which are said to have subscribed to the share capital of the assessee company were found to be non-existent at all the address given to the department and the assessee failed to produce any of directors or employees of these share applicants, and therefore, their identity is not proved and the onus cast upon it by s. 68 has not been discharged by the assessee and, therefore, addition under s. 68 in respect of share application money was justified; mere submission of share application form, PAN, names and address and ROC registration, etc. was not sufficient in view of the fact that these companies were found to be non-existent.*

*2) Agrawal Coal Corporation (P) Ltd. -Vs.- Additional Commissioner of Income Tax (2011) 63 DTR 0201 (Indore ITAT)
In the said case the assessee has submitted only identity of both these companies and details of the ROC as well as their returns but failed to submit explanation regarding transaction. The assessing officer has issued summons/notices to the companies, which were returned back. In the said case assessee did not comply with the directions of the bench regarding production of any of the directors or employees of the share applicant. The assessee companies has also not been explained the nature and source of the receipt.*

In the present case, the appellant has cried hoarse explaining the genesis of the advance receipts and the same is backed by documents. These advances were later converted as allotment of share after about a year and half, due to

specific reasons of failure to make full payment towards purchase of showrooms.

3) *Som Nath Maini vs. CIT (2008) 306 ITR 0414 (P & H HC)*

The aforesaid case is with respect of the short term capital gain from sale of shares in view of astronomical difference between the share price of a company within a short span of 6-7 months and addition was made to the income of the assessee as the genuineness of transactions were not proved.

In the present case, the appellant has provided all possible documents to prove the genuineness of transactions and had fulfilled its burden. Not a single document has been proven false, and the onus was on the AO to disprove the transactions which he has failed miserably.

Therefore, the decision relied upon by the AO are on different facts, and not comparable. In fact, these decisions go to show how the AO in the present case had not discharged his own duties as a revenue authority, and how ineffective the addition was, without completing such enquires and recording of such proper findings by the AO.

6.19 I am also aware of the fact that the Finance Act, 2012 inserted two provisos to Section 68, with effect from 1-4-2013 (assessment year 2013-14). First proviso is to enlarge the onus of a closely held company and provides that if a closely held company receives any share application money or share capital or share premium or the like, it should also establish the source of source (that is, the resident from whom such money is received). Second proviso provides that the first proviso will not apply if the receipt of sum (representing share application money or share capital or share premium etc.) in from a VCC or VCF [referred in Section 10(23FB)]. However, in the year under consideration, no such provisions or stipulation existed. The amended provisions therefore, would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In any view of the matter, the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts, namely, the genuineness of the transaction, identity and the capacity of the investor have all been examined and on facts it is found satisfied.

6.20 Considering the totality of the fact and circumstances of the case, and the evidences filed before the AO and also during the appellate proceedings, and respectfully following the judicial decisions discussed in the body of the order, I am of the considered view that the A.O. was not justified in making the addition of Rs. 6,58,12,500/- under section 68 of I.T. Act 1961 and the same cannot be sustained. The AO is hereby directed to delete the addition of Rs. 6,58,12,500/-. These grounds are allowed."

11. The Revenue being aggrieved by the order of the learned CIT(A), filed appeal before the Tribunal.

12. Before us, the learned Departmental Representative strongly relied on the order of Assessing Officer and vehemently objected to the impugned order passed by the learned CIT(A). He reiterated the ratios laid down in the case laws which were relied upon by the Assessing Officer and prayed that the impugned order passed by the learned CIT(A) be reversed and that of the Assessing Officer be upheld.

13. The learned Counsel for the assessee reiterated the submissions made before the authorities below which are reproduced herein above and prayed that the order passed by the learned CIT(A) be upheld.

14. We have heard the rival contention of both the parties; perused material placed on record and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the assessee as well as Revenue. It is admitted fact that the assessee company engaged in the business of construction. The assessee company has received advance against sale of property at ₹ 48,75,000, from M/s. Aadhar Ventures India Ltd., ₹ 1,46,25,000, from Prabhav Industries Ltd., ₹ 1,46,25,000, from Dhanus Technologies Ltd., ₹ 63,37,500, from Avance Technologies Ltd. ₹ 48,75,000, from Vemax Drugs & Pharmaceuticals Ltd. and an amount of ₹ 1,07,25,000, from M/s. Yantra Natural Resources Ltd. and ₹ 97,50,000, from L.N. India Ltd., during the year under consideration. He submitted that the copies of agreement executed in respect of sale were placed on record at Page-79 to 79, 168 to 174, 212 to 218, 226 to 2336, 319 to 325, 381 to 387 of the Paper Book. He further submitted that the assessee company has received sum of ₹

6,58,12,500, towards booking advance and said amount was shown in the books of account of the assessee company. All the 7 agreements are legal evidence in the eyes of law and cannot be brushed aside. Since the 7 companies are failed to make balance agreed payment within the stipulated time limit and the assessee company has already invested aforesaid sum in its project and also was not position to return booking advance. It was amicably decided to avoid further litigation the assessee company will allot equity shares to aforesaid 7 companies. With respect of said transaction seven the parties entered into Modification Agreement. The assessee company has also filed copies 7 Modification Agreement, which are placed on record Page-69 to 71, 175 to 177, 219 to 221, 231 to 233, 326 to 328 and 388 to 390 of the Paper Book. Consequently, the assessee company has allotted equity shares by completing of formalities for issuing of such equity shares. It is admitted fact that these documents have not been controverted by the Assessing Officer. It is admitted fact that the assessee has filed before us copies of PAN details, copies of Memorandum of Association and Article of Association, Copies of Audit Report and Balance Sheets, Bank Statement of the companies, copies of share application form along with Board Resolutions and the same were filed during the course of assessment proceedings. The assessee also filed the confirmation of the aforesaid seven companies confirming the payments made to assessee and the same are placed on record. All the transactions are through proper banking channel and reflected in the books of account of assessee as well as aforesaid 7 companies.

15. We further find that it is also an admitted fact that the assessee company has filed original return of income declaring ₹ nil, income. It is also admitted fact that the reasons for issue of notice under section 148 of the Act was for ₹ 6,58,12,500, copy of notice under section 148 of the Act are placed on record at Page-24 & 25 of the Paper Book and the Assessing Officer has made addition of ₹ 6,58,12,500. Though the addition with respect of two companies i.e., M/s. Prabhav Industries Ltd. at ₹ 1,50,00,000, and ₹ 65,00,000, from M/s. Avance Technology Ltd., a total ₹ 2,15,00,000, were made during the previous year relevant to the assessment year 2010-11.

16. It is also admitted an fact that all the 7 parties have confirmed their transactions and their confirmation which are placed on record. All the 7 companies are assessed to tax and all the 7 companies have submitted Memorandum and Articles of companies along with acknowledgment of return of income, Audit Report with Schedule, copies of Bank Statement and all other details, which are placed on record.

17. The learned Counsel for the assessee submitted that the case of the assessee is covered in favour of the assessee by the following judgments:-

1. *CIT Vs. Lovely Exports (P) Ltd. (2008) 216 CTR 0195 (SC)*
If the share application money is received by the assessee company from alleged bogus shareholders, whose name are given to the AO, then the department is free to proceed to reopen their individual assessment in accordance with law, but it cannot be regarded as undisclosed income of assessee company.

2. *Prakash Chand Nahta -Vs.- Union of India & Ors. (2001) 247 ITR 0274 (SC)*

High Court having wrongly proceeded to dispose of the reference upon the basis that the questions challenging the validity of assessment arose upon an

order passed by Tribunal in a rectification application, the impugned order is set aside and reference is restored to the High Court to be decided afresh.

3. Judgment of High Court of Judicature at Bombay, Ordinary Original Civil Jurisdiction, dated 12/10/2009 vide ITA No. 2182 of 2009 in case of Commissioner of Income Tax -Vs.- M/s. Creative World Telefilms Ltd.

4. Commissioner of Income Tax -Vs.- Value Capital Services (P) Ltd. (2008) 307 ITR 0334 (Del. HC)

CIT(A) having accepted the existence of the share applicants and the Revenue having not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company, addition was rightly deleted by the Tribunal; no substantial question law arises.

5. Vodafone India Services Pvt. Ltd. -Vs.- Additional Commissioner of Income Tax(2014) 368 ITR 0001 (Bom. H.C.)

Provision of chapter X are not applicable to international transaction of issuance of equity share by resident company to its non-resident holding company at certain value, since neither capital receipts received by resident company on issuance of equity shares to its non-resident holding company nor short-fall between the fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act.

6. Judgment of Hon'ble Supreme Court of India dated 28/03/2018 vide Special Leave petition (Civil) Diary No(s) 9432/2018 in case of Commissioner of Income Tax -Vs.- Sunita Dhadda

7. Judgment of Hon'ble High Court of Judicature for Rajasthan, Bench of Jaipur dated 31/07/2017 vide D.B. Income Tax Appeal No. 197-199/2012 in case of Commissioner of Income Tax-Central -Vs.- Smt. Sunita Dhadda and others

8. Judgment of Hon'ble Income Tax Appellate Tribunal, Jaipur bench "A" Jaipur dated 30/12/2011 vide ITA No. 751 & 852/JP/2011 in case of Smt. Sunita Dhadda -Vs.- Deputy Commissioner of Income Tax, Central Circle-2, Jaipur

9. Hindustan Inks & Resins Ltd. -Vs.- Deputy Commissioner of Income Tax (2011) 60 DTR 0018 (HC Gujrat)

Assessee having established identity of shareholders, addition under s. 68 could not be made on the ground that assessee failed to explain the source of credit; Department was free to proceed against shareholders in accordance with law.

10. Commissioner of Income Tax -Vs.- STL Extrusion (P) Ltd. (2011) 333 ITR 0269 (MP HC)

Assessee having duly furnished the name, aged, address, date of filing the application of shares, number of shares of each subscriber, there was no justification for the AO for making the addition under s. 68.

11. *Commissioner of Income Tax -Vs.- Orbital Communication (P) Ltd. (2010) 327 ITR 0560 (Delhi HC)*
Tribunal upheld the order of CIT(A) deleting addition made by the AO on account of share application money following the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Exports (P) Ltd. 2008) 219 CTR (SC) 195 as the assessee produced substantial evidence to establish the identity and creditworthiness of share applicant-Tribunal justified in holding that the share application money cannot be regarded as undisclosed income of the assessee under s. 68.

12. *Commissioner of Income Tax -Vs.- GP International Ltd. (2010) 325 ITR 0025 (P&H HC)*
AO having not doubted the identity of the persons from whom the assessee company has shown receipt of share application money, impugned transactions cannot be treated as non-genuine merely because some of the applicants did not respond to the notice issued by the AO under s. 133(6) and, therefore, addition was not sustainable.

13. *Commissioner of Income Tax -Vs.- Lovely Exports (P) Ltd. (2008) 216 CTR 0195 (SC)*
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 assessment in accordance with law, but it cannot be regarded as undisclosed income of Assessee company.

14. *Green Infra Ltd. -Vs.- Income Tax Officer (2014) 98 DTR 0187 (Mum. ITAT)*
Expenditure and receipts directly relating to share capital of a company are of capital in nature and therefore cannot be taxed u/s. 56(1)-Share premium realized from issue of shares is of capital in nature and forms part of share capital of company and therefore cannot be taxed as a Revenue receipt-As per Section 68, initial onus was upon assessee to establish identity, genuineness of transaction and capacity of lender or depositor-Confirmation of transaction had been received by AO by issuing notice U/s. 133(6), therefore, identity had been established-Genuineness of transaction could be safely concluded since entire transaction had been done through banking channel duly recorded in books of assessee-Assessee company had invested fund in its three subsidiary companies, wherein assessee was holding 99.68 percent of share capital which meant that funds had not been diverted to an outsider—No single evidence was found leading to entire transaction as sham-Revenue erred in treating share premium as income of assessee U/s. 56(1)

Conclusion- Share premium realized from the issue of share is of capital in nature and forms part of the share capital of the company and therefore cannot be taxed as a Revenue receipt.

15. *Commissioner of Income Tax -Vs.- Pradeep Kumar Gupta (2008) 303 ITR 0095 (Del. HC)*
Reassessment-Validity-Reopening on the basis of third Party's statement-Assessee showing agriculture income-Deposition by A that he was involved in bogus transaction with the assessee and provided 'accommodation entries' in

the form of agriculture receipts-Same would constitute reason to believe that income chargeable to tax had escaped assessment-However, it was mandatory for the Revenue to produce A for cross-examination by the assessee on their specific demand in this regard-AO must first discharge the burden of showing that income has escaped assessment-Opportunity to cross-examine A denied to assessee-Reopening of assessment not therefore valid.

Failure of the Revenue to produce A for cross-examination, by the assessee, assumes fatal consequences. It is true that the assessee's failure to produce K had the consequence of not providing that the said person was tilling the land on their behalf. This failure cannot inexorably lead to the conclusion that no agriculture income had been generated by the assessee. Such an inference can only be drawn from the statement of A to the effect that the transaction between him, and the assessee were bogus. Therefore, it was mandatory for the Revenue to produce A for cross-examination by the assessee on their specific demand in this regard. There may well be instances where the reopening may pass muster in light of some facts, but those facts by themselves may turn out to be insufficient to preserve the assessment itself. Once ss. 147 and 148 are resorted to, the AO must first discharge the burden of showing that income has escaped assessment. It is only thereafter that the assessee has to provide all the answers. There is no reason why the initial burden of proof should not rest on the AO even whether the assessment has gone through under s. 143(1). The Tribunal has, therefore, arrived at the correct conclusion.

16. *Commissioner of Income Tax -Vs.- Steller Investment Ltd. (1991) 192 ITR 0287 (Del. HC)*

Notwithstanding that Assessing Officer failed to enquire into genuineness of shareholders, assessment of company could not be revised to assess the amount of share capital in the hands of company.

17. *Commissioner of Income Tax -Vs.- Dwarkadhish Investment (P) Ltd. (2011) 330 ITR 0298 (Del. HC)*

Tribunal having confirmed the order of the CIT(A) deleting the impugned addition under s. 68 holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques, no question of law arises.

18. *Commissioner of Income Tax -Vs.- Value Capital Services (P) Ltd. (2008) 307 ITR 0334 (Del. HC)*

CIT(A) having accepted the existence of the share applicants and the Revenue having not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company, addition was rightly deleted by the Tribunal; no substantial question law arises.

18. It is also admitted fact that no opportunity for cross-examination has been granted to assessee. The search and seizure action was carried on the

residence and office premises of Shri Shirish Shah at Mumbai, no incriminating material or documents were found in respect of assessee company. The statement of Shri Shirish Shah was recorded behind the back of the assessee and no copy of the statement of Shri Shirish Shah was provided to the assessee before using it as evidence against the assessee. No opportunity was granted to the assessee to cross-examination Shri Shirish Shah. No copies of material found in search were provided to the assessee for controverting the same. It is also seen that the statement was recorded of Shri Jayesh Thakkar, the Director of M/s. Prabhav Industries. behind the back of the assessee. Neither the copy nor any opportunity to cross-examine him was provided to the assessee by the Assessing Officer. It is the case of the assessee that it did not know Shri Shirish Chandrakant Shah who is a third party. No credence can be given to the statements which were not provided to the assessee for cross-examination nor can any adverse view can be taken from this statements.

19. We find that it is a matter of record that there arose disputes between the assessee company and above 7 parties since as per terms and condition of agreement to sale, these entities has failed to make payment of balance agreed amounts within the stipulated time limit, and also the interest due thereon. The assessee company has already invested the aforesaid sums in its project, which was also not in the position to return the booking advance, after deduction of interest due on seven the companies. Therefore, in order to avoid any further litigation in the matter, it was amicably decided between the assessee and above 7 companies that the assessee company will allot

equity shares of the assessee company to these parties. In respect of the said transactions all the above 7 parties entered in to Modification Agreements on 16.02.2012. The assessee submitted copies of the Modification Agreements entered into by it with the aforesaid 7 parties, documents thereof are placed on record. Consequently, the assessee allotted the equity shares by completing the formalities for issuing of such equity shares. These documents have not been controverted by the Assessing Officer.

20. In respect of all the 7 companies, the assessee has filed copies of PAN details, copies of Memorandum of Association and Article of Association, copies of audit report and Balance Sheets, Bank Statement of the companies, copies of share application form along with Board Resolutions before the Assessing Officer during the course of assessment proceedings as well as during the court of appellate proceeding before the CIT(A), which are placed on record. The assessee company also filed the confirmation of the aforesaid seven companies confirming the payments made to assessee company and the same are placed on record. All the transaction are through proper banking channel and reflected in the books of account of assessee company as well as aforesaid seven companies. The books of account of the assessee company are audited and auditor has not made any adverse remark in maintaining of the books of account. On the basis of above, and evidences filed thereof and on the fact, we do not find any justification in Assessing Officer's observation that the aforesaid seven companies had provided accommodation entries to

the assessee company. It is also admitted facts that the Assessing Officer has not brought on record any contrary evidences that negates the legal evidences provided by assessee. The Assessing Officer appears to have simply dismissed the evidences provided without assigning any valid reasons. Other than the statement recorded by the Department in some other case, the contents of which were also not provided to the assessee company. In view of the above, the action of the Assessing Officer is found to be untenable.

21. It is also admitted facts that during the course of assessment proceedings, the learned Counsel for the assessee had requested for supply of copies of the statement and other material based on which the department had taken an adverse view against the assessee. We find that these were neither provided by the Assessing Officer nor opportunity granted to cross-examination. Whereas, the Assessing Officer on basis of statement of one unrelated person, proceeded to make an addition to income of the assessee as unexplained cash credit. It was incumbent on the Assessing Officer to afford the assessee an opportunity of cross-examination and in the absence of such an opportunity, the impugned addition was not justified. Reliance in this regard is placed on the decision of Delhi High Court in CIT v/s Ashwani Gupta [2010] 322 ITR 396, CIT v/s SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) and DCIT v/s GVS Investments (P) Ltd. [2005] 146 Taxman 36 (Del.) where the addition made has been deleted as the Assessing Officer has passed the assessment order in violation of the principles of natural justice

inasmuch as no opportunity for cross-examination was allowed to the assessee company on basis of whose statement the said addition was made.

22. It is further observed that the Assessing Officer has stated that the investment made by the seven companies was bogus, even after all the documents in support were available on record, or it could have been called by the Assessing Officer from various Govt. Departments (including ROC/Income Tax authority of the investor company etc.). Even after these submissions were made of all the relevant documents to justify the assessee's stand, the Assessing Officer simply disagreed with the contentions of the assessee without mentioning any concrete reason for his disagreement. I find that the Assessing Officer has not demanded any other documents that could have been produced by the assessee company that were required for his satisfaction. The Assessing Officer has also not mentioned in his order about any contrary findings or the existence of any adverse documents that were available with him that proved the transaction as bogus. The Assessing Officer has also not mentioned that the advances received by the assessee company were its own cash rerouted through accommodation entries, or even that the advances were accommodation entries of any other person. Therefore, merely on the basis of third party statements, the actual facts and evidences available cannot be denied or rejected. Moreover all the seven entities are companies (and not unidentified persons) which are duly registered with Registrar of companies and have filed all their details as statutorily requirement. Even if, for argument's sake, if the Assessing Officer had any adverse information or suspicions regarding the investor companies, he could

have obtained all the information about the companies if so desired. However, I find that no corroborative documents, other than a statement of an unconnected person was used against the assessee company and the Assessing Officer has held that the identity was not proved. Therefore, the stand of the Assessing Officer in this regard is not justified.

23. On perusal of the documents and submission pertaining to the said share allotment transactions, it is found that the assessee has discharged its onus of establishing the identity of the purchaser/investor and genuineness of the transaction. Taking into consideration of all the above, we find merit in the argument of the counsel for the assessee that the primary burden cast on the assessee was duly discharged. The issue of primary onus is to be weighed on the scale of evidence available on the record and the discharge of burden by the assessee and facts and circumstances of the case and on that basis a reasonable view is to be taken as to whether the assessee has discharged the primary onus of establishing the identity of share application, its creditworthiness and genuineness of the transaction. In this regard, the Hon'ble Delhi High Court in CIT v/s Divine Leasing & Finance Ltd. [2008] 299 ITR 268 (Del.) had held as under:-

"13. There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessee it should not be harassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The Company must, however, maintain and make available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking

the tightrope of section 68 and 69 of the It Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out through investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company.

16. In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the Income Tax Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely; whether it has been transaction, namely whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness of financial strength of the creditor/subscriber; (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee (5) The department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices: (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take repudiation at face value and construe it, without more, against the assessee, (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation:

24. The preceding enumeration of the circumstances of the case shows that the assessee had furnished all relevant data before the Assessing Officer which, however, were not inquired into by the Assessing Officer. Instead, he obdurately adhered to his initial understanding that the entire transaction was neither creditworthy nor genuine. The assessee has relied upon the documents to prove that the monies had been received through banking channel from all the investor related companies; it had produced copy of bank statement, copy of Form 2 filed before ROC etc., for the year 2012-13 and the confirmation given by the remitters towards remittance of share capital etc. It could not be expected to prove the negative that the monies received by it were suspicious or not genuine infusion of capital etc. The assessee had discharged its burden of proof in terms of the settled dicta in Divine Leasing &

Finance Ltd. (supra). It is only logical to expect that if the Assessing Officer was not convinced about the genuineness of the said documents, he would have inquired into their veracity from the bank(s) to ascertain the truth of the assessee's claims. Having not done so, he was not justified in disregarding the assessee's contentions that the infusion of advance/capital into its accounts was legitimate. Where the assessee adduces evidence in support of the advances received, it is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, or some statement of an unconnected party, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged accommodation entry providers. Consequently, the Assessing Officer was not justified in making additions of the amounts under section 68 of the Act.

25. In the assessment order, the Assessing Officer has cited the following judgments, the basic facts of these cases are found to be different from the assessee's case, which are as under:—

1) *CIT v/s Nova Promoters & Finlease (P) Ltd. (2012) 342 ITR 0169*
In the aforesaid case share applicant companies which are said to have subscribed to the share capital of the assessee company were found to be non-existent at all the address given to the department and the assessee failed to produce any of directors or employees of these share applicants, and therefore, their identity is not proved and the onus cast upon it by s. 68 has not been discharged by the assessee and, therefore, addition under s. 68 in respect of share application money was justified; mere submission of share application form, PAN, names and address and ROC registration, etc. was not sufficient in view of the fact that these companies were found to be non-existent.

26. In the present case, the Directors of seven companies had confirmed the payment of advances and statement of the directors of one company was recorded and used against the assessee, therefore, these were existing entities.

2) Agrawal Coal Corporation (P) Ltd. -Vs.- Additional Commissioner of Income Tax (2011) 63 DTR 0201 (Indore ITAT)
In the said case the assessee has submitted only identity of both these companies and details of the ROC as well as their returns but failed to submit explanation regarding transaction. The assessing officer has issued summons/notices to the companies, which were returned back. In the said case assessee did not comply with the directions of the bench regarding production of any of the directors or employees of the share applicant. The assessee companies has also not been explained the nature and source of the receipt.

27. In the present case, the assessee has cried hoarse explaining the genesis of the advance receipts and the same is backed by documents. These advances were later converted as allotment of share after about a year and half, due to specific reasons of failure to make full payment towards purchase of showrooms.

3) Som Nath Maini vs. CIT (2008) 306 ITR 0414 (P & H HC)
The aforesaid case is with respect of the short term capital gain from sale of shares in view of astronomical difference between the share price of a company within a short span of 6-7 months and addition was made to the income of the assessee as the genuineness of transactions were not proved.

28. In the present case, the assessee has provided all possible documents to prove the genuineness of transactions and had fulfilled its burden. Not a single document has been proven false, and the onus was on the Assessing Officer to disprove the transactions which he has failed miserably.

29. Therefore, the decision relied upon by the Assessing Officer are on different facts, and not comparable. In fact, these decisions go to show how

the Assessing Officer, in the present case, had not discharged his own duties as a Revenue Authority, and how ineffective the addition was, without completing such enquires and recording of such proper findings by the Assessing Officer.

30. It is also admitted fact which is mentioned at Page-26 Para-6 of the CIT(A) order that the aforesaid transactions are backed by agreement of sell and entire amount were received through proper banking channel as advance against property, the assessee has submitted all the details during the course of assessment proceedings before the Assessing officer. A chart showing details are as under:-

<i>Sr. No</i>	<i>Name of companies</i>	<i>Amount of Advance/Share application money</i>	<i>Year of receipt of advance</i>
1.	<i>Adhar Ventures India Ltd., Surat</i>	<i>48,75,000/-</i>	<i>F.Y. 2010-11</i>
2.	<i>Prabhav Industries Ltd. Vadodara</i>	<i>1,46,25,000/-</i>	<i>F.Y. 2009-10</i>
3.	<i>Dhanus Technologies Ltd. Chennai</i>	<i>1,46,25,000/-</i>	<i>F.Y. 2010-11</i>
4.	<i>Avance Technologies Ltd. Mumbai</i>	<i>63,37,500/-</i>	<i>F.Y. 2009-10</i>
5.	<i>Venmax Drugs & Pharmaceuticals Ltd., Hyderabad</i>	<i>48,75,000/-</i>	<i>F.Y. 2011-12 wrongly typed its F.Y. 2010-11</i>
6.	<i>Yantra Natural Resources Ltd. Hyderabad</i>	<i>1,07,25,000/-</i>	<i>F.Y. 2009-10</i>
7.	<i>L.N. Ind. India Ltd., Hyderabad</i>	<i>97,50,000/-</i>	<i>F.Y. 2010-11</i>
	<i>Total...</i>	<i>6,58,12,500/-</i>	

31. The issue under dispute is that, the money was received through proper banking channel in the financial years 2009-10 and 2010-11, and these were towards advance for purchase of showroom. All the documents with respect of issue and allotment of share to the investor companies in the subsequent year were submitted to Registrar of companies (ROC), including the Audited Balance Sheet of the company after the said entire allotment of shares, its

Form No.2, for allotment of shares, Board Resolution and the challan for the filing fees of these documents filed by the assessee company. There was no query in the year of issue of shares for any default in this transaction. It is worth to mention here that the ROC has never objected to this issue of shares or treated the share transaction as invalid till this date.

32. Since the amount has not been received during the previous year relevant to assessment year 2012-2013 as advance against property, therefore, there is no question of making addition during the previous year relevant to assessment year 2012-2013 arises at all. We find that issue is covered in favour of the assessee which is reported as [2008] 216 CTR 0195 (SC), CIT v/s Lovely Exports (P) Ltd. wherein it has been held as under:-

"If the share application money is received by the assessee company from alleged bogus shareholders, whose name are given to the AO, then the department is free to proceed to reopen their individual assessment in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

It is also admitted fact the Finance Act, 2012, which inserted two provisos to section 68, with effect from 01/04/2013 (assessment year 2013-14). The first proviso is to enlarge the onus of a closely held company and provides that if a closely held company receives any share application money or share capital or share premium or the like, it should also establish the source of source (that is, the resident from whom such money is received). The second proviso provides that the first proviso will not apply if the receipt of sum (representing share application money or share capital or share premium etc.) respect of any income of a venture capital company (VCC) or

venture capital fund (VCF) [referred in section 10(23FB)]. The amended provisions, therefore, would be effective only from the assessment Year 2013-14 onwards and not for the subject assessment year. In any view of the matter, the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts, namely, the genuineness of the transaction, identity and the capacity of the investor have all been examined and on facts it is found satisfied. The case laws cited above also support the case of the assessee and insofar as provisions of section 68 of the Act are concerned, the said is not applicable in the case facts of the present case.

3. In the background of aforesaid discussion and case laws relied upon by the learned Counsel for the assessee and the Revenue, we do not find any infirmity in the order of passed by the learned CIT(A) warranting us to interfere with the same. Accordingly, the order passed the learned CIT(A) is hereby upheld by dismissing the grounds raised by the Revenue.

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 06/12/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 06/12/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur