

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, AHMEDABAD**  
**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.479, 480 and 590/Ahd/2020**  
**Assessment Year : 2009-10, 2010-11 and 2013-14**

The ITO, Ward-1(1)(1) Vadodara.	Vs.	M/s.Gujarat Coastal Construction Ltd. C/o. Shri Viral H. Ajmera (Director) 7, Matruchhaya Society Nizapura Vadodara 390 002. PAN : AABCG 3891 M
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Assessee by	:	Shri Mehul K. Patel, AR
Revenue by	:	Shri Rignesh Das, Sr.DR

सुनवाई की तारीख / **Date of Hearing** : 04/12/2024  
घोषणा की तारीख / **Date of Pronouncement**: 17/12/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

The impugned three appeals relating to the same assessee, are filed by the Revenue against separate orders passed by the Id.Commissioner of Income Tax (Appeals)-1(hereinafter referred to as CIT(A)), Vadodara under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining Assessment Years 2009-10, 2010-11 & 2013-14.

2. The grounds raised by the Revenue are as under:

**ITA No.479/Ahd/2020 – Asst.Year 2009-10**

1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(Appeals) erred in deleting the addition on account of share application money of Rs.2,02,83,000/- without considering the facts that creditworthiness of the share applicant has not been proved, thus primary onus on the assessee company to prove the creditworthiness of the share applicant. Ld. CIT(A) also ignored the facts that the share applicant has meager income of Rs.10,650/- during the year whereas the share applicant has advanced the share application money of Rs.2,02,83,000/-."

**ITA No.480/Ahd/2020 – Asst.Year 2010-11**

1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(Appeals) erred in deleting the addition on account of share application money of Rs.1,88,33,760/- without considering the facts that creditworthiness of the share applicant has not been proved, thus primary onus on the assessee company to prove the creditworthiness of the share applicant. Ld. CIT(A) also ignored the facts that the share applicant has meager income of Rs.78,710/- during the year whereas the share applicant has advanced the share application money of Rs.1,88,33,760/-"

**ITA No.590/Ahd/2020 – Asst.Year 2013-14**

1. "On the facts and in the circumstances of the case and in law, whether the CIT(A) has erred in quashing the notice u/s 148 of the Act issued by the Assessing Officer stating that it is merely on change of opinion subsequent to original assessment framed u/s 143(3) of the Act?"

2. "On the facts and in the circumstances of the case and in law, whether the CITA) has erred in quashing the notice u/s 148 of the Act issued by the Assessing Officer without going into the merits of the case and also without appreciating the fact that the Assessing Officer was in possession of tangible material while recording reasons for reopening of assessment, which cannot be construed to be change of opinion?"

3. At the outset itself, it was stated that all three appeals have come up before us in identical background of facts; that in all three cases reassessment proceedings were resorted to in the case of the assessee and orders passed under section 147 of the Act. The addition being

made on account of share capital introduced in the assessee-company, during each of the impugned years, source of which was alleged to have not been satisfactorily explained. The addition was made in terms of section 68 of the Act on account of unexplained credits, and quantum of addition in each of the assessment years was as under:

Asst.Year 2009-10	Rs.2,02,83,000/-
Asst.Year 2010-11	Rs.1,88,69,240/-
Asst.Year 2013-14	Rs.2,17,66,800/-

4. The basis for making the addition by the Assessing Officer (AO), it was contended, was the same, noting that an apparently unreasonably huge amount of share premium was taken on the shares issued, despite the fact that the assessee's financials were weak and did not support such a huge premium.

5. The assessee's explanation, it was pointed out, in all three years was the same, that the share application money had been given by one Shri Mandhata Singh M. Jadeja ("MMJ" for short), who was the director of the company, and the assessee substantiated this claim with relevant documentary evidences, but the AO found that the credit-worthiness of the share applicant/shareholder was not proved by the assessee, and in the light of the same therefore, finding that the assessee had failed to discharge its onus of proving the genuineness of the transaction of the share capital, all the share capital introduced in the assessee-company in each of the years was added to the income of the assessee.

The ld.counsel for the assessee pointed out that in the first-two years i.e. Asst.Year 2009-10 and 2010-11, initially no regular

assessment/ scrutiny assessment was made in the case of the assessee; that accordingly, there was no challenge to the validity of the re-assessment proceedings in these two years. In the third year, before us i.e. Asst.Year 2013-14, the assessee had been subjected to scrutiny assessment initially and order passed under section 143(3) of the Act; that subsequently, the impugned re-assessment proceedings were resorted to, the legality of which was challenged before the Id.CIT(A).

The Id.counsel for the assessee contended that the Id.CIT(A) in first two years deleted the addition on merits, finding the assessee to have discharged its primary onus of proving the genuineness of the transaction; that in the third year i.e. Asst.Year 2013-14, he held the proceedings under section 147 itself to be invalid, and accordingly, set aside the order passed by the AO. It is, in this background, it was contended that the Revenue has filed the present appeal before us.

7. The Id.counsel for the assessee stated that since the share applicant in all three years is the same, the explanation of the assessee regarding the share application is also the same, and the addition made to the income of the assessee is also for the identical reason, therefore, in the first-two years, where the addition has been deleted by the Id.CIT(A) on merits, his arguments would be identical. that in Asst.Year 2013-14, since only legal issue was involved, separate arguments needed to be made.

8. The Id.DR fairly agreed with the above. Accordingly, the appeals were proceeded to be heard with; The appeals of the Revenue for Asst.Year 2009-10 and 2010-11 were first taken up together for hearing. Since admittedly, the issue involved in both years are

identical, we shall be dealing with the Department's appeal for Asst.Year 2009-10 and our decision rendered therein will apply *pari passu* to Asst.Year 2010-11 also.

**9. ITA No.479/Ahd/2020 (Revenue's appeal)-Asst.Yr 2009-10.**

10. As stated above, since the solitary issue involved in the appeal relates to the deletion of addition made of share application money under section 68 of the Act, the ground accordingly raised by the Revenue reads as under:

*1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(Appeals) erred in deleting the addition on account of share application money of Rs.2,02,83,000/- without considering the facts that creditworthiness of the share applicant has not been proved, thus primary onus on the assessee company to prove the creditworthiness of the share applicant. Ld. CIT(A) also ignored the facts that the share applicant has meager income of Rs.10,650/- during the year whereas the share applicant has advanced the share application money of Rs.2,02,83,000/-."*

11. Before proceeding further, certain facts relating to the issue need to be brought on record.

12. During the impugned year, the assessee had received Rs.2,02,83,000/- as share application money. The entire amount was stated to be received from one Shri Mandhatasinh M. Jadeja ("MMJ" for short), who was a director of the assessee-company. The assessee submitted confirmation letter of Shri "MMJ", copy of acknowledgment of return of income for the impugned year of "MMJ" i.e. Asst.Year 2009-10, copies of his bank account entries to substantiate the genuineness of the transaction. The AO noted from the return of income of "MMJ" for the impugned year that he reported a total income of only Rs.10,650/-. Accordingly, the assessee was asked to

establish credit-worthiness of the share applicant. The assessee stated that entire money was paid by the share applicant through banking channel. The AO, however, noted from the bank account of “MMJ” that immediately before the issuance of cheques for investment in the assessee-company there were credits of the same or higher amounts in the bank account of “MMJ”. The data in this regard is tabulated at page no.4 and 5 of his order. He noted that some of the amounts were deposited in cash. Accordingly, show cause notice was issued to the assessee as to why the entire share application money be not added to the income of the assessee under section 68 of the Act, in the absence of satisfactory explanation for the source of the same. The assessee submitted response, which contained the details of the share application money received from “MMJ”, the person from whom the amounts were received by “MMJ” along with copies of bank entries of “MMJ”. The AO however held that since the assessee had not explained the nature or purpose of the amounts given by various persons to “MMJ”, credit-worthiness of “MMJ” had not been established. He also noted from the financial statement of the assessee-company that it had no turnover since inception i.e. FY 2000-01 and noting that no prudent person would invest such a huge amount in a company, which had not yet started earning income, he found the premium of Rs.1,000/- for which the shares were issued by the assessee-company to be unbelievable. He accordingly held that no proper, reasonable and acceptable explanation had been given by the assessee-company of the source of share application money introduced in the assessee-company, and accordingly added the same to the income of the assessee under section 68 of the Act.

13. The Id.CIT(A), however, found the assessee-company to have discharged its primary onus of proving the identity, genuineness as also credit-worthiness of the transaction, noting that the assessee had filed the income-tax return of the share applicant, bank statement of the share applicant; that all payments were made through banking channels, and also noting the fact that the assessee had also furnished the details of all persons from whom “MMJ” had received the amount, which were further invested in the assessee-company. Accordingly, noting so, the Id.CIT(A), found the assessee to have discharged its primary onus of proving the genuineness of the transaction, and deleted the addition made by the AO.

14. Before us, the Id.DR heavily relied on the finding of the AO, pointing out particularly the finding of the AO to the effect that –

- i) Financials of the assessee-company did not justify the huge premium at which shares were issued, since the assessee-company was noted to have no turnover, and yet issued shares at a premium of Rs.1,000/- with the face value of shares being Rs.10/- only;
- ii) The credit-worthiness of “MMJ” was not established, since, he was noted to have invested a huge amount of Rs.2.02 crores while his return of income showed a meagre income of only Rs.10,000/-;
- iii) The bank account details of “MMJ” reflected credits in the said account immediately before the amounts were withdrawn for investment in the assessee-company, as share application money.

Reliance was placed on the decision of the Hon'ble Apex Court in the case of Pr.CIT Vs. NRA Iron & Steel P.Ltd., (2019) 103 taxmann.com 48 (SC) for the proposition that merely because the assessee-company had filed all the primary evidences, it could not be said that onus on the assessee to establish the credit-worthiness of investor company stood discharged.

15. The ld.counsel for the assessee, on the other hand, pointed out that the assessee had duly demonstrated credit-worthiness of the depositor, Shri "MMJ", by demonstrating that all investments by him were made through banking channels, and all details of the credit entries in his bank account were also furnished to the AO. He pointed out that this fact was also noted by the AO in his order wherein the details of all credits in the bank account of "MMJ" were noted to be furnished by the assessee. He contended, therefore, that the assessee had proved the credit-worthiness of Shri "MMJ" and had also gone extra length of proving the source of source also; that, therefore, the order of the ld.CIT(A) holding that the assessee has discharged its primary onus of proving the genuineness of the transaction needs to be confirmed.

16. Having heard contentions of both the parties, we do not find any merit in the contentions of the ld.DR that the assessee had failed to discharge its primary onus of proving the genuineness of share application money received during the impugned year.

The finding of fact, recorded by the ld.CIT(A) are pertinent in this regard. The same find mention at page no.18 of his order as under:

The AO during the assessment proceedings found Rs.2,02,83,000/- as share application money and the same was credited in the books of accounts of the appellant company. As per sec.68 of the Act, the appellant has to explain the nature and source of the sum so credited. In this case, the appellant offered an explanation stating that one of the Managing Director has advanced share application money thereby explained the nature of amount. The appellant also explained the source of such fund by giving confirmation letter from the person. Therefore, the appellant filed the nature and source of the amount so credited alongwith explanation. To substantiate the same, the appellant filed confirmation letter, PAN, I.T return and bank transactions details. On further enquiry, the appellant also filed the details of the amounts taken by the investor and also filed relevant bank accounts of the investor before the AO. In the light of this, one has seen whether the primary onus casted upon the appellant was discharged or not. The appellant relied several decisions as can be seen from the submissions supra for the propositions that once confirmation letter, PAN, copy of return, bank statement, details of persons who advanced money to the investor alongwith bank transactions were placed before the AO the primary onus has to be treated as discharged by the appellant. The appellant relied on the decisions of Hon'ble High Court of Gujarat for the above propositions. I have carefully considered the decisions and felt that in the present case the appellant has discharged its primary onus by filing the required documents and explanation before the AO.

17. As is evident from the above, the Id.CIT(A) records that the assessee had explained the source of investment by filing confirmation letter of the investor. The assessee had also filed PAN of the investor, his IT returns and bank transactions details. He further goes on to note that the assessee had also filed details of the amounts taken by the investor for making the investment which were reflected as credits

in his bank account immediately before making the investment. All these evidences are noted by the Ld.CIT(A) to be filed by the assessee to the AO. There is no dispute with respect to the said facts.

18. Considering the same, we agree with the ld.CIT(A) that the assessee had established all the ingredients, which were necessary to prove the genuineness of the share application money received in terms of section 68 of the Act. We agree with the ld.CIT(A) that the assessee had provided the identity of the investors(PAN ,ITR filed), genuineness of the transaction(transaction shown to be done through banking channels, confirmation of the share applicant filed), as also credit-worthiness of the same by filing even details of persons who had advanced money to the investor for making the investment in the assessee-company. We completely agree with the ld.CIT(A) that the assessee had discharged the primary onus cast on it, by filing the required document and explanation before the AO.

19. The ld.CIT(A), we find, thereafter, notes that the assessee having so discharged its onus, it was thereafter for the AO to have conducted further inquiries before holding the assessee's explanation as unsatisfactory, and finding no such inquiry had been done by the AO, accordingly, he went on to delete the addition made under section 68 of the Act. His finding in this regard are at page 19 of the order as under:

Once it is held that the appellant has discharged its primary onus then it is necessary to see whether AO has conducted any enquiry/investigation to find out whether the explanation given is satisfactory or not. From the assessment record and also submissions made by the appellant, it is clear that the AO has only examined the bank account copies and no further enquiry was conducted by him with the investor or the persons who have advanced money to the investor which ultimately given to the appellant company in the form of share application money.

The appellant in the submissions stated that the burden shifted from the appellant to the AO once the primary evidences were placed before the AO. If the AO has not conducted any enquiry as required to arrive at the decision of explanation of the appellant not satisfactory or otherwise, then no addition can be made in the hands of the appellant. For this proposition, the appellant relied on several decisions. I have gone through the decisions and also found that they are in favour of the appellant. The AO is duty bound to conduct enquiry on the submissions made by the appellant, if not satisfied. As stated above in the present case, the AO has not made any enquiries. Hence on this count, the addition made by the AO in the hands of the appellant is incorrect. As per sec.68 of the Act, the appellant is required to give explanation with regard to the transaction regarding nature and source of the amount credited. In the present case, the appellant has filed an explanation and also evidences to substantiate the nature and source of the transaction. The AO has not found the explanation as false one. There are decisions for the propositions that the AO cannot insist the appellant to bring evidence for the source of source. Further, in the present case, the appellant filed details of banking transactions and also the persons from whom the

money was received by the investor through banking channels. From this, it is evident that the appellant established the source of source too. The appellant relied on the decision of the Hon'ble High Court of Gujarat in the case of Rohini Builders and stated that in the facts of the case no addition is warranted. It was also brought to the notice that SLP filed against the decision of Hon'ble High Court was also dismissed by the Hon'ble Supreme Court. In view of this, the learned AR requested to delete the addition made by the AO. I have gone through the decision of the Hon'ble High Court and found that the ratio is applicable to the facts of the case and the appellant deserves relief. }

20. We are in complete agreement with the Id.CIT(A) in this regard also. The assessee having discharged primary onus by filing all necessary documents, the onus thereafter shifted to the Department, who needed to carry out further inquiry before arriving at any conclusion or finding with regard to the explanation furnished by the assessee being unsatisfactory, and having failed to do so, therefore, the Id.CIT(A), we hold, has rightly held that the explanation of the assessee cannot be said to be unsatisfactory for the purpose of invoking section 68 of the Act.

21. The case of the Revenue of the credit worthiness of the share applicant not being established is we find, incorrect. The assessee having demonstrated the fact of the share applicant having made investment through banking channels and having even provided details of the source from where the share applicant made the advance by giving details of all credits appearing in his bank account, the creditworthiness of the share applicant was we hold sufficiently demonstrated.

22. The case of the Revenue, if any, we find, merely rests on the financials of the assessee-company not supporting the huge premium collected by it, but that, we agree with the Id.CIT(A), cannot be the ground for doubting the explanation of the assessee, particularly, when all documentary evidences to prove the genuineness of the transactions have been filed by the assessee, and there is no infirmity found by the Department in the same. Reliance placed by the Id.CIT(A) on the decision of the Apex Court in the case of Pr.CIT Vs. Chain House International P.Ltd., (2019) 103 taxmann.com 435 (SC) in this regard, is apt, wherein the Hon'ble Apex court has categorically held that once the genuineness, credit-worthiness and identity of the investors are established, no addition can be made of cash credit on the ground that shares were issued at excess premium.

23. Having stated so, we find that reliance placed by the Id.DR on the decision of the Hon'ble Apex Court in the case of NRA Iron & Steel P.Ltd. (supra) for the proposition that mere filing of the documentary evidences would not sufficient for discharge of onus under section 68 of the Act, is not applicable to the present case. The said decision was rendered in the particular facts of case before the Hon'ble Apex Court, where the Hon'ble Court noted that though the assessee had furnished all documentary evidences, field inquiry by the department revealed that in several cases the investor companies were found to be non-existent. It is, in this background that the Hon'ble Apex Court held that mere submissions of documentary evidences would not suffice to discharge the onus cast on the assessee under section 68 of the Act.

24. The facts in the present case before us are clearly distinguishable, where the Id.CIT(A) has categorically noted that after

the filing of the documentary evidences by the assessee no field inquiry was done by the AO.

In the light of the same, this argument of the Id.DR is found to be without any merits, and is therefore, rejected.

25. In view of the above, we, therefore, find no reason to interfere in the order of the Id.CIT(A), which we find is well-reasoned order, passed after correctly appreciating the facts of the case, and applying correctly the proposition of law to it.

The grounds raised by the Revenue are accordingly dismissed.

26. The appeal of the Revenue is dismissed.

**27. ITA No.480/Ahd/2020 – Asst.Year 2010-11**

28. The issue raised in the above appeal is reflected in the following solitary ground:

*1. "On the facts and in the circumstances of the case and in law, whether the Ld. CIT(Appeals) erred in deleting the addition on account of share application money of Rs.1,88,33,760/- without considering the facts that creditworthiness of the share applicant has not been proved, thus primary onus on the assessee company to prove the creditworthiness of the share applicant. Ld. CIT(A) also ignored the facts that the share applicant has meager income of Rs.78,710/- during the year whereas the share applicant has advanced the share application money of Rs.1,88,33,760/-"*

29. As stated hereinabove, the above ground is identical to the sole ground raised by the Revenue for Asst.Year 2009-10, with the only difference being the quantum involved. Accordingly, following our decision in the Revenue's case for Asst.Year 2009-10, we reject this ground of appeal and dismiss the Revenue's appeal.

**30. We now take up the appeal of the Revenue for the Asst.Year 2013-14 in ITA No.590/Ahd/2020.**

31. In the impugned appeal, challenge to the order of the Id.CIT(A) is against allowing the assessee's appeal on the legal ground, holding the proceedings conducted under section 147 of the Act to be invalid. The grounds raised by the Revenue are as under:

*1. "On the facts and in the circumstances of the case and in law, whether the CIT(A) has erred in quashing the notice u/s 148 of the Act issued by the Assessing Officer stating that it is merely on change of opinion subsequent to original assessment framed u/s 143(3) of the Act?"*

*2. "On the facts and in the circumstances of the case and in law, whether the CITA) has erred in quashing the notice u/s 148 of the Act issued by the Assessing Officer without going into the merits of the case and also without appreciating the fact that the Assessing Officer was in possession of tangible material while recording reasons for reopening of assessment, which cannot be construed to be change of opinion?"*

32. In the facts of the present case, during the original assessment proceedings under section 143(3) of the Act, the issue of share application money introduced in the assessee-company was duly examined and thereafter, reopening under section 147 of the Act was resorted to for the same issue. The assessee challenged reopening before the Id.CIT(A) on the ground that it was resorted to on the basis of mere change of opinion with no new material in the possession of the AO. The Id.CIT(A) examined all the facts and documents before him relating to the original assessment proceedings, as also basis for reopening the case in the impugned year, and found the contention of the assessee to be correct. He accordingly held that reopening resorted to by the AO was invalid, since it was not based on any new

material or information coming into the hands of the AO, but was merely based on change of opinion. The assessment order passed accordingly was quashed.

33. The Id.CIT(A), at para 6.1 of his order has recorded all facts relating to the examination on the issue of share application received by the assessee in the original assessment proceedings. The same are reproduced herewith:

6.1 Since the appellant has challenged the very basis of re-opening hence, I must peruse and examine all notices issued, explanation alongwith supporting evidence filed before the AO during the original scrutiny assessment. Para-2 of the show cause notice dated 18.03.2016 suggests that AO has examined preliminary explanation wrt huge share premium but he remained dissatisfied. He issued notice u/s.133(6) to one of the largest investor namely Shri Mandhatasinhji Jadeja calling from him a copy of his bank statement of HDFC, Rajkot branch, alongwith a copy of ITR. Para-3 of the said show cause notice clearly mentions that cash has been deposited prior to issue of cheque to the company for investment in share. Para-3 also reads that creditworthiness of Shri Mandhatasinhji Jadeja is not proved as his income reflected in ITR is Rs.34,798/- for assessment year under consideration. Accordingly, AO show caused the appellant company as to why sec.68 is not attracted in this case. Appellant submitted reply stating that share application was received from Shri Mandhatasinhji Jadeja who is one of the promoter Director of the company. Appellant filed confirmation letter, copy of ITR, bank statement of Shri Mandhatasinhji Jadeja, a certificate from govt. approved valuer justifying share premium. AO, however, noticed that the share application money was advanced on various dates and prior to the date of advancement certain amounts were deposited in his bank account by way of cheque or cash. The appellant, during the assessment proceedings u/s.143(3) of the Act, filed WT return for earlier years stating that promoters of the company are from the royal family of Rajkot hence his capacity should not be doubted. It was also contended that charging of premium on the share is prerogative of the company, the same cannot be questioned by the AO as laid down by Hon'ble Supreme Court in the case of Chain House International (P) Ltd. Thus, the primary onus casted upon the appellant company was discharged. In view of this, all the three ingredients required u/s.68 of the Act i.e. identity, creditworthiness and genuineness of the transaction were proved beyond doubt. As it appears from record, AO did not raise further query in this matter. Finally AO passed assessment order u/s.143(3) of the Act on 30.03.2016 accepting returned income.

34. At para 6.2 of his order, he mentions reasons for reopening of the case of the assessee as under:

6.2 Having completed the assessment u/s.143(3) of the Act on 30.03.2016, AO proceeded to reopen the case with the reason that bank statement shows cash deposit just before issuing cheque to the appellant company for share premium. The reason also suggests, appellant company failed to prove source of funds credited in bank account of Promoter/Director Shri Mandhata Singh Jadeja. The Ld.AR reiterated that all these issues have been examined during assessment proceedings u/s.143(3) of the Act wherein no addition was made. Despite appellant's objection, AO proceeded to make addition of entire share application money and share premium holding as under

1. Company were making losses in earlier year hence huge premium of Rs.1010 was nothing but a sham transaction.
2. Investor who happens to be Director of the company has meager income of Rs.34,798/- and source of cash deposit remains unexplained hence investment in share premium also remains unexplained.
3. Company has no turnover and has not yet earned profit
4. Assessee has not offered proper, reasonable and acceptable explanation regarding the sum credited.

Being aggrieved with the addition of Rs.2,17,66,900/- (Rs.2,13,400 + Rs.2,15,53,400), appellant is before me.

35. And after considering both of them, at para 6.4 of his order, he notes that the basis for reopening of the cases, which were based on information with the AO that the investment made by "MMJ" from his bank account showed immediate credit in the bank account, before making investment, was an information which was there before the AO during the original assessment proceedings also; that this information was examined by the AO and query raised with regard to the same, to which the assessee had furnished explanation with supporting evidence at para 6.4 as under:

6.4 During the course of appellate proceedings, Ld.AR cited various judgments of the jurisdictional High Courts/Tribunals and also various notable decisions of the Supreme Court. His main argument revolves around AO's jurisdiction to reopen the case on the basis of "change of opinion". From the copies of explanation, reply and evidence filed before the AO during the assessment proceedings, it is seen that case was selected for scrutiny for verification of share application money and share premium. AO has called for requisite information by issuing notice u/s.133(6) of the Act from the investor i.e. Shri Mandhatasinhji Jadeja. I find that AO had examined the same bank statement and found cash deposit proximate to the date of transfer of fund to the applicant company for share

application money and share premium. From the record, it is also clear that AO show caused the appellant on 18.03.2016 to explain the sources of fund which was rebutted by the appellant alongwith supporting evidence. From the date of issue of show cause notice dated 18.03.2016 to the date of passing assessment order u/s 143(3) dated 30.03.2016, AO had 12 days time to act upon the information supplied by the appellant. However, AO passed assessment order u/s.143(3) of the Act on 31.03.2016 accepting the returned income. Once the initial onus was discharged, it was for the AO to make further inquiry with reference to sources of fund or even source of source of fund. Having not done so prior to finalization of assessment proceedings, it would be considered that Ld. AO has accepted the explanation offered by the appellant. The Hon'ble Gujarat High Court in case of Clantha Research Ltd. vs. CIT (2014) 225 Taxman 102 has held that where during the original assessment, assessee's claim was processed at length and after calling for detailed explanation from him the same was accepted, merely because a certain element or angle was not in mind of the AO while accepting such a claim, it cannot be a ground to start the reassessment proceedings.

36. Based on the above finding, he therefore held at para 6.5 of his order that reopening was merely on account of change of opinion and not on account of new information coming in the possession of the AO. His finding in this regard are at para 6.5 of his order as under:

6.5 Admittedly, AO has enquired the issue at assessment stage, therefore it cannot be said that AO could not verify source of source of fund invested for share premium. Having accepted the returned income during the assessment proceedings and thereafter reopening the assessment on the very premise i.e. share premium, amounts to "change of opinion". AO has not brought on record as to what new evidence or information came to light, which led to reopening of assessment. The Hon'ble Jurisdictional Tribunal in case of Sweta Organics (P) Ltd. v. CIT(2008) 118 IIT (Ahd) 426 has held that the facts were before the AO at the time of framing of original assessment, later on a different view was taken by him or by his successor on the same facts, clearly amounts to change of opinions and nothing else. This could not form the basis of reopening the assessment, permitting the AO or his successor to reopen the completed assessment merely on conjecture and surmise even when nothing new had come to the possession of the AO, which suggested that the assessee's income had escaped assessment. If the AO while passing the original assessment order chose not to give any finding in respect of any issue, which was properly replied by the assessee, that could not give him or his successor in office a reason to reopen the completed assessment of the assessee or to contend that because the facts were considered in the assessment order, a full and true disclosure was not made. In this case, AO could not demonstrate as to what new facts have emerged after the completion of assessment u/s. 143(3) of the Act.

37. The Id.DR was unable to controvert the factual findings of the Id.CIT(A) that the information or basis, on which the reopening was resorted to by the AO was also in the possession of the AO during the original assessment proceedings, who had duly examined it, questioned the assessee regarding it, and to which the assessee had furnished explanation duly substantiated with evidences. The findings of the Id.CIT(A) therefore that there was no new information in the possession of the AO for reopening the case of the assessee, and that reopening was resorted to only on a change of opinion is therefore factually correct. Ld.DR had no quarrel with the proposition

of law applied by the Ld.CIT(A) for holding the reassessment proceedings to be invalid since it was based on mere change of opinion of the AO and there was no new information in the possession of the AO.

38. In the light of the same, we do not find any infirmity in the order of the ld.CIT(A) quashing the assessment order passed.

The grounds raised by the Revenue are therefore dismissed.

The appeal of the Revenue is dismissed.

39. In the combined result, all the appeals of the Revenue are dismissed.

**Order pronounced in the Court on 17<sup>th</sup> December, 2024 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 17/12/2024  
vk\*