

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

ITA No. 173/JPR/2024  
Assessment Year : 2010-11

Income Tax Officer, Ward-7(2), Jaipur	बनाम Vs.	Amar Pratap Steels Pvt. Ltd. A-161, RIICO Industrial Area, Bagroo, Jaipur
PAN/GIR No.: AAECA 9152 G		
Appellant		Respondent

CO No. 03/JPR/2024  
(Arising out of ITA No. 173/JPR/2024)  
Assessment Year : 2010-11

Amar Pratap Steels Pvt. Ltd. A-161, RIICO Industrial Area, Bagroo, Jaipur	बनाम Vs.	Income Tax Officer, Ward-7(2), Jaipur
PAN/GIR No.: AAECA 9152 G		
Appellant		Respondent

Assessee by : Sh. Rohan Sogani, CA  
Revenue by : Sh. Anup Singh, Addl. CIT

Date of Hearing : 13/12/2024  
Date of Pronouncement: 18/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

By way of the present appeal the revenue challenges the finding of the National Faceless Appeal Centre [for short 'NFAC/CIT(A)'] recorded in the order dated 29.12.2023. Against that appeal so filed by the revenue, assessee also preferred the cross objection. The dispute relates to the assessment year 2010-11. That order of the Id. CIT(A) arise because the assessee has challenged the order dated

28.03.2016 before him the order passed under section 143(3) r.w.s 147 of the Income Tax Act, [ for short "Act" ] by the ITO, Ward 7(1), Jaipur.

2. Revenue challenges the finding of the Id. CIT(A)/NFAC on the following grounds in ITA No. 173/JPR/2024:-

"1 . On the facts and in the circumstance of the case, the Ld. CIT(A) erred in deleting the addition made by the AO of Rs. 1,70,02,500/- on account of unexplained cash credit u/s 68 of the Act in respect of share application money received by the assessee during the year without appreciating the fact that the information was received from investigation wing after thorough verification wherein the identity and credit worthiness of the share applicants as well as the genuineness of the transactions were not proved.

2. On the facts and in the circumstance of the case, the Ld. CIT(A) failed to appreciate the findings of investigation wing wherein the Statement of the principal person of the group, Sh. Praveen Kumar Jain, was recorded in which he has categorically admitted that the entire business of accommodation entries is through him and companies under his control and had been established after dure verification that the concerned entities have provided accommodation entries.

3. On the facts and in the circumstance of the case, the Ld. CIT(A) erred in ignoring all these material findings and failed to appreciate that various Courts including the jurisdiction High Court and also the 7 Apex Court have held time to time that cross examination is not a legal right of the assessee.

4. On the facts and in the circumstance of the case, the Ld. CIT(A) erred in holding that entire transactions were carried out through Banking channel, ignoring the fact that payment by account payee cheque is not sufficient to establish the genuineness of any transaction by itself."

3. Whereas against the appeal of the revenue the assessee preferred to file cross objection in CO No. 03/JPR/2024 on the following grounds: -

“1. In the facts and circumstances of the case and in law, Id. CIT(A)/National Faceless Appeal Centre (NFAC) has erred in, confirming the action of the Id. AO in reopening the case of the assessee under Section 147 of the Income Tax Act, 1961. The action of Id. CIT(A)/NFAC is illegal, unjustified, arbitrary and against the facts of the case and without jurisdiction. Relief may be please be granted by quashing the entire reassessment proceedings initiated by the Id. AO and confirmed by the Id. CIT(A)/NFAC.”

Since, the appeal of the revenue and the cross objection of the assessee were head together disposed off by this common order.

4. The brief facts as culled out from the records is that the assessment proceedings u/s 147 of the Income Tax Act, 1961 on the basis of information received by the Id. AO regarding the assessee had taken the accommodation entries as share application money from the various companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai during the financial year 2009-10. and consequently, a notice u/s 148 of the Income Tax Act, 1961 was issued on 17.03.2015 and duly served upon the assessee on 24.03.2015. Records reveals that as per information passed on by the office of the Director General of

Income Tax (Investigation), 3rd Floor Scindia House, Ballard Pier, Mumbai vide its office letter no DGIT(Inv)/Information/PJ2014-15 dated 03.07.2014 and received from the Income Tax Officer (Inv)(Hqrs) O/s the Director General of Income Tax (inv). Rajasthan, Jaipur wherein it is available that the assessee has taken the accommodation entries as share application money from the following companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai.

Investor Company	Amount (Rs.)
Alka Diamond India Limited	35,00,000
Javda India Impex Ltd	30,02,500
Nakshatra Business P. Ltd (Formerly known as Hema Trading Co. P Ltd)	35,00,000
Olive Overseas P. Ltd (Formerly known as Real Gold Trading Co. P Ltd)	35,00,000
Traingular Infocom Ltd (Formerly known as Lexus Infotech Ltd)	35,00,000
Total	1,70,02,500

4.1 As is clear that the assessee is a one of the beneficiary for taking the accommodation entries as share application money from the above companies which are managed and controlled by Shri Praveen Kumar Jain through his relatives, agents and his accountants detected during the search & seizure operation

conducted by Investigation Wing of Income Tax Department, Mumbai in the case Shri Praveen Kumar Jain Group. This information revealed that the income of the assessee for an amount of Rs. 1,70,02,500/- for the assessment year 2010-11 has escaped assessment within the meaning of the provisions of section 147 of the Income Tax Act, 1961 and therefore, the re-assessment proceedings u/s 147 of the Income Tax Act, 1961 was initiated by issue of notice u/s 148 of the Act on 17.03.2015 which was duly served on 24.03.2015.

Subsequently, notice u/s 142(1) and along with questionnaire was issued to the assessee and also notice u/s 143(2) was issued.

Pursuant to those notices the assessee filed the reply and also objected to the initiation of the re-assessment proceeding against the assessee company praying there to drop the proceeding or pass a speaking order disposing off the objection take to the re-assessment proceeding. Ld. AO passed a speaking order regarding objections filed against the issuance of notice u/s 148 of the Act on 12.02.2016 and rejected the objections filed by assessee.

In response to the notices so issued filed the details of share capital received during the year, share application form, bank statement of applicant and bank statement of assessee company.

On perusal of details filed by assessee and available record of assessee, a notice was issued to assessee requiring information from, assessee taken the accommodation entries as share application money from the following companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai.

Investor Company	Amount (Rs.)
Alka Diamond India Limited	35,00,000
Javda India Impex Ltd	30,02,500
Nakshatra Business P. Ltd (Formerly known as Hema Trading Co. P Ltd)	35,00,000
Olive Overseas P. Ltd (Formerly known as Real Gold Trading Co. P Ltd)	35,00,000
Traingular Infocom Ltd (Formerly known as Lexus Infotech Ltd)	35,00,000
Total	1,70,02,500

In response the submission was filed in which details / confirmation of Share Application received from M/s Alka Diamond India Ltd./- of Rs. 35,00,000/-, M/s Javda India Impex Ltd. of Rs.30,02,500/-, M/s Nakshatra Business P. Ltd. (M/s Hema Trading Co.P.Ltd.) of

Rs. 35,00,000/-, M/s Olive Overseas P. Ltd. (M/s Real Gold Trading Co.P. Ltd.) of Rs.35,00,000/- and M/s Traingler Infocom Ltd.(M/s Lexus Infotech Ltd.) of Rs. 35,00,000/- was provided.

But Id. AO based on the statement of Shri Praveen Kumar Jain recorded during the search operation wherein answer of question No. 66,75 and 76 in which he accepted that he had provided accommodation entries as unsecured loan/advance.

In the light of that acceptance by him that he provided Accommodation entry for share Application and stated that the shares are purchased by companies under his control which are merely paper companies engaged in the business of providing accommodation entries wherein he get a one-time commission of 1.25% to 2.0% of the total transaction value in case of such transactions also stated that those desirous of taking an accommodation entry in the form of share application gives the cash to him and the same is then transferred to the broker through whom the entry is finally provided, for arranging this entry, one get a onetime commission of about 0.25% of total value of the transaction.

As is clear from the statement of Shri Praveen Jain that assessee had taken accommodation entry as share application money received from the names as listed herein above, therefore, assessee was asked to show caused as to why the accommodation entry as bogus share application money received from those five companies for an amount of Rs. 1,70,02,500/- was not disallowed and thereby the assessee was required to produce the reply on 18.03.2016 at 11:00 A.M. positively otherwise Id. AO mentioned that failure in furnishing the same, an action will be taken on the above line of the action and materials available on the record.

4.2 In response to the above show cause notice the assessee filed submission on 18.03.2016. The submission filed by the assessee is not acceptable. Because Shri Praveen Kumar Jain accepted that he provided accommodation entry for share Application and stated that the shares are purchased by companies under his control which are merely paper companies engaged in the business of providing accommodation entries. He gets a one-time commission of 1.25% to 2.0% of the total

transaction value in case of such transactions also stated that the client desirous of taking an accommodation entry in the form of share application gives the cash to him and the same is then transferred to the broker through whom the entry is finally provided. For arranging this entry he gets a onetime commission of about 0.25% of total value of the transaction, as it is duly accepted based on the statement of Shri Praveen Jain that the assessee had taken accommodation entry as share application many received from M/s Alka Diamond India Ltd./-of Rs. 35,00,000/-, M/s Javda India Impex Ltd. of Rs.30,02,500/-, M/s Nakshatra Business P. Ltd. (M/s Hema Trading Co.P.Ltd.) of Rs. 35,00,000/-, M/s Olive Overseas P. Ltd. (M's Real Gold Trading Co.P. Ltd.) of Rs.35,00,000/- and M/s Traingler Infocom Ltd.(Mis Lexus Infotech Ltd.) of Rs. 35,00,000/-. While doing so Id. AO relied on the decision of Hon'ble Delhi High Court on similar facts in the case of CIT Vs. Nova Promoters & Finlease Pvt. Ltd. (2012) reported in 18 taxmann.com 217 (Delhi) has also disproved the claim of the assessee.

4.3 Ld. AO also noted that the theory of payment by cheque and through banking channels does not make the transaction genuine. He further observed that ITAT, Jaipur in the case of M/s Kanchwala Gems vis JCIT, ITA No. 134/JP/02 dated 10.12.2003 and affirmed by Hon'ble Supreme Court in 288 ITR 10(SC) has held that even payment by account payee cheque is not sufficient to establish the genuineness of the transaction. Further, in CIT V/s Precision Finance Pvt. Ltd. 208 ITR 465 (Cal.), the Hon'ble Calcutta High Court has held that payment made by account payee cheque is not sacrosanct and it would not make an otherwise non genuine transaction genuine. It is a well settled law that strict rules of evidence do not apply to the Income Tax Act and the real test with regard to genuineness of transactions is "Preponderance of probabilities" and not "Beyond reasonable doubt". Ld. AO also placed reliance on the decision of Chaturbhuj Panauj AIR 1969 (SC) 255, Sumati Dayal V/s CIT, 214 ITR 801 (SC), C. Vasant Lal & Co., 45 ITR 206 (SC).

4.4 As regards the contention of the assessee company to make available (being witness), Shri Praveen Kumar Jain to enquire

about the transactions and cross examination is of no use as sufficient material evidences are already in the possession with the department to disprove the transaction regarding share application as received by the assessee-company from above parties (paper concern of Sh. Praveen Jain Group). The assessee furnished the details of allotment of shares, share application form, bank statement of applicant and replied that the assessee company had received the share application money from the above parties through account payee cheques/ RTCG. The reply found insufficient to prove the genuine nature of the transaction.

4.5 Ld. AO based on the discussion so made and relying on those decisions noted that it is crystal clear that-

- (a) The primary onus is on the assessee to establish the genuineness of the share application money received.
- (b) If the investigation done by the department leads to doubt regarding the genuineness of the share applications it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction.
- (c) Payment by account payee cheque is not sacrosanct.

Based on these discussion Id. AO hold a view that the assessee failed to establish the genuineness of the Share Application Money received by it or has failed in discharging this

onus. The information received from investigation wing and extract of statement of Shri Praveen Jain & others along with relevant material supplied to the assessee clearly explain the modus operandi of these bogus transaction. The case laws cited by the assessee in its defense also do not help it being distinguishable on facts. At last based on that discussion Id. AO invoking the provision of section 68 added share application of Rs. 1,70,02,500/- from above companies and was treated as Non-genuine and bogus Share Application Money and was added to the total income of the assessee-company.

5. Aggrieved from the finding so recorded by the Id. AO assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5. I have gone through the above submissions made by the appellant. I have also verified the material as presented during the course of appellate proceedings. I have also considered assessment order and various facts and circumstances of the case. From the verification of the material, it is understood that the appellant made various submissions to prove the genuineness of the transactions. In the case of the investors as mentioned hereunder, the appellant filed following details:-

1. Copy of Return of Income of the investor and schedules reflecting transaction with the appellant.
2. Copies of bank statements evidencing the investment of share application money through banking channels.

**3. Copy of confirmation letters from the investor.**

S.No.	Name of the entry provider	PAN	FY	Amount
1	M/s. Alka Diamond India Ltd.	AAACA5236D	2009-10	35,00,000
2	M/s. Javda India Impex Ltd.	AAACA7065L	2009-10	30,02,500
3	M/s. Nakshtra Business P Ltd.	AABCH7279G	2009-10	35,00,000
4	M/s. Olive Overseas P Ltd.	AACCR4512K	2009-10	35,00,000
5	M/s. Traingler Inforcom Ltd.	AAACL4646G	2009-10	35,00,000

Thus, the assessee discharged its onus as per 68 of the IT Act. Now onus is on AO to disprove the genuineness of the investments. However, the AO has not made efforts to conduct enquiries and to establish the genuineness of the investors. From the materials filed, it is understood that the assessee filed all relevant details which are needed to explain genuineness, creditworthiness and identification of investors.

**5.2 Hon'ble Apex Court in the case of Commissioner of Income Tax Vs. Odisha Corporation Pvt. Ltd held as under:-**

"It was noted that the assessee had given names and addresses of the alleged creditors. It was knowledge of revenue that the said creditors were income tax assesseees. Revenue apart from issuing notices u/s. 131 at instance of assessee would not pursue matter any further. In view of this, tribunal was justified in concluding that assessee had discharged burden."

**5.3.** Thus, as per the above judgement, the assessee discharged its burden as per section 68 of the IT Act. The AO simply relied on some vague information from the Investigation Wing regarding the accommodation entries. However, verification of the source of source is not the realm of the AO, as clearly held by the Supreme Court in the case of Lovely Exports (269 CTR 194), Hon'ble Apex Court held as under.-

"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company."

Thus as held by the Hon'ble Apex Court, the AO to proceed against the investors if they do not have proper creditworthiness for which the AO cannot penalize the assessee by making addition. Further, the AO did

not point out any specific instance or any information in the statements recorded by the Investigation Wing in the case of Sri Praveen Kumar Jain Group which reveals the alleged involvement of assessee in taking accommodation entries. Further, the AO did not make any efforts to examine the investors on his own by issue of letters u/s.133(6) of the Act. In the absence of any specific information about the assessee it is not correct to make addition merely on the basis surmises and presumptions. If there was any specific adverse information about the assessee, the burden clearly lies on the AO to give an opportunity to cross-examine the person who had given that information. However, the AO did not do the same. Thus as per the facts and circumstances, the AO could not establish conclusively about the non-genuineness of the share application money. Accordingly, the addition made in respect of the share application money is hereby deleted.

This ground of appeal is accordingly allowed.

In the result, the appeal is partly allowed.”

6. Aggrieved from the above finding so recorded by the Id. CIT(A), revenue has preferred the present appeal on the grounds as stated herein above. On the other hand, assessee also dissatisfied with the dismissal of the ground of re-opening of the assessment merely based on the third-party information assessee preferred to file the cross objections.

Before us both the parties supported the orders of the lower authority to the extent favorable to them.

7. The Id. DR representing the revenue in addition to the contentions so raised heavily relied upon the detailed finding recorded in the order of the assessing officer. Ld. DR vehemently

supported the fact that present appeal is filed as the addition is based on the condition laid down in the section 68 of the Act. As is clear that the assessee failed to establish the identity and genuineness of the Share Application Money through the company operated and managed by Shri Praveen Jain who has during the search conducted by the revenue has in detailed accepted the method adopted by him in providing accommodation entry of loan and share application money. Based on that information the case of the assessee has rightly been reopened by the revenue and even that ground of re-opening taken by the assessee was dismissed by the Id. CIT(A). So far as the merits of the case of the assessee wherein the Id. CIT(A) hold a view that the AO simply relied on some vague information from the Investigation Wing regarding the accommodation entries. However, verification of the source of source is not the realm of the AO, as clearly held by the Supreme Court in the case of Lovely Exports (269 CTR 194). He further relying on that judgment hold a view that the AO should have to proceed against the investors if they do not have proper creditworthiness for which the AO cannot penalize the assessee by making addition. Further, the AO did not point out any specific

instance or any information in the statements recorded by the Investigation Wing in the case of Sri Praveen Kumar Jain Group which reveals the alleged involvement of assessee in taking accommodation entries. Further, the AO did not make any efforts to examine the investors on his own by issue of letters u/s.133(6) of the Act. In the absence of any specific information about the assessee it is not correct to make addition merely on the basis surmises and presumptions. If there was any specific adverse information about the assessee, the burden clearly lies on the AO to give an opportunity to cross-examine the person who had given that information. However, the AO did not do the same. Thus, as per the facts and circumstances, the AO could not establish conclusively about the non-genuineness of the share application money and accordingly, here directed to delete the addition which the Id. AO has clearly made his case and also cited the various judicial judgment and therefore, the finding of the Id. AO should be sustained and that of the finding of the Id. CIT(A) be set aside. As is clear from the decision cited recent decision of PCIT Vs. Swati Bajaj 139 taxmann.com 353 the Calcutta High Court made it clear that the cross examination is not legal right. Ld. AO made it clear

by relying on the judgment that transaction done by banking channel does not conclusively prove the transaction where the provision section 68 is clearly applicable. As held by Id. CIT(A) that the Id. AO was sufficient information to re-open the proceeding and the same has been used to make the addition and in the statement of Shri Praveen Jain categorically explained in detail the activities that he has conducted by shell companies. That all the discussion was considered as eye washed by Id. CIT(A) while dealing with the appeal of the assessee. The preponderance of probability clear made applicable in the facts of the case held in the case of Durga Prasad More and other that are applicable to the facts of the case and provision of section 68 of the Act and same are listed herein below:

**Case Laws (In favour of revenue)- Addition u/s 68 of the act**

S.no.	Name of the case
1	[2022] 139 taxmann.com 352 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. Swati Bajaj
2	[1995] 80 Taxman 89 (SC) SUPREME COURT OF INDIA Sumati Dayal v. Commissioner of Income-tax
3	[2019] 112 taxmann.com 330 (SC) SUPREME COURT OF INDIA Suman Poddar v. Income Tax Officer
4	[1985] 22 Taxman 11 (SC) SUPREME COURT OF INDIA McDowell & Co. Ltd. v. Commercial tax Officer
5	[1979] 2 Taxman 197 (SC) SUPREME COURT OF INDIA Indian & Eastern Newspaper Society v. Commissioner of Income-tax
6	[1964] 53 ITR 231 (SC) SUPREME COURT OF INDIA S.S. Gadgil v. Lal & Co
7	[2019] 103 taxmann.com 48 (SC) SUPREME COURT OF INDIA Principal Commissioner of Income-tax (Central)-1 v. NRA Iron & Steel (P.) Ltd.
8	[1958] 34 ITR 807 (SC) SUPREME COURT OF INDIA A. GovindarajuluMudaliar v. Commissioner of Income-tax
9	[1971] 82 ITR 540 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. Durga Prasad More
10	[1973] 87 ITR 370 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. S.P. Jain
11	[2018] 95 taxmann.com 327 (SC) SUPREME COURT OF INDIA Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company
12	[2007] 161 Taxman 169 (SC) SUPREME COURT OF INDIA Commissioner of Income-tax v. P. Mohanakala
13	[1963] 50 ITR 1 (SC) SUPREME COURT OF INDIA Kale Khan Mohammad Hanif v. Commissioner of Income-tax
14	[2019] 109 taxmann.com 53 (SC) SUPREME COURT OF INDIA NDR Promoters (P.) Ltd.v. Principal Commissioner of Income-tax
15	[2011] 13 taxmann.com 189 (SC) SUPREME COURT OF INDIA Ram Jethmalani v. Union of India
16	[1977] 107 ITR 938 (SC) SUPREME COURT OF INDIA Roshan Di Hatti v. Commissioner of Income-tax
17	[2016] 66 taxmann.com 288 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Kishore R. Ajmera
18	[2018] 90 taxmann.com 147 (SC) SUPREME COURT OF INDIA Securities & Exchange Board of India v. Rakhi Trading (P.) Ltd
19	[2022] 135 taxmann.com 252 (SC) SUPREME COURT OF INDIA T. Takano v. Securities and Exchange Board of India
20	[1988] 38 Taxman 190 (SC) SUPREME COURT OF INDIA Chuhamal v. Commissioner of Income-tax
21	[2022] 136 taxmann.com 333 (SC) SUPREME COURT OF INDIA Securities and Exchange Board of India v. Mega Corporation Ltd
22	State of J&K v BakshiGhulam Mohammad AIR 1967 SC 122 SUPREME COURT OF INDIA
23	M J James civil appeal no 8223 of 20089 SC dated 16.11.2021 SUPREME COURT OF INDIA
24	AIR 1996 SC 1669 State Bank of Patiala v S.K.Sharma SUPREME COURT OF INDIA
25	Supreme Court of India The State Of Uttar Pradesh vs Sudhir Kumar Singh on 16 October, 2020

26	Supreme Court of India Mahindra & Mahindra Ltd vs Union Of India & Anr on 24 January, 1979, 1979 AIR 798, 1979 SCR (2)1038
27	[1954] 26ITR775 (SC) SUPREME COURT OF INDIA Dhakeswari Cotton Mills Ltd. v. Commissioner of Income-tax
28	[1972] 83ITR685 (SC) SUPREME COURT OF INDIA S.V. Kondaskar, Official Liquidator & Liquidator of the Colaba Land & Mills Co. Ltd. v. V.M. Deshpande, Income-tax Officer
29	Calcutta High Court Kishanlal Agarwalla vs Collector Of Land Customs on 21 May, 1965
30	High Court of Judicature at Madras Dated : 15.09.2021 Tax Case Appeal No.451 of 2021 The Pr. Commissioner of Income Tax, Chennai Vs Prabha Jain
31	HIGH COURT OF JUDICATURE AT MADRAS DATED: 11.02.2019 Tax Case Appeal No. 128 of 2019 And C.M.P.No. 3353 of 2019 Smt. Tharakumari Appellant Vs. The Income Tax Officer
32	HIGH COURT OF DELHI UDIT KALRA Vs ITO [ITAT]ITA No. 220/2019CM No. 10774/2019
33	[2023] 151 taxmann.com 119 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-taxv.mt.Usha Devi Modi
34	[2022] 143 taxmann.com 402 (Calcutta) HIGH COURT OF CALCUTTA Principal Commissioner of Income-tax v. Nand Kishore Agarwala
35	[1980] 4 Taxman 525 (Delhi) HIGH COURT OF DELHI Yadu hari Dalmia v. Commissioner of Income-tax
36	[2022] 139 taxmann.com 406 (Rajasthan) HIGH COURT OF RAJASTHAN Jawari Lal Lunia v. Union Of India
37	[1978] 113 ITR 389 (DELHI)HIGH COURT OF DELHI Additional Commissioner of Income-tax v. Jay Engineering Works Ltd
38	[1928] 3 ITC 48 (ALL.) HIGH COURT OF ALLAHABAD BhagatHalwai, In re
39	[1984] 18 Taxman 412 (Punj. &Har.) IN THE HIGH COURT OF PUNJAB AND HARYANA Commissioner of Income-tax v. Metal Products of India
40	[1995] 82 TAXMAN 31 (CAL.) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. Precision Finance (P.) Ltd.
41	[1991] 56 TAXMAN 304 (CAL) HIGH COURT OF CALCUTTA Commissioner of Income-tax v. United Commercial & Industrial Co. (P.) Ltd.
42	[2009] 315 ITR 105 (Madras) HIGH COURT OF MADRAS Mangilal Jain v. Income-Tax Officer
43	[1982] 134 ITR 119 (RAJ.)HIGH COURT OF RAJASTHAN Vimal Chandra Golecha v. Income-tax Officer
44	[2011] 12 taxmann.com 276 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Balbir Chand Maini v. Commissioner of Income-tax-III, Ludhiana
45	[2015] 54 taxmann.com 10 (Punjab & Haryana) HIGH COURT OF PUNJAB & HARYANA Chandan Gupta v.Commissioner of Income-tax, Ludhiana
46	[2013] 37 taxmann.com 286 (Gauhati) HIGH COURT OF GAUHATI Commissioner of Income-tax v. Smt. JasvinderKaur
47	[2003] 132 TAXMAN 629 (RAJ.)HIGH COURT OF RAJASTHAN Rameshwar Lal Mali v. Commissioner of Income-tax
48	[2020] 122 taxmann.com 180 (Madras) HIGH COURT OF MADRAS Commissioner of Income Tax, Chennai v. Mrs. Manish D. Jain (HUF),Chennai
49	[2013] 30 taxmann.com 292 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. Nipun Builders & Developers (P.) Ltd.
50	[2012] 18 taxmann.com 217 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax v. Nova Promoters &Finlease (P) Ltd.
51	[2013] 29 taxmann.com 291 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax, Delhi-V N.R. Portfolio (P.) Ltd

52	[2003] 128 Taxman 621 (Delhi) HIGH COURT OF DELHI Sajan Dass& Sons v. Commissioner of Income-tax
53	[2018] 89 taxmann.com 196 (Bombay) HIGH COURT OF BOMBAY Sanjay Bimalchand Jain v. Principal Commissioner of Income-tax-1, Nagpur
54	[2020] 119 taxmann.com 470 (Delhi) HIGH COURT OF DELHI Sanjay Kaul v. Principal Commissioner of Income Tax, Delhi-8, New Delhi
55	[2011] 9 taxmann.com 179 (Delhi) HIGH COURT OF DELHI Commissioner of Income-tax.v.Oasis Hospitalities (P.) Ltd
56	[2011] 43 SOT 544 (Delhi) IN THE ITAT DELHI BENCH 'B' Hersh W. Chadha v. Deputy Director of Income-tax, Circle-1(1), International Taxation
57	[2016] 69 taxmann.com 65 (Mumbai - Trib.) IN THE ITAT MUMBAI BENCH 'E' Income-tax Officer, 19(3)(4), Mumbai v. Shamim M. Bharwani
58	[2019] 110 taxmann.com 307 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'G' Satish Kishore v. Income Tax Officer, Ward-47(2), New Delhi
59	[2018] 99 taxmann.com 339 (Bangalore - Trib.) IN THE ITAT BANGALORE BENCH 'SMC-C' Smt. M.K. Rajeshwari v. Income Tax Officer, Ward-3, Raichur
60	[2020] 122 taxmann.com 75 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'E' Sanat Kumar v. Assistant Commissioner of Income Tax, Circle-36(1), New Delhi
61	[2019] 106 taxmann.com 65 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'SMC' Pooja Ajmani v. Income-tax Officer, Ward 20(4), New Delhi
62	[2023] 149 taxmann.com 104 (Ahmedabad - ITAT) IN THE ITAT AHMEDABAD BENCH 'SMC' Atmiben Alpitkumar Doshi v. Income-tax officer
63	[2022] 145 taxmann.com 315 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'A' Shyam Sunder Bajaj v. Income-tax Officer
64	[2023] 149 taxmann.com 98 (Pune - Trib.) IN THE ITAT PUNE BENCH 'A' Dinesh Kumar R. Tulsyan (HUF) v. Income-tax Officer
65	[2023] 147 taxmann.com 21 (Indore - Trib.) IN THE ITAT INDORE BENCH Abhishek Gupta v. Income-tax Officer
66	[2019] 109 taxmann.com 174 (Delhi - Trib.) IN THE ITAT DELHI BENCH 'G' Sandeep Bhargava v. Assistant Commissioner of Income-tax, Circle-60(1), New Delhi
67	Hemil Subhashbhai Shah vs DCIT, Ward-5(3)(1) Ahmedabad, ITA No.1121/Ahd/2018, [Asst.Year : 2014-15] AND ITA No.961/Ahd/2019, [Asst.Year : 2015-16], INCOME TAX APPELLATE TRIBUNAL "B" BENCH, AHMEDABAD dated 12.06.2023
68	2019-TIOL-686-ITAT-DEL IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'SMC' NEW DELHI ITA No. 3809/Del/2018 Assessment Year: 2015-16 ANIP RASTOGI Vs INCOME TAX OFFICER ITA No. 3810/DEL/2018 Assessment Year: 2015-16 ANJU RASTOGI Vs INCOME TAX OFFICER
69	2018-TIOL-733-ITAT-CHD IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'A' CHANDIGARH ITA No.951/Chd/2016 Assessment Year: 2011-12 SHRI ABHIMANYU SOIN Vs ASSTT COMMISSIONER OF INCOME TAX CIRCLE- VII , LUDHIANA
70	2014-TIOL-1459-ITAT-MUM IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'F' MUMBAI ITA No.6858/Mum/2011 Assessment Year:2006-07 USHA CHANDRESH SHAH Vs INCOME TAX OFFICER 19(1)(2), MUMBAI
71	2016-TIOL-1746-ITAT-MUM IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'D' MUMBAI ITA No.995/Mum/2012 Assessment Year: 2006-07 RATNAKAR M PUJARI Vs INCOME TAX OFFICER
72	2013-TIOL-128-ITAT-MUM IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'A' MUMBAI ITA No.7024/Mum/2010 Assessment Year: 2004-05 SHRI ARVIND M KARIYAA Vs ASSTT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-12
73	2019-TIOL-496-ITAT-PUNE IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'B' PUNE ITA Nos.1648 & 1649/Pun/15 Assessment Years: 2005-06 & 2006-07 RAJKUMAR B AGARWAL Vs DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-1(2), PUNE ITA Nos.1650 & 1651/Pun/15 Assessment Years: 2004-05 & 2006-07

	BHARAT R AGARWAL Vs DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-1(2), PUNE ITA No.1652/Pun/15 Assessment Year: 2006-07 AMEETA R AGARWAL Vs DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-1(2), PUNE
74	2019-TIOL-1973-ITAT-MAD IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'B' CHENNAI ITA No. 746/CHNY/2019 Assessment Year: 2012-13 SHRI ASHOK BATUKLAL MAKWANA Vs INCOME TAX OFFICER NON-CORPORATE WARD 9(1), CHENNAI ITA No. 747/CHNY/2019 Assessment Year: 2015-16 SHRI ASHOK BATUKLAL MAKWANA, Vs INCOME TAX OFFICER NON- CORPORATE WARD 9(1), CHENNAI
75	Hon'ble ITAT Mumbai in the case of Soman Sun Citi vs. JCIT in ITA No 2960 Mum/2016, Order dated 23.10.2017
76	Hon'ble ITAT Delhi in the case of Ram Niwas Gupta vs. DCIT in ITA No 4881 to 4883/Del/2016, Order dated 06.02.2019
77	2019-TIOL-685-ITAT-DEL INCOME TAX APPELLATE TRIBUNAL BENCH 'SMC' NEW DELHI ITA No. 6717/Del/2017 Assessment Year: 2014-15 UDIT KALRA Vs INCOME TAX OFFICER
78	2017-TIOL-788-ITAT-MUM IN THE INCOME TAX APPELLATE TRIBUNAL BENCH 'D' MUMBAI ITA No.6398/Mum/2012 Assessment Year: 2003-04 DISHA N LALWANI Vs INCOME TAX OFFICER
79	Income Tax Appellate Tribunal – Bangalore, K.C.N. Chandrashekar vs Assistant Commissioner Of Income , 11 August, 1998, 66 TTJ Bang 355
80	[2021] 128 taxmann.com 224 (Madras) HIGH COURT OF MADRAS Commissioner of Income Tax, Chennai v. Mrs. Pinky Devi
81	[2023] 155 taxmann.com 630 (Kolkata - Trib.) IN THE ITAT KOLKATA BENCH 'B' Saroj Baid v. Income-tax Officer

7.1 Finding of the Id. CIT(A) is only based on the 3-evidence placed on record by the assessee and has not considered the detailed finding of the Id. AO. The Id. DR stated at bar that he will the distinguishing note on the decision of apex court in the case of Lovely Exports with that of the case of the assessee but till the 17<sup>th</sup> December the said distinguishing note received. He further submitted that the Id. CIT(A) has totally ignored the report of the Investigation wind and conclusions derived therefrom. As regards the contention of not issuing the notice u/s. 133(6) of the Act when the parties from the money is flowing has in fact given in the statement that they were provided accommodation entry and that is why the Id. AO has not invoked that provision and in fact looking to

the fact that was not required. As is clear that the Id. AO is not a separate entity, it is the part of the revenue officer and when the other officers have made the detailed investigation the Id. AO did not considered it to give the cross examination to the assessee. The wing has derailed the economic offence done by Shri Praveen Jain and therefore, the addition made by the Id. AO be sustained. The Id. DR has filed the paper book containing the following supporting documents:

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7.2 Ld. DR also filed a detailed note which reads as under:

Brief Facts of the Case

The assessee company filed its return of income on 15.04.2015 declaring total income of NIL for A.Y. 2010-11. Information was received in this office that the assessee had taken the accommodation entries as share application money received from the various companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai during the FY 2009-10. Thereafter, the assessment in the case of

assessee for the AY 2010-11 was completed u/s 143(3)/147 of the Income-tax Act, 1961 on 28.03.2016 at total assessed income of Rs.1,70,02,500/-with an addition of the entire amount by treating the share application money received as unexplained cash credits u/s 68 of the Act as the assessee could not prove the genuineness of transactions of share application money of Rs.1,70,02,500/-received from various parties.

Findings of Ld. CIT(A):-

The Ld. CIT(A) has decided the appeal of the assessee on 29.12.2023 and partly allowed the appeal of the assessee. While deciding the appeal of the assessee, Ld. CIT(A) has deleted the addition made by the AO of Rs. 1,70,02,500/- on account of unexplained cash credit u/s 68 of the Act in respect of share application money received by the assessee.

The Ld. CIT(A) has placed reliance on the judgement of the Hon'ble Supreme Court in the case of "Commissioner of Income Tax Vs. Odisha Corporation Pvt. Ltd." As per the judgement, the assessee discharged its onus u/s 68 of the Act by providing all relevant details which were needed to explain genuineness, creditworthiness and identification of investors viz. copy of return of income of the investor and schedules reflecting transaction with the appellant, copies of bank statements evidencing the investment of share application money through banking channels & copy of confirmation letters from the investor. However, the AO has not made efforts to conduct enquiries and to establish the genuineness of the investors.

Further, the Ld. CIT(A) held that the verification of source of source is not the realm of the AO, as clearly held by the Supreme Court in the case of "Lovely Exports (269 CTR 194). Thus, as held by the Hon'ble Apex Court, the AO to proceed against the investors if they do not have proper creditworthiness for which AO cannot penalize the assessee by making addition. Further, the AO did not point out any specific instance or any information in the statements recorded by the investigation wing in the case of Shri Praveen Kumar Jain Group which reveals that the alleged involvement of assessee in taking accommodation entries. If there was any specific adverse information about the assessee, the burden clearly lies on the AO to give an opportunity to cross-examine the person who had given that information. The AO could not establish about the non-genuineness of the share application money.

Comments of AO:-

1. In this case, information was received from Investigation wing of the department which was gathered during the search conducted on Shri Praveen Kumar Jain Group. Shri Praveen Kumar Jain has categorically accepted that he provided accommodation entry for share application and stated that the shares are purchased by companies under his control

which are merely paper companies engaged in the business of providing accommodation entries for which he gets one time commission of 1.25% to 2.0% of total transaction value. Further he stated that the client desirous of taking an accommodation entry in the form of share application used to give the cash to him and the same was then transferred to the broker through whom the entry was finally provided & for arranging this entry he gets a onetime commission of about 0.25% of total value of the transaction. The assessee had taken accommodation entry as share application money received from M/s Alka Diamond India Ltd. of Rs. 35,00,000/-, M/s Javda India Impex Ltd. of Rs. 30,02,500/-, M/s Nakshatra Business P. Ltd (M/s Hema Trading Co. P. Ltd.) of Rs. 35,00,000/-, M/s Olive Overseas P. Ltd. (M/s Real Gold Trading Co. P. Ltd.) of Rs. 35,00,000/- and M/s Traingler Infocom Ltd. (M/s Lexus Infotech Ltd.) of Rs. 35,00,000/-. Thus the total amount Rs.1,70,02,500/- on account of accommodation entries was received by the assessee company during the year. The above statement clearly reflect the modus operandi adopted by Pravin Jain group including the assessee.

2. Further, the payment by cheque and through banking channels does not make transaction genuine. In this context Hon'ble High Courts of Madras and Calcutta has observed in the cases of Mangilal Jain Vs ITO (Mad) 315 ITR 105&CIT Vs Precision Finance P. Ltd. (Cal) 208 ITR 465 respectively, that when the assessee has failed to prove the genuineness of credit, mere proof of identity of creditor or that transaction was by cheque, is not sufficient. Payment made by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine. In view of the above, addition u/s 68 of the Act was justified.

3. Further, the primary onus is on the assessee to establish the genuineness of the share application money received. In this context, reliance is placed on the judgement of Hon'ble Supreme Court of India in the case of Commissioner of Income-tax Vs. P. Mohanakala wherein it was pointed out that in cases where the explanation offered by the assessee about the nature and source of sums found credited in the books is not satisfactory shows, prima facie evidence against the assessee namely, the receipt of money, the burden is on the assessee to rebut the sum and if he fails to rebut, it can be held against the assessee that it was a receipt of an income nature. Further, it was held that in the absence of satisfactory explanation of the assessee, the Income-tax Officer may assume that cash credit entries in the books represented income from undisclosed sources. The same view has also been taken by the Hon'ble Apex Court in the case of Sumati Dayal Vs. Commissioner of Income-tax.

4. Further, the Ld. CIT(A) has taken reference of judgements of Hon'ble Supreme Court in the case of "Commissioner of Income Tax Vs. Odisha

Come Corporation Pvt. Ltd." And "Lovely Exports (269 CTR 194). In this regard, it is stated that in the case of Lovely Exports, "the monies were received through banking channels. In some case, affidavits/confirmations of the share applicants containing the above information were filed. The Assessing Officer did not carry out any inquiry into the income tax records of the persons who had given their file numbers in order to ascertain whether they were existent or not. He neither controverted nor disapproved the material filed by the assessee." Further the case of Orissa Corporation (1986) 159 ITR exemplifies the category of cases where no action is taken by the Assessing Officer to verify or conduct an enquiry into the particulars about the creditors furnished by the assessee, including their income-tax file numbers. In this case, the decision was based on the fundamental rule of law that evidence or material adduced by the assessee cannot be thrown out without any enquiry. The ratio does not extend beyond that.

The boundaries of the ratio cannot be, and should not be, widened to include therein cases where there exists material to implicate the assessee in a collusive arrangement with persons who are self-confessed "accommodation entry providers".

5. In the present case, information was received from the investigation wing of the department about the existence of accommodation entry providers and their modus operandi in which the assessee was also found to be involved. The statements of Shri Praveen Kumar Jain, the entry provider, explaining his modus operandi to help assessee's having unaccounted monies convert the same into accounted monies affords sufficient material on the basis of which the assessing officer has discharged the duty. Section 68 permits the assessing officer to add the credit appearing in the books of account of the assessee if the latter offers no explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. The material before the assessing officer has shown the link between the entry providers and the assessee company and the same is incorporated in the assessment order itself.

Reliance is placed on the judgement of Hon'ble Delhi High Court in the case of CIT Vs. Nova Promoters Finlease (P.) Ltd. wherein it was held that in view of the link between the entry providers and incriminating evidence, mere filing of PAN, Acknowledgement of IT Returns of the entry providers, bank account statements etc. were not sufficient to discharge the onus u/s 68 of the Act.

6. The Ld. CIT(A) vide its order dated 29.12.2023 has stated that if there was any specific adverse information about the assessee, the burden clearly lies on the AO to give an opportunity to cross examine the person who had given that information. In this regard, it is stated that the AO vide assessment order rejected the request of the assessee company to make available Shri Praveen Kumar Jain to enquire about the transaction and

cross examination as sufficient material evidences were already in possession with the department to disprove the transaction regarding share application received by the assessee company from paper concerns of Shri Praveen Kumar Jain. Reliance is placed on the judgement of Hon'ble rajasthan High Court, in the case of Rameshwar Lal Mali V/s CIT 256 ITR 536 (Raj.) wherein it has been held that there is no provision for permitting a cross-examination of the person, whose statement is recorded during survey.

8. On the other hand, Id. AR of the assessee supported the order of the Id. CIT(A) on the merits of the case and to support further to that finding Id. AR of the assessee relied upon the following written submission:

I. Assessee Company is engaged in business of Manufacturing of MS Ingots and TMT Bars in the brand name of "AMCO TMT saria." Assessee Company filed its Return of Income, for the relevant Assessment Year, declaring total income of Rs. Nil.

II. During the relevant previous year, assessee company received Share Application Money, amounting to Rs 1,70,02,500, from the below mentioned investor Companies: -

Investor Company	Amount (Rs.)
Alka Diamond India Limited	35,00,000
Javda India Impex Ltd	30,02,500
Nakshatra Business P. Ltd (Formerly known as Hema Trading Co. P Ltd)	35,00,000
Olive Overseas P. Ltd (Formerly known as Real Gold Trading Co. P Ltd)	35,00,000
Traingular Infocom Ltd (Formerly known as Lexus Infotech Ltd)	35,00,000
Total	1,70,02,500

III. Search and seizure operation u/s 132(1) of the Income Tax Act, 1961 was carried out by the Investigation Wing, Mumbai in case of Shri

Praveen Jain. During the course of search, statements of Shri Praveen Jain were recorded u/s 132(4), in which he accepted the fact that he was involved in the activity of providing accommodation entries.

IV. On the basis of such information, received from Investigation Wing, Mumbai, Id. AO reopened the case of the assessee company under Section 148 and added such amount of Share Application Money, so received, as unexplained cash credits under section 68.

V. Under Section 68 addition of Rs 1,70,02,500 was made by the Id. AO. Assessee company filed an appeal before the Id. CIT(A). *Vide* order dated 29.12.2023, the Id. CIT(A) allowed the appeal of the assessee company on merits. However, against the order of Id. CIT(A), department has preferred an appeal before the Hon'ble Bench.

DEPARTMENTAL ADDITION OF RS. 1,70,02,500 DELETED BY CIT(A)  
GROUND OF  
APPEAL:

#### 1. SUBMISSION

1.1. During the course of reassessment proceedings, bank statement of assessee company (PB 19-26), along with Form 2 filed with Registrar of Companies (PB : 13-18) and following other evidences were furnished before the Id AO to prove the identity, creditworthiness and genuineness. (PB : 27-85):-

Investor Company	Application for shares	Board resolution/ Confirmation	Financials	Bank Statement	PB Pg.
Alka Diamond India Limited	✓	✓	✓	✓	27-36
Javda India Impex Ltd	✓	✓	✓	✓	37-49
Nakshatra Business P. Ltd (Formerly known as Hema Trading Co. P Ltd)	✓	✓	✓	✓	50-61
Olive Overseas P. Ltd (Formerly known as Real	✓	✓	✓	✓	62-73

Gold Trading Co. P Ltd)					
Traingular Infocom Ltd (Formerly known as Lexus Infotech Ltd)	✓	✓	✓	✓	74-85

1.2. All the Investor Companies are private/public limited companies duly regulated by the stringent provisions of the Companies Act, 1956 and their complete details could be verified from MCA Site (official website of Ministry of Company Affairs). The department has also issued them PAN and these shareholder companies are regularly assessed to tax. Thus the onus, on the part of the assessee Company, stood fully discharged during the course of assessment proceedings.

1.3. In view of this, no addition can be made in the hands of the assessee company. At best, if the Id. AO was not satisfied, the addition could have been made in the hands of the investor company who had confirmed the transactions.

1.4. Reliance is placed on the following judicial pronouncements, the extracts of which have been set out for the sake of convenience:-

1.4.i CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)  
*"If share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO. Then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."*

1.4.ii CIT vs. Stellar Investment Ltd. 25 ITR 463 (SC)  
*"Even if it is assumed that the subscribers to the increased share capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company."*

1.4.iii CIT vs. Sophia Finance Ltd. 205 ITR 98 (Delhi)  
*"The ITO would be entitled, and it would indeed be his duty to, to enquire whether the alleged shareholders do in fact exist or not if the shareholders exist then, possibly, no further enquiries need to be made. The instant case all the share holders were found verifiable and they were in existence".*

1.5. Similar ratio has been laid down by the Jurisdictional High Court of Rajasthan in the below mentioned cases, the extracts of which have also been set out for the sake of convenience:-

1.5.i Barkha Synthetics Ltd. vs. ACIT [2006] 283 ITR 377 (Rajasthan)  
*"The principle relating to burden of proof concerning the assessee is that where the matter concerns the money receipts by way of share application from investors through banking channel, the assessee has to prove existence of person in whose name share application is received. Once the existence of*

*shareholder is proved, it is no further burden of assessee to prove whether that person itself has invested said money or some other person had made investment in the name of that person. The burden shifts on revenue to establish that such investment has come from assessee company itself."*

1.5.ii CIT vs. Morani Automotives (P.) Ltd. [2014] 45 taxmann.com 473 (Raj.)

*"In CIT v. Shree Barkha Synthetics Ltd. [2004] 270 ITR 477 (Raj.), in a similar nature matter, this Court observed that the Tribunal having found that the companies from which the share application money had been received by the assessee-company were genuinely existing and the identity of the individual investors were also established and they had confirmed the fact of making investment, the finding that assessee had discharged initial burden and addition under Section 68 could not be sustained, was essentially a finding of fact. This Court said,—*

*"19. A perusal of the aforesaid finding goes to show that deletion has been made on appreciation of evidence, which was on record Finding that there was existence of investors and their confirmation has been obtained, were found to be satisfactory. All these conclusions are conclusions of fact based on material on record and, therefore, cannot be said to be perverse so as to give rise to question of law, which may be required to be considered in this appeal under s.260A of the IT Act."*

1.6. Further, Hon'ble ITAT Jaipur Bench, Jaipur in the case of M/s. Bells Paper Board (P) Ltd ITA No. 575/JP/2011 and M/s. Misty Meadows (P) Ltd. ITA No. 422/JP/2012 followed the ratio laid down by the Hon'ble Rajasthan High Court in the case of Shree Barkha Synthetics Ltd.(*Supra*).

1.7. The above decisions are based on the logic that strangers can be shareholders of the Company. Therefore, once the identity is established then the onus is discharged on the part of the Company. In case the identity is not established or the shares are issued to non-existent persons then only the addition under Section 68 can be made in the hands of the Company.

1.8. APPARENT IS REAL: The transaction is absolutely in accordance with the procedure laid down in the law and fully evidenced. No defects have been pointed out in these. Therefore, the transaction must be accepted as genuine. We rely on the ratio laid down by the Hon'ble Supreme Court in the case of Daulat Ram Rawatmull (1973) 87 ITR 349 (SC), wherein it was held that the onus of proving that the apparent was not real was on the party who claimed it to be so.

1.9. Ld. AO framed the entire assessment on the basic premise that unaccounted cash was handed over by the assessee company which in turn got deposited in the Bank Account of the assessee company in the form of Investment in Share Application by the Investor Companies. However Ld AO was absolutely silent about the following questions: -

- 1.9.i To whom cash was given by the assessee company?
- 1.9.ii On what date cash was given by the assessee company?
- 1.9.iii Where the cash was given by the assessee company?
- 1.9.iv How cash was transferred from Jaipur to Mumbai?
- 1.9.v Who was the person carrying cash on behalf of the assessee company and how much commission did he charge?

1.10. There is no evidence, to show that the money so received actually belonged to the assessee. Nowhere the Id. AO has suggested that the money given by investors had actually flown from the assessee company. In absence of any such cogent evidence on record, no addition can be made to the income of the assessee merely on suspicion. This ratio is laid down by the Hon'ble Jurisdictional High Court of Rajasthan in the case of Shubh Mines Private Limited (Income Tax Appeal No. 96/15), vide its order dated 03.05.2016, in which it was held that *"In absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the ITAT, which remains a finding of fact, cannot be said to be capricious or perverse..."*

1.11. Hon'ble Madhya Pradesh High Court in the case of Peoples General Hospital Ltd. [2013] 356 ITR 65 (Madhya Pradesh) held that *"...from the Heads Notes - Section 68 of the Income-tax Act, 1961 - Cash credit [Share application money] - Whether, where assessee had established identity of person providing share application money, burden of proving creditworthiness of said person was not on assessee, and, therefore, addition could not be made as cash credit under section 68 - Held, yes..."*

1.12. Further, Hon'ble Karnataka High Court in the case of Arunananda Textiles P. Ltd. (2011) 333 ITR 0116 (Kar.) held that *"...It is not for the assessee to place material before the Assessing Officer in regard to the creditworthiness of the shareholders. If the assessee has given the addresses of the shareholders and their identity is not in dispute, whether they were capable of investing, the Assessing Officer shall investigate. It is not for the assessee to establish but it is for the Department to enquire with the investors about their capacity to invest the amount in the shares..."*

1.13. Section 68 amended by the Finance Act 2012 w.e.f 1.4.2013 goes to confirm that prior to this amendment the person/entity in whose name such credit was recorded in the books of the company was not expected to offer any explanation about the nature and source of such sum. Reliance is also placed on the recent judgment of the Hon'ble Bombay High Court in the case of M/s. Gagandeep Infrastructure Pvt. Ltd., ITA No. 1613/Mum/2014, vide order dated 20.03.2017 wherein it was held that:

*“...We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso....”*

1.14. Hon'ble Jurisdictional High Court, in the case of ARL INFRATECH LTD [2017] 394 ITR 383 (RAJ.), held that *“It had been found by the tribunal that the assessee had provided the permanent account numbers of the share applicants. The mode of payment had also been explained. There was no direct or indirect relationship between the assessee company and share applicants. The statements recorded during the survey had no evidentiary value without any supporting documents or evidence. The tribunal was justified in deleting the addition under section 68. “*

1.15. Ld. AO made addition, under section 68, of the Share Application received from the Investor Companies, on the basis of the statements made by Shri Praveen Jain during the course of search and survey proceedings and also on the basis of incriminating documents alleged to have been found from the business premises of Shri Praveen Jain.

1.16. Ld. AO, being a quasi-judicial authority, was duty bound to provide opportunity to cross examine Shri Praveen Jain and also for providing copies of the impugned documents before relying on the same for making additions in the hands of the assessee company. Request for the same was made to ld. AO as evident from Page No. 8 of the order of the ld. AO.

1.17. It is submitted that such statements of Shri Praveen Jain were untested and could become evidence only if opportunity of Cross Examination would have been provided to the assessee company.

1.18. It is well settled that statement of third party cannot be unilaterally utilized against the assessee as evidence to frame the assessment for it is a serious violation of the principles of natural justice. This infringement may as well result in a legally untenable assessment.

1.19. In the case of Ashwani Gupta [2010] 322 ITR 396 (Delhi), addition was made on the basis of the statement of a third party and

seized documents. Neither the seized documents were provided to the assessee nor was any opportunity of cross-examination of the adverse party given. Hon'ble Delhi High Court, following its own judgment in the case of SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) deleted the addition on the premise that there was violation of the principles of natural justice.

1.20. Hon'ble Supreme Court in the case Andaman Timber Industries (CIVIL APPEAL NO. 4228 OF 2006), vide its order dated 02.09.2015, held that *"...not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected"*

1.21. It was observed by the Apex Court that an order passed in violation of the principles of natural justice is a nullity as held in A.K. Kraipak vs. Union of India A/R – 1970 SC-150 RB. Shree Ram Durga Prasad and Fateh Chand vs. Settlement Commissioner 1989-SC-1038.

1.22. It is submitted that in the statements recorded of Shri Praveen Jain, u/s 132(4), as provided by the Id. AO, during re-assessment proceedings, nowhere the name of the assessee company has been mentioned.

1.23. Attention is also drawn towards the case of Monga Metals Pvt. Ltd. v. ACIT 67 TT] 247 (All.) where Block Assessment made by placing reliance on evidence of third party, without giving assessee an opportunity to cross-examine the third party was held to be illegal and void.

1.24. Information from Director General of Income Tax (Investigation) is not an evidence in itself. It can, at best, be an indicator for arousing suspicion. That suspicion has to be confirmed further by the Id. AO to make that as admissible evidence. When Id. AO alleged that the specific transaction was bogus, heavy onus was on the Id. AO to establish the same considering the fact that assessee company had provided all necessary evidences supporting its claim. Id. AO failed in discharging the said onus and passed the assessment order without further investigating and producing evidences supporting the rejection of the claim of the assessee company, that the share application was genuine.

1.25. Even if it is assumed that Shri Praveen Jain was involved in bogus transactions, such fact may be relevant for suspicion but it *ipso facto* does not lead to conclusion of all transaction of Shri Praveen Kumar Jain would be bogus. Hon'ble Jharkhand High Court in case of CIT, Jamshedpur v/s Arun Kumar Agarwal (HUF) [2012] 26 taxmann.com 113 (Jharkhand) held that "Even in a case where the share

broker was found involved in unfair trade practice and was involved in lowering and rising of the share price, and any person, who himself is not involved in that type of transaction, if purchased the share from that broker innocently and bonafidely and if he show his bonafide in transaction by showing relevant material, facts and circumstances and documents, then merely on the basis of the reason that share broker was involved in dealing in the share of a particular company in collusion with others or in the manner of unfair trade practices against the norms of S.E.B.I and Stock Exchange, then merely because of that fact a person who bonafidely entered into share transaction of that company through such broker then only by mere assumption such transactions cannot be held to be a shame (sic - sham) transaction. Fact of tinted broker may be relevant for suspicion but it alone necessarily does lead to conclusion of all transaction of that broker as tinted (sic – tainted). In such circumstances, further enquiry is needed and that is for individual case. Such further enquiry was not conducted in that case.”

1.26. Attention is drawn towards the judgment of Hon'ble Rajasthan High Court in the case of Pooja Agarwal, ITA 385/2011, wherein it was held that no addition can be made if the following conditions are satisfied:

- The payments and receipts are through banking channel.
- There is no trail which could substantiate that the cash has flown back to the assessee.
- The transactions is supported by documents appear to be genuine transaction.
- The statements recorded do not have a clear and a distinct remark about the assessee so as to challenge the genuineness of the transaction.

1.27. Below mentioned is the summary of the contentions made herein above, asserting that the additions made by the Id. AO were illegal and deserved to be deleted.

- Identity, Creditworthiness of the Investor Company and genuineness of the transactions was established beyond doubt.
- Once identity was established Id. AO could have at best made additions in the hands of the Investor Company.
- No evidence that the money received as share application money actually belonged to the assessee company put forth by the Id. AO.
- Ld. AO solely relied on the statements of Shri Praveen Jain.
- Assessee company was not provided copy of the impugned documents found during the course of search of Shri Praveen Jain
- No opportunity of cross examination of Shri Praveen Jain was provided.

1.28. The aforementioned facts and legal position were duly submitted before the Id. CIT(A) during the course of the first appellate proceedings. The same were rightly accepted by the Id. CIT(A). In this regard, specific reference is drawn to page numbers 19 and 20 of the CIT(A)'s order. It is respectfully submitted that the findings therein may kindly be considered in the correct perspective.

In view of the above, the Id. CIT(A) was correct in allowing the appeal. Accordingly, it is respectfully submitted that the present departmental appeal deserves to be dismissed.”

9. To support the contention so raised in the written submission Id. AR of the assessee placed reliance on the following evidence / records / decisions:

S. No.	Particulars	Page No.
1.	Copy of Computation	1-5
2.	Copy of the letter dated 15.09.2015 submitted to the Id. AO	6
3.	Copy of the notice issued by the Id. AO under section 143(2)	7-8
4.	Copy of reasons recorded for section 148	9-10
5.	Copy of the notice issued by the Id. AO under section 142(1)	11-12
6.	Allotment Form 2 filled by company	13-18
7.	Copy of the Bank Statement of assessee company	19-26
8.	Following documents w.r.t Alka Diamond India Limited: <ul style="list-style-type: none"> <li>• Application/ Board resolution for shares</li> <li>• Audited Financial Statements</li> <li>• Bank Statement</li> </ul>	27-36
9.	Following documents w.r.t Javda India Impex Ltd: <ul style="list-style-type: none"> <li>• Application/ Board resolution for shares</li> <li>• Audited Financial Statements</li> <li>• Bank Statement</li> </ul>	37-49
10.	Following documents w.r.t Nakshatra Business P. Ltd: <ul style="list-style-type: none"> <li>• Application/ Board resolution for shares</li> <li>• Audited Financial Statements</li> <li>• Bank Statement</li> </ul>	50-61
11.	Following documents w.r.t Olive Overseas P. Ltd: <ul style="list-style-type: none"> <li>• Application/ Board resolution for shares</li> <li>• Audited Financial Statements</li> <li>• Bank Statement</li> </ul>	62-73
12.	Following documents w.r.t Triangular Infocom Ltd: <ul style="list-style-type: none"> <li>• Application/ Board resolution for shares</li> </ul>	74-85

	<ul style="list-style-type: none"> <li>• Audited Financial Statements</li> <li>• Bank Statement</li> </ul>	
13.	Copy of Written Submissions filed by the assessee company before Id. CIT(A) in the first appellate proceedings	86-106

**Case laws relied upon:**

S. No.	Particulars	Page No.
1.	Copy of the order of ITAT, Jaipur Bench in the case of Padmavati Agrico (India) Pvt. Ltd. ITA No. 702/JP/2023	1-28
2.	Copy of the order of ITAT Mumbai Bench in the case of Centaurus Equities Pvt. Ltd. ITA No. 4102/Mum/2018	29-46
3.	Copy of the order of ITAT, Mumbai Bench in the case of Ambee Investment & Finance Pvt. Ltd., ITA No. 3899 & 3948/Mum/2017	47-52

10. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the addition were made merely based on the statement of Shri Praveen Jain. It is also in the public domain that Shri Praveen Jain has retracted the statement made in the search by filling an affidavit. [ Reference para 7 in the decision in the case of Padmavati Agro (I) Ltd. Vs. ACIT [ Manu/IT/0167/2024 listed in the case law paper book].

11. We have heard the rival contentions and perused the material placed on record. Ground no. 1 to 4 raised by the revenue deals

the addition of Rs. 1,70,02,500/- made by Id. AO and deleted by the Id. CIT(A). Since all the ground relates to the only one addition and all these grounds being interconnected and relates to that addition only, we considered it decided the same together.

Brief fact related the disputes are that the assessment proceedings in this case was taken up in the light of the provision of section 147 of the Act. The reasons for invoking that provision are that the revenue has the information received regarding the accommodation entries as share application money from the various companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai during the financial year 2009-10. and consequently, a notice u/s 148 of the Act was issued on 17.03.2015 and duly served upon the assessee on 24.03.2015. That information came to possession of the Id. AO from the office of the Director General of Income Tax (Investigation), 3rd Floor Scindia House, Ballard Pier, Mumbai vide its office letter dated 03.07.2014 which was addressed to the Income Tax Officer (Inv)(Hqrs) O/s the Director General of Income Tax (inv). Rajasthan, Jaipur. In that report as is available that the assessee has taken the accommodation entries as share application money

from the following companies which are managed and controlled by

Shri Praveen Kumar Jain Group, Mumbai:

Investor Company	Amount (Rs.)
Alka Diamond India Limited	35,00,000
Javda India Impex Ltd	30,02,500
Nakshatra Business P. Ltd (Formerly known as Hema Trading Co. P Ltd)	35,00,000
Olive Overseas P. Ltd (Formerly known as Real Gold Trading Co. P Ltd)	35,00,000
Traingular Infocom Ltd (Formerly known as Lexus Infotech Ltd)	35,00,000
Total	1,70,02,500

As per the records with revenue they have the information that assessee is one of the beneficiary for taking the accommodation entries as share application money from the above companies which are managed and controlled by Shri Praveen Kumar Jain through his relatives, agents and his accountants detected during the search & seizure operation conducted by Investigation Wing of Income Tax Department, Mumbai in the case Shri Praveen Kumar Jain Group. This information revealed that the income of the assessee for an amount of Rs. 1,70,02,500/- for the assessment year 2010-11 has escaped assessment within the meaning of the provisions of

section 147 of the Income Tax Act, 1961 and therefore, the re-assessment proceedings u/s 147 of the Act was initiated.

Subsequently, notice u/s 142(1) and along with questionnaire was issued to the assessee and notice u/s 143(2) was issued.

Pursuant to those notices the assessee filed the reply and objected to the initiation of the re-assessment proceeding against the assessee company praying there to drop the proceeding or pass a speaking order disposing off the objection take to the re-assessment proceeding. Ld. AO passed a speaking order regarding objections filed against the issuance of notice u/s 148 of the Act on 12.02.2016 and rejected the objections filed by assessee.

In response to the notices so issued filed the details of share capital received during the year, share application form, bank statement of applicant and bank statement of assessee company, Board Resolution and confirmation Financial of the investor company as per the chart filed in the written submission all these documents were also filed in the paper book page 27 to 85.

Ld. AO disregard to the evidence so placed on record and based on the statement of Shri Praveen Kumar Jain recorded

during the search operation wherein answer of question No. 66,75 and 76 in which he accepted that he had provided accommodation entries as unsecured loan/advance. In the light of that acceptance by him that he provided Accommodation entry for share Application and stated that the shares are purchased by companies under his control which are merely paper companies engaged in the business of providing accommodation entries wherein he get a one-time commission of 1.25% to 2.0% of the total transaction value in case of such transactions also stated that those desirous of taking an accommodation entry in the form of share application gives the cash to him and the same is then transferred to the broker through whom the entry is finally provided, for arranging this entry, one get a onetime commission of about 0.25% of total value of the transaction. Ld. AO relying on the statement of Shri Praveen Jain that assessee had taken accommodation entry as share application money received from the names as listed herein above, asked the assessee to show caused as to why the accommodation entry as bogus share application money received from those five companies for an amount of Rs. 1,70,02,500/- should not disallowed.

In response assessee filed submission but the same was not found accepted because in the statement of Shri Praveen Kumar Jain he accepted that he provided accommodation entry for share Application and stated that the shares are purchased by companies under his control which are merely paper companies engaged in the business of providing accommodation entries. He gets a one-time commission of 1.25% to 2.0% of the total transaction value in case of such transactions also stated that the client desirous of taking an accommodation entry in the form of share application gives the cash to him and the same is then transferred to the broker through whom the entry is finally provided. For arranging this entry he gets a onetime commission of about 0.25% of total value of the transaction, as it is duly accepted based on the statement of Shri Praveen Jain that the assessee had taken accommodation entry as share application many received from M/s Alka Diamond India Ltd./-of Rs. 35,00,000/-, M/s Javda India Impex Ltd. of Rs.30,02,500/-, M/s Nakshatra Business P. Ltd. (M/s Hema Trading Co.P.Ltd.) of Rs. 35,00,000/-, M/s Olive Overseas P. Ltd. (M's Real Gold Trading Co.P. Ltd.) of

Rs.35,00,000/- and M/s Traingler Infocom Ltd.(Mis Lexus Infotech Ltd.) of Rs. 35,00,000/-.

Ld. AO also noted that the theory of payment by cheque and through banking channels does not make the transaction genuine. He further observed that ITAT, Jaipur in the case of M/s Kanchwala Gems vis JCIT, ITA No. 134/JP/02 dated 10.12.2003 and affirmed by Hon'ble Supreme Court in 288 ITR 10(SC) has held that even payment by account payee cheque is not sufficient to establish the genuineness of the transaction. Further, in CIT V/s Precision Finance Pvt. Ltd. 208 ITR 465 (Cal.), the Hon'ble Calcutta High Court has held that payment made by account payee cheque is not sacrosanct and it would not make an otherwise non genuine transaction genuine. It is a well settled law that strict rules of evidence do not apply to the Income Tax Act and the real test with regard to genuineness of transactions is "Preponderance of probabilities" and not "Beyond reasonable doubt". Ld. AO also placed reliance on the decision of Chaturbhuj Panauj AIR 1969 (SC) 255, Sumati Dayal V/s CIT, 214 ITR 801 (SC), C. Vasant Lal & Co., 45 ITR 206 (SC). As regards the contention of the assessee company to make available (being

witness), Shri Praveen Kumar Jain to enquire about the transactions and cross examination is of no use as sufficient material evidences are already in the possession with the department to disprove the transaction regarding share application as received by the assessee-company from above parties (paper concern of Sh. Praveen Jain Group). The assessee furnished the details of allotment of shares, share application form, bank statement of applicant and replied that the assessee company had received the share application money from the above parties through account payee cheques/ RTCG. The reply found insufficient to prove the genuine nature of the transaction. Ld. AO based on the discussion so made and relying on those decisions noted that it is crystal clear that the primary onus is on the assessee to establish the genuineness of the share application money received. If the investigation done by the department leads to doubt regarding the genuineness of the share applications it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction. Payment by account payee cheque is not sacrosanct. Thus, considering that contentions Id. AO hold a view that the

assessee failed to establish the genuineness of the Share Application Money received by it or has failed in discharging this onus. The information received from investigation wing and extract of statement of Shri Praveen Jain & others along with relevant material supplied to the assessee clearly explain the modus operandi of these bogus transaction. Ld. AO noted that the case laws cited by the assessee in its defense also do not help it being distinguishable on facts. Thus, ld. AO considering that statement of Mr. Jain and relying on the decision of Hon'ble Delhi High Court on similar facts in the case of CIT Vs. Nova Promoters & Finlease Pvt. Ltd. (2012) reported in 18 taxmann.com 217 (Delhi) made the addition in hands of the assessee as income of the assessee by invoking the provision of section 68 of the Act added share application of Rs. 1,70,02,500/- from above companies and was treated as non-genuine and bogus Share Application Money and was added to the total income of the assessee-company.

When the assessee challenged that finding of the assessing officer the ld. CIT(A) has allowed the appeal of the assessee taking resort of the decision of the apex court in the case of Lovely Exports. Ld. CIT(A) noted that the assessee-appellant filed various

documents so as to prove the identity, creditworthiness and genuineness of the transaction. Thereby the assessee has placed on record, Copy of Return of Income of the investor and schedules reflecting transaction with the appellant, Copies of bank statements evidencing the investment of share application money through banking channels, and Copy of confirmation letters from the investor. Thus, he noted that the assessee discharged its onus as per 68 of the IT Act. Now onus is on AO to disprove the genuineness of the investments. However, the AO has not made efforts to conduct enquiries and to establish the genuineness of the investors. From the materials filed, it is understood that the assessee filed all relevant details which are needed to explain genuineness, creditworthiness and identification of investors. As held in the case of Commissioner of Income Tax Vs. Odisha Corporation Pvt. Ltd that *"if the assessee had given names and addresses of the alleged creditors. It was knowledge of revenue that the said creditors were income tax assesseees. Revenue apart from issuing notices u/s. 131 at instance of assessee would not pursue matter any further. In view of this, the tribunal was justified in concluding that assessee had discharged burden."* As the Id. AO

was very well have all the details of the investors if so desired Id. AO could have proceed against the investors if they do not have proper creditworthiness for which the AO cannot penalize the assessee by making addition and reference was made those investor as is available from the record. Further, the AO did not point out any specific instance or any information in the statements recorded by the Investigation Wing in the case of Shri Praveen Kumar Jain Group which reveals the alleged involvement of assessee in taking accommodation entries. AO did not make any efforts to examine the investors on his own by issue of letters u/s.133(6) of the Act. In the absence of any specific information about the assessee against the evidence on record it is not correct to make addition merely on the basis surmises and presumptions of a statement of the third party Shri Praveen Jain. The evidence placed on record clearly proves the identity, capacity and genuineness of the transactions were proved and thus the criteria as prescribed in section 68 has been fulfilled and it does not warrant the source of source to be proved. The decision cited by the Id. AO does not match with the facts of the case. We also note that proviso to section 68 wherein addition on account of Share

Application Money / Share application can be made, stood inserted to the statue book, by Finance Act 2012 w.e.f. 01.04.2013 and therefore considering the explanation about the nature and source of share application money so furnished by assessee by way of various documents as above are in accordance with the provision of law. Considering that aspect of the matter once the credential of the investor is proved about the identity, genuineness and creditworthiness of the investor there is no reason to sustain the addition. We get strength to our view from the decision of the apex court in the case Lovely Exports wherein it has been held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit. Even otherwise the amendment made in the law cannot apply retrospective as held by Hon'ble Bombay High Court in the case of Commissioner of Income Tax – 1 vs. M/s Gagandeep Infrastructure Pvt. Ltd. reported in 394 ITR 680, wherein it has been held that :

*“(e) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. 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 by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the pre amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.”*

Thus, it is very much clear from the provision of section 68 as prevailing for year under consideration the Id. AO can make addition u/s 68 only under two circumstances, (i) the assessee does not offer any explanation about nature and source of such credit or (ii) Explanation offered by Appellant is not up to the satisfaction of Ld. AO. Therefore, here we note that the assessee provided so as prove the identity, credit worthiness and genuineness of the transaction by placing all the records such as

PAN, Application made for Shares, Board Resolution and Confirmations, Financial Statement and Bank statement of the investor company which were not at all doubted by Id. AO. But all such vital evidence has been ignored solely on the basis of statements of third party recorded by some other officials during the course of search operation conducted. As argued by the Id. AR of the assessee relying on the decision of the Padmavati Agrico(India) Private Limited in ITA no. 702/JP/2023 it is clear that Shri Praveen Jain has retracted from his statement and as held by our jurisdictional Hon'ble Rajasthan High Court stating that on the retracted statement no addition can be made in the hands of the assessee. This has been held by our High Court in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 stating that the merely based on the retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

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

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

" .....

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

.....

14. That the Ld. CIT(A) on a very detailed examination was satisfied about identity, creditworthiness and genuineness of the investor companies and held that the assessee had discharged the primary onus to prove their identity, creditworthiness, and genuineness. We, therefore, concur with the finding of the Ld. CIT(A) that the AO has made an addition under section 68 of the Act without any basis. In our view, the CIT(A) has analyzed the transaction with each share holder and assigned reasons as to why share capital have to be treated as genuine and has rightly deleted the addition. There is no reason to interfere in this finding of fact particularly since nothing has been shown by the department to conclude that the finding of fact was perverse in any manner whatsoever. In view of that matter, we hold that the impugned order it did not suffer from any legal infirmity or perversity to the facts on record."

8. In "*Pankaj Bhargava and Anr. v. Mohinder Nath and Anr.*" AIR 1991 SC 1233, the Hon'ble Supreme Court held that if a question of law has been settled by the highest Court of the country that question, however important and difficult it may have been regarded in the past and however large may be its effect on any of the parties, would not be

regarded as substantial question of law. The expression 'substantial question of law' has been explained by the Hon'ble Supreme Court in "Sir Chunilal V. Mehta and sons Ltd. v. Century Spinning and Manufacturing Co. Ltd." AIR 1962 SC 1314 wherein the Hon'ble Supreme Court held that the proper test for determining whether a question of law raised in the case is substantial would be to find out whether it directly and substantially affects the rights of the parties and if so whether it is either an open question or is not free from difficulty or calls for discussion of alternative views.

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

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

".....

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

6. In view of the above, it is crystal clear that the transactions made with the concerns owned or operated by Shirish Chandrakant Shah are not genuine and there are only paper transaction took place instead of actual transactions. Although the transactions are completed through banking channel after getting commission in case. Therefore, share application money of Rs. 3,00,00,000/- shown by the assessee is treated as diversion of profits to evade the tax liabilities. Therefore, the amount of Rs. 3,00,00,000/- is added to the total income of the assessee. Penalty proceedings u/s.271(1) (c) are initiated for concealing income by furnishing inaccurate particulars of income.

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

7. Shirish Chandrakant Shah in his statement has admitted that "rate of commission varying between 2.5% to 5% on the total benefits provided to the beneficiaries in form of LTCG, STCG, Sharge Application Money or unsecured loans. Therefore, on the basis of admission by Shirish Chandrakant Shah, commission of @2.50% for bogus accommodation

entries of Rs. 3,00,00,000/- which amounts to Rs. 7,50,000/- is added to the total income of the assessee being undisclosed income. Penalty proceedings u/s.271(1)(c) are initiated for concealing income by furnishing inaccurate particulars of income.

Addition: Rs. 7,50,000/-

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

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

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

11. Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.

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

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

Respectfully following the finding of apex court in the case of Lovely Export and our Jurisdictional High Court's decision in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 as referred herein above we do not find any infirmity in the finding of the Id. CIT(A). In the light of the discussion so recorded herein above ground no. 1 to 4 raised by the revenue stands dismissed.

12. As we note that while challenging finding of the Id. CIT(A) so far as to the re-opening of the case assessee has filed the cross objection. At the time of the hearing of the appeal the Id. AR of the assessee fairly not pressed the grounds so raised in the cross objection so filed being technical ground challenging the re-opening done in the case of the assessee. In terms of this observation, we considered the cross objection filed by the assessee dismissed as withdrawn.

In the results the appeal of the revenue stands dismissed and that of the cross objection filed by the assessee also stands dismissed.

Order pronounced in the open court on 18/12/2024.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/12/2024

\*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- ITO, Ward-7(2), Jaipur
2. प्रत्यर्थी / The Respondent- Amar Pratap Steels Pvt. Ltd., Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 173/JPR/2024 & CO No. 03/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar