

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No. 29/CHD/2022
निर्धारणवर्ष / Assessment Year : 2012-13

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| The ACIT, Central Circle-1, Ludhiana | बनाम | M/s Oswal Trend (P)Ltd., Office No. 23, # B 20-350, New Shopping Centre, Ghumar Mandi, Ludhiana 141001 |
| स्थायीलेखासं./PAN NO: AABCO0431D | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपीलसं./ITA No.429/CHD/2021
निर्धारणवर्ष / Assessment Year :2012-13

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| M/s Oswal Trend (P)Ltd., Office No. 23, # B 20-350, New Shopping Centre, Ghumar Mandi, Ludhiana 141001 | बनाम | The DCIT, Central Circle-1, Ludhiana |
| स्थायीलेखासं./PAN NO: AABCO0431D | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपीलसं./ITA No. 27/CHD/2022
निर्धारणवर्ष / Assessment Year : 2012-13

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| The ACIT, Central Circle-1, Ludhiana | बनाम | M/s Oswal Apparels Pvt. Ltd., New Shopping Centre, Ghumar Mandi, Ludhiana 141001 |
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| स्थायीलेखासं./PAN NO: AAACO9177H | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

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आयकरअपीलसं./ITA No. 432/CHD/2021
निर्धारणवर्ष / Assessment Year :2012-13

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| M/s Oswal Apparels Pvt. Ltd., New Shopping Centre, Ghumar Mandi, Ludhiana 141001 | बनाम | The DCIT, Central Circle-1, Ludhiana |
| स्थायीलेखासं./PAN NO: AAACO9177H | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ITA No. 26/CHD/2022
निर्धारण वर्ष / Assessment Year : 2011-12

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| The ACIT, Central Circle-1, Ludhiana. | Vs | M/s Oswal Apparels Pvt. Ltd., New Shopping Centre, Ghumar Mandi, Ludhiana. |
| स्थायी लेखा सं./PAN NO: AAAC09177H | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ITA No. 28/CHD/2022
निर्धारण वर्ष / Assessment Year : 2011-12

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| The ACIT, Central Circle-1, Ludhiana. | Vs | M/s Oswal Trends Pvt. Ltd., New Shopping Centre, Ghumar Mandi, Ludhiana. |
| स्थायी लेखा सं./PAN NO: AABCO0431D | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: Shri Gaurav Sharma, CA
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR & Shri K.
Mehboob Ali Khan, CIT DR

सुनवाई की तारीख/Date of Hearing : 4th December, 2024
उदघोषणा की तारीख/Date of Pronouncement : 17th December, 2024

PHYSICAL HEARING

आदेश/Order

Per Bench:

The captioned appeals pertain to the assessments carried out under Section 153A of the Income Tax Act, 1961 pursuant to the search action carried out under Section 132 of the Income Tax Act, 1961 in Oswal Group of cases on 10.05.2012. Almost identical assessment orders have been passed by the Assessing Officer (in short “AO”) in these cases except that the quantum of addition differs for each assessment year. Hence, all these appeals were heard together and are being disposed of with this common order.

2. First, we take up the Revenue’s appeal in ITA No. 29/CHD/2022 for assessment year 2010.11.

ITA No. 29/CHANDI/2022 – Revenue’s appeal

3. The captioned appeal has been preferred by the Revenue against the order dated 17.11.2021 of the Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as the ‘CIT(A)’].

4. The revenue in this appeal is aggrieved by the action of the Ld. CIT(A) in deleting the addition of Rs. 2,43,00,000/- out of total addition made by the Assessing Officer (in short “the AO”) of Rs. Rs. 2,88,00,000/- on account of share application money received by the assessee and further deleting the addition of Rs. 1, 90, 00,000/- out of total addition of Rs. 2,10,00,000/- made by the AO in respect of unsecured loans received by the assessee during the year under consideration.

5. First, we take up the issue relating to Share Application Money. Brief facts of the case relating to this issue are that the AO during the assessment proceedings noted that the assessee during the year had received share application money of Rs. 2,88,00,000/-, out of which Rs. 1,26,00,000/- had been received from M/s JMD Cloth & Garments Pvt. Ltd. and balance Rs. 1,62,00,000/- had been received from M/s Navratan Distributors Pvt. Ltd. On being asked to explain in this respect, the assessee furnished the relevant documents and submissions to prove the identity and financial capacity of the share subscribers and genuineness of the transactions. However, we note that the AO by way of identical order for all the assessment years by making general observations and without pointing out any specific defect, infirmity or discrepancy in the documents furnished by the assessee, treated the share application money received by the assessee as unaccounted income of the assessee and made the impugned additions.

6. The Ld. CIT(A), however, after going through the evidences furnished by the assessee and considering the explanations and submissions made by the assessee, deleted major part of the additions (Rs. 2,43,00,000/-), however, sustained some part of the additions (Rs. 4500000/-) made by the AO.

6.1 The Revenue has come in appeal before us contesting the action of the Ld. CIT(A) in deleting the additions made by the AO, whereas, the assessee being aggrieved by the sustenance of some part of the additions (Rs. 4500000/-) by the CIT(A) has come in appeal before us.

6.2 We have heard the rival contentions and gone through the record.

6.3 The Ld. Counsel for the assessee has submitted that the assessee during the year had received/booked share application money as under:

1. Share application money received from M/S JMD Cloth & Garments Pvt. Ltd. Of Rs. Rs. 1,26,00,000/-
2. Share application money received from M/S Navratan Distributors Pvt. Ltd. of Rs. 1,62,00,000/-

Share Application Money received from M/s JMD Cloth & Garments Pvt. Ltd. of Rs. Rs. 1,26,00,000/- :

7. The Ld. Counsel for the assessee has firstly brought our attention to the impugned Assessment Order to submit that the Assessing Officer has not discussed any of the documents and explanations submitted by the assessee, rather has made the impugned additions by way of a common and general order by treating the share application money received by the assessee, mostly from the group concern, as unexplained income of the assessee.

7.1 The Ld. Counsel further referring to the Balance Sheet of the assessee has demonstrated that out of the total amount of Rs.

1,26,00,000/-, an amount of Rs. 60,00,000/- was the opening balance of the preceding year. He has demonstrated that the said amount of Rs. 60,00,000/- was not received at all during the previous year relevant to the assessment year under consideration. The Ld. Counsel inviting our attention to page 37 of the impugned order of the CIT(A) and has submitted that the Ld. CIT(A), after appreciation of this fact on the file, has rightly deleted the addition of Rs. 60,00,000/- being the opening balances of the previous year.

7.2 The Ld. DR could not rebut the aforesaid factual aspects.

7.3 We therefore do not find any infirmity in the order of the CIT(A) in deleting the aforesaid addition of Rs. 60,00,000/-.

8. The Ld. Counsel, further, inviting our attention to the relevant part of the order of the CIT(A), has pointed out that it was duly explained before the Ld. CIT(A) that a cheque of Rs. Rs. 66,00,000/- from M/s JMD Cloth & Garments Pvt. Ltd was received on 31.03.2012 which amount was booked as share application money in the books of accounts of the assessee. However, the said cheque was not presented for encashment during the year. It was explained that in fact, the said sum of Rs. 66,00,000/- was never received by the assessee. The Ld. Counsel in this respect has referred to the bank statement of the assessee and has also demonstrated that the said entry of receipt of Rs. 66,00,000/- was a mere accounting entry. He has further explained that since the said entry was passed on the last day of the financial year under consideration, hence, the said entry was reversed in the subsequent year A/Y 2013-2014.

8.1 We note that the Ld. CIT(A), after duly considering the aforesaid facts on the file, has deleted the addition.

8.2 The Ld. DR could not rebut the aforesaid factual position.

8.3 Since the said amount was not received by the assessee at all during the year under consideration, therefore we do not find any infirmity in the order of the Ld. CIT(A) in deleting the impugned addition of Rs. 66,00,000/-.

9 In view of the above discussion, we do not find any infirmity in the order of the CIT(A) in deleting the addition of Rs. 1,26,00,000/- said to be received from M/s JMD cloth & Garments Ltd. The order of the CIT(A) is upheld to that extent.

Share application money received from M/S Navratan

Distributor Pvt. Ltd. of Rs. 1,62,00,000/-:

10. Rs. 65,00,000/- out of Rs. 1,62,00,000/- :

10.1 The Ld. Counsel has submitted that the assessee had received Rs. 65 Lakhs as share application money from its group concern M/s Navratan Distributors P. Ltd. Though, the AO, by making general observations and without pointing out any defect or infirmity in the documents and explanations furnished by the assessee, has made the addition of the entire amount, however, the Ld. CIT(A) after considering the submissions of the assessee, deleted the addition of Rs. 20 Lakhs out of the said amount of Rs. 65 lakhs observing that the source of source i.e. source of amount in the hands of share subscriber M/s Navrattan Distributors was from another group company of the assessee. He, however, sustained the addition of Rs. 45 Lakhs observing that the source of source i.e. Source of Rs. 45 lakhs in the hands of share subscriber M/s Navrattan Distributors was from a non-group company.

10.2 The Ld. Counsel, in this respect, has referred to the paper book to submit that the assessee had furnished the following documents to prove the identity and financial capacity of the share subscribers and genuineness of the transaction.

| Documents relating to the Assessee Concern (M/s Oswal Trends (P) Ltd.) | | |
|---|---|-------|
| 1 | Copy of Audit Report, Audited Balance Sheet and Profit & Loss Account of M/s Oswal Trends (P) Ltd. for the year ended 31.03.2012 | 1-14 |
| 2. | Copy of Acknowledgment of Return of Income & Copy of Computation of Income of M/s Oswal Trends (P) Ltd. for the year ended 31.03.2012 | 15-17 |

| Documents relating Share Subscriber (M/s Navratan Distributors Private Limited) | | |
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| a | Copy of Audit Report, Audited Balance Sheet and Profit & Loss Account of M/s Navratan Distributors Private Limited for the year ended 31.03.2012 | 42-53 |
| b | Copy of Acknowledgment of Return of Income & Copy of Computation of Income of M/s Navratan Distributors Private Limited for the year ended 31.03.2012 | 54-55 |
| c | Copy of Account of M/s Navratan Distributors Private Limited in the books of M/s Oswal Trends (P) Ltd. for the F/Y 2011-2012 | 56 |
| d | Copy of Account of M/s Navratan Distributors Private Limited in the books of M/s Oswal Trends (P) Ltd. for the F/Y 2012-2013 | 57 |
| e | Copy of Bank Statement of Bank Account of M/s Oswal Trends (P) Ltd. maintained with the ICICI Bank for the period 01.07.2012 to 31.07.2012 | 58 |
| f | Copy of Account of M/s Oswal Trends (P) Ltd. in the books of M/s Navratan Distributors Private Limited for the F/Y 2011-2012 | 59 |
| g | Copy of Account of M/s Oswal Trends (P) Ltd. in the books of M/s Navratan Distributors Private Limited for the F/Y 2012-2013 | 60 |

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| | h | Copy of Bank Statement of Bank Account of M/s Navratan Distributors Private Limited |
| | | 61-64 |

10.3 Referring to the aforesaid documents, the Ld. Counsel has submitted that the identity of the Investor is proved from the copies of ITR Acknowledgment and Computation of Income and Audited Financial Statements of M/s Navratan Distributors Pvt. Ltd. for the year under consideration (enclosed at Pages No. 42 to 55 of the Paper Book). He has further submitted that the genuineness of the transaction is proved from the confirmed copies of accounts of M/s Navratan Distributors Pvt. Ltd. in the books of the assessee company and vice-a-versa. He has further submitted that the credit worthiness of M/s Navratan Distributors Pvt. Ltd. is proved from the Bank Statement of the Bank Account enclosed at Pages No. 61 to 64 of the Paper Book, wherein, the source of Share Application Money given to the assessee company was shown to be the money received from another companies. An amount of Rs. 20 lakhs was received from the group company named M/s Oswal Apparels Pvt. Ltd. The Ld. Counsel has further submitted that even the said M/s Oswal Apparels Pvt. Ltd. had also been assessed with the same Assessing Officer under Section 153A of the Act. Further, all the sources of M/s Oswal Apparels Pvt. Ltd. had already been taken care of in the said assessment proceedings, from where the amount has been further transferred to M/s Navratan Distributors Pvt. Ltd. Regarding the remaining amount of Rs. 45 lakhs, the Ld. Counsel has duly demonstrated that even the source of source in respect of the said amount was also proved. That the Ld. CIT(A) has sustained the addition to that extent merely because of the reason that source of source i.e. Source of the amount to the extent of Rs.45 Lakhs in the hands of share subscriber Navrattan Distributors was from non-group companies. The Ld. Counsel,

in this respect, has submitted that the action of the CIT(A) in sustaining the addition, on this score alone, was not legally sustainable. The Ld. Counsel has further submitted that the assessment year under consideration was 'AY 2012-13' and that the assessee company was not required to explain the source of source for the year under consideration as the Proviso to Section 68 of the Act was not applicable for AY 2012-13 as the same was inserted in the Act with effect from 01.04.2013. He in this respect has relied upon the following case laws to contend that that Proviso to Section 68 of the Act, introduced by the Finance Act, 2012 with effect from 01.04.2013 was prospective in nature and that the same was not applicable for the earlier years:

- CIT vs. Gagandeep Infrastructure Pvt. Ltd. (2018) 394 ITR 0680 (Mumbai High Court)
- DCIT vs. Alcon Biosciences Pvt. Ltd. (2018) ITA No. 1946/Mum/2016 (ITAT Mumbai)
- ITO vs. Confiance Trading Pvt. Ltd. (2022) ITA No.199/M/2020 (ITAT Mumbai)
- Nimbus (India) Ltd. vs. DCIT (2020) ITA No. 929 & 930/Del/2019 (ITAT Delhi)

10.4 The Ld. DR has, however, relied upon the observations made by the Assessing Officer. He, however, could not rebut the fact that the assessee had duly furnished all the documents to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction and that the AO has not pointed out any specific defect or infirmity in the evidences and explanations furnished by the assessee.

10.5. We have considered the rival contentions and gone through the record. So far as the action of the CIT(A) in deleting the addition of Rs. 20 Lakhs is concerned, we do not find any infirmity in the same. The

share application money has been received from the Group company. The source in the hands of the share subscriber is also from another Group company. Both the group companies are assessed to income tax and their assessment has also been carried out by the same assessing officer. Therefore, even the source of source is also proved.

10.6. Even we note that the action of the Ld. CIT(A) in sustaining the addition of the remaining amount of Rs. 45 lakhs received from the group company is not legally sustainable. Though, the Assessing Officer has observed in the assessment order that the share subscriber company was a group company having common directors and that there was routing of money from investor company to the assessee company, however, this observation of the Assessing Officer, in our view, goes in favour of the assessee, rather than against it. It is generally observed that a company is always interested in its group companies and always prefer to make investment in its group companies as there is a security of the investment. Having common directors, the group companies not only are known to each other but also are fully aware of the financial strength and future projections and progress chances of such company. The name of the directors of the investor companies were also furnished before the Assessing Officer from which the Assessing Officer had made the observation that the investor companies and the assessee company have common directors. This fact on the file also proves that the assessee duly established the identity of the share subscribers. The Assessing officer has neither discussed about, nor pointed out any defect, discrepancy or infirmity in the documents furnished by the assessee to prove the identity and creditworthiness of the subscribers and genuineness of the transaction.

10.7 Even during the appellate proceedings, the assessee furnished all the relevant documents to prove the identity and creditworthiness of the share-subscribers and genuineness of the transaction which have been duly discussed by the Ld. CIT(A). The assessee has not only proved the source of the investments but source of source also. Merely because of that the source of source i.e. the source in the hands of share subscriber company was from a non group company, that itself is no ground to uphold the additions. Moreover, the assessment has also been done in the case M/S Navratan Distributors Pvt. Ltd., therefore, the source of source, so far as assessee is concerned, stand established. Reliance has been placed in this respect on the decision of the Coordinate Kolkata Bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of “Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata” I.T.A. No.2666/Kol/2019 decided vide order dated 09.09.2022.

10.8 Even otherwise, in view of the various case laws cited (supra), the assessee was not supposed to prove the source of source for the assessment year under consideration (AY-2012-13) as the Proviso to Section 68 of the Act, introduced by the Finance Act, 2012 with effect from 01.04.2013 and that the same is prospective in nature and that the same is not applicable in the preceding years.

10.9 Even there is no rebuttal to the contention that the share subscribers were having sufficient net worth to invest in the assessee company. There is no evidence brought on record that the share subscription money is the own unaccounted income of the assessee.

10.10 So far as the reliance of the Ld. DR on the decision of the Hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.

10.11 However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee had furnished all the details and documents before the Assessing Officer, but the Assessing Officer did not point out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even to make independent inquiries and thereafter to state that on what account, he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid

down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra), impugned additions are not warranted in this case.

10.12. Our view is further supported by the following judicial pronouncements: -

a) The Hon'ble Apex Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd.* (supra), under identical circumstances, has held as follows:-

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

{emphasis ours}

b) The ITAT Kolkata Bench in *ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016*, held as follows:

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by ITO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO

it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

c) Further the co-ordinate bench in the case of *ITO vs. Forceful Estates Pvt. Ltd.* in *ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023*, and for necessary reference, the facts and findings of the Tribunal read as follows:-

"5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

"5. Conclusion:

Ground No.1 & 2

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.

It is observed form the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for Lne AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that the respective Assessing Officers have all verified the accounts and therefore any amount

that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not.

When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act.

In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed.

Ground no. 3 is general in nature, which does not require adjudication.

6. In the result, the appeal of the assessee is treated as allowed.”

6. A perusal of the above concluding part of the order of the CIT(A) reveals that the ld. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled

law, once the addition has been made in the hands of the share subscribers, the investments by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of "Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata" I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd.

reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed."

d) Our view is further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal) has held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and

acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

11. Respectfully following the above decisions, which, in our view, are squarely applicable on the facts of the instant case, we find that the assessee has successfully discharged the burden of proof primarily casted upon it to explain the identity and creditworthiness of share applicant and genuineness of the share transactions and correctness of such details has

not been disputed by the Revenue Authorities, except making general observations. In view of the above discussion, we do not find justification on the part of the lower authorities in making the impugned addition and the same is accordingly ordered to be deleted.

Rs. 25,00,000/- out of Rs. 1,62,00,000/- :

12. The aforesaid amount of Rs. 25 lakh was received by the assessee company as share application money from its group concern M/s Navratan Distributors Pvt. Ltd on 31.03.2012 by way of two cheques of Rs. 24,00,000/- and Rs. 1,00,000/- respectively. The above said two cheques were not sent for encashment in the Bank Account of the assessee company during the year under consideration. However, the assessee made accounting entry in respect of the aforesaid amount in its books of account. There was thus, no actual receipt of the aforesaid money during the year under consideration. The said two cheques, however, had been encashed in the Bank Account of the assessee for the succeeding year (A.Y. 2013-2014). Therefore, no additions were warranted for the year under consideration. Even as observed above, the amount was received from group company and in view of our findings given above, the identity and creditworthiness of the share subscriber M/s Navrattan Distributors P. Ltd. And genuineness of the transactions duly established in this case. Therefore, the Ld. CIT(A) has rightly deleted the impugned addition.

Rs. 72,00,000/- out of Rs. 1,62,00,000/- :

13. The said amount of Rs. 72 lakhs stated to have been received by the assessee from its group concern M/s Navratan Distributors Pvt. Ltd on 31.03.2012 by way of one cheque. However, as noted by the Ld. CIT(A), the said cheque was not sent for encashment. No such amount was received by the assessee during the year under consideration. The Ld.

Counsel in this respect has referred to the bank statement of the assessee and has also demonstrated that the said entry of receipt of Rs. 72,00,000/- was a mere accounting entry. He has further explained that since the said entry was passed on the last day of the financial year under consideration, hence, the said entry was reversed in the subsequent year A.Y. 2013-2014.

13.1 We note that the Ld. CIT(A), after duly considering the aforesaid facts on the file, has deleted the addition.

13.2 The Ld. DR could not rebut the aforesaid factual position.

13.3 Since the said amount was not received by the assessee at all during the year under consideration, therefore we do not find any infirmity in the order of the Ld. CIT(A) in deleting the impugned addition of Rs. 7200000/-.

Unsecured Loan From M/S Fantastic Commercial Pvt. Ltd.

14. The AO noted that the assessee had received an amount of Rs. 2,10,00,000/- under the head “Unsecured Loan” from M/s Fantastic Commercial Pvt. Ltd. On being asked to explain in this respect, assessee furnished requisite documents and explanations. The AO, however, without examining the same, by way of a general observation, treated the said loans as unaccounted income of the assessee.

14.1 The Ld. CIT(A), however, considering the facts and circumstances of the case, deleted the addition of Rs. 1,90,00,000/- out of total addition of Rs. 2,10,00,000/- made by the AO and sustained the addition of Rs. 20 lakhs.

14.2 The revenue thus, has come in appeal against the action of the CIT(A) in deleting the addition of Rs. 1,90,00,000/- whereas, the assessee has come in appeal against the sustenance of addition of Rs. 20 lakhs by the CIT(A).

14.3 We have heard the rival contentions and gone through the record.

Issue of Rs. 1,10,00,000/- out of Rs. 2,10,00,000/-

The Ld. Counsel for the assessee has submitted that the creditor was the group company of the assessee company. The creditor has substantial net worth. The source of the funds in the hands of the creditor was duly explained. The Ld. Counsel has further submitted that the following documents were furnished before the lower authorities to establish the identity and creditworthiness of the creditor and the genuineness of the transaction.

| | | |
|---|--|-------|
| Documents relating to Unsecured Loan received from M/s Fantastic Commercial Private Limited | | |
| a. | Copy of Audit Report, Audited Balance Sheet and Profit & Loss Account of M/s Fantastic Commercial Private Limited for the year ended 31.03.2012 | 65-74 |
| b. | Copy of Acknowledgment of Return of Income & Copy of Computation of Income of M/s Fantastic Commercial Private Limited for the year ended 31.03.2012 | 75-76 |
| c. | Copy of Account of M/s Fantastic Commercial Private Limited in the books of M/s Oswal Trends (P) Ltd. for the F/Y 2011-2012 | 77 |
| d. | Copy of Account of M/s Fantastic Commercial Private Limited in the books of | 78 |
| | M/s Oswal Trends (P) Ltd. for the F/Y 2012-2013 | |
| e. | Copy of Account of M/s Oswal Trends (P) Ltd. in the books of M/s Fantastic Commercial Private Limited for the F/Y 2011-2012 | 79 |
| f. | Copy of Account of M/s Oswal Trends (P) Ltd. in the books of M/s Fantastic Commercial Private Limited for the F/Y 2012-2013 | 80 |

| | | |
|---|---|-------|
| g | Copy of Bank Statement of the Bank Account maintained by M/s Fantastic Commercial Private Limited with the ICICI Bank | 81-82 |
|---|---|-------|

14.4 The Ld. Counsel has submitted that the identity of the Investor is proved from the copies of ITR Acknowledgment and Computation of Income and Audited Financial Statements of M/s Fantastic Commercial Pvt. Ltd. for the year under consideration. The genuineness of the transaction is proved from the confirmed copies of accounts of M/s Fantastic Commercial Pvt. Ltd. in the books of the assessee company and vice-a-versa. The creditworthiness of M/s Fantastic Commercial Pvt. Ltd. is proved from the Bank Statement of the Bank Account maintained by it and duly produced on record, wherein, the source of Share Application Money given to the assessee company has been shown as the money received from another group company named M/s Oswal Polycot (India) Ltd. The Ld. Counsel has further explained that M/s Oswal Polycot (India) Ltd. had also been assessed with the Ld. AO under Section 153A of the Act. Further, all the sources of M/s Oswal Polycot (India) Ltd. had already been taken care of in the said Assessment Proceedings, from whom, the amount has been further transferred to M/s Fantastic Commercial Pvt. Ltd. The Ld. Counsel has relied upon the following case laws to stress that once the Assessee has discharged his onus by furnishing the evidences to prove the Identity and Creditworthiness of the Cash Credit and the Genuineness of the Transaction, then no addition can be made in the Case of the Assessee of such Cash Credits under section 68 of the Act. The following are the above Judgments:

- i. *P. Refinery (P) Ltd. vs. ACIT [2015] 174 TTJ 41 (Chandigarh ITAT)*
- ii. *Principal CIT vs. N. C. Cables Ltd. [2017] 98 CCH 10 (Delhi)*
- iii. *CIT vs. Shokeen Properties (P) Ltd. [2015] 92 CCH 67 (Delhi)*

iv. Principal CIT vs. Softline Creation Pvt. Ltd. [2016] 387 ITR 636 (Delhi)

14.5 We note that the Ld. CIT(A) has deleted addition of Rs. 90,00,000/- by observing that the identity and creditworthiness of the creditor was proved as the creditor was the group company of the assessee and has been assessed to Income tax and further the assessment in the case of the said creditor was also carried out u/s 153A of the Income Tax Act. Further, that the source of the creditor was also from the group company of the assessee. He, however, sustained the addition to the extent of Rs. 20,00,000/- observing that the source of the creditor M/S Fantastic Commercial Pvt. Ltd to that extent was from non-group companies.

14.6 We have already deliberated upon the identical issue in relation to share application money as above and our findings given above will also apply under identical circumstances to the issue of aforesaid unsecured loans also. As observed above, merely because the meagre amount of Rs.20,00,000/- was received by the creditor of the assessee from a non-group company that itself cannot be a ground to hold that the same was unaccounted income of the assessee. Moreover, the assessment year being the A.Y. 2012-13, the Proviso to Section 68 of the Act, introduced by the Finance Act, 2012 with effect from 01.04.2013 being prospective in nature is not applicable in the preceding years. The issue and the law thereupon have already been discussed above. In view of this, impugned addition of Rs. 1,10,00,000/- is not sustainable. The order of the CIT(A) deleting the addition of Rs. 90,00,000/- is upheld whereas, the order of the CIT(A) sustaining the addition of Rs. 20,00,000/- is reversed and the said addition is also ordered to be deleted.

14.7 In view of the above discussion, we do not find any merit in the appeal filed by the revenue and the same is accordingly dismissed.

Assessee's Appeal - ITA No. 429/Chandigarh/2021:

15. The assessee in this appeal has contested the sustenance of addition of Rs. 45 lacs by the Ld. CIT(A). This issue has been thoroughly discussed by us in Paras above while deciding the appeal of the Revenue for the same assessment year. In view of our findings given above, the impugned additions are not sustainable as per law and the same are accordingly ordered to be deleted.

16. Accordingly, Assessee's appeal stands allowed.

17. In the result, the appeal of the revenue is hereby dismissed, whereas the appeal of the assessee stands allowed.

Revenue Appeal – ITA No. 27/Chd/2022 in the case of Oswal Apparel Private Limited.

18. The Revenue in this appeal is aggrieved by the action of the CIT(A) in deleting the addition of Rs. 8,69,75,000/- out of total addition made by the Assessing Officer (in short "the AO") of Rs. 9,29,75,000/- on account of share application money received by the assessee from Navrattan Distributors Private Limited, a group company of the assessee.

19. Brief facts of the case relating to this issue are that the AO during the assessment proceedings noted that the assessee during the year had received share application money of Rs. 9,29,75,000/- from M/s Navratan Distributors Pvt. Ltd. On being asked to explain in this respect, the assessee furnished the relevant documents and submissions to prove the identity and financial capacity of the share subscribers and genuineness

of the transactions. However, as observed above, the AO by way of identical order for all the assessment years, by making general observations and without pointing out any specific defect, infirmity or discrepancy in the documents furnished by the assessee, treated the share application money received by the assessee as unaccounted income of the assessee and made the impugned additions.

20. The Ld. CIT(A), however, after going through the evidences furnished by the assessee and considering the explanations and submissions made by the assessee, deleted major part of the additions (Rs. 8,69,75,000/-), however, sustained some part of the additions (Rs. 60,00,000/-) made by the AO.

21. The Revenue has come in appeal before us contesting the action of the Ld. CIT(A) in deleting the additions made by the AO, whereas, the assessee being aggrieved by the sustaining of some part of the additions by the CIT(A) has come in appeal before us.

Issue Of Rs. 3,54,75,000/- Out Of Rs. 9,29,75,000/-

22. We have heard the rival contentions and gone through the record. Out of the aforesaid amount of Rs.3,54,75,000/-, the Ld. CIT(A) deleted the addition to the extent of Rs.2,94,75,000/- but sustained the addition of the remaining amount of Rs. 6 lakhs.

22.1. The Ld. Counsel, in this respect has referred to the various documents placed in paper book to submit that the assessee had furnished all the requisite documents to prove the identity and financial worthiness of the share subscriber and genuineness of the transaction.

He, in this respect, has submitted that the identity of the investor was proved from the copies of ITR Acknowledgment and Computation of

Income and Audited Financial Statements of M/s Navratan Distributors Pvt. Ltd. for the year under consideration, which is enclosed at Pages No. 27 to 39 of the Paper Book. He has further submitted that the genuineness of the transaction is proved from the confirmed copies of accounts of M/s Navratan Distributors Pvt. Ltd. in the books of the assessee company and vice-a-versa, which have been placed at Pages No. 40 to 41 & Pages No. 50 to 52 of the Paper Book. He has further submitted that the creditworthiness of M/s Navratan Distributors Pvt. Ltd. was proved from the Bank Statement of the Bank Account maintained by it, the copy of which has been enclosed at Pages No. 59 to 65 of the Paper Book, wherein the source of Share Application Money given to the assessee company has been mentioned and which was majorly out of cash deposits. About the source of deposit of cash in the bank account of M/s Navratan Distributors Pvt. Ltd., the Ld. Counsel submitted that it was out of 'cash in hand' available with the company and the source of the cash was mainly out of the withdrawals from the bank accounts of that company. He in this respect has relied upon the Cash Book of M/s Navratan Distributors Pvt. Ltd. for the period 01.04.2011 to 31.03.2012 enclosed at Pages No. 66 to 71 of the Paper Book. He has further relied upon the following case laws, wherein, it has been held that once the Assessee has fulfilled his onus by furnishing the Identity and Creditworthiness of the Cash Credit and the Genuineness of the Transaction with such Cash Credit, then no addition can be made in the Case of the Assessee of such Cash Credit under section 68 of the Act.

- i. A. P. Refinery (P) Ltd. vs. ACIT [2015] 174 TTJ 41 (Chandigarh ITAT)*
- ii. Principal CIT vs. N. C. Cables Ltd. [2017] 98 CCH 10 (Delhi)*
- iii. CIT vs. Shokeen Properties (P) Ltd. [2015] 92 CCH 67 (Delhi)*
- iv. Principal CIT vs. Softline Creation Pvt. Ltd. [2016] 387 ITR 636 (Delhi)*

22.3 We note that the Id. CIT(A) has thoroughly discussed about the issue. The Id. CIT(A) has given a categorical finding that the identity and creditworthiness of the share subscriber was duly established as the said creditor was the group company of the assessee. Assessment was also carried out in the case of the share subscriber company also. The source of the said subscriber was also proved on the file. The relevant documents relating to the financial worthiness M/s Navratan Distributors have already been discussed above. The Id. CIT(A) further noted that the source to the extent of Rs. 3,25,00,000/- was proved as the said amount was received by M/s Navratan Distributors from another company namely M/s Fortune Metals Limited through banking channel. He further noted that the said amount was returned back by the said Navratan Distributors in the same year through bank account. He further noted that the balance amount was cash deposits out of cash in hand of M/s Navratan Distributors, which was out of withdrawals from the same bank account. The Id. CIT(A) noted that the identity, creditworthiness and genuineness of the transaction was proved from the copy of the ITR and computation, audited balance sheet and further from the confirmed copies of accounts and bank statements. The Id. CIT(A) has also taken note of the ledger account of the assessee company with M/s Navrattan Distributors Limited which showed debit and credit entries which were also tallied with the bank statement. Further, the Id. Counsel explained that M/s Fortune Metals Ltd. was a known and established Company, involved in manufacturing of TMT, Steel Pipes & Tubes, Structural and Strips at Mandi Gobindgarh, Punjab and Raipur, Chhatisgarh and that there was no doubt about its identity and creditworthiness. Therefore, we hold that there is no infirmity in the order of the CIT(A) in deleting the addition of Rs. 2,94,75,000/-

22.4 However, the Id. CIT(A) sustained the addition of Rs. 60,00,000/- observing that the source of the said amount in the hands of the shares subscriber was from the non-group companies. The assessee vide ITA No. 432/CHD/2021 has contested the sustenance of the aforesaid addition of Rs. 60 lacs by the Ld. CIT(A). This issue has been thoroughly discussed by us in paras above in the case of Oswal Trends (P) Limited, wherein, the issue was also relating to the identity, creditworthiness and genuineness of the transaction with M/s Navrattan Distributors i.e., the same party. We have also held that even otherwise, in view of the various case laws cited (supra), the assessee was not supposed to prove the source of source for the assessment year under consideration (AY-2012-13) as the Proviso to Section 68 of the Act, introduced by the Finance Act, 2012 with effect from 01.04.2013 and that the same is prospective in nature and that the same is not applicable in the preceding years. In view of our findings given above, the impugned additions are not sustainable. Therefore, we upheld the findings of the CIT(A) in deleting the addition of Rs. 2,94,75,000/- and reverse the findings of the CIT(A) in sustaining the addition of Rs. 60,00,000/- and accordingly the said addition confirmed by the CIT(A) is ordered to be deleted.

A. Issue of Rs. 96,00,000/- out of Rs. 9,29,75,000/-

22.5 The Id. Counsel has explained that the above amount of Rs. 96,00,000/- was shown to have been received through four cheques dated 31.03.2012 of Rs. 21,00,000/-, Rs. 30,00,000/-, Rs. 15,00,000/- and Rs. 30,00,000/- respectively from M/s Navrattan Distributors. However, the said cheques were not encashed during the assessment year under consideration. The Id. CITA) has duly considered the said aspect and held that since the said cheques were not encashed, therefore, this amount was

not received by the assessee during the year under consideration. Therefore, he held that the imputed addition was not sustainable. Though the said cheques were encashed in subsequent years, yet as discussed above the identity, creditworthiness of the share subscriber and genuineness of the transaction was duly proved. Therefore, the Id. CIT(A) rightly deleted the addition of Rs. 96,00,000/-. We do not find any infirmity in the order of the CIT(A) in this respect.

B. Issue of Rs. 4,79,00,000/- out of Rs. 9,29,75,000/-

22.6 The Id. Counsel in this respect has explained that the assessee company, though had received a cheque of Rs. 4,79,00,000/- from M/s Navratan Distributors Pvt. Ltd on 31.03.2012, however, the said cheque was never encashed. It was explained that in fact, the said sum of Rs. 4,79,00,000 was never received by the assessee. The Ld. Counsel in this respect has referred to the bank statement of the assessee and has also demonstrated that the said entry of receipt of Rs.4,79,00,000/- was a mere accounting entry. He has further explained that since the said entry was passed on the last day of the financial year under consideration, hence, the said entry was reversed in the subsequent year A/Y 2013-2014.

22.7 We note that the Ld. CIT(A), after duly considering the aforesaid facts on the file, has deleted the addition.

22.8 The Ld. DR could not rebut the aforesaid factual position.

22.9 Since the said amount was not received by the assessee at all during the year under consideration, therefore we do not find any infirmity in the order of the Ld. CIT(A) in deleting the impugned addition of Rs.. 4,79,00,000/-.

23. In view of this we do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

ITA No. 432/Chandigarh/2021- Assessee's appeal :

24. The assessee in this appeal has contested the sustenance of addition of Rs. 60,00,000/- by the Ld. CIT(A). This issue has been thoroughly discussed by us in Paras above while deciding the appeal of the Revenue for the same assessment year. In view of our findings given above, the impugned additions are not sustainable as per law and the same are accordingly ordered to be deleted.

24.1 This appeal of the assessee is, hereby, allowed.

25. ITA No. 26/CHD/2022 for AY-2010-11

251. The Revenue in this appeal is aggrieved by the action of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana [hereinafter referred to as the 'ld. CIT(A)'] in deleting the addition of Rs.8,95,50,000/- made by the AO under Section 68 of the Income Tax Act, 1961 by treating the share application/share premium received by the assessee as unaccounted income of the assessee.

25.1 The AO during the assessment proceedings noted that the assessee had received a sum of Rs.8,20,50,000/- from M/s Fantastic Commercial Pvt. Ltd. and Rs.75 lacs from M/s Gayatri Investment Consultants P. Ltd. On being asked to explain the identity and credit worthiness of the share subscriber and genuineness of the transaction, the assessee furnished the documents such as Audit Report, Audited Balance Sheet, Profit & Loss Account for the year under consideration of the assessee. Apart from that, the assessee also furnished the following documents relating to the identity and

credit worthiness of the share subscribers and genuineness of the transaction:

Documents relating to M/s Fantastic Commercial Pvt. Ltd.

| | |
|----|---|
| a. | Copy of Audit Report, Audited Balance Sheet and Profit & Loss Account of M/s Fantastic Commercial Pvt. Ltd. for the year ended 31.03.2011 |
| b. | Copy of Acknowledgment of Return of Income of M/s Fantastic Commercial Pvt. Ltd. for the year ended 31.03.2011 |
| c. | Copy of Account of M/s Fantastic Commercial Pvt. Ltd. in the books of M/s Oswal Apparels Pvt. Ltd for the F/Y 2010-2011 |
| d. | Copy of Account of M/s Fantastic Commercial Pvt. Ltd. in the books of M/s Oswal Apparels Pvt. Ltd for the F/Y 2011-2012 |
| e. | Copy of Account of M/s Oswal Apparels Pvt. Ltd in the books of M/s Fantastic Commercial Pvt. Ltd. for the F/Y 2010-2011 |
| f. | Copy of Account of M/s Oswal Apparels Pvt. Ltd in the books of M/s Fantastic Commercial Pvt. Ltd. for the F/Y 2011 -12 |
| g. | Copy of Bank Statement of Fantastic Commercial Pvt. Ltd. Showing relevant amount paid to M/s Oswal Apparels Pvt. Ltd during the F/Y 2010-2011 |
| h. | Bank Reconciliation Statement of Bank Account No. 30747450684 maintained by M/s Oswal Apparels Pvt. Ltd with SBI Bank for the F/Y 2010-2011 |
| i. | Copy of last pages of Bank Account No. 30747450684 |

Documents relating to M/s Gayatri Investment Consultants .

| | |
|----|---|
| a. | Copy of Audit Report, Audited Balance Sheet and Profit & Loss Account of M/s Gayatri Investments Consultants Pvt. Ltd for the year ended 31.03.2011 |
| b. | Copy of Acknowledgment of Return of Income M/s Gayatri Investments Consultants Pvt. Ltd for the year ended 31.03.2011 |
| c. | Copy of Account of M/s Gayatri Investments Consultants Pvt. Ltd in the books of M/s Oswal Apparels Pvt. Ltd for the F/Y 2010-2011 |
| | Copy of Account of M/s Gayatri Investments Consultants Pvt. Ltd in the books of M/s Oswal Apparels Pvt. Ltd for the F/Y |

| | |
|----|--|
| d. | 2011 -12 |
| e. | Copy of Account of M/s Oswal Apparels Pvt. Ltd in the books of M/s Gayatri Investments Consultants Pvt. Ltd. for the F/Y 2010-2011 |
| f. | Copy of Account of M/s Oswal Apparels Pvt. Ltd in the books of M/s Gayatri Investments Consultants Pvt. Ltd. for the F/Y 2011-2012 |

25.2 However, the AO was not satisfied with the evidences furnished by the assessee. He, therefore, treated the said share application money received by the assessee as unaccounted income of the assessee and made the impugned additions.

26. Being aggrieved by the said order of the AO, the assessee preferred the appeal before the Id. CIT(A). The CIT(A), however, considering the evidences and submissions made by the assessee, deleted the additions so made by the AO. The relevant part of the order of the Id. CIT(A) is reproduced as under :

“The facts of the case, the basis of addition made by the A.O. and the arguments of the AR during the appellate proceedings have been considered. The AR submitted that during the year an amount of Rs. 8,95,50,000/- was received as Share Application Money out of which, Rs. 8,20,50,000/- was received from M/s. Fantastic Commercial Pvt. Ltd. and Rs. 75,00,000/- was received from M/s Gayatri Investment Consultants Pvt. Ltd. and confirmed copy of account in this regard has been enclosed.

Regarding the Share Application Money of Rs. 8,20,50,000/- received from M/s. Fantastic Commercial Pvt. Ltd., it is submitted by the AR that an amount of Rs. 86,00,000/- was received as Share Application Money from M/s. Fantastic Commercial Pvt. Ltd. and confirmed copy of account in this regard has been enclosed. As per the AR, the AO revolved around some procedural discrepancies carried out by some of the owned group concerns and made the addition without looking at the facts of the case on the basis of assumption, surmises and conjectures. The AR argued that if the identity and creditworthiness of the lender and genuineness of the transactions gets proved then section 68 has no applicability and relied upon certain judgments in the submission including the judgments of ITAT Chandigarh in A. P. Refinery Pvt. Ltd., PCIT vs. N. C. Cables Ltd. [2017] 98 CCH 10, CIT vs. Shokeen Properties (P) Ltd. , PCIT vs. Softline Creation Pvt. Ltd. As per the AR, in the present case, the identity is proved from

the ITR, computation and audited balance sheet, the genuineness of the transactions is proved from the confirmed copy of the accounts and creditworthiness of M/s. Fantastic Commercial Pvt. Ltd. is proved from bank account statement wherein, the source of Share Application Money given to the appellate company is the money received from M/s. Oswal Apparels Pvt. Ltd. the assessee itself. As per the AR, the source of M/s. Oswal Apparels Pvt. Ltd. have already been taken care of in the assessment proceedings of that company and from where the amount has been transferred to M/s. Fantastic Commercial Pvt. Ltd. The AR also argued that the AO did not make any addition when fund is transferred in the shape of Share Application Money from one group concern which is assessed u/s 153A to another group concern assessed u/s 153A. The AR further submitted that in the present case, money has received by the appellant from M/s. Fantastic Commercial Pvt. Ltd. out of funds given earlier. The AR further referred to the order dated 05.04.2019 passed in the case of M/s. Oswal Fashions Pvt. Ltd. in Appeal No. 72/IT/CIT(A)-5/Ldh/2015-16 where similar issue was dealt. The AR filed the bank account statement and copy of the ledger account of the assessee with M/s. Fantastic Commercial Pvt. Ltd. showing the receipt and payment of the above amount. There is merit in the contention of the AR that in the hands of the assessee, the source of money is the receipt from M/s. Fantastic Commercial Pvt., Ltd. through bank in which the money was received from the assessee itself. The AO has mentioned that M/s. Fantastic Commercial Pvt. Ltd. was controlled by Sh. Vikas Jain and taken over by the group by way of complete share purchase and the company shifted to Punjab where bank accounts were opened in Ludhiana and the assessee produced Sh. Rajesh Kalia and Sh. Anuj Verma as Directors, thus the existence of the company has been accepted by the AO also. Under the facts and the circumstances of the case, the arguments of the AR appear acceptable regarding the source of Rs.86,00,000/-.

Regarding the remaining sum of Rs. 7,34,50,000/- out of total Rs. 8,20,50,000/- received from M/s. Fantastic Commercial Pvt. Ltd. on 31.03.2011, the AR submitted that this was received by way of six cheques of Rs. 1,00,00,000/-, Rs. 1,00,00,000/-, Rs. 1,00,00,000/-, Rs. 1,00,00,000/-, Rs. 2,00,00,000/- and Rs. 1,34,50,000/-. It is further submitted that the above said cheques were not sent for encashment in the bank and the entries were reversed during next year by passing the reverse entry on 01.10.2011 and argued that hence no addition of Rs. 7,34,50,000/- should be made. The AR relied upon various case laws in support of his contention and also referred to the order dated 03.05.2019 passed in the case of M/s. Oswal Polycot (India) Ltd. in Appeal No. 142/IT/CIT(A)-5/Ldh/2015-16 where the similar issue was dealt with. The AR filed the copy of the ledger account of the assessee with M/s. Fantastic Commercial Pvt. Ltd. for the period 01.04.2010 to 31.03.2011 and 01.04.2011 to 31.03.2012 showing the credit and reversal/debit of the above amounts. It is clear that no money ever changed hand as the cheques dated 31.03.2011 received from M/s. Fantastic Commercial Pvt. Ltd. were never deposited in the bank account and ultimately a reverse entry was passed in the books of the accounts of the assessee on 01.10.2011 on account of cheques being time barred. Since, no money ever changed hand and the assessee was not in a position to utilize the sum of Rs. 7,34,50,000/- because the cheques were not deposited in the bank account of the assessee and no funds were

therefore transferred from M/s. Fantastic Commercial Pvt. Ltd. to the assessee, the addition of Rs. 7,34,50,000/- made by the AO is not found sustainable and hence deleted.

Regarding the Share Application Money received from M/s. Gayatri Investment Consultants Pvt. Ltd. amounting to Rs. 75,00,000/-, the AR submitted that his was received on 31.03.2011 by way of a cheque of Rs. 75,00,000/-. It is further submitted that the above said cheque was not sent for encashment in the bank and the entry was reversed during next year by passing the reverse entry on and argued that hence no addition of Rs. 75 lacs should be made. The AR relied upon various case laws in support of his contention and also referred to the order dated 03.05.2019 passed in the case of M/s. Oswal Polycot (India) Ltd. in Appeal No. 142/IT/CIT(A)-5/Ldh/2015-16 where the similar issue was dealt with. The AR filed the copy of the ledger account of M/s. Gayatri Investment Consultants Pvt. with the assessee Ltd. for the period 01.04.2010 to 31.03.2011 which shows the opening balance of Rs. 3,00,00,000/- and closing balance of Rs. 3,75,00,000/-. The AR also filed the ledger account for the period 01.04.2011 to showing the reversal of the above amounts on 01.10.2011. It is clear that no money ever changed hand as the cheque dated 31.03.2011 received from Gayatri Investment Consultants Pvt. Ltd. was never deposited in the bank account and ultimately a reverse entry was passed in the books of the accounts of the assessee on 01.10.2011 on account of cheque being time barred. Since no money ever changed hand and the assessee was not in a position to utilize the sum of Rs. 75,00,000/- because the cheque was not deposited in the bank account of the assessee and no funds were therefore transferred from M/s. Gayatri Investment Consultants Pvt. Ltd. to the assessee, the addition of Rs. 75,00,000/- made by the AO is not found sustainable and hence deleted.”

26.1 A perusal of the above findings of the Id. CIT(A) would reveal that out of total share application received of Rs.8,95,50,000/-, the assessee allegedly received share application money of Rs.8,20,50,000/- from M/s Fantastic commercial Pvt. Ltd. The CIT(A) has firstly discussed the amount of Rs.86 lacs received as share application money out of the said amount of Rs.8,20,50,000/-. In this respect, the Id. CIT(A) has observed that the said share subscriber had duly confirmed the transactions and that the confirmed copy of account was placed on record. So far as the identity of the share subscriber was concerned, the confirmed copy of the ITR along with computation and audited balance sheet was placed on the file. So far as genuineness of the transaction was

concerned, the confirmed copy of accounts was placed on the file. Further, the credit worthiness of the said share subscriber was proved from bank account statement, wherein, the source of share application money was explained as the amount received from M/s Oswal Apparels P. Ltd., i.e., the assessee, itself, through banking channel. The share subscriber was the group company of the assessee company. The share application money was received from M/s Fantastic Commercial Pvt. Ltd. out of the funds given by the assessee earlier to the said concern. The Id. CIT(A) has also taken note of the fact that under similar circumstances, where the share application was subscribed by the group company, the AO did not make any addition. Copy of the bank account statement and copy of the ledger account of the assessee with M/s Fantastic Commercial Pvt. Ltd. was duly filed showing the receipt of payment of the aforesaid amount. The Id. CIT(A) has further taken note of the fact that even the AO himself has observed that the said M/s Fantastic Commercial Pvt. Ltd. was controlled by Shri Vikas Jain i.e. the Director of the assessee company and the same was taken over by the assessee group by way of a complete share purchase and therefore, there was no doubt either about the identity and credit worthiness of the share subscriber or about the genuineness of the transaction relating to the amount of Rs.86 lacs received as share application money from the said concern.

26.2 So far as the remaining amount of Rs. 7,34,50,000/- was concerned, it was explained that the said amount was entered into the accounts as six cheques were received, however, the said cheques were not encashed and therefore, no such amount was received by the assessee concern from the said company. Since the said cheques were not encashed and no amount was received, hence,

the said accounting entry was reversed. The ld. CIT(A) considering the overall facts and circumstances of the case, deleted the addition so made by the AO of Rs.8,20,50,000/- received from M/s Fantastic Commercial Pvt. Ltd.

26.3 Regarding share application money received from M/s Gayatri Investment Consultants amounting to Rs.75 lacs, the ld. CIT(A) has observed that the same was just an accounting entry. Though, a cheque of Rs.75 lacs was received, however, the same was not encashed and the entry was reversed during next year. Since no such amount was ever received/encashed by the assessee, therefore, in our view, the ld. CIT(A) was justified in deleting the impugned additions made by the AO.

27. The ld. DR could not point out any distinguishing facts on record.

28. Therefore, we do not find any infirmity in the order of the ld. CIT(A) in deleting the impugned additions. There is no merit in this appeal of the Revenue and the same is, accordingly, dismissed.

ITA No. 28/CHD/2022- Revenue's appeal

29. The Revenue in this appeal is aggrieved by the action of the Ld. CIT(A) in deleting the addition of Rs.2,23,00,000/- made by the AO under Section 68 of the Income Tax Act in respect of unsecured loan received by the assessee and further an addition of Rs.1,63,01,000/- made by the AO on account of unexplained share application money.

29.1. So far as the addition on account of unsecured loan is concerned, the AO noted during the assessment proceedings that the

assessee had received an unsecured loan of Rs.2,23,00,000/-, out of which, Rs.1,63,00,000/- was received from M/s Fantastic Commercial Pvt. Ltd. and Rs.60 lacs was received from M/s J.M.D. Cloth & Garments P. Ltd.

29.2 So far as the amount of Rs.1,63,00,000/- received from M/s Fantastic Commercial Pvt. Ltd. was concerned, it was explained by the assessee before the Id. CIT(A) that out of the said amount of Rs.1,63,00,000/-, the assessee had made accounting entry of Rs.1,50,00,000/- on account of receipt of three cheques of Rs.50 lacs each by the assessee from the said concern on 31.03.2011. It was demonstrated before the Id. CIT(A) that the said cheques were never encashed. Since, only the accounting entry was made of the aforesaid amount and since the said cheques were not encashed, therefore, the reversal entry was made in the next Financial Year. The Id. CIT(A) considering the aforesaid facts that the said amount was never received by the assessee and that the cheques given by the said concern were not presented for encashment and that the entry was reversed later on, deleted the impugned addition of Rs.1,50,00,000/-. We do not find any infirmity in the aforesaid action of the CIT(A) in this respect.

29.3 So far as the addition of remaining amount of Rs.13 lacs received from M/s Fantastic Commercial Pvt. Ltd. was concerned, the Ld. CIT(A), in this respect, has observed that the assessee had duly furnished the required documents to prove identity and credit worthiness of the creditor and genuineness of the transaction. Copy of the ITR of M/s Fantastic Commercial Pvt. Ltd. along with computation and audited financial statement for the year under consideration was provided for the purpose of proving identity and

credit worthiness of the creditor. Further, the confirmed copy of the accounts was also placed on file. Credit worthiness of the creditor was also proved from the Financial Statement. The source of the deposit in the bank account was also explained as out of the cash in hand as withdrawal from the bank account by the creditor. The creditor was group company of the assessee and controlled by the same Directors.

29.4 The ld. DR could not rebut aforesaid aspects of the case.

29.5. In view of this, we do not find any infirmity in the order of the ld. CIT(A) in deleting the addition of remaining amount of Rs.13 lacs also.

30. So far as the loan amount of Rs.60 lacs from M/s J.M.D. Cloth & Garments P. Ltd. was concerned, the ld. CIT(A) has observed that the assessee had duly placed on file the requisite documents and evidences to prove the identity and credit worthiness of the said creditor and genuineness of the transaction. The ld. CIT(A) in this respect observed that the creditor was income tax assessee. Copy of the ITR along with computation and audited Balance Sheet of the creditor was placed on the file. He has further observed that the genuineness of the transaction was proved from the confirmed copy of the accounts. The credit worthiness of M/s J.M.D. Cloth & Garments P. Ltd. was proved from the bank account statement wherein, the source of unsecured loan given to the assessee company was from the money received from the Director of the assessee company namely Shri Vikas Jain, who has also been assessed with the same AO. The creditor was the group company of the assessee company and controlled by the same Director, Shri Vikas Jain. It was proved on the file that the money was received

by the assessee from its own Director, Shri Vikas Jain via another group concern namely M/s J.M.D. Cloth & Garments P. Ltd. The ld. CIT(A) considering the overall facts and circumstances of the case, in our view, had rightly deleted the aforesaid addition made by the AO of the loan received of Rs.60 Lacs from M/s J.M.D. Cloth & Garments P. Ltd.

30.1 The ld. DR could not rebut the aforesaid factual instance on the file.

30.2. Therefore, we do not find any infirmity in the order of the ld. CIT(A) in this respect.

31. So far as addition of Rs.1,63,01,000/- on account of unsecured share application money was concerned, the AO, in this respect, noted that huge amount of share application/share premium was received by the assessee in different years from various investor companies. The AO further noted that the assessee company had made investment of Rs.1,63,01,000/- in M/s Oswal Apparels P. Ltd. by way of share application money, however, in the Financial Year 2010-11, the whole of this amount has been shown as liquidated. On being asked to explain in this respect, the assessee provided the necessary documents in the shape of bank statement etc. showing the return/receipt of the amount of Rs.1,63,01,000/- from M/s Oswal Apparels P. Ltd. and also filed the confirmed copy of accounts. However, the AO did not get satisfied. The AO noted that as per the bank statement, the aforesaid share application money was neither given in lumpsum nor received back by way of a single entry. That there were many other amounts given and taken from M/s Oswal Apparels P. Ltd., it being the sister concern of the assessee company. He, therefore, did not get satisfied and held that

it was not proved that the assessee had received back the said amount of Rs.1,63,01,000/-. He, accordingly, made the impugned addition as unexplained credit entry.

32. In appeal, ld. CIT(A) observed that the assessee had duly filed the bank statements of its own as well as of M/s Oswal Apparels P. Ltd. and it was demonstrated that all the entries appearing in the ledger account were reflected in the bank account statement. The ld. CIT(A) has also taken note of the assessment proceedings carried out in the case of M/s Oswal Apparels P. Ltd. under Section 153A of the Act, wherein, the name of the assessee company duly appeared in the share application money account with a closing balance of Rs.1,63,01,000/-. It was also explained that there was some accounting error and that the separate accounts for the share application money and other transactions were not made. However, the fact on the file was that there was 'nil' balance at the end of the year. That it was duly proved on the file that the aforesaid money was received back by the assessee during the year under consideration, even that was even not disputed by the AO. Therefore, the only contention of the AO that the money was not received in lumpsum cannot be a basis for making the impugned addition. The ld. CIT(A) considering the aforesaid factual aspects deleted the addition made by the AO.

33. The ld. DR could not bring any differentiating facts or law, warranting our interference in the aforesaid order of the CIT(A).

34. We, therefore, do not find any infirmity in the order of the ld. CIT(A) on this issue also.

35. In view of the discussions made above, we do not find any merit in this appeal of the Revenue and the same is accordingly dismissed.

36. In the result, this appeal of the Revenue stands dismissed.

37. Finally, in the result, the appeals of the Revenue and Assesseees are disposed of as under: -

ITA No. 26/Chd/2022 — Revenue's appeal dismissed.

ITA No. 28/Chd/2022 — Revenue appeal dismissed.

ITA No. 29/Chd/2022 – Revenue's appeal dismissed.

ITA No. 27/Chd/2022 – Revenue's appeal dismissed.

ITA No. 429/Chd/2021 – Assessee's appeal allowed.

ITA No. 432/Chd/2021 – Assessee's appeal allowed.

Order Pronounced on 17.12.2024.

Sd/-
(KRINWANT SAHAY)
Accountant Member

Sd/-
(SANJAY GARG)
Judicial Member

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Revenue
3. CIT(A)-5, Ludhiana
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

Assistant Registrar

ITAT, Chandigarh