

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 356/RPR/2024
(निर्धारण वर्ष Assessment Year: 2014-15)

Deputy Commissioner of Income Tax, Aayakar Bhawan, Civil Lines, Raipur	V s	Balajee Loha Pvt. Ltd., Agrasen Chowk, Raipur, C.G.-492001
PAN: AABCB0068M		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Amit M. Jain, Advocate & Shri Bikram Jain, CA
राजस्व की ओर से /Revenue by	:	Shri S. L. Anuragi, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	21.11.2024
घोषणा की तारीख/Date of Pronouncement	:	10.02.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the department against the Commissioner of Income Tax (Appeals), NFAC, Delhi, [in short Ld. "CIT(A)"] for the Assessment Year 2014-15 dated 10.06.2024, which in turn arises from the order of Assistant Commissioner of Income Tax, Circle-3(1), Raipur u/s 143(3) of I. T. Act, dated 27.12.2016.

2. The grounds of appeal raised by the department are as under:

1. Whether on the facts and in the circumstances of the case, and in law, the Id. CIT(A) was justified in deleting the additions of Rs.11,54,65,000/- made by the Assessing Officer u/s 68 of the I T Act, 1961 ?

3. Briefly stated, the assessee / appellant is a Pvt. Ltd. Company, engaged in the business of manufacturing and trading steel products. Return of Income for AY 2014-15 was filed on 29.09.2014, declaring total income at NIL. Subsequently, assessment proceedings u/s 143(3) are completed vide order dated 27.12.2016 after making additions on account of share application money u/s 68 for Rs.11,54,65,000/- and estimated disallowance out of consumption of Stores & Spares and Repairs & maintenance of Rs.1,59,401/-, aggregating to Rs.11,56,24,401/- thereby, the assessed income of assessee has been determined at Rs.11,11,09,885/-.

3.1 While making the addition on account of share application and share premium receipt by the assessee during the year under consideration, Ld. AO observed that the assessee company had issued fresh shares to Giriraj Infotech Pvt. Ltd. (GIPL) and Wave Promoters Pvt. Ltd. (WPPL) for Rs.14,70,00,000/- out of which an amount of Rs.11,54,65,000/- has been received during the year under consideration.

Ld. AO observed that GIPL, Raipur (formerly known as Vizcom Solutions Pvt. Ltd.) and WPPL are Kolkata Based Companies. On further verification, it is revealed from ROC that both these shareholders companies have changed the place of their registered office from Kolkata to Raipur. In view of the aforesaid material, assessee was requested to furnish information *qua* the aforesaid investors. Necessary information are furnished by the assessee, the same has been considered by the Ld. AO and have observed that the shareholder companies do not possess creditworthiness to invest the amount shown in their names, in fact the inflow of share-application money into the books of assessee company has to be seen in the perspective of money-laundering through Share-capital route in which unaccounted money available with the promoters/ directors/ family members and their associates is routed back into the books of accounts in the garb of share-application money through extensive money-laundering process without payment of due taxes.

3.2 Ld. AO further noted that during the year under consideration, investor M/s GIPL has shown the income u/s the head miscellaneous receipt for Rs.19,860/- only, with no business activities. Similarly, the second investor, i.e., WPPL had declared the return of income at Rs.10,860/- for AY 2014-15, without any business activities.

3.3 Ld. AO further noticed that two directors of GIPL i.e., Shri Ajoy Das and Shri Sushil Jana, are replaced by Shri Mohan Lal Agrawal, who is one of the Director of Balajee Group of Companies, and following the same pattern the initial director of WPPL namely Shri Shyam Sunder Agrawal and Shri Ashit Mullick are replaced by Shri Jai Prakash Agrawal, who is one of the Directors of Balajee group of companies. Thus, these two investor companies is now pertains to Balajee Group.

3.4 Before Ld. AO, the assessee submitted that during the year under consideration, it had issues 24,50,000 shares at a face value of Rs.10 per share and premium of Rs. 50/- per share, as against book value of Rs.63.90 per share. Copy of valuation certificate under rule 11UA of Income Tax Rules is also furnished before the Ld. AO, along with list of shareholders to whom fresh shares have been allotted, including details like their address, number of shares issued and amount of shares including share premium, so as to establish the identity / creditworthiness of the investors and genuineness of the transactions. Certain documents are also furnished before the Ld. AO, such as copy of bank statements, Audited Balance Sheet / Profit & Loss account, copy of Income Tax return, Share Application Form, Memorandum of Article and Association, Certificate of Incorporation etc. of the investor companies. In addition, the

assessee submitted copy of assessment order of M/s GIPL for the AY 2011-12, wherein the capital of Rs.23.21Cr was raised and the assessment was completed u/s 143(3) of the Act. Copy of Assessment order of M/s WPPL for AY 2008-09, wherein the capital of 15.59 Cr. was raised and assessed u/s 143(3) was also furnished before the Ld. AO.

3.5 Before Ld. AO, assessee submitted that all the necessary primary information / documents required to substantiate the identity and creditworthiness of the investors and genuineness of the transactions are furnished, which is further supported with assessment u/s 143(3) of the Act of the investor companies, wherein such shareholders have raised their capital and was accepted by the concerned Assessing Officers, therefore, the assessee had duly discharged its onus cost upon it to prove the presence of essential ingredient, to be looked into before invoking the provisions of 68 of the Act i.e., identity and creditworthiness of the shareholders and genuineness of the transaction. The addition, therefore, shall not be made in its case, unless the evidence submitted by the assessee have otherwise been proved wrong. It is also submitted that the premium charged by the assessee on the shares was justified in terms of book value of shares, which is higher than the amount received by the assessee.

3.6 Ld. AO considered the submissions of the assessee, however, are not found it satisfactory, therefore, after considering various judicial pronouncements have concluded the assessment with the following observations:

3.4 In the light of above discussion, it follows that the identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument. It would be incorrect to State that the onus to prove the genuineness of the transaction and .creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. It has been elaborately established .in the preceding paras that the assessee had failed to discharge its onus in proving the identity, creditworthiness and genuineness of the share applicants and hence the share application money credited in its books is treated as undisclosed income charged to tax u/s 68 of the Act.

3.5 In the light of the above discussion, I find no merits in the arguments of the assessee. The legal proposition based on the case laws cited (supra), is clear that the onus lies with the assessee to establish the identity, creditworthiness and genuineness of the cash creditors. The department does not have to establish that the said cash credit was routed through the assessee and ploughed back in its books of accounts. I am therefore to hold that the assessee had failed to offer satisfactory explanation on the nature and source of the share application money credited in its books of account for the relevant assessment year in question and hence the same is treated as undisclosed income of the assessee u/s 68 of the Act. It has been elaborately established in the preceding par that the assessee had failed to discharge its onus in proving the identity, creditworthiness, genuineness of the share applicants. Accordingly the unexplained cash credit of Rs. 11,54,65,000/- is added to the total income of the assessee u/s 68 of the Act.

Penalty proceedings u/s 271(1)(c) of the Act are initiated separately.

3.7 Ld. AO, further observed another discrepancy in the P&L of the assessee and had made the following estimated addition:

4. During the course of proceedings, from perusal of P&L account it is found that the assessee has debited Rs.1,56,61,943/- towards Consumption of Stores & Spares and Rs.2,78,142/- towards "Repair & Maintenance" under head "Manufacturing Expenses". The assessee was asked to substantiate the claims made under these heads. In response, the assessee produced relevant vouchers for verification. After verification of these vouchers, it is found that in some of the cases the expenditure has been incurred in cash through self-drawn vouchers and the vouchers are not properly maintained. As such, the vouchers are not fully verifiable. Therefore, considering the facts and circumstances of the case and the quantum of expenses claimed under this head, 1% of aforesaid expenses Rs.1,59,40,085/-(15661943+240324) which works out to Rs.1,59,401/- is disallowed and added to the total income of the assessee to prevent the leakage of revenue.

3.8 Ld. AO, finally concluded the assessment by making the following additions:

5. Subject to above discussion total income is computed as under:-

Total income Before allowing Depreciation		Rs.2,69,19,324/-
<i>Add: as discussed above</i>		
<i>Disallowance u/s 68</i>	<i>11,54,65,000/-</i>	
<i>Disallowance out of consumption of store & spares and repair & maintenance</i>	<i>1,59,401/-</i>	11,56,24,401/-
Total Income		Rs.14,25,43,725/-

<i>Less: Allowable Depreciation Rs.3,14,33,840/-</i>	<i>Rs.3,14,33,840/-</i>
<i>Total Assessed Income</i>	<i>Rs.11,11,09,885/-</i>

***Total income assessed and rounded to Rs.11,11,09,890/-
MATT profit shown at Rs.41,22,113/- is as per return.***

Assessed as above u/s 143(3) of the Income-tax Act.

Interest levied as per sec.234 A/13/C/D, as applicable,

Tax calculation as per ITNS-150 is enclosed which is a part of this order.

Issued Demand Notice U/s 156.

Penalty u/s271(l)(c) of I. T. Act,1961 initiated separately.

3.9 Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), NFAC, challenging the findings of Ld. AO, wherein the contentions raised by the assessee are considered and found satisfactory by the Ld. CIT(A), therefore, the addition made by the Ld. AO *qua* the fresh share capital and premium money received by the assessee have been vacated with the following observations:

4.2. Decision on Ground of Appeal No.

4.2.1 ***Ground no 1*** is related to addition of Rs.11,54,65,000/- u/s 68 being fresh share capital money received from two companies named Giriraj Infotech Pvt Ltd and Wave Promoters Pvt Ltd. I have perused the assessment order and the submissions of the appellant. In this case, the AO has made addition of share application money amounting to Rs.10,25,00,000/- received by the appellant from M/s Giriraj Infotech Pvt. Ltd., Raipur (formerly known as Vizcom Solutions Pvt. Ltd.) on

the ground that the assessee has not been able to discharge its onus regarding the identity and credit-worthiness of the share applicant company and the genuineness of transaction. The AO has held that the share-applicant company – M/s Giriraj Infotech Pvt. Ltd 'did not possess the creditworthiness to invest such amounts' as it had not carried out any business activity in this year or in the preceding years. The share-applicant company had shown a returned income of Rs. Nil in A Yrs. 2011-12, 2012-13 & 2013-14. Even in the assessment year under consideration, the share-applicant company has shown other income of only Rs.19,860/-. The AO has also stated that initially the share-applicant company was a Kolkata based company but thereafter, the directors of the Company have been changed and a Director of the assessee group of companies has now become the Director of the share-applicant company which is now based in Raipur. In view of the above facts, the AO has inferred that the share applicant did not have any actual genuine business activity or any profit making apparatus and was merely rotating the money which was coming through its bank account which showed that this share application money had been managed in connivance with the share applicant company. As regards the genuineness of the transaction, the AO has admitted that this money was received through banking channels but the AO has held that the assessee has failed to discharge its onus regarding the genuineness of the transaction also. The AO has cited several case laws which lay down the position that the onus lies on the assessee to establish the identity and credit worthiness of the share applicant and the genuineness of the transaction. The AO has also cited case laws which lay down the position that identity of the creditor cannot be proved by merely submitting PAN number, ITR, Registration from the ROC when enquiries conducted by the AO show that the share applicant is not existing at the address given or the AO has adverse information about the share applicant. It has also been held that filing of confirmation of the share applicants by the assessee will not serve the purpose of establishing the identity of the creditor when letter issued by the AO has been returned back unserved. On this basis, the AO has held that the assessee has failed to establish the identity, credit worthiness and genuineness of the share application money received by the assessee from M/s Giriraj

Infotech Pvt. Ltd. and has added this amount as unexplained cash credit u/s 68 of the I. T. Act.

4.2.2 *In reply, the appellant has stated that it had discharged its onus u/s 68 with respect to the identity, credit worthiness of the share-applicant company and the genuineness of the transaction by submitting PAN number of the share-applicant company, MOA and Certificate of Incorporation issued by the ROC, bank statements, audited financial statements, income tax return, copy of assessment order u/s 143(3) of the share-applicant company and copy of the Valuation Certificate under Rule 11UA. The appellant has stated that the shares of face value of Rs.10/- has been subscribed at a premium of Rs.50/- which is backed by the book value per share of the appellant at Rs.63.90 thereby justifying the share premium charged. The appellant has further stated that the source of the share application money received by it from the share applicant M/s Giriraj Infotech Pvt. Ltd. (GIPL) is the share capital of Rs.23.21,54,000/- raised by GIPL in Financial Year 2010-11. In support of this, the appellant has submitted copy of audited financial statements of the share applicant (GIPL). The appellant has informed that the PCIT- 1, Raipur had passed in the case GIPL an order u/s 263 for A.Y. 2011-12 on 29.03.2019 setting aside the earlier order u/s. 143(3) and directing the AO to verify the source of share capital Rs.23.21.54.000/- in the case of GIPL. The appellant has informed that the share applicant M/s Giriraj Infotech Pvt. Ltd. has opted for the Vivad-se-Viswas Scheme to avoid any future litigation and has offered the entire share capital received by it of Rs.23,21,54,000/- as income and has paid due taxes on it to settle the matter permanently. The appellant has submitted copies of Form No. 1, Form No. 2, Form No. 3, Form No. 4 & Form No. 5 in the case of M/s Giriraj Infotech Pvt. ltd. with respect to its share capital of Rs.23,21,54,000/- received in A.Y. 2011-12. The appellant has submitted that M/s Giriraj InfoTech Pvt. Ltd. has subscribed to the shares of the assessee company from its share capital and since due taxes have been paid by M/s Giriraj InfoTech Pvt. Ltd. on its share capital, the source of share application money of Rs.6,37,00,000/- in the hands of the appellant, received from M/s Giriraj Infotech Pvt. Ltd. stands fully*

explained. Without prejudice to the above. the appellant has also stated that it had informed the AO that both the share applicant company and its Directors are based in Raipur. The appellant has stated that the AO did not conduct any inquiry and has made addition without bringing any material on record to show that the source of the share application money is not properly explained. The appellant has stated that after the assessee submitted PAN number, certificate of incorporation, audited books of accounts, bank statements, copy of assessment order etc., the onus shifted from the assessee to the AO to disprove the genuineness of this cash credit. The appellant has emphasized that when the primary onus cast by the Act on the assessee u/s 68 stood discharged: thereafter it was open to the department to take recourse to Sec. 131 or Sec. 133(6) of the I. T. Act to disprove the facts stated by the assessee which has not been done in this case. In this context, the appellant has cited judgement of the jurisdictional bench of the Hon'ble High Court of Chhattisgarh in the case of Pawan Kumar Aggarwal vs. ITO (Tax case of 24 of 2011). The appellant has also distinguished its case from the case laws cited by the AO, case by case, and has cited several case laws in its favour to show that the share application money received by it was explained.

4.2.3 *The facts of this issue are that the assessee received share application money of Rs.10,25,00,000/- from M/s Giriraj Infotech Pvt. Ltd. during the year under consideration. The share premium charged by the appellant has not been disputed by the AO. The source of the share application money in the hands of the appellant was the share capital money received by Mis Giriraj Infotech Pvt. Ltd. in AY. 2011-12 of Rs.23,21,5400/- which has been brought to tax by the Department by passing an order u/s 263 dated 29.03.2019. Against this order u/s. 263, appeal (no. ITA No. 83/RPR/2019) was filed by GIPL in ITAT, Raipur. M/s Giriraj Infotech Pvt. Ltd. has offered this share capital of Rs.23,21,54,000/- to tax by opting for the Vivad se Viswas Scheme by filing Form No.1 & 2 on 28.11.2020. In response the PCIT-1, Raipur has issued Form No.3 on 01.03.2021. Thereafter, the share-applicant company has paid due taxes on this amount and uploaded Form No.4, after which the PCIT-1, Raipur*

*has issued Form No.5 to M/s Giriraj Infotech Pvt. Ltd. for A.Y. 2011-12 on 10.02.2023, certifying that the assessee has paid the required tax arrears. The ITAT Raipur has allowed M/s. Giriraj InfoTech Pvt. Ltd. to withdraw its appeal by order dated 29.07.2021. The above facts show that the source of the share application money received by the appellant from M/s Giriraj InfoTech Pvt. Ltd. has been duly taxed in the hands of M/s Giriraj InfoTech Pvt. Ltd in A.Y. 2011-12 and this matter has attained finality. Therefore the nature and source of the share application money received by the appellant from M/s Giriraj InfoTech Pvt. Ltd. stands explained. When the source of the share application money has been taxed in the hands of the share applicant company and the matter has attained finality; upholding this addition u/s 68 in the hands of the appellant amounts to taxing the same amount twice; which is illogical and illegal. Further, appellant has submitted that the same set of issues were there in the case of assessee's sister concern M/s Balajee Structure (India) Private Limited before the honorable CIT(A), which have been concluded in the favour of the company. Appellant has enclosed copy of order of the sister concern in the submissions. In view of the above discussion, **the addition made by the AO u/s. 68 of share application money received from M/s. Giriraj InfoTech Pvt. Ltd. is directed to be deleted.***

4.2.4 *Similarly the AO has made addition of share application money amounting to Rs.1.29,65.000/- received by the appellant from Wave Promoters Pvt Ltd. Raipur on the ground that the assessee has not been able to discharge its onus regarding the identity and credit-worthiness of the share applicant company and the genuineness of transaction. The AO has held that the share-applicant company - Wave Promoters Pvt Ltd 'did not possess the credit-worthiness to invest such amounts' as it had not carried out any business activity in this year or in the preceding years. The share- applicant company had shown a returned income of Rs.16,970/- in AY 2013-14. Even in the assessment year under consideration, the share-applicant company has shown other income of only Rs.10,860/-. The AO has also stated that initially the share-applicant company was a Kolkata based company but thereafter, the directors of the Company have been changed and a Director of the assessee group of companies*

has now become the Director of the share-applicant company which is now based in Raipur. In view of the above facts, the AO has inferred that the share applicant did not have any actual genuine business activity or any profit making apparatus and was merely rotating the money which was coming through its bank Account which showed that this share application money had been managed in connivance with the share applicant company. As regards the genuineness of the transaction, the AO has admitted that this money was received through banking channels but the AO has held that the assessee has failed to discharge its onus regarding the genuineness of the transaction also. The AO has cited several case laws which lay down the position that the onus lies on the assessee to establish the identity and credit worthiness of the share applicant and the genuineness of the transaction. The AO has also cited case laws which lay down the position that identity of the creditor cannot be proved by merely submitting PAN number, ITR, Registration from the ROC when enquiries conducted by the AO show that the share applicant is not existing at the address given or the AO has adverse information about the share applicant. It has also been held that filing of confirmation of the share applicants by the assessee will not serve the purpose of establishing the identity of the creditor when letter issued by the AO has been returned back unserved. On this basis, the AO has held that the assessee has failed to establish the identity, credit worthiness and genuineness of the share application money received by the assessee from Wave Promoters Pvt Ltd, and has added this amount as unexplained cash credit u/s 68 of the I.T. Act.

4.2.5 *In reply, the appellant has stated that it had discharged its onus u/s 68 with respect to the identity, credit worthiness of the share-applicant company and the genuineness of the transaction by submitting PAN number of the share-applicant company, MOA and Certificate of Incorporation issued by the ROC, bank statements. Audited financial statements, income tax return, copy of assessment order u/s 143(3) of the share-applicant Company and copy of the Valuation Certificate under Rule 11UA. The appellant has stated that the shares of face value of Rs.10/- has been subscribed at a premium of Rs.50/- which is backed by the book value per share of the*

appellant at Rs.63.90 thereby justifying the share premium charged. The appellant has further stated that the source of the share application money received by it from the share applicant Wave Promoters Pvt ltd is the share capital of Rs.23,21,54,000/- raised by GIPL in Financial Year 2010-11. In support of this, the appellant has submitted copy of audited financial statements of the share applicant (GIPL). The appellant has submitted copies of Form No. 1, Form No. 2, Form No. 3, Form No. 4 & Form No. 5 in the case of M/s Giriraj Infotech Pvt. Ltd. with respect to its share capital of Rs.23,21,54,000/- received in A.Y. 2011-12. The appellant has submitted that M/s Giriraj Infotech Pvt. ltd. has subscribed to the shares of the assessee company from its share capital and since due taxes have been paid by M/s Giriraj Infotech Pvt. Ltd. on its share capital, the source of share application money of Rs.6,37,00,000/- in the hands of the appellant, received from M/s Giriraj Infotech Pvt. Ltd. stands fully explained. Without prejudice to the above, the appellant has also stated that it had informed the AO that both the share applicant company and its Directors are based in Raipur. The appellant has stated that the AO did not conduct any inquiry and has made addition without bringing any material on record to show that the source of the share application money is not properly explained. The appellant has stated that after the assessee submitted PAN number, certificate of incorporation, audited books of accounts, bank statements, copy of assessment order etc., the onus shifted from the assessee to the AO to disprove the genuineness of this cash credit. The appellant has emphasized that when the primary onus cast by the Act on the assessee u/s 68 stood discharged; thereafter it was open to the department to take recourse to Sec. 131 or Sec. 133(6) of the I. T. Act to disprove the facts stated by the assessee which has not been done in this case. In this context, the appellant has cited judgement of the jurisdictional bench of the Hon'ble High Court of Chhattisgarh in the case of Pawan Kumar Aggarwal vs. ITO (Tax case of 24 of 2011). The appellant has also distinguished its case from the case laws cited by the AO. case by case and has cited several case laws in its favour to show that the share application money received by it was explained.

4.2.6 *The facts of this issue are that the assessee received share application money of Rs.12,29,65,000/- from Wave Promoters Pvt. Ltd. during the year under consideration. The share premium charged by the appellant has not been disputed by the AO. The appellant has made submissions, the relevant part of that is reproduced below:-*

Further, in regard to the source of investment made by M/s Wave Promoters Private Limited it is to submit that the said amount has been invested out of the funds received on 22.07.2013 from Shri Hanuman Loha (P) Ltd. of Rs.1,22,00,000 and from M/s Balajee Steels of Rs.12,65,000/- on account of loans and advances given. The investor company has given loan to M/s Hanuman Loha Pvt. Ltd. of Rs.9,22,00,000/- and Rs.1,01,80,000/- to M/s Balajee Steels in preceding assessment years. The repayment received from the said parties were further transferred to M/s Balajee Loha Pvt. Ltd. on 22.07.2013 and shares were issued to the M/s Wave Promoters Pvt. Ltd. on 26.07.2013. Summary of the nexus of the amount utilized in investing in the shares of the assessee company is as under:-

Particulars	Total Advance given by M/s Wave Promoters Pvt. Ltd. in preceding assessment years	Amount paid to M/s Wave Promoters Pvt. Ltd. on 22.07.2013	Amount Invested in shares of M/s Balajee Loha Pvt. Ltd. on 22.07.2013 by M/s Wave promoters pvt. Ltd.
<i>Hanuman Loha (P) Ltd.</i>	9,22,00,000/-	1,22,00,000/-	1,22,00,000/-
<i>Balajee Steels</i>	1,01,80,000/-	12,65,000/-	7,65,000/-

The above-mentioned facts are evident from the copy of confirmation of account along with ITR. relevant extract of bank statements of M/s Hanuman Loha (P) Ltd. and M/s Balajee Steels enclosed in our previous submission dated 06.05.2023. Copy of all the

said documents is once again enclosed herewith for your ready reference. Kindly refer annexure 3. Also, copy of relevant extract of tax audit report of M/s Hanuman Loha Private Ltd. evidencing the repayment made to M/s Wave Promoter Pvt. Ltd. is enclosed herewith for your reference. Kindly refer annexure 4.

That from the above facts the "Source of Source" of the assessee company also remains explained so far as investment from Wave Promoters (P) Ltd is concerned. Since vide its earlier written submissions and this written submissions the assessee has duly proved the identity, creditworthiness and genuineness of the transactions done with two shareholders, the share capital money received during the year may kindly be treated as explained and the addition made by the AO deserves to be deleted."

The source of the share application money in the hands of the appellant was the loan received back by Wave Promoters Pvt Ltd. Which was given to Hanuman Loha (P) Ltd. and Balajee Steels in earlier years. The source of share application money received from Wave Promoters Pvt Ltd. stands explained by way of amount received back from two parties in earlier years. The share applicant has explained the source of money which was given to appellant by way of share application. From these facts the "Source of Source" of the assessee company also remains explained so far as investment from Wave Promoters (P) Ltd is concerned.

*Therefore the nature and source of the share application money received by the appellant from Wave Promoters Pvt Ltd. stands explained. In view of the above discussion, **the addition made by the AO u/s. 68 of share application money received from Wave Promoters Pvt Ltd. is directed to be deleted. Ground no. 1 is allowed.***

3.10 Regarding lump sum addition of 1% out of expense incurred on account of consumption of stores and spares and repair and maintenance.

Ld. CIT(A) had partly allowed the contentions of the assessee by vacating the disallowance of Rs.1,59,491/- to the extent of 50%. For the sake of clarity, observations of Ld. CIT(A) *qua* the lump sum disallowance of Rs.1,59,401/- are culled out as under:

5. Ground no 2 is related to disallowance of Rs.1,59,401/- being 1% of expenses of Rs.1,56,61,943/- as consumption of stores and spares and Rs.2,78,142/- as Repair and Maintenance. This disallowance has been made for the reason that some of the vouchers are cash vouchers and are self-drawn and vouchers are not properly maintained. The appellant is contending that the AO have not pointed out any specific defect in any of bills and vouchers and has disallowed the expenses on general observation and that too on adhoc basis. According to assessee the books of accounts have been duly audited u/s 44AB of the Income Tax Act. 1961 by a Chartered Accountant and no defect has been pointed out by him in his report. Appellant has stated that, the finding of the A.O. is not supported by any instance of unverifiable expenses.

Here it is to be noted that it is matter of fact that there are always few vouchers which are self-made for some unverifiable expenses. The AO has disallowed 1% of expenses on consumption of sores and spares and repair and maintenance. The disallowance is confirmed to the extent of 50 % of Rs.1,59,401/- and balance amount is deleted. This ground is partly allowed.

3.11 As Ld. CIT(A) granted substantial relief to the assessee in the impugned order dated 10.06.2024, which could not considered justified by the revenue, therefore, had carried the matter by way of an appeal before the Tribunal, challenging the deletion of the addition of Rs.

11,54,65,000/- u/s 68 of the Act, which is under consideration in the present case.

4. At the outset, Shri S.L. Anuragi, Ld. CIT-DR, representing the revenue submitted that decision of Ld. CIT(A), NFAC, is not acceptable on merits. It is argued that Ld. AO in his order had exhaustively elaborated the facts mentioning the reasons and rational before making the aforesaid additions u/s 68, as why the said addition warranted in this case. Ld. CIT-DR, accordingly, had placed his strong reliance on the order of Ld. AO and requested to set aside the order of Ld. CIT(A) by restoring the additions made by the Ld. AO for Rs.11,54,65,000/- u/s 68 on account of unexplained cash credit received by the assessee in the guise of share capital and premium.

5. Per contra, Shri Bikram Jain, Authorized Representative (in short "Ld. AR") representing the assessee submitted that Ld. CIT(A) had rightly, judiciously and according to settled principle of law have deliberated upon the issue and have decided the appeal in favor of the assessee by vacating the additions made by the Ld. AO. Ld. AR placed his strong reliance on the order of Ld. CIT(A). During the course of hearing, Ld. AR also referred to the written synopsis furnished before the Tribunal, which is culled out as under:

BALAJEE LOHA (P) LTD

ITA No. 356/RPR/2024

A.Y.2014-15

SYNOPSIS

The present appeal has been preferred by the department against the order of CIT(A), NFAC wherein the addition, made by the AO, of Rs.11,54,65,000/- u/s 68 of the Act has been deleted.

1. Ground No.1:

“Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) was justified in deleting the additions of Rs.11,54,65,000/- made by the assessing officer u/s 68 of the I.T. Act, 1961 ?

Facts:

During the year under consideration the assessee company has received fresh equity share application money of Rs.11,54,65,000/-from two companies. Details thereof are as under:-

Name of the Shareholder	Opening Balance	Amount Received during the year	Share Allotted (In Rs.)	Money Refunded
Giriraj Infotech (P) Ltd	3,00,00,000/-	10,25,00,000/-	11,70,00,000/-	1,55,00,000/-
Wave Promoters (P) Ltd (Now known as Shri Hanuman Sponge & Power (P) Ltd	1,70,35,000/-	1,29,65,000/-	3,00,00,000/-	NIL

Note: The fresh equity shares has been issued at face value of Rs.10/- and premium of Rs.50/- per share. The book value of the share is Rs.63.90/- per share.

Observation of the AO:

- The observation of the AO is at Para 3 at page 2 to 10 of the assessment order.

विधि और न्याय मंत्रालय
Ministry of Law & Justice

क्रमांक 1276

21 NOV 2024

आयकर अपीलिय अधिकरण, रायपुर
Income-Tax Appellate Tribunal, Raipur

- The main allegation and observation of the AO is that the assessee has not established the identity and creditworthiness of the share holder and genuineness of the transaction.
- For identity; the observation of the AO is at 2nd para, page 6 of assessment order.
- For creditworthiness and genuineness; the observation of the AO is at 3rd para, page 7 of the assessment order.
- The concluding observation of the AO is at para 3.4 and 3.5 of order at page 9.

Observation of CIT (A), NFAC:

- For Giriraj Infotech (P) Ltd: The observation of the CIT(A) is at para 4.2.3 at page 25 & 26 of CIT(A) Order.
- For Wave Promoters (P) Ltd: The observation of the CIT (A) is at 2nd para of page 29 of CIT(A) Order.

Submission:

- The assessee has furnished all the documents related to both the shareholders. However the AO has not conducted any enquiry with any of the shareholder. It was open for the department to take recourse of section 131 or 133(6) of the I.T. Act, 1961. Kindly refer judgment of Hon'ble Chhattisgarh High Court in the case of **Pawan Kumar Agrawal Vs. ITO, Ward 2(2), Bilaspur. Refer page 286 to 288 of PB, judgment of Hon'ble Karnataka High Court in case of G.Shubha Devi Vs ITO. Refer page 289 and 290 of PB.**
- Addition has been made on general theory and not on any specific findings irrespective of the fact that all the directors of both the shareholders companies were residing at Raipur and complete details were given in audited financial statement.
- *No addition has been made for the monies received from same shareholders in earlier years.*
- The facts of all the case laws relied upon by the AO are distinguishable on facts. **Kindly refer page 8 to 15 of PB.**

Explanation for Giriraj Infotech (P) Ltd:

- **Giriraj Infotech (P) Ltd** has raised share capital of Rs.23.21 crore in A.Y.2011-12. The shareholder has opted for VSVS, 2020 and has paid the due taxes on total share capital of Rs. 23.21 Crore. **Relevant forms are at page 54 to 68 of PB.**
- Total share capital and premium of Giriraj Infotech (P) Ltd remained unchanged in A.Y.2014-15. **Kindly refer page 76 & 79 of PB.** It is out of these monies Giriraj Infotech (P) Ltd has invested in the shares of the assessee company.
- Since , source of Giriraj Infotech (P) Ltd is duly taxed therefore source of source is duly explained along with identity of the share holder and genuineness of the share application money received from Giriraj Infotech (P) Ltd.

Explanation for Wave Promoters (P) Ltd:

- The source of Shareholder Wave Promoters (P) Ltd for investing in the shares of assessee company is as under:-

Received from	Amount	Date of receipts	Amount invested	Date of investment	Remarks
Shri Hanuman Loha (P) Ltd	1,22,00,000/-	22.07.2013	1,22,00,000/-	22.07.2013	Refund of loan. Kindly refer page <u>115 to 131</u> of PB.
M/s Balajee Steels	7,65,000/-	22.07.2013	7,65,000/-	22.07.2013	Refund of loan. Kindly refer page <u>111 to 114</u> of PB.

- The source of source has duly been explained along with the identity of the shareholder and genuineness of the transaction.

- Since the identity and creditworthiness of both the shareholders and genuineness of the transactions has duly been explained, the CIT (A) NFAC has correctly deleted the addition made by the AO and therefore the order passed by CIT(A), NFAC may kindly be uphold.

Thanking you.


Adv. Amit Malu Jain

(Counsel for the Assesse)

5.1 Based on aforesaid written synopsis, it was the submission that the all the necessary documents related to both the investors companies / shareholders are furnished before the revenue authorities, however, Ld. AO has not conducted any enquiry that any of the shareholders so as to decide the identity, creditworthiness of the investors and genuineness of the transactions. It is submitted that the recourse available with the Ld. AO to conduct enquiries u/s **131 or u/s 133(6)** of the Income Tax Act are deemed necessary to exercise, therefore, the case of assessee is squarely covered by the judgment of Hon'ble jurisdictional High Court in the case of **Pawan Kumar Agrawal vs ITO, Ward 2(2) TAX Case No. 24 of 2011, dated 04.04.2017**, the copy of judgment is placed before us at page no. 286 to 288 of the paper book. On this issue, Ld. AR further

placed his reliance on the order of Hon'ble Karnataka High Court on the case of **G. Subha Devi vs ITO (2018) 102 CCH 0417 Kar HC**, in **ITA No.94/2016, dated 05.07.2018**, page no. 289-290. Regarding the submission of primary evidence, which is not acted upon by the revenue authorities, it was the submission by the Ld. AR that this issue was raised before the Ld. CIT(A) and was acknowledged by considering the submissions of the assessee in the order by Ld. CIT(A), the same was also a supporting contention which led the observations of Ld. CIT(A) to decide the matter in favour of the assessee. Ld. AR further submitted that as there was no specific finding by the Ld. CIT(A), on the issue of no enquiries by the Ld. AO u/s 131 and 133(6), it was prayer seeking liberty to have an adjudication on this issue by way of raising a preliminary objection before us, which is requested to be permitted.

5.2 To strengthen the aforesaid contention, Ld. AR took us through the observations of the Hon'ble Jurisdictional High Court and Hon'ble Karnataka High Court in the aforesaid two cases, wherein the observations and analogy drawn by the Hon'ble Courts are culled out hereunder, for the sake of clarity and better interpretation of the issue:

In the case of Pawan Kumar Agrawal vs ITO-2(2) (supra):

6. Section 68 of the Act provides a process by which the Assessing Authority has to reach at transactions of those persons with whom the Assessee had entered into transactions in which the particular assessee is involved, to conclude the assessment on the basis of the transactions referable to those persons. Such concluded assessments will have a bearing on the acceptability or otherwise the plea set up by the Assessee in the course of proceeding under Section 68 of the Act. So much so, notwithstanding, the finality attained by the assessment proceeding in relation to the lender, the borrower is entitled to say that the contents of the returns of the lender and the matters emanating therefrom have to be looked into. In that view of the matter, the First Appellate Authority was justified, also on the basis of the judicial precedents referred by it, in entering the finding that the Assessee had discharged his primary onus under Section 68 of the Act. That having been done, the First Appellate Authority was fully justified in taking the view that it was open to the department to take recourse of Section 131 or Section 133(6) of the Act if they were to further proceed. That not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, in favour of the Assessee. The Appellate Tribunal, in the Appeal at the instance of the Revenue, has not rendered the decision holding the finding of the First Appellant Authority regarding applicability of Sections 131 and 133(6) of the Act, as the case may be, is erroneous in law. So much so, the impugned decision of the Tribunal stands faulted on a substantial question of law referable to the contents of Section 68 of the Act and the failure of the Revenue to take recourse to Sections 131 and 133(6) of the Act, in the case of the Assessee, where the primary onus under Section 68 of the Act stood discharged by the Assessee.

7. *For the foregoing reasons, we are of the view that the impugned order of the Tribunal has to be set aside, answering the question of law, framed and quoted above, in favour of the Assessee. We do so.*

In the case of G. Subha Devi vs ITO (supra):

Confirmations in writing produced by agriculturists could not have been rejected by AO without their evidence being recorded. AO had power of a Civil Court by virtue of s. 131. Therefore, he could very well summon those agriculturists and after their examination, he could have believed or discarded evidence given by them. Misplaced apprehension of AO that since confirmations were in same handwriting, therefore, they were not believable was a typical pro-revenue approach, without any foundation. Agriculturists most of whom might have been illiterates, could not have been expected to write their own confirmations to be produced before AO, but as witnesses they could have been certainly summoned by AO for verifying written confirmations given by them and it was only thereafter that AO could have confirmed fact as to whether written confirmations given by them were genuine or fake.

(Para 12)

CIT(A) after having looked into evidence on record was justified in granting relief to assessee, but !TAT without assigning any cogent reasons took a different view of matter and rendered a finding of fact, which was bad and perverse to that extent therefore, required to be quashed and set aside.

(Para 16)

5.3 Ld. AR further submitted that the addition u/s 68 in the present case was made describing the general theory i.e. *modus operandi* in the case of bogus share capital and premium with any specific findings on the issue. It is the submission that all the directors and shareholders of both the companies were residing at Raipur and complete details were furnished in Audited Financial Statement which are available to the Ld. AO. Ld. AR further enlighten on the issue that the assessee had also received share application and premium from the same shareholders in the earlier years if no additions were made by the Revenue on that count. Ld. AR further submitted that the cases relied upon by the Ld. AO are distinguishable on the facts on which details are furnished before us at page no. 8 to 15 of the paper book mentioning factors for distinguishment of the cases relied upon as compared to the case of assessee. The details so prepared by the assessee are culled out as under:

2.6 It is further to submit before your honour that while making the addition the AO has not assigned any specific reasons but has only relied upon certain case laws which are totally distinguishable from the facts of the present case of the appellant. The same is demonstrated as under:-

Case law relied upon by the AO	Facts of the case	Remark
Sumati Dayal vs. CIT (214 ITR 801)	In the case of Sumati Dayal there were specific documentary evidences against the assessee which was provided to assessee in order to rebut but the assessee fails to rebut and therefore it was held by the explanation offered by the assessee was rejected by the AO.	The fact of the present case is totally different from the facts of the case relied upon by the AO. In the present case there was no documentary evidence against the appellant. Further, no discrepancies were ever pointed out by the AO in the documents furnished before him.
CIT vs. Durga Prasad More 82 ITR 540 (SC)	In the case of Durga Prasad More it was held by the Apex Court that they authorities were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents. <i>Whether to accept those recitals or not was within the province of the Tribunal. Unless its conclusion is held to be perverse or is not supported by any evidence or is based on irrelevant evidence.</i>	The AO has wrongly applied the principal laid down in the case of Durga Prasad More in the present case of the appellant. The AO has overlooked the fact that while disbelieving the material the AO should have some concrete evidence, whereas, in the present case the AO has never disbelieved the documents submitted by the appellant or by the shareholders. Therefore, the AO has wrongly applied the principal of the judgment laid down in Durga Prasad More case.
CIT Vs. P.Mohankala 291 ITR 278	In this case P.Mohankala has received foreign gifts from two different persons namely Ariavan	The facts of this case are totally different from the present case of the appellant. In the present, the

	<p>Thotan and Suprotoman. It is only after the enquiries by the Department, it was informed by letter dt. 25th April, 1996 that Ariavan Thotan and Suprotoman are one and the same person. Even at that time, no mention was made about Sampathkumar. For the first time Sampathkumar's name figured in the letter dt. 30th Aug., 1996 and thereafter it was stated that the names of Ariavan Thotan and Suprotoman are the other names of Sampathkumar. The AO while appreciating the contents of the letters brought on record came to the conclusion that Sampathkumar had obliged in giving 'gifts' to Srinivasan and his family members. It is further held that in all probabilities Sampathkumar may have received compensatory payments in lieu of the gifts made by him. The letters according to the AO suggest that Sampathkumar reserved his right to receive suitable compensation from the respondents assesseees. The AO in the circumstances came to the conclusion that the gifts though apparent are not real and accordingly treated all those amounts credited in the books of assesseees as the income of the assesseees.</p>	<p>Ld.A.O. has not issued notice u/s 133(6) of the Income Tax Act, 1961. No enquiry ever conducted. Since the facts are entirely different in the present case, this case law is not applicable in the present case of the assessee.</p>
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CIT Vs. N.R.Portfolio (P) Ltd 264 CTR 0258	Respondent-assessee being private limited company filed returns for impugned A.Ys. declaring income—Returns were processed u/s. 143(1)—Subsequently, reassessment proceedings were initiated u/s. 147/148 on basis of information received from Investigation Wing that assessee was one of beneficiaries, who had procured share application money from entry providers—In spite of various notices issued, assessee did not appear in response to said notices—Accordingly, ex-parte or best judgment assessment orders were passed for impugned A.Ys.—	The fact of this case is totally different from the present case of the appellant. In the case N.R.Portfolio (P) Ltd enquiry was conducted by investigation wing and statements of certain persons were recorded who accepted the fact that they have provided the accommodation entries to various companies. The summons was also issued to the persons as well as company which remained un served and none complied. In light of these circumstances it was held in N.R.Portfolio (P) Ltd that share capitals are bogus and accordingly addition u/s 68 was made. Whereas the facts of the present case of appellant is entirely and squarely different from the case of N.R.Portfolio. There is no admission by any of the persons/brokers/entry providers that they have provided accommodation entries to the appellant company. There is no adverse material collected by the department during search. All this clearly establish that these judgment is not applicable in the present case of appellant and the AO has wrongly applied it.
CIT Vs. Nova Promoters &	In these case, the A.O. received a letter from the Director of Income	The fact of this case is totally different from the present case of

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<p>Finlease (P) Ltd 342 ITR 169</p>	<p>Tax (Investigation), New Delhi which furnished detailed information regarding entry operators/accommodation providers. The letter informed the A. O. that there were 16 entry operators who had given accommodation entries to several persons of which the assessee was also one. There were also statements recorded from persons confirming the facts. The total amount received from such persons as share application monies was Rs.1,18,50,000/-. In the course of the reassessment proceedings pursuant to the notice issued u/s 148, the A. O. issued a questionnaire to the assessee. In order to comply with the same the assessee sought for the documents/material in the possession of the Assessing Officer and also requested him to produce the person in charge of the 16 companies for cross examination with regard to the contents of the statements recorded from them. In response to the assessee's request, the Assessing Officer provided the assessee with the statement of Sh. Rajan Jassal, Sh. Mukesh Gupta and Printed contents of CD received from Investigation Wing showing</p>	<p>the appellant. In the case Nova Promoters Finlease (P) Ltd enquiry was conducted by investigation wing and statements of certain persons were recorded who accepted the fact that they have provided the accommodation entries to various companies including Nova Promoters Finlease (P) Ltd. The summons was also issued to the persons as well as company which remained un served and non complied. In light of these circumstances it was held in Nova Promoters Finlease (P) Ltd that share capitals are bogus and accordingly addition u/s 68 was made. Whereas the facts of the present case of appellant is entirely and squarely different from the case of Nova Promoters. In the case of the appellant no such enquiry has ever been conducted by the department. There is no admission by any of the persons/brokers/entry providers that they have provided accommodation entries to the appellant company. There is no adverse material collected by the department. No Summons ever issued to any of the director. Notice u/s 133(6) has duly been complied. All this clearly</p>
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	<p>transaction made with various parties, Copy of letters written to Addl. Commissioner of Income Tax Unit-I. New Delhi, by Sh. Mukesh Gupta and Sh. Rajan Jassal claiming various Benami accounts maintained by them. The Assessing Officer issued summons to Mukesh Gupta and Rajan Jassal. It appears that the Assessing Officer had also issued summons to the companies. He has recorded in the assessment order that some of the summons sent to the companies were received back unserved and the other summons remained uncomplied with. The summons issued to Mukesh Gupta and Rajan Jassal were served but remained uncomplied with. On the aforesaid facts, the Assessing Officer came to the conclusion that the independent enquiries carried out by him disclosed that the assessee was unable to prove the genuineness of the transactions with the companies and that it also proved that the assessee company had introduced its own monies through non-existing companies using the banking channel in the shape of share application monies. He accordingly invoked section 68 of the Act and added the amount of Rs.1,18,50,000/- to the income</p>	<p>establish that the judgment of Nova Promoters is not applicable in the present case of appellant and the AO has wrongly applied it.</p>
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	of the assessee.	
CIT Vs Nipun Builders and Developers 350 ITR 407	For enquiry of accommodation entries, AO issued summons u/s 131 to share-holders of assessee company which returned unserved—Unsatisfactory explanations were submitted by assessee, failing its onus to prove genuineness—Addition was made by AO—Held, u/s 68 onus is upon assessee to prove three ingredients, i.e., identity and creditworthiness of person from whom the monies were taken and genuineness of transaction—In case when AO requested to produce principal officer of subscribing companies, that too only after trying to serve summons unsuccessfully, assessee developed cold feet—It directed AO to go to website of ROC and search for addresses of share-subscribers and then communicate with them for proof of genuineness of share subscription—Also assessee did not produce principal officer of companies who subscribed to shares; it merely filed a letter at "dak" counter of AO, stating that communications sent by it to share subscribers have not come back unserved—This was not compliance with direction of AO who had issued notice to assessee—Certainly assessee did	The facts of this case are totally different from the present case of the assessee. No notice u/s 133(6) was conducted by the A.O. and no enquiry ever conducted. All this clearly establish that this judgment is not applicable in the present case of appellant and the AO has wrongly applied it.

	nothing worthwhile to discharge onus to prove creditworthiness of subscribing companies.	
Hindustan Tea Trading Co. Ltd Vs. CIT 129 Taxman 601	<i>Addition under s. 68 can be made only if the assessee offers no explanation regarding the source of the credit or the explanation is not found satisfactory; once the assessee-company had given the income-tax file numbers of the subscribers to its capital, it was for the ITO to enquire about it and find out the creditworthiness of the subscribers and the genuineness of the transaction except in respect of persons who were not found at the addresses given.</i>	This case is in fact in favour of the appellant. Therefore, the AO has wrongly relied upon this case.
CIT Vs Oasis Hospitalities (P) Ltd 333 ITR 119	AO issued summons to the share applicants which were received back unserved—Ultimately assessee produced five of the fifteen shareholders whose statements were recorded—On analysis of these statements, authorities below arrived at the finding of fact that neither the identity of said parties is established nor their capacity to invest is proved as they are all agriculturists and have not produced a single document to support their version—No steps were taken by the assessee which could establish the three ingredients to obviate the mischief	As already stated in earlier non of the summons ever issued to any director. Further , no notice ever issued u/s 133(6) of the Income Tax Act, 1961. So the case law not applicable in the present case.

	of s. 68—It has merely given the names of the parties without anything more—Even the bank statement submitted by the assessee has not been proved—Therefore, assessee has not discharged the onus and addition under s. 68 is justified	
Vijay Kumar Talwar Vs. CIT 330 ITR 1	The apex court has not given any decision. Hon ^{ble} apex court has stated that <i>all the authorities below, in particular the Tribunal, having observed in unison that the assessee did not produce any evidence to rebut the presumption drawn against him under s. 68 by producing the parties in whose names the impugned amounts were credited in assessee's books of account, the conclusion of the Tribunal to the effect that the assessee has failed to prove the source of the cash credits cannot be said to be perverse, giving rise to a substantial question of law and, therefore, no interference is warranted.</i>	Cited case law is not applicable in the present case since the facts are totally different. In the present case the appellant has furnished all the documentary evidences. Further no enquiry ever conducted u/s 133(6) of the Income Tax Act, 1961
N.Tarika Property Invest Pvt. Ltd	In the said case, there is deposit and withdrawal of cash.	In the present case of the appellant there is no deposit of cash prior to receive of share application money. Hence the case law is not applicable in the present case of the appellant.

5.4 Ld. AR further placed his reliance on various judgments which are also part of submissions before the Ld. CIT(A), for the sake of clarity, brief findings in the said judgments, are extracted as under:

- *Hon'ble Supreme Court in case of CIT Vs Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195, held that "if the share application money received by the assessee company from alleged bogus shareholders. whose names are given to the A O. then the department is free to proceed to reopen their individual assessments in accordance wit/1 law. but it can not be regarded as undisclosed income of the assessee company".*
- *In the case of Principal Commissioner of Income Tax Vs. Sreeleathers. (2022) 114 CCH 0180 KolHC, it was held that "it is not enough for the assessing officer to brushed aside the explanation offered by the assessee but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender".*
- *In the case of Principal Commissioner of Income Tax & Ors. Vs. Krishna Devi & Ors (2021) 110 CCH 0009 Del HC, it was held that Reliance placed on the report of investigation wing. Without further corroboration on the basis of cogent material. does not Justify AO's conclusion that the transaction is bogus. sham and nothing other than a racket of accommodation entries.*
- *In the case of Principal Commissioner of Income Tax Vs. Ami Industries (India) Ltd (2020) 107 CCH 0294 Mum HC, it was held that "Addition u/s 68 is not sustainable where the assessee had discharged its onus of proving identity of the creditors. Genuineness of the transactions and credit-worthiness of the creditors".*
- *In the recent judgment of Delhi HC in case of CIT Vs. Vrindawan Farms (P) Ltd ITA 71/2015 pronounced on 12.08.2015 it was held that "If the identity and other details of the share applicants are available, the share application money cannot be treated as undisclosed income in the hands of the Co. The addition, if at all, should be in the hands of the applicants if their creditworthiness cannot be proved."*

- *In case of CIT vs. Oasis Hospitalities Pvt. Ltd. 333 ITR 119 (Del), it was held that "assessee company has filed copies of PAN, acknowledgment of returns of the share applicants and their bank accounts and statements of the relevant period, thus the primary onus was discharged by the assessee. The appellant contends that now it is for the AO to disprove the credits by bringing adverse material. In holding a particular receipt as income from undisclosed sources. The fate of the assessee cannot be decided by the revenue on the basis of surmises. Suspicion or probabilities.*
- *In case of CIT vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh), the Jurisdiction High Court held that where AO had not made any independent enquiry to disprove creditworthiness of the creditors, as established by affidavits and statements of creditors disclosing source of income. Addition made u/s 68 was rightly deleted. In this case also the rejection is based on no evidences and therefore raising of a presumption against the assessee does not arise. An explanation prima facie reasonable cannot be rejected on capricious or arbitrary grounds or on mere suspicion or on imaginary or irrelevant grounds. The AO has arbitrarily disbelieved the identity/creditworthiness without substantiating by any evidence and therefore the addition deserves to be deleted.*
- *In the case of Namdhari Industrial Traders Pvt. Ltd. Vs. Assistant Commissioner of Income Tax, (2021) 62 CCH 0216, it was held that Addition u/s 68 is not sustainable where the Assessee has prima facie discharged the onus of establishing identity and creditworthiness of the aforesaid three companies and further in establishing the genuineness of the transaction.*
- *In the case of Ninestar Merchants Pvt. Ltd vs. /TO, (2021) 61 CCH 0201 KolTrib, it was held that When the assessments of the share applicant companies who have invested in the share capital of the assessee company are completed u/s 143(3). no addition can be made in the hands of the assessee company u/s 68.*
- *In the case of Bini Builders Pvt. Ltdvs. DCIT, (2021) 62 CCH 0085 MumTrib, it was held that No addition could be made merely on the basis of allegation, suspicion, conjectures or surmises.*
- *In the case of DCIT vs. R.K. Transport & Constructions Pvt Ltd [ITA. No. 236 to 242/ RPRI 2014), the Jurisdictional Raipur Tribunal has held that the identity of share applicants, genuineness of the share transactions and creditworthiness of the share applicants were established by the various documents like bank statements, balance sheets etc. furnished by the*

share applicants to the AO in pursuance to the notice issued to them u/s 133(6) of the Act. Accordingly, the Raipur Tribunal dismissed the appeal filed by the Revenue against the order of the CIT(A), deleting the said addition in effect.

- *In case of ACIT vs Venkateshwar Ispat Pvt. Ltd., 319/TR 393 (CG), the Jurisdictional High Court Chhattisgarh has held that "in case of share application money the assessee has produce evidence regarding names, addresses etc. and the shareholders have confirmed the investment. The department is free to proceed to re-open shareholders individual assessment in accordance with law but it cannot be regarded as undisclosed income of the assessee company."*

5.5 Apropos, explanation about the source of investment, Ld. AR further submitted that the First investor i.e., GIPL has raised share capital of Rs.21.31 Crores in the AY 2011-12, that the said shareholders has opted for VSVS-2020 and has paid the due tax on total share capital of Rs.23.21 Crores. It was the submission that share capital and premium of GIPL remain unchanged from AY 2011-12 till year consideration i.e., 2014-15. To substantiate the aforesaid facts, Ld. AR drew our attention to page nos. 76 to 79 of the paper book comprising of Audit Balance Sheet of M/s Vizcom Solution Pvt. Ltd. (presently known as GIPL) showing share capital and source of surplus of Rs.23.19 Cr. in the year ended 31.03.2014. Ld. AR also furnished before us year wise details of investment and realization of investment starting from AY 2011-12 and up to AY 2014-15 for GIPL (Formerly known as Vizcom Solution Pvt. Ltd.), the same is culled out as under:

VIZCOM SOLUTION PRIVATE LIMITED**DETAIL OF INVESTMENT AS ON 31ST MARCH OF F.Y. 2010-11 TO 2013-14**

S.No.	NAME OF THE SHARE	YEAR WISE INVESTMENT							
		A.Y. 2011-12		A.Y. 2012-13		A.Y. 2013-14		A.Y. 2014-15	
		No. Of Shares	Total	No. Of Shares	Total	No. Of Shares	Total	No. Of Shares	Total
1	Blackberry Ventures Pvt. Ltd.	78,400	39,984,000	-	-	-	-	-	-
2	Ayodhya Vincom Pvt. Ltd.	90,500	46,155,000	-	-	-	-	-	-
3	Brilliant Investment Consultants Pvt. Ltd.	58,800	29,988,000	-	-	-	-	-	-
4	Gazel Venture Pvt. Ltd.	90,600	46,206,000	-	-	-	-	-	-
5	Mountain Vintrade Pvt. Ltd.	58,800	29,988,000	12,000	6,120,000	-	-	-	-
6	Penant Commotrade Pvt. Ltd.	77,900	39,729,000	-	-	-	-	-	-
7	Concast Bengal Industries Ltd	-	-	30,000	15,000,000	-	-	-	-
8	Concast Global Ltd	-	-	50,000	25,000,000	-	-	-	-
9	Concast Steel & Power Ltd	-	-	240,000	120,000,000	112,992	56,496,000	452	226,000
10	Dankuni Steels Ltd	-	-	100,000	50,000,000	100,000	50,000,000	-	-
11	Dharu Gera Steels Pvt Ltd	-	-	11,720	2,930,000	11,720	2,930,000	-	-
12	Kaiser Oils Pvt Ltd	-	-	1,000	2,500,000	1,000	2,500,000	-	-
13	Tirupati Fuels Pvt Ltd	-	-	50,000	10,000,000	50,000	10,000,000	-	-
15	Shree Hanuman Loha Pvt. Ltd.	-	-	-	-	Advance for share purchase	18,000,000	550,000	38,500,000
14	Balajee Loha Pvt. Ltd.	-	-	-	-	-	-	1,950,000	117,000,000
16	Balajee Structural India Ltd.	-	-	-	-	-	-	710,000	63,900,000
17	Shree Hanuman Metalics (I) Pvt. Ltd.	-	-	-	-	-	-	57,500	11,500,000
	TOTAL (A)		232,050,000		231,550,000		139,926,000		231,126,000

5.6 Based on aforesaid information, it is submitted that the source of GIPL is duly taxed under VSVS-2020, therefore, source of source is duly explained, accordingly the addition made by Ld. AO is rightly vacated by the Ld. CIT(A).

5.7 Regarding, WPPL, Ld. AR submitted that WPPL is received unsecured loan from Shri Hanuman Loha Pvt. Ltd. And M/s Balajee Steels on 22.07.2013 and on the same day the investment was made in the share capital of the assessee company. It is further explained that the amount

received from the aforesaid parties was on account of the repayment of loans extended by M/s WPPL to Shri Hanuman Loha and Balajee Steel, therefore, the source of source of such investments by WPPL in the assessee company is duly explained with the identity and creditworthiness of the shareholders and genuineness of transactions.

5.8 Backed by aforesaid submissions, it was the prayer by Ld. AR that the source of source of the share capital + share premium issued by the assessee company are duly explained before the revenue authorities which was rightly appreciated by the Ld. CIT(A), therefore, the addition u/s 68 after considering the various judicial pronouncements had rightly been vacated by the Ld. CIT(A), therefore, the order of Ld. CIT(A) deserves to be sustained and the additions made by the Ld. AO is liable to be struck down.

6. We have considered the rival submissions, perused the material available on record and judicial pronouncements relied upon by the parties. On perusal of the order of Ld. CIT(A), wherein exhaustive submissions are made by the assessee and after lengthy discussion / deliberation on the issue following the provisions of Act, mandate of law

and settled principles in accordance with jurisprudence available on the issue. Factually, there is no doubt that the assessee had furnished various primary documents and evidence necessary to substantiate the basic ingredients, the absence of which give rise to doubt a transaction to bring it within the four corners of provisions of section 68 of the Act. It is settled position of law that if the assessee has *prima facie* have discharged the onus of establishing identity / creditworthiness of the investor and genuineness of the transaction, which are not refuted by exercising any independent enquiries by the revenue authorities, such evidence cannot be disregarded at the threshold and addition u/s 68 made without invalidating such evidence cannot be sustained.

6.1 On this issue, Hon'ble Jurisdictional High Court in the case of **CIT vs Abdul Aziz (supra)** have held that, "*Where AO had not made any independent enquiry to disprove creditworthiness of the creditors, as established by affidavits of creditors disclosing source of income, addition made u/s 68 was rightly deleted. An explanation prima facie reasonable cannot be rejected on capricious or arbitrary grounds or on mere suspicious or on imaginary or irrelevant grounds*".

6.2 A similar view has been accorded by the Hon'ble Jurisdictional High Court in the case of **Pawan Kumar Agrawal vs ITO (supra)**, with the categorical finding that once the assessee had discharged primary onus u/s 68 of the Act, it was open to the department to take recourse of section 131 or section 133(6) of the Act, if they were to further proceed, that not having done so, the First Appellate Authority was within its jurisdiction to conclude on facts and law, in favour of the assessee.

6.3 In the case of **G. Shubha Devi vs. ITO (supra)**, Hon'ble High Court of Karnataka have drawn a similar finding that the confirmations of Agriculturist could not have been rejected by the Ld. AO without their evidence being recorded. AO had power of a Civil Court by virtue of section 131. Misplaced apprehensions of Ld. AO that the confirmations were in same handwriting, therefore, they were not believable was a typical pro revenue approach, without any foundation. CIT(A) after having looked into evidence on record was justified in granting relief to the assessee.

6.4 As the aforesaid issue, which was there before Ld. CIT(A) also, who had recorded the same in his order taking note of the contention of the assessee, shows that Ld. CIT(A) had an affirmative view towards such

submission of the assessee, though there was no categorical finding on issue. Since Ld. AR had raised a preliminary objection, which in our opinion is permissible to be raised before us, thus admitted, in terms of decision of this tribunal in the case of **ITO-2, Raigarh Vs. Shri Bishambhar Dayal Agrawal in ITA No. 223/RPR/2016, dated 27.10.2023**, following the judgments of various Hon'ble Courts, wherein the observations of the Tribunal are as under:

*13. Admittedly, it is a fact borne from the record that the assessee respondent has neither preferred before us a cross-appeal nor a cross-objection. The objection as regards the validity of the jurisdiction assumed by the A.O. had orally been raised by the Ld. AR at the threshold of hearing of the appeal. As observed by the Hon'ble High Court of Delhi in the case of **Sanjay Sawhney Vs. Pr. CIT** (supra) that as Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 does not specify any definite structure for making any application in a particular manner; therefore, the view taken by the Tribunal, which had declined the objection filed by the assessee respondent that was rejected for the reason that it was not raised on the basis of an application made in writing was fallacious. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as follows:*

“11. The Tribunal has taken a pedantic view on the interpretation of Rule 27 by holding that for availing the remedy under the said provision, an application in writing is necessary. In our opinion, this surmise is fallacious and we cannot countenance the same. We agree with Mr. Krishnan that Rule 27, as it stands today, does not mandate for the application to be made in writing. Revenue has not brought to our notice any particular Form notified for filing such an application. Revenue also does not controvert the contention of the Appellant that the draft

Appellate Tribunal Rules 2017 proposing to insert a proviso to Rule 27, providing for an application to be made in writing, have not been notified, as yet. Therefore, the reasoning of the Tribunal for rejecting Appellant's contentions is palpably wrong. If the provision does not specify any defined structure for making an application in a particular manner, the Tribunal ought not to have deprived the Appellant of an opportunity to raise a fundamental question of jurisdiction, taking a hyper technical viewpoint. The Tribunal has plainly refused to consider the additional grounds on an erroneous premise which is contrary to the statutory scheme of the Act, that permits the Respondent to urge all grounds in support of the order appealed, as provided under Rule 27. The appeal deserves to be allowed on this short ground and we would have no hesitation in doing so with a consequential direction to ITAT to reconsider the matter afresh on the additional grounds urged by the Appellant.....”

*14. Considering the judgment of the Hon'ble High Court of Delhi in the case of **Sanjay Sawhney Vs. Pr. CIT (supra)**, we find favor with the claim of the Ld. AR that as the objection under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, does not propose raising the same in writing, the assessee-respondent before us is, thus, well within his right to raise the same orally.*

*15. Coming to the issue as to whether the assessee respondent, in the absence of any cross-appeal or a cross-objection, could assail the validity of the jurisdiction that the A.O assumed for reopening the concluded assessment despite the fact that neither any such issue was raised before the CIT(Appeals) nor was adverted to by the latter while disposing off the appeal, we find that the said issue had been looked into at length by the Hon'ble High Court of Bombay in the case of **Peter Vaz Vs. CIT, Central Circle, Bangalore (supra)**. Before adverting to the view taken by the Hon'ble High Court on the aforesaid issue, we shall briefly cull out the facts involved in the appeal before the Hon'ble High Court in the context of which the latter had looked into the scope of Rule 27.*

- (i) *The assessee before the Hon'ble High Court had, in the proceedings before the Tribunal, filed cross-objections, which involved a delay of 248 days. The cross-objections filed by the assessee were dismissed by the Tribunal, which declined to condone the delay therein involved. On further appeal, it was the claim of the assessee that as it had assailed the validity of the jurisdiction that was assumed by the A.O u/s.153C of the Act, which was purely an issue of law, therefore, there was no justification on the part of the Tribunal in refusing to consider such significant issue. It was the claim of the assessee that as he was under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, only supporting the order passed by the CIT(Appeals) before the Tribunal, which was already in his favor, thus, there was no necessity for filing of a cross-objection.*
- (ii) *After deliberating on the contentions of the assessee, the Hon'ble High Court found favor with the same. Adverting to the issue as to whether the assessee could have assailed the validity of the jurisdiction u/s.153C of the Act before the Tribunal without filing any cross-objection, the Hon'ble High Court observed that as the assessee wished to raise an issue that was at least prima facie going to the root of jurisdiction to initiate proceedings under Section 153C of the Act, therefore, having regard to the provisions of Rule 27, the Tribunal should have permitted the assessee-respondent to have supported the order of CIT (Appeals) on this ground, even without the necessity of filing any cross-objections. Relying on the judgment of the **Hon'ble High Court of Gujarat** in the case of **Dahod Sahakari Kharid Vechan Sangh Ltd. Vs. CIT (2006) 200 CTR 265 (Guj)**, the Hon'ble High Court observed that the right that accrued to the assessee respondent under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 could not have been taken away by the*

*Tribunal by referring to the provisions of Section 253(4) of the Act. The Hon'ble High Court had observed that though the issue as regards the validity of the jurisdiction assumed by the A.O u/s. 153C of the Act was not raised before the CIT(Appeals), but having regard to the provisions of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, as also the provisions of Section 260A(7) read with provisions of Order XLI Rule 22 of the CPC as interpreted by the Hon'ble Supreme Court in the case of **S. Nazeer Ahmed Vs. State Bank of Mysore (2007) 11 SCL 75**, the ITAT should not have precluded the assessee from assailing the issue as regards the validity of the jurisdiction assumed by the A.O u/s.153C of the Act in the course of hearing of the appeal instituted by the revenue, even without the necessity of filing any cross-objection. Based on its aforesaid observations, the Hon'ble High Court observed that in terms of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, the assessee was entitled to support the order of the CIT(Appeals) before the Tribunal even without the necessity of filing any cross-objection. For the sake of clarity, the observations of the Hon'ble High Court are culled out as under (relevant extract) :*

*"38. In the present case, it is not as if the issue of non-fulfillment of jurisdictional parameters of Section 153C was raised but rejected by the CIT (Appeals). **Such an issue was not raised before the CIT (Appeals)**. Having regard to the provisions of Rule 27 of the Appellate Tribunal Rules, 1963 as also the provisions of Section 260A(7) read with Order XLI Rule 22 of CPC as interpreted by the Hon'ble Supreme Court in *S. Nazeer Ahmed (supra)* we think that the ITAT should not have precluded the assessee from raising the issue in the appeals instituted by the Revenue, even without the necessity of filing any cross-objections. Accordingly, the additional substantial question of law is*

required to be answered in favor of the Appellants/assesseees and against the Revenue."

(emphasis supplied by us)

*16. Considering the aforesaid judgment of the **Hon'ble High Court of Bombay** in the case of **Peter Vaz Vs. CIT, Central Circle, Bangalore (supra)**, we are of the view that the assessee respondent before us, by triggering Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, is well within his right to assai the validity of the jurisdiction assumed by the A.O for reopening of his concluded assessment u/s.147 of the Act*

*17. Also, the vesting of similar rights with the assessee respondent can be traced in the judgment of the **Hon'ble High Court of Punjab & Haryana** in the case of **CIT Vs. Dehati Co-operative Marketing cum Processing Society (1981) 130 ITR 504 (P&H)**. Referring to Rule 11 of the Income Tax Appellate Tribunal Rules, 1963, the Hon'ble High Court had observed that now, when the appellant can be allowed a concession, therefore, there is no justification for denying the respondent in an appeal a similar concession. It was, thus, observed by the Hon'ble High Court that the Tribunal can, therefore, allow an assessee to raise a ground that had not been taken before or adjudicated upon by the ITO so long that does not require further investigation of the facts.*

18. Based on our aforesaid observations r.w. the interpretation of the scope of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, as had been looked into by the Hon'ble High Courts (supra), we are of the considered view that the objection raised by the assessee respondent under Rule 27 of the

Income Tax Appellate Tribunal Rules, 1963 as regards the validity of the jurisdiction assumed by the A.O for reopening of his concluded assessment u/s.147 of the Act merits admission.

6.5 In view of the aforesaid decision, the preliminary objections raised by the Ld. AR on an issue which was raised there before the Ld. CIT(A) also, we deem it appropriate to admit the same. Coming to the issue raised at whether disallowance u/s 68 can be made in a case where assessee had furnished all the requisite documents / explanation and had discharged the primary onus cast upon it and adverse opinion is formed and a contrary view have been adopted *dehors* exercising the powers / recourse u/s 131 or u/s 133(6) of the Act available with the revenue authorities to initiate independent enquiries before arriving at a negative conclusion. On this issue respectfully following the decision of Hon'ble Jurisdictional High Court in the case of **Pawan Agrawal(supra)**, supported with judgment in the case of **Abdul Aziz (supra) and G. Subha Devi vs ITO (supra)**, as all the necessary primary documents (discussed supra) are furnished by the assessee during the course of assessment proceedings to substantiate the identity / creditworthiness of the investors and genuineness of transactions, without negating such documents by way of conducting inquiries under the recourses available in the law, the addition u/s 68 cannot be sustained, thus, we direct to struck down the

same. Consequently, ground of appeal No. 1, raised by the revenue in absence of any plausible explanation, contradicting material or decision to dislodge the aforesaid contention of Ld. AR, being bereft of merits, stands rejected.

7. In result, the appeal of revenue in **ITA NO. 356/RPR/2024** has been rendered as dismissed, in terms of our aforesaid observations.

Order pronounced in the open court on 10/02/2025.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य / JUDICIAL MEMBER
रायपुर/Raipur; दिनांक Dated 10/02/2025
Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)
लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant- DCIT, Raipur
2. प्रत्यर्थी / The Respondent- Balajee Loha Pvt. Ltd., Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur