

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 358/GTY/2018
Assessment Year: 2010-11**

Accrecent Way Marketing Private Limited	Vs.	Deputy Commissioner of Income Tax, Circle-3, Guwahati
(Appellant)		(Respondent)
PAN: AAFC8279H		

Appearances:

Assessee represented by : Anil Kumar Agarwala, FCA.

Department represented by : Kausik Ray, JCIT.

Date of concluding the hearing : 12-Mar-2025

Date of pronouncing the order : 09-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-2, Guwahati [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 251 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2010-11 dated 27.08.2018,



which has been passed against the assessment order passed by the u/s 143(3) of the Act, dated 31.03.2013.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the Learned Commissioner of Income Tax (Appeals) erred in facts as well as in law in upholding the order of the Assessing Officer adding back a sum of Rs. 8,50,45,030/- under the head "Income from other sources" on account of unexplained Share Application Money u/s 68 of Income Tax Act, 1961.

2. For that the Learned Commissioner of Income Tax (Appeals) erred in law in upholding the addition u/s 68 of Income Tax Act, 1961 when the pre-conditions for such addition did not exist in the present case.

3. For that the Learned CIT(A) has failed to appreciate the facts and circumstances of the claim for deduction raised before her in regard to liability of Rs. 5,11,68,800/- which was erroneously offered as Income by the appellant company and was thoroughly unjustified in disallowing the claim raised before her.

4. For that the appellant urges leave to raise any further/ additional ground at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessee company had e-filed the return of income on 06.06.2011 showing total income of Rs. 1,04,91,100/- which was processed u/s 143(1) of the Act and subsequently, the case was selected for scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). Statutory notices u/s 143(2) and 142(1) of the Act were issued and duly served upon the assessee and the assessee filed various details including tax audit report in Form Nos. 3CA and 3CD along with copy of the audited balance sheet, profit and loss account for the year ended 31.03.2010. Thereafter, a notice u/s 142(1) of the Act along with a detailed questionnaire requiring the assessee to furnish various specific details/documents was issued, in response to which the details were



filed which were perused by the Ld. AO. The company was incorporated on 24.07.2006 and has its registered office at Ganesh Bhawan, P.P. Road, Rehabari, Guwahati-781008 and has two Directors namely; i) Shri Tapas Debnath and ii) Smt. Jayati Bhattachargee Debnath. The assessee company had shown gross turnover from its business at Rs. 31,59,75,687/- and the object of the company is trading of various FMCG products and insurance products and after meeting various expenditure incidental to its business, the net profit has been disclosed at Rs. 1,06,48,066/- which is worked out to 3.36% of the gross receipts. The Ld. AO noted that the assessee company raised share application money of Rs. 8,50,45,030/- during the financial year relevant to the impugned assessment year and was asked vide letter dated 30.10.2012 to furnish the details of share application money such as the name and postal address of the party from whom to share application money had been received, their PANs, date of receipt of payment, amount received and the mode of receipt. The assessee submitted a list showing the names, addresses, PAN and the amount and mode of receipt of the share application money and the same was received from 31 companies and one individual. Further, as per the details filed, the entire amount of share application money was received by way of cash only. However, the assessee had not furnished the date of receipt of the alleged share application money. From the details submitted it was seen that all the 31 companies from whom the assessee claimed to have received the share application money during the year based in Kolkata the details of which are as under:

Sl. No.	COMPANY NAME & ADDRESS	PAN	AMOUNT	Mode
1.	Green Valley Sales Pvt. Limited 20, Maharshi Devendra Road, Kolkata-700007	AACCG8192Q	40,00,000	Cash
2.	Green Valley Sales Pvt. Limited, 20, Maharshi Devendra	AACCG8192Q	33,00,000	Cash



	Road, 4 th Floor, Kolkata-700 007			
3.	Improve Vintrade Pvt Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AACCI2544L	35,00,000	Cash
4.	Janpragati Merchants Pvt. Ltd. 15/2, Armenium Street, 2 nd Floor, Kolkata-700 007	AACCCJ0768K	40,00,000	Cash
5.	Tulip Goods Pvt. Limited, BN-18/A, North Complex, 35, Lawrence Street, Uttarpara, West Bengal-712258	AACCT6422C	36,00,000	Cash
6.	Tulip Goods Pvt. Limited, BN-18/A, North Complex, 35, Lawrence Street, Uttarpara, West Bengal-712258	AACCT6422C	5,00,000	Cash
7.	Topmost Tie-Up Pvt Limited 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah	AACCT6449F	45,00,000	Cash
8.	Victor Commodities Pvt Limited, 24/25, Becharam Chowdhury Lane, 4 th Floor, Howrah-711101, West Bengal	AACCV4477H	39,00,000	Cash
9.	Valentino Tradecom Pvt Ltd. 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah, West Bengal-711101	AACCV4509L	38,00,000	Cash
10.	Basanti Tradecom Pvt. Limited 62, Nalini Seth Road, Kolkata -700007	AADCB1003E	35,00,000	Cash
11.	Basanti Tradecom Pvt. Limited, 62, Nalini Seth Road, Kolkata- 700007	AADCB1003E	5,00,000	Cash
12.	Country Wide Tradecom Pvt Limited, 62, Nalini Seth Road, Kolkata-700007	AADCC0385J	5,00,000	Cash
13.	Country Wide Tradecom Pvt. Limited, 62, Nalini Seth Road, Kolkata-700007	AADCCO385J	36,00,000	Cash
14.	Green Valley Mercantile Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AADCG2756K	40.00.000	Cash
15.	Kohinoor Commodities Pvt. Limited, 20, Maharshi Devendra Road, 4 th Floor, Kolkata- 700 007	AADCK0453B	37,00,000	Cash
16.	Kohinoor Commodities Pvt. Limited, 20, Maharshi Devendra Road, Kolkata-700007	AADCK0453B	5,00,000	Cash
17.	Pleasant Sales Pvt Limited, 62, Nalini Seth Road, Kolkata-700007	AAECP2157L	40,00,000	Cash
18.	Pleasant Sales Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AAECP2157L	5,00,000	Cash
19.	Pushpanjali Tie-UP Pvt Limited, 2C, Imam Bux Lane, Kolkata- 700006	AAECP2158F	38,00,000	Cash
20.	Pushpanjali Tie-UP Pvt Limited, 2C, Imam Bux Lane, Kolkata- 700006	AAECP2158F	5,00,000	Cash
21.	Pushpanidhi Distributor Pvt Limited, 24/25, Becharam Chowdhury Lane, Howrah- 711101	AAF3P3790C	35,00,000	Cash
22.	Amazing Sales Pvt. Limited, 20/2/A, M. D. Road, Kolkata-700007	AAGCA2397B	40,00,000	Cash
23.	Amazing Sales Pvt. Limited, 20/2/A, M. D. Road, Kolkata-700 007	AAGCA2397B	5,00,000	Cash
24.	Abhilasha Vyapaar Pvt. Limited 20/2/A, M.D. Road, 3 rd Floor, Kolkata - 700007	AAGCA2398Q	40,00,000	Cash
25.	Abhilasha Vyapaar Pvt. Ltd., 20/2/A, M. D. Road, 3 rd Floor, Kolkata-700007	AAGCA2398Q	5,00,000	Cash
26.	Ashamangal Vanijya Pvt Ltd. 20A, Maharshee Devendra Road, Kolkata-700007	AAGCA2448F	40,00,000	Cash
27.	Ashamangal Vanijya Pvt. Ltd. 20A, Maharshee Devendra Road, Kolkata-700007	AAGCA2448F	5,00,000	Cash
28.	Shreeyukta Merchants Pvt Limited, 9/12, Lal Bazar Street, Block-A, 1 st Floor Room No. 9, Kolkata-700001	AAKCS0581R	38,00,000	Cash



29.	Snehpushp Sales Pvt Limited, 20, MaharshiDevendra Road, Kolkata PIN-700007	AAKCS7275C	37,00,000	Cash
30.	Shrinu Vinimay Pvt. Ltd. 132/1, M.G. Road, 4 th Floor, Kolkata - 700007	AAKCSO436R	38,00,000	Cash
31.	Snehpushp Sales Pvt Limited, 20, Maharshi Devendra Road, Kolkata PIN-700 007	AAMCS4127P	5,00,000	Cash
32.	Geeta Debnath, Fatasil Ambari, Guwahati-78 008	AHZPD8105D	45,030	Cash

3.1 Even though the list is of 31 companies and one person however, it was submitted before the Ld. CIT(A) that it had received share application money only from 20 companies and the details are accordingly reworked out as under:

Sl. No.	COMPANY NAME & ADDRESS	PAN	AMOUNT	Mode
1.	Green Valley Sales Pvt. Limited 20, Maharshi Devendra Road, Kolkata-700007	AACCG8192Q	40,00,000	Cash
2.	Green Valley Sales Pvt. Limited, 20, Maharshi Devendra Road, 4 th Floor, Kolkata-700 007	AACCG8192Q	33,00,000	Cash
3.	Improve Vintrade Pvt Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AACCI2544L	35,00,000	Cash
4.	Janpragati Merchants Pvt. Ltd. 15/2, Armenium Street, 2nd Floor, Kolkata-700 007	AACCCJ0768K	40,00,000	Cash
5.	Tulip Goods Pvt. Limited, BN-18/A, North Complex, 35, Lawrence Street, Uttarpara, West Bengal-712258	AACCT6422C	36,00,000	Cash
6.	Tulip Goods Pvt. Limited, BN-18/A, North Complex, 35, Lawrence Street, Uttarpara, West Bengal-712258	AACCT6422C	5,00,000	Cash
7.	Topmost Tie-Up Pvt Limited 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah	AACCT6449F	45,00,000	Cash
8.	Victor Commodities Pvt Limited, 24/25, Becharam Chowdhury Lane, 4 th Floor, Howrah-711101, West Bengal	AACCV4477H	39,00,000	Cash
9.	Valentino Tradecom Pvt Ltd. 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah, West Bengal-711101	AACCV4509L	38,00,000	Cash
10.	Basanti Tradecom Pvt. Limited 62, Nalini Seth Road, Kolkata -700007	AADCB1003E	35,00,000	Cash
11.	Basanti Tradecom Pvt. Limited, 62, Nalini Seth Road, Kolkata- 700007	AADCB1003E	5,00,000	Cash
12.	Country Wide Tradecom Pvt Limited, 62, Nalini Seth Road, Kolkata-700007	AADCC0385J	5,00,000	Cash
13.	Country Wide Tradecom Pvt. Limited, 62, Nalini Seth Road, Kolkata-700007	AADCCO385J	36,00,000	Cash
14.	Green Valley Mercantile Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AADCG2756K	40.00.000	Cash
15.	Kohinoor Commodities Pvt. Limited, 20, Maharshi Devendra Road, 4 th Floor, Kolkata- 700 007	AADCK0453B	37,00,000	Cash
16.	Kohinoor Commodities Pvt. Limited, 20, Maharshi Devendra Road, Kolkata-700007	AADCK0453B	5,00,000	Cash
17.	Pleasant Sales Pvt Limited, 62, Nalini Seth Road, Kolkata-700007	AAECP2157L	40,00,000	Cash
18.	Plesant Sales Pvt. Limited, 62, Nalini Seth Road, Floor,	AAECP2157L	5,00,000	Cash



	Howrah-711101			
19.	Pushpanjali Tie-UP Pvt Limited, 2C, Imam Bux Lane, Kolkata- 700006	AAECP2158F	38,00,000	Cash
20.	Pushpanjali Tie-UP Pvt. Limited, 2C, Imam Bux Lane, Kolkata-700006	AAECP2158F	5,00^00	Cash
21.	Pushpanidhi Distributor Pvt Limited, 24/25, Becharam Chowdhury Lane, Howrah- 711101	AAFPC3790C	35,00,000	Cash
22.	Amazing Sales Pvt. Limited, 20/2/A, M. D. Road, Kolkata-700007	AAGCA2397B	40,00,000	Cash
23.	Amazing Sales Pvt. Limited, 20/2/A, M. D. Road, Kolkata-700 007	AAGCA2397B	5,00,000	Cash
24.	Abhilasha Vyapaar Pvt. Limited 20/2/A, M.D. Road, 3 rd Floor, Kolkata - 700007	AAGCA2398Q	40,00,000	Cash
25.	Abhilasha Vyapaar Pvt. Ltd., 20/2/A, M. D. Road, 3 rd Floor, Kolkata-700007	AAGCA2398Q	5,00,000	Cash
26.	Ashamangal Vanijya Pvt Ltd. 20A, Maharshee Devendra Road, Kolkata-700007	AAGCA2448F	40,00,000	Cash
27.	Ashamangal Vanijya Pvt. Ltd. 20A, Maharshee Devendra Road, Kolkata-700007	AAGCA2448F	5,00,000	Cash
28.	Shreeyukta Merchants Pvt Limited, 9/12, Lal Bazar Street, Block-A, 1 st Floor Room No. 9, Kolkata-700001	AAKCS0581R	38,00,000	Cash
29.	Snehpushp Sales Pvt Limited, 20, Maharshi Devendra Road, Kolkata PIN-700007	AAKCS7275C	37,00,000	Cash
30.	Shrinu Vinimay Pvt. Ltd. 132/1, M.G. Road, 4 th Floor, Kolkata - 700007	AAKCSO436R	38,00,000	Cash
31.	Snehpushp Sales Pvt Limited, 20, Maharshi Devendra Road, Kolkata PIN-700 007	AAMCS4127P	5,00,000	Cash
32.	Geeta Debnath, Fatasil Ambari, Guwahati-78 008	AHZPD8105D	45,030	Cash

3.2 Thus, a sum of Rs. 8.50 Crore from 20 closely held companies based in Kolkata and another sum of Rs. 45,030/- from Geeta Debnath, an individual based in Guwahati which may be related to the Director of the company were received. The assessee could not furnish the date(s) of the receipt of share application money from the share applicants except for the list produced, the assessee could not file even a single documentary evidence to prove the identity and the creditworthiness of the shareholders and the genuineness of the transaction of the share application money received during the relevant period. The Ld. AO examined the provisions of section 68 of the Act and held that the assessee had to establish the shareholders' identity, genuineness of the transaction and the creditworthiness of the shareholders but except for furnishing a list of 31 companies and an individual, the assessee did



not furnish any evidence to prove its claim. In order to enquire and verify as to how the companies based in Kolkata had invested in a private limited company based in Guwahati, Shri Tapash Debnath, Managing Director of the assessee company was summoned u/s 131 of the Act for recording his statement u/s 131 of the Act and examining certain issues and his statement was recorded, who confirmed the names and addresses of the parties from whom the assessee company claimed to have received the share application money and also confirmed that all the share application money was received by way of cash only. The examination was partially carried out and his statement was recorded on 21.12.2013, was temporarily concluded which was to be resumed on 13.03.2013 but could not be concluded on this date as well and was temporarily concluded and the case was adjourned to 15.03.2013. However, due to non-compliance by the Director who appeared before the Ld. AO, his statement could not be finally concluded on the adjourned date. The Ld. AO observed that all the companies from whom the assessee claimed to have received the share application money were based in Kolkata. Further, he noted that the assessee is not a reputed company, therefore, it was improbable that companies from Kolkata would invest such huge amount in such a small, unknown and un-reputed company like the assessee company where there was no guarantee of getting their money back and when they had many other avenues of investing their money in other reputed companies or banks from where they could expect good returns. According to the Ld. AO, it was beyond the human probabilities that all these 31 companies would invest such huge amounts in such a small, unknown company like the assessee company. It was also not explained by the assessee as to how the above companies had brought such a



huge amount of cash from Kolkata to Guwahati as it was not possible to bring such huge amount of cash by Airways. The details of the investor companies who had invested in shares of the assessee company were downloaded from the website of the Ministry of Corporate Affairs and it was found that all the 31 companies were registered in Kolkata with meagre subscribed share capital and also these companies were formed during the last quarter of March, 2007. Further perusal of the LLP Master Data downloaded from the website of Ministry of Corporate Affairs shows that the status of most of the companies was “under process of striking off” which implied that either these companies were not filing their annual return with the ROC regularly or they had filed applications before the ROC for striking off their names. It was also noted by the Ld. AO from the website of the Ministry of Corporate Affairs that there were many common Directors in the above companies and some of the Directors of those companies were Directors in several companies. As an illustration, the names of following four Directors have been mentioned in the assessment order:

- a. Shri BiswanathGiri, Director of (i) Countrywide Tradecom P. Ltd. (ii) Kohinoor Commodities Private Limited, (iii) Pusphanjali Tie-up Limited is a Director in 41 (forty one) other companies.
- b. Lalit Jain, Director of (i) Countrywide Tradecom P Ltd, (ii) Kohinoor Commodities Private Limited, (iii) Pusphanjali Tie-Up P Limited is a Director in 9(nine) other companies.
- c. Ashok Kumar Panday, Director of (i) M/s Tulip Goods Private Limited, (ii) M/s Ashamangal Vanijya P Limited is a Director in 67 (sixty seven) other companies.

d. Sunil Kumar Jain, Director of (i) M/s Tulip Goods Private Limited, (ii) Srinu Vnimay Private Limited (iii) Improve Vintrade P Limited and (iv) Sreeyukta Mercantile Pvt limited is a Director in 8(eight) other companies.

3.3 According to the Ld. AO, the above facts indicated that these companies were only letter box companies having no actual existence and were created only to give accommodation entries to some companies in the form of share application money/investment in shares. The Ld. AO noted that the assessee had failed to furnish the date of receipt of the money and it was not explained as to what the assessee company did with such a huge amount of cash. Since the assessee was claiming that it had received share application money during the year, the burden was on the assessee to prove the identity, capacity and genuineness of the transactions which in the instant case had not been discharged as even the initial burden of proving the genuineness of the claim except for the names and addresses of the 31 companies and an individual from whom the assessee is claiming to have received the share application money could not be discharged. The assessee could not furnish even a single piece of evidence like confirmation of the share application contribution from the parties or copies of their IT returns and balance sheets of the investor companies or bank statements of the investor companies etc. for the relevant assessment year. Even in respect of share application money claimed to have been received from Geeta Debnath, Guwahati, the assessee failed to furnish any documentary evidence. In view of the above, since the genuineness and creditworthiness of the alleged share application money remained unverifiable, therefore, there was reason to doubt the veracity of the transactions and failure on the part of the assessee to



furnish the date of receipt of share application money and other documentary evidence discussed in the assessment order clearly indicated that the assessee had actually not received any such share application money during the year and the amount shown under this head was nothing but its own unaccounted money which was introduced in the garb of share application money. On considering the facts and the surrounding circumstances and applying the test of human probabilities, the Ld. AO concluded that it was highly improbable that companies from Kolkata would be investing such huge sums of money in the shares of an unlisted company when there are lots of avenues for investing their money in listed companies or other Govt./public securities. The transactions shown by the assessee in respect of the 31 companies' share applications could not be accepted as genuine as it was improbable under the test of human probabilities applied to the surrounding circumstances of the case in entirety. In view of the discussion made, a sum of Rs. 8,50,00,000/- from 31 companies was treated as bogus and was assessed as income from undisclosed sources invested in the garb of share application money in the name of other companies. Further, a sum of Rs. 45,030/- from Smt. Geeta Debnath, Guwahati was also treated as bogus and brought to taxation as undisclosed income of the assessee in absence of any documentary evidence to prove the genuineness of transaction and the credit worthiness of the applicant. Thus, an addition of Rs. 8,50,45,030/- was made to the total income of the assessee and the total income was assessed at Rs. 9,50,41,130/-.

4. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) and also raised an additional ground relating to membership fee of Rs. 5,11,68,800/- which was credited under the

head 'other income' in the profit and loss account for advance received from members against Service 86 FMCG Product but the same had not been provided due to the fact that full payment was not made and was wrongly included in the income and tax was paid thereon. The same was requested to be deleted and taken as liability of the assessee company. The Ld. CIT(A) considered the submission of the assessee, went through the judicial pronouncements and confirmed both the additions on account of share application money and also discussed the additional ground of appeal in view of the decision of the Hon'ble Guwahati High Court in Criminal Petition No. 98 of 2010 in the case of Accrescent Way Marketing Pvt. Ltd., Sh. Tapash Debnath and Smt Jayati Bhattacharjee Debnath vs. The State of Assam, Sh. Dipak Biswas and Axis Bank order dated 02.06.2011. The appeal of the assessee was accordingly dismissed.

5. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

6. Rival submissions were heard and the record and the submissions made have been examined.

7. Before us the assessee has also made the written submissions on the three grounds of appeal raised as under:

"Ground 1: For that the Learned Commissioner of Income Tax (Appeals) erred in facts as well as in law in upholding the order of the Assessing Officer adding back a sum of 28,50,45,030/- under the head "Income from other sources" on account of unexplained Share Application Money u/s 68 of Income Tax Act, 1961.

The Hon'ble CIT(A) upheld the order of the Assessing Officer in respect of the additions made under Section 68 based on the following arguments (Para 8(iv) -Page 15-25 of the CIT(A) Order):

- a) *The primary onus is on the assessee to prove the identity and creditworthiness of the party and the genuineness of the transaction in respect of the cash credit in the books of account.*
- b) *The Appellant did not file even a single document qua identity, creditworthiness and genuineness.*
- c) *Owing to the failure of the assessee to discharge the primary onus, the Assessing Officer could not examine these parties under section 133(6).*
- d) *It is highly implausible that an unknown person had made substantial investment in a private limited company.*
- e) *The Appellant adopted a prevaricating and non-co-operative attitude before the learned AO.*
- f) *The Assessee failed to produced the shareholders before the Assessing Officer for examination.*

Submission:

1. *The Hon'ble CIT failed to appreciate the fact that the burden of proving the nature and source of the cash credit had never been cast upon the assessee. There was no indication from the Assessing Officer at any stage of the assessment that he intended to invoke the provisions of Section 68.*
- *Explanation of nature and source of the Share Application money was never asked for during the course of the assessment.*
 - *During the assessment proceedings Notice u/s 142(1) was issued on 30.10.2012 seeking details/explanations on 17 points. During the course of hearing, no further details were ever called for except the following:*
 - a. *Hearing Dated 30.11.2012: Books of Accounts were asked to be produced (Paper Book Page 29);*
 - b. *Hearing dated 06.03.2013: Documentary evidence pertaining to receipt of Share Application Money were asked for (Paper Book Page 32).*
 - *During the assessment proceedings recorded on 28.12.2012, where all details required under the 142(1) notice were furnished, the AO recorded that details furnished under Sl No 8 was in incomplete format and needed to be furnished again (Paper Book Page 31). It implied that other details were found satisfactory.*
 - *Full list of Shareholders was placed before the AO vide submission dated 28.12.2012 (Paper Book Page 35-38) to explain the addition to share premium. Also complete details of Share Applicants in the format*

required at Sl No 7 of the 142(1) notice dated 30.10.2012 was provided (Paper book Page 39-42).

- The appellant assessee had thus discharged the burden cast upon it as far as details of share application was concerned. No query about the nature and source of the application money was raised.

The following cases before the Hon'ble SC wherein the court has decided about burden of proof would highlight the proposition that the initiation of the enquiry should be from the side of the assessing officer, and only thereafter the burden would shift to the assessee (emphasis added):

1. In *Sreelekha Banerjee vs. CIT* (1963) 49 ITR 112 (SC), this Court held that if there was an entry in the account books of the assessee which showed the receipt of a sum on conversion of high denomination notes tendered for conversion by the assessee himself, it is necessary for the assessee to establish, if asked, what the source of that money was and to prove that it was not income.
 2. In *Commissioner of Income Tax vs. Orissa Corporation (P) Ltd.* (1986) 159 ITR 78 (SC) the court while recounting the facts of the case noted the following:

"3. The assessee, at the relevant time, was a private limited company and maintained accounts according to the calendar year. For the accounting year ending on 31st Dec., 1961, corresponding to the asst. yr. 1962-63, the ITO did not accept the assessee's accounts showing cash credits of Rs. 1,50,000."
 3. In *Lalchand Bhagat Ambica Ram vs. Commissioner of Income Tax* (1959) 37 ITR 288 (SC), the facts recounted by the court was as follows:

"3. The appellant filed its IT return for the asst. yr. 1946-47 showing a loss of Rs. 46,415 in the business. The ITO, Patna, however, in the course of the assessment noticed that the appellant had encashed high denomination notes of the value of Rs. 2,91,000 on 19th Jan., 1946. The ITO asked for an explanation which the appellant gave stating that these notes formed part of its cash balances including cash balance in the Almirah account."
2. The Hon'ble CIT(A) failed to appreciate the true facts of the case and confirmed the addition on totally wrong facts which negatively affected his judgement.
- The CIT(A) in his order has commented that it is highly implausible that an unknown person had made substantial investment in a private limited company. However sir, a perusal of the list of Share Applicants shows that there were a total of 20 Applicant companies and one individual applicant. Of these 21, **13 were existing shareholders of the assessee company** and only 8 companies were new investors



(Reference is invited to lists attached at Paper Book Page 34-42). Furthermore, the share applications received from the existing shareholders had already been examined in the scrutiny assessment for the AY 2009-10 and no adverse findings were recorded.

- The CIT(A) has commented that the Appellant adopted a prevaricating and non-co-operative attitude before the learned AO. This is not at all borne out by the facts. Your honours kind attention is invited to the Order Sheet of the proceedings (Paper Book Page 27-33) which reveals that the Assessee has responded to each and every notice and has attended every hearing date. It has also furnished all information asked for.
- The CIT(A) has also mentioned that the Assessee failed to produce the shareholders before the Assessing Officer for examination. Your honours would appreciate that there was never an occasion when attendance of the share applicants was demanded by the Assessing Officer. No notice u/s 131 or even under 133(6) were ever issued. There was therefore no cause for levelling this allegation at the assessee.

You Honours, all these wrong facts have heavily weighed upon the judgement of the Hon'ble CIT(A) and hence the CIT(A) was wrong in rejecting the appeal.

Reference Invited:

1. Order Sheet of Proceedings u/s 143(3).
2. List of Existing Shareholders filed before the Assessing Officer.
3. Complete details of Share Applicants filed before the Assessing Officer.
4. Reference is invited to the Assessment Order and the CIT(A)'s Order.

Ground 2: For that the Learned Commissioner of Income Tax (Appeals) erred in law in upholding the addition u/s 68 of Income Tax Act, 1961 when the pre-conditions for such addition did not exist in the present case.

1. Non-examination of Books of Accounts:

- Your honours, the basic condition of invoking Section 68 is an entry in the books of accounts. The section begins with the words "where any sum is found credited in the books maintained by the assessee....". In the present case, during the entire proceedings, there is no mention of any examination being carried out of the books by the Assessing Officer although at the hearing held on 30.11.2012, the Assessing Officer had indeed asked for production of books. But the subsequent proceedings, nor the assessment order speaks of any such examination. In fact in para 8, the Assessing Officer writes that the dates on which the money has been received is not known to him, because it was not furnished by the Assessee which could not have been the case if books had been actually examined.

- Para 8 of the assessment order clearly states that the issue under enquiry has arisen from a study of the Balance Sheet of the assessee company which showed that the company had raised Share Application Money of Rs 8,50,45,030/- during the relevant period. It is an accepted position that a Balance Sheet cannot be equated with Books of Accounts in as much as it is a mere extract of the books as on a particular date.
- Thus invoking Section 68 based merely on the Balance Sheet of the company is not in accordance with the law.

2. No Opportunity to explain Nature and Source of Credit:

- The appellant, after having furnished details called for under the notice issued u/s 142(1), was never asked upon to explain the nature and source of the credit in the books of accounts. The question of making additions under Section 68 therefore does not arise at all. Failure to explain the nature and source can only will arise once such explanation is asked for. Since the scrutiny was a general scrutiny and not based on only the issue of share capital, the assessee could not have known in what line the Assessing Officer intended to complete the assessment.
- In the absence of opportunity, the appellant could not have produced any documents pertaining to the identity and creditworthiness of the share applicants and the genuineness of the transaction. Such opportunity was neither provided by the Assessing Officer nor by the Hon'ble CIT(A). The assessee company is in a position to discharge the onus once the burden is cast upon it. If permitted, the company would like to place such evidence before your honours.

3. Share Capital do not fall within the ambit of Section 68:

- Another legal question which is relevant to the case is whether Section 68 can be invoked in the matter of Share Money at all. The law as existed at that point in time (before amendment made by Finance Act 2012) w.e.f. AY 2013-14) was what was laid down by the Apex Court in Commissioner of Income Tax vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195: (2008) 6 DTR (SC) 308. In this case, the Hon'ble Supreme Court while rejecting the SLP filed by the Department challenging a Delhi High Court order in the matter of Section 68, has clearly expounded the following: "Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

In view of the above propositions, the invocation of Section 68 in this case is highly irregular and against the provisions of law. The Assessment Order may therefore be struck down as illegal.

Ground 3: For that the Learned CIT(A) has failed to appreciate the facts and circumstances of the claim for deduction raised before her in regard to liability of 5,11,68,800/- which was erroneously offered as Income by the appellant company and was thoroughly unjustified in disallowing the claim raised before her.

1. The following additional ground was raised before the Hon'ble CIT(A) during the course of the appeal:

"That Membership fees Rs. 5,11,68,800/- shown under the head other Income (Sch. 15 of Profit & Loss Account) which was liability of Company for Advance received from members against Service & FMCG Product but same has not been provided due to full payment was not made and wrongly included in Income and Tax paid thereon, same should be delete and taken as Liability of Assessee Company"

2. This claim was raised for the first time before the CIT(A) based on the following judicial precedents

- CIT vs Motor Industries Co. Ltd. 229 ITR 137 (Kar) where it was held that The CIT (A) and ITAT can permit assessee to claim deduction not claimed before ITO when relevant material are an record.*
- Similarly Kolkata Branch of ITAT in the case of Kandi Industrial (P) Ltd V. DCIT (2006) 100 ITD 462 (ITAT KOL) held that if assessee entitled to certain relief, deduction or benefit, assessee should not be denied or deprived on it even if claim pertaining to some is made for first time before Tribunal during pendency of appeal before it.*

3. The Hon'ble CIT(A) very kindly accepted the ground and looked into the claim. However, the claim was rejected by her based on incorrect appreciation of facts.

4. The following facts are laid down in this matter before your honours:

- a. The sum of 5,11,68,800/- was credited to the Profit & Loss Account for the year ended 31.03.2010 under the head Other Income in Schedule 15, and thus was offered for tax for the AY 2010-11.*
- b. This sum represented advance received from subscribers of its business plans under name & style of "AWM PLAN" & AWM SAVIOUR PLAN" against which the subscriber was entitled to received certain products. The receipt issued against the same is clear proof of the same. It was thus a liability of the company which should have been included as such in the Balance Sheet instead of being shown as income.*
- c. The terms of the plan, as printed in the plan brochure and also on the money receipt issued by the company (Paper Book Page 43-44) nowhere provide that the money will be forfeited if plan conditions were not*

fulfilled. The CIT(A) was wrong to hold that "On account of non-performance by the customer or below performance, the initial deposits have been forfeited." (Page 37 of CIT(A)'s Order).

- d. The CIT(A)'s while dismissing the claim has opined that it would be premature to hold that the initial deposits are not income of the appellant in view of the fact that a Special Investigation Team is looking into the matter in view of the directions of the Hon'ble Gauhati High Court. However, since the facts are very clear on the point of whether the deposit is income or liability, the outcome of the ongoing investigation should have no bearing on the issue.*

It is prayed before your honour that the claim the sum of Rs 5,11,68,800/- erroneously credited to the Profit & Loss Account of the company instead of being shown as a liability may be admitted.

Evidence Placed Before Your Honours:

- 1. Financial Statements for FY 2009-10: Reference is invited to Profit & Loss Account and Schedule 15.*
- 2. Receipt issued against the Club membership Fees receipt which shows that it is an advance/ booking of Products. Also reference is invited to the terms printed on the receipt."*

8. It was submitted by the Ld. AR that no opportunity was provided at all by the Ld. AO regarding the addition to be made u/s 68 of the Act as only one notice u/s 142(1) of the Act was issued. The gist of submissions made are at page 24 of the paper book in which the notice issued u/s 142(1) of the Act has been filed. It was stated that at Sl. No. 7 the only query raised was regarding the details of share application money being the name and full postal address of the parties, PAN, date of receipt, amount received and mode of receipt and the details were duly furnished on 28.12.2012 vide page no. 34 of the paper book. However, a perusal of Annexure-B enclosed therein shows that while the date of allotment of shares is mentioned in respect of the 14 applicants as per the details of shareholder and share premium as 31.03.2010, the details of share application money is at page 39 to 41 of the paper book which mentions the date of application but the date of receipt of cash is not mentioned. It was submitted that the details of shareholder and share premium were filed and as per the details of



shareholders it is observed that the amount invested being face value of shares of Rs. 100/- per share and except for the two promoters, premium of Rs. 900/- per share on the face value of Rs. 100/- was charged from 12 other applicants for total shares of 8000, while share application money has been received in respect of 34 transactions amounted to Rs. 8,50,45,030/- as per the details from page 39 to 42 of the paper book filed. It was also argued that the Ld. AO had not issued any notice to the assessee or 2 the investors but made the addition. The Ld. CIT(A) vide page 15 gave opportunity to the assessee but there were riots in the office which led to misplacement of records and the same being beyond the control of the assessee, the details are required could not be filed and noticed out and placed in paper book 2 filed before us. It was requested that an opportunity may be provided to furnish the same before the Ld. CIT(A).

8.1 The Ld. DR on the other hand submitted that the Ld. CIT(A) has referred to Hon'ble Guwahati High Court's order and multilevel marketing and the initial deposits in 80 cases having been forfeited, the cases being filed against the assessee and the Directors and the money being siphoned off clandestinely which has been brought back in the books of accounts in the guise of share application money.

9. The Ld. AR further submitted in respect of Ground nos. 2 and 3 and the observation of the Ld. CIT(A) that Special Investigation Team (SIT) has yet not given any verdict in the matter and it would be unfortunate to hold the assessee guilty till final outcome of investigation by SIT. The Ld. Judicial Member intervened at this juncture and stated that the creditworthiness of the investors being 21 applicants out of which 12 were also in the previous year alone and the assessment of

which was also under scrutiny but the Ld. AO had not taken any adverse view on the same. The assessee submitted that 12 were existing shareholders and no new persons were included, no opportunity was provided to prove the genuineness of the transactions and para 8.1 of the assessment order was referred in this regard. It was submitted by the Ld. AR that the onus shifts only after the enquiries are conducted. It was observed by the bench that in this case the enquiry could not be concluded as the statement of the Managing Director remained incomplete.

10. The Ld. DR argued and stated that the Ld. AO had downloaded the data from MCA website as most of the companies or applicants had not filed their return and were either written off/struck off or were only existing for providing accommodation entry as is mentioned at page 7 of the assessment order. It was submitted that the assessee failed to prove the genuineness, the creditworthiness and the source of the transactions as is mentioned at para 8.2 of the assessment order. The Ld. DR further stated that the investors had no source, and the MCA website showed that these companies were not filing their return. Further, the balance sheet and income-expenditure statement filed now before the Hon'ble Tribunal do not support the case of the assessee.

11. We have considered the submissions made and have also gone through the facts of the case and examined the paper books filed. The assessee has not given any cogent reason as to why the details which were available with him were not filed before the Ld. AO or even before the Ld. CIT(A) as regards the application for shares in the FY 2009-10 relevant for A.Y. 2010-11 .



12. On the basis of the submission made all these are fresh evidences and therefore, in the absence of valid reasons for not submitting before the Ld. AO, the same are not liable to be accepted.

13. In the case of these 20 applicant companies the details of income in their returns filed is shown as under which has been compiled from the details filed the course of the appeal before us:

Sl. No.	COMPANY NAME & ADDRESS	PAN	ITR (Rs.)
1.	Amazing Sales Pvt. Limited, 20/2/A, M. D. Road, Kolkata- 700007	AAGCA2397B	857/-
2.	Abhilasha Vyapaar Pvt. Ltd., 20/2/A, M. D. Road, 3 rd Floor, Kolkata-700007	AAGCA2398Q	518/-
3.	Ashamangal Vanijya Pvt Ltd. 20A, Maharshee Devendra Road, Kolkata-700007	AAGCA2448F	
4.	Victor Commodities Pvt Limited, 24/25, Becharam Chowdhury Lane, 4 th Floor, Howrah-711101, West Bengal	AACCV4477H	648/-
5.	Topmost Tie-Up Pvt Limited 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah	AACCT6449F	1,051/-
6.	Valentino Tradecom Pvt Ltd. 24/25, Becharam Chowdhury Lane, 5 th Floor, Howrah, West Bengal-711101	AACCV4509L	
7.	Pushpanjali Tie-UP Pvt Limited, 2C, Imam Bux Lane, Kolkata-700006	AAECP2158F	
8.	Basanti Tradecom Pvt. Limited 62, Nalini Seth Road, Kolkata -700007	AADCB1003E	713/-
9.	Improve Vintrade Pvt Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AACCI2544L	0
10.	Plesant Sales Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AAECP2157L	860/-
11.	Country Wide Tradecom Pvt Limited, 62, Nalini Seth Road, Kolkata-700007	AADCC0385J	896/-
12.	Green Valley Mercantile Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AADCG2756K	175/-
13.	Shreeyukta Merchants Pvt Limited, 9/12, Lal Bazar Street, Block-A, 1 st Floor Room No. 9, Kolkata-700001	AAKCS0581R	370/-
14.	Tulip Goods Pvt. Limited, BN-18/A, North Complex, 35, Lawrence Street, Uttarpara, West Bengal-712258	AACCT6422C	701/-
15.	Pushpanidhi Distributor Pvt Limited, 24/25, Becharam Chowdhury Lane, Howrah- 711101	AAF3790C	300/-
16.	Shrinu Vinimay Pvt. Ltd. 132/1, M.G. Road, 4 th Floor, Kolkata -700007	AAKCSO436R	295/-
17.	Janpragati Merchants Pvt. Ltd. 15/2, Armenium Street, 2nd Floor, Kolkata-700 007	AACCJ0768K	240/-



18.	Green Valley Mercantile Pvt. Limited, 62, Nalini Seth Road, Floor, Howrah-711101	AADCG2756K	526/-
19.	Kohinoor Commodities Pvt. Limited, 20, Maharshi Devendra Road, Kolkata-700007	AADCK0453B	914/-
20.	Snehpushp Sales Pvt Limited, 20, Maharshi Devendra Road, Kolkata PIN-700 007	AAMCS4127P	738/-

14. Thus, all these companies had meagre income and as the assessee has not justified the premium charged, the whole transaction is a make-believe transaction. We also note that on the face value of Rs. 100/-per share, the assessee charged premium of Rs. 900/- without any supporting evidence. The share applicants are based in Kolkata while the assessee was in Guwahati and the entire share application money is claimed to have been received in cash. How the money moved Kolkata to Guwahati could neither be demonstrated before the Ld. AO nor before the Ld. CIT(A).

15. Similar issue arose in the case of **Winsher Vinimay Pvt. Ltd. Vs. ITO, Ward-9(2), Kolkata in ITA No.1393/KOL/2018 for AY 2012-13** before the **ITAT "A" BENCH KOLKATA** in the **order dated 06.08.2024** wherein reliance has been placed on a recent decision of the Hon'ble jurisdictional High Court in the case of **Principal Commissioner of Income-tax v. BST Infratech Ltd. [2024] 161 taxmann.com 668 (Calcutta)** to decide the issue of share premium treated as unexplained cash credit. The relevant extracts from the order are as under:

*"11. We have gone through the facts of the case, the written submissions filed by both the Ld. AR and the Ld. Sr. DR as well as the case laws cited. A similar issue came up for consideration before the Hon'ble Jurisdictional High Court and in the case of **Principal Commissioner of Income-tax v. BST Infratech Ltd. [2024] 161 taxmann.com 668 (Calcutta)** this issue has been discussed threadbare. Relevant paragraphs from the order of the Hon'ble High Court are extracted and reproduced as under:*

***14.** Before we examine the correctness of the decision rendered by the learned tribunal it will be beneficial to take note of a few decisions which have elaborately dealt with Section 68 of the Act and what are*

the parameters which are required to be established to prove the creditworthiness or the genuineness of a transaction.

15. *Mr. Om Narayan Rai, learned senior standing counsel appearing for the departments submits that though the assessee might have established the identity and creditworthiness of the share applicants at the relevant time but the third and the most important ingredient namely genuineness of the transaction has to be established and unless and until all the three factors are conjointly established, the revenue was fully justified in invoking Section 68 of the Act.*

16. *In CIT v. N.R. Portfolio Private Limited [2014] 42 taxmann.com 339/264 CTR 258/222 Taxman 157 (Delhi) the substantial question of law which was framed for consideration is whether the tribunal was right in deleting the additions under Section 68 of the Act and whether the decision of the tribunal is perverse.*

17. *With regard to the role of the assessing officer, the Hon'ble Court held that the assessing officer is both an investigator and an adjudicator; when a fact is alleged and stated before the assessing officer by an assessee, he must and should examine and verify, when in doubt or when the assertion is debatable. Normally a factual assertion made should be accepted by the assessing officer unless for justification and reasons the assessing officer feels that he needs/requires a deeper and detailed verification of the facts alleged. The assessee in such circumstances should cooperate and furnish papers, details and particulars, this may entail issue of notices to third parties to furnish and supply information or confirm facts or even attend as witnesses. The assessing officer can also refer to incriminating material or evidence available with him and call upon the assessee to file their response. A universal procedure or method which should be adopted by the assessing officer when verification of facts is required cannot be laid down. The manner and mode of conducting assessment proceedings has to be left to the discretion of the assessing officer and the same should be just, fair and should not cause harassment to the assessee or third person from whom the confirmation or verification is required.*

18. *It was further held that the provisions of the Evidence Act are not applicable but the assessing officer being a quasi-judicial authority must take care and caution to ensure that the decision is reasonable and satisfies the canons of equity, fairness and justice. The principle of Preponderance of Probability applies. On the question of creditworthiness and genuineness of the transaction in the said case,*

the Hon'ble Court recorded the following finding:-

19. On the question of creditworthiness and genuineness, it was highlighted that the money no doubt was received through banking channels, but did not reflect actual genuine business activity. The share subscribers did not have their own profit making apparatus and were not involved in business activity. They merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. The bank accounts, therefore, did not reflect their creditworthiness or even genuineness of the transaction. The beneficiaries, including the respondent-assessee, did not give any share-dividend or interest to the said entry operators/subscribers. The profit motive normal in case of investment, was entirely absent. In the present case, no profit or dividend was declared on the shares. Any person, who would invest money or give loan would certainly seek return or income as consideration. These facts are not adverted to and as noticed below are true and correct. They are undoubtedly relevant and material facts for ascertaining creditworthiness and genuineness of the transactions.

19. The doctrine of "Source of Source" or "Origin of Origin" was explained in the following terms:-

24. We are conscious of the doctrine of 'source of source' or 'origin of origin' and also possible difficulty which an assessee may be faced with when asked to establish unimpeachable creditworthiness of the share subscribers. But this aspect has to be decided on factual matrix of each case and strict or stringent test may not be applied to arms length angel investors or normal public issues. Doctrine of 'source of source' or 'origin of origin' cannot be applied universally, without reference to the factual matrix and facts of each case. The said test in case of normal business transactions may be light and not vigorous. The said doctrine is applied when there is evidence to show that assessee may not be aware, could not have knowledge or was unconcerned as to the source of money paid or belonging to the third party. This may be due to the nature and character of the commercial/business transaction relationship between the parties, statutory postulates etc. However, when there is surrounding evidence and material manifesting and revealing involvement of the assessee in the "transaction" and that it was not entirely an arm's length transaction, resort or reliance to the

said doctrine may be counter-productive and contrary to equity and justice. The doctrine is not an eldritch or a camouflage to circulate ill gotten and unrecorded money. Without being oblivious to the constraints of the assessee, an objective and fair approach/determination is required. Thus, no assessee should be harassed and harried but any dishonest facade and smokescreens which masquerade as pretence should be exposed and not accepted.

20. *With regard to the identity, creditworthiness and genuineness of the transaction and the onus of prove the Hon'ble Court held as follows:-*

30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them.

31. 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 may, as in the present case required entail a deeper scrutiny. 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. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are

basically and primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent, cannot be spured by formal but unreliable pale evidence ignoring the patent and what is plain and writ large.

21. *In Rajmandir Estates Private Limited v. Principal Commissioner of Income Tax 2016 SCC Online Cal 1237, one of the substantial questions of law which fell for consideration was whether the finding of the CIT(A) that unaccounted money was or could have been laundered as clean share capital by creating facade of paper work, routing the money through several bank accounts and getting the seal of statutory approval by getting the case re-opened under Section 147 suo motu and whether the same is perverse. The facts of the said case was noted wherein 19 out of the 13 applicants secured funds for the purpose of contributing to the share capital of the assessee therein, on account of share application money. In other words, those 19 applicants collected funds on account of share application money in their respective companies and that money was contributed to the share capital of the assessee. 15 out of the 39 applicants procured the requisite funds by selling the shares and the rest of the applicants of shares, in the share capital of the assessee company, did not disclose the nature of receipt at their end though the source of funds were identified. Further the shares were offered to and subscribed by closely held companies owned by the promoter/director or their close relatives and friends. After noting the facts, the Hon'ble Court held that the identity of the alleged shareholders is known but the transaction was not a genuine transaction. The transaction was nominal rather than real; creditworthiness of the alleged shareholders is also not established because they did not have money of their own, each one of them received from somebody and that somebody received from a third person and therefore prima facie, shareholders are near namelenders.*

22. *In Principal Commissioner of Income Tax, (Central - 1) v. NRA Iron and Steel Private Limited (2019) 15 SCC 529 the issue which fell for consideration is when share capital/premium is credited in the Books of Account of the assessee company, the onus of prove is on the assessee to establish by cogent and reliable evidence of the identity of the investor company, the creditworthiness of the investor and*

genuineness of the transaction, to the satisfaction of the assessing officer. The Hon'ble Supreme Court observed that the courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors but also the capacity of the creditors to advance money, and establish the genuineness of those transaction. The initial onus of proof lies on the assessee. The decision in *Roshan Di Hatti v. Commissioner of Income Tax (1977) 2 SCC 378* was referred to wherein it was held that if the assessee fails to discharge the onus by producing cogent evidence and explanation the assessing officer would be justified in making the addition back into the income of the assessee.

23. The decision in *N.R. Portfolio Private Limited* was quoted with approval wherein it has been held that creditworthiness or genuineness of a transaction regarding share application money depends on whether two parties are related or known to each other, or mode by which parties approached each other, whether a transaction is entered into through written documentation to protect investment or whether the investor was a angel investor, the quantum of money invested, the creditworthiness of the receipt, object and purposes for which payment/investment was made etc. The incorporation of a company and payment by banking channel etc. cannot in all cases tantamount to satisfactory discharge of onus. The principles which emerge were sums of money are credited as share capital/premium was summarised as follows:-

13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

13.2. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.

24. In *Principal Commissioner of Income Tax, Kolkata v. Swati Bajaj 2022 SCC Online Cal 1572* this court considered as to in what

manner the allegation against the assessee has to be proved. It was held that to prove the allegation against the assessee, it can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegation/charges made and levelled and when direct evidence is not available it is the duty of the court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that are reasonable/prudent man would apply to arrive at a conclusion. It was further held that the proximity of time and prior meeting of minds is also very important factor especially when the income tax department has pointed out the unnatural rise in prices of the scripts of very little known companies.

25. While on this issue it would be beneficial to take note of the decision in *Yadu Hari Dalmia v. Commissioner of Income Tax, Delhi (Central) (1980) 126 ITR 48* wherein it was held that the whole catena of sections starting from Section 68 have been introduced in the taxing enactment step by step in order to pluck loopholes and in order to plug certain situation beyond doubts even though there were judicial decisions covering some of the aspects. It was pointed out that even prior to the introduction of Section 68 in the statute book, the courts have held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered, in the opinion of the ITO, not satisfactory, the sum so credited would be charged to income tax as income of the assessee during the relevant previous year. That Section 68 was inserted in the Act only to provide statutory recognition to a principle which had been clearly adumbrated in judicial decisions. Section 68 thus only codified the law as it existed before 01.04.1962 and did not introduce any new principle or rule.

26. We also take note of the Finance Bill, 2012 which brought about certain amendments to the Act with effect from the assessment year 20132014 wherein under the heading "Measures to Prevent Generation and Circulation of Unaccounted Money" it was pointed out that the onus of satisfactory explaining such credit remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is found to be satisfactory then the sum is added to the total income of the person. That certain judicial pronouncements have created doubts about the onus of proof and the requirements of Section 68, particularly in cases where sum

is credited as share capital, share premium etc. **That courts have drawn a distinction and emphasised that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large. In the case of closely held companies, investments are made by a known person; therefore, a higher onus is required to be placed on such companies besides the general onus to establish, identity and creditworthiness of the creditors and genuineness of the transaction. This additional onus needs to be placed on such companies to also prove the source of money in the hands of such shareholders or person making payments towards issue of shares before such sum is accepted as genuine credit. If the company fails to discharge the additional onus, the sum shall be treated as income of the company and added to its income. Therefore, it was proposed to amend Section 68 of the Act to provide the nature and onus of any sum credited, as share capital premium etc. in the books of a closely held company shall be treated as explained only if the source of fund is also explained by the assessee company in the hands of the resident shareholders.** However, even in the case of closely held companies, it is proposed that this additional onus of satisfactorily explaining the source in the hands of the shareholder, could not apply if the shareholder is a well regulated entity namely a Venture Capital Fund, a Venture Capital Company registered with SEBI.

{emphasis supplied}

27. It is no doubt true that this amendment which was made to Section 68 applies in relation to the assessment year 2013-2014 and the subsequent years and it has been argued that the said amendment will not apply to the assessee's case as the case concerns the assessment year 2012-2013. Though this may be true, as pointed out in *Yada Hari Dalmia* Section 68 as it stood prior to the earlier amendment only codified the law as it existed before 01.04.1962 and did not introduce any new principle or rule and when Section 68 was inserted in the 1961 Act it only provided a statutory recognition to a principle which had been clearly adumbrated in judicial decisions. Therefore, it was held that ratio laid down in the earlier judgments of the Hon'ble Supreme Court is equally applicable to the interpretation of Section 68 of the 1961 Act. Thus, we can very well refer to the objects behind amendment to Section 68 by Finance Bill, 2012 which has taken note of various decision of the court where the courts have drawn a distinction and

emphasised that in case of private placement of shares the legal regime should be different from that which is followed in the case of a company seeking share capital from the public at large.

28. *Having taking note of the above referred decisions and the legal principles if we revert back to the factual position in this case, we find that the CIT(A) has analysed the three principles which are required to be fulfilled namely identity, creditworthiness and genuineness of the transaction. It is not in dispute that the investors whose details we have referred in the earlier part of this judgment are all either group companies or having a common set of directors. Further the assessee has not been able to dislodge the factual findings recorded by the CIT(A) that the share application money was received from independent legal entities. By way of illustration if we take the case of Gainwell Textrade Private Limited, they have invested Rs. 8,10,00,000/- in the assessee company. The said company receives a total of Rs. 1,65,00,000/- on 01.06.2011 and 02.06.2011 from eight private limited companies/entities. Out of the said amount, Rs. 1,50,00,000/- was remitted to the assessee's bank account on 02.06.2011 by three cheques of Rs. 50,00,000/- each. The balance remained at Rs. 15,09,039/-. On 02.06.2011, an amount of Rs. 38,00,000/- was remitted to the account by a private limited company and the balance rose to Rs. 53,09,039/- out of this an amount of Rs. 50,00,000/- was remitted to the assessee account on the same day. On 04.06.2011, Divine Suppliers Private Limited deposited another sum of Rs. 60,00,000/- of which Rs. 50,00,000/- was remitted to the assessee on 06.06.2011. On 06.06.2011 Highlight Goods Private Limited transferred a sum of Rs. 10,00,000/- to this account by taking a closing balance to Rs. 23,08,819/-. On the same day an amount of Rs. 20,00,000/- was remitted to the assessee's account. On 06.06.2011 Divine Suppliers Private Limited RD Fashion transferred Rs. 25,00,000/-, Rs. 38,00,000/- and Rs. 37,00,000/- to this account and out of this amount Rs. 1,00,00,000/- was remitted to the assessee's account in two transactions on 07.06.2011. On 14.06.2011, Magnificent Distributors Private Limited remitted an amount of Rs. 35,00,000/- to the account which was immediately transferred to the assessee's account. On 18.07.2011, Superior Retail Private Limited credited an amount of Rs. 50,00,000/- to the account which was remitted to the assessee's account on 19.07.2011. On 20.07.2011 amount of Rs. 30,00,000/- was received through RTGS in the account and the amount was transferred to the account of the assessee on the same day. On 02.01.2012 an amount of Rs. 40,00,000/- was deposited into account by two companies and*

this was remitted to the assessee's account on 03.01.2012. On 03.01.2012 Salasar Garments Traders Private Limited credited to the account a sum of Rs. 20,00,000/- and out of the said amount Rs. 40,00,000/- was transferred to the assessee's account on 04.01.2012. The CIT(A) has in the above manner examined the factual position and has analysed the pattern of the transactions in the bank accounts of the five investor companies to that of the assessee's bank account. They have received cheques from somewhere and has immediately issued in favour of another company and the balance remaining in the account was very meagre the bank account has been operated solely for the purpose of rotating money.

29. With regard to the other investor namely Mubarak Cosmetics Private Limited on perusal of the bank statements, it was found that the said company had transactions with the assessee between 23.07.2011 to 28.07.2011 and the entire sum remitted to the assessee by Mubarak Cosmetics Private Limited had come from Gainwell Textrade Private Limited. The bank statements of HIL Engineering was also thoroughly examined more particularly the pattern of transaction and it was held that the only apparent purpose for which the bank accounts have been used is to receive money from one account and transfer it to another. With regard to the investor Pavapuri Mercantile Private Limited the bank statements revealed that the entire sums are remitted by Pawapuri Mercantile Private Limited to the assessee had come from Gainwell Textrade Private Limited. The analysis done by the CIT(A) would reveal the nature and character of the transaction and the CIT(A) cannot be faulted to have held that the transactions are well planned and stage managed to show genuineness behind which a clean and simple "round tripping" of funds is taking place. The CIT(A) on examination of the facts found that the bank accounts act as "highway" in the "journey of money" on a rotation and laundry trail from one entity to another and by this way these bank accounts create a facade of documentary evidence for clean money in the form of account payee cheques for any kind of accommodation entries.

30. The CIT(A) did not stop with the above findings but proceeded to analyse the data which was made available in the form of return of income, bank statements etc. and found that the investors have purchased the shares of the assessee at a premium and all have shown similar characteristics, the revenue from operations are either nil or are negligible; the returns are either of loss or of insignificant income below



taxable limit; they have been issued shares at very high premium without having earned any revenue from business operations; they have invested on shares at very high premium in companies who also have not earned anything from business operations; their balance sheet shows that even though they do not earn anything, they invite huge investments in their accounts and this money is used to make further investments at high premiums in other companies and they have also issued unsecured loans to other companies; money obtained from the route of share premium is rerouted for supplying sources of receipts of money to other companies; the circuit of investments remains within a group companies and in this manner through a circular routing of funds, the capital of each of the companies is enhanced and this inflated capital is then used for providing loans etc. to desired entities; the bank accounts show huge sums are received from one concern through cheques or RTGS and immediately diverted to other companies of the group and the bank balance remains negligible before and after such transfers; each of these companies invest in each other at very high premiums even though there is no business conducted; there is no reason or logic provided by any of the companies as to on what basis they arrived at the value of premium on shares to be issued as neither the assessee nor its investors had followed the guidelines of RBI or ICAI or any other guidelines for determining the rate of premium on their shares. Thus, the fixing of rate for premium is arbitrary and devoid of any financial or accounting rationale; the investors have not bothered to ensure protection of their investments; the investor company do not have any business operations worth noticing yet they have raised huge capital through issue of shares at a premium and also made investments in shares of other companies at a premium even though the other companies like them, did not have any promising business activities. Thus, on analysing the data which was available it is seen that each of the companies have invested in each other and the investments have been made by rotating funds from one account to another. The assessee has not been able to explain why the investors companies had applied for shares in the assessee's company at a high premium even though the face value of the share was Rs. 10/- per share. The pattern of transaction clearly shows that these investors companies had raised capital by issue of shares at a very high premium and the transaction is repetitive. Therefore, the mere

fact that the transactions were through banking channels or that the companies were income tax assessees or registered with Registrar of Companies can in no manner be sufficient to discharge the onus under Section 68 of the Act. The learned tribunal did not examine the factual matrix in the depth and in the manner it ought to have done. Therefore, we would be well justified to hold that the findings rendered by the tribunal are perverse. It was argued by the learned Senior Advocate appearing for the respondent assessee that there is no material to show "round tripping" of funds; there is no finding that the money which has come to the assessee is ill gotten money and that the CIT(A) did not examine how the money came to the investors and failed to note that the company had requisite share capital resource. Various documents which were placed before the tribunal in the form of a paper book was submitted to the court for its perusal.

{emphasis supplied}

31. In our view it is not required to show that the money which came to the assessee is ill gotten and what is required to be seen is whether the transaction was genuine. It may be true that the identity of the investor company has been established as they are registered with the Registrar of Companies and they are regularly assessed to income tax. Assuming without admitting that at the relevant point of time when the investor companies invested in the assessee company by purchasing shares at high premium, they had sufficient funds in the bank accounts, the question would be as to whether this by itself will establish the creditworthiness of the investor companies. This is a fit case where the doctrine of "source of source" or "origin of origin" should be made applicable. We say so because the CIT(A) has brought the evidence and the materials on record which manifestly show the involvement of the assessee as the Directors of the five investor companies and the Director of the assessee company Mr. Gopal Kumar Agarwala are all closely related.

{emphasis supplied}

32. One of the directors of the Gainwell Textrade Private Limited is brother-in-law of Gopal Kumar Agarwala. One of the directors of Lucky Trading Private Limited is the wife of the brother-in-law of Mr. Agarwala and the other director is the maternal uncle. Mr. Gopal Kumar Agarwala himself is one of the director in Pavapuri Mercantile Private Limited and another director is the sister of Mr; Agarwala. One of the directors of HIL Engineering Private Limited is the brother-in-law of Mr. Agarwala and one of the Directors of Mubarak Cosmetics Private Limited is the wife of Mr. Agarwala. Thus, the facts

clearly show that the doctrine of "origin of origin" has to be applied in the case on hand and this exercise has been rightly done by the CIT(A) by lifting the veil and enquiring into the real nature of the transaction. The pattern of remittances made to the five investor companies and immediately thereafter to the assessee company clearly shows that the shares subscriptions were collected as a part of pre-meditated plan which has been conceived by the assessee.

33. The tribunal fell in error in holding that the CIT(A) has not pointed out any doubt or discrepancy with regard to the identity of the investors. The learned tribunal has posed a wrong question which has led to a wrong answer. The question is not whether the identity of the investor has to be established but the question was whether the investor had requisite creditworthiness and whether such creditworthiness was a make belief situation by means of a circular transaction and if the same had been established. The learned tribunal has held that the findings rendered by the CIT(A) that the assets in the form of investments have been created through rotating of money in between the group companies and the assets mainly consists of cash and cash equivalents are not enough to prove that any unaccounted money of the assessee has been introduced in the assessee company warranting addition under Section 68 of the Act. This finding in our opinion upon consideration of the facts is perverse.

34. The CIT(A) has made an elaborate exercise to assess the creditworthiness of the investor companies as well as the genuineness. All the investor companies are group companies and the directors are closely related to the director of the assessee company and the director Mr. Agarwala himself is one of the directors in one of the investor companies namely Pawapuri Mercantile Private Limited and the spouse of Mr. Agarwala is the director of Mubarak Cosmetics Private Limited, an investor company. Therefore, on a deeper scrutiny of the factual position would show that the investor company did not have a genuine creditworthiness and consequently the transaction has to be held to be not genuine. As held in N.R. Portfolio Private Limited (supra) whether or not the onus is discharged depends on facts of each case as well as it depends on whether the two parties are related or known to each other; the manner or mode by which the parties approach each other, the quantum of money, the object and purpose for which payment/investment was made. As held earlier certificate of incorporation of the companies, payment by banking channel etc. cannot tantamount to satisfactory discharge of onus and the facts of the case on hand speaks for itself as it is obvious. Thus, the principle of Preponderance of Probabilities applies

with full force to the case on hand which leads to the irresistible conclusion that the finding rendered by the CIT(A) is legal and valid.

35. We have noted that the tribunal has made certain observations as regards the future prospects of the assessee company as they are a steel industry and that their fixed assets and also the turnover had increased substantially. However, this appears to have not been the submission when the assessee filed an appeal before the CIT(A) challenging the addition made by the assessing officer. This is evident from the grounds of appeal which have been set out in the order passed by the CIT(A) in paragraph 2.1 of the order dated 28.11.2019. The finding rendered by the tribunal is probably taken from the written submissions made by the assessee before the tribunal giving certain facts and figures regarding the expanding of business activities of the assessee. The assessee in their submission contended that their business activity has increased considerably and for the purpose of expansion funds were required and therefore the assessee raised funds from various means, increment in share capital from associates being one of them. The fact clearly demonstrates that the source of the funds which have flown into the account of the assessee have substantially come from one company namely Gainwell Textrade Private Limited and the said company had contributed to the other companies and the funds transferred to those companies were transferred to the assessee company invariably on the same day leaving a bank balance which was almost negligible and the bank statements reveal that the prior to the inflow of the funds into those investing companies, the bank balance was negligible and after the transfer it was also negligible. The assessee had contended before the tribunal that the amount was credited through proper banking channels and the investing companies are body corporate registered with the Registrar of Companies and individually assessed to income tax and therefore the genuineness of the parties is beyond doubt. However, this is not the litmus test to discharge the burden on the assessee to establish creditworthiness of the investing companies as well as the genuineness of the transaction. Thus, we have no hesitation to hold that the explanation offered by the assessee is neither proper, reasonable or acceptable.

36. In Swati Bajaj, the court held that based on the foundational facts the department has adopted the concept of "working backward" leading to the assessee. The department would be well justified in considering the surrounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over and then arrive at a decision.

37. Thus the CIT(A) was right in adopting a logical process of reasoning considering the totality of the facts and circumstances surrounding the allegations made against the assessee taking note of the minimum and proximate facts and circumstances surrounding the events on which charges are founded so as to reach a reasonable conclusion and rightly applied the test that a reasonable/prudent man would apply to arrive at a conclusion. On facts we are convinced to hold that the assessee has not established the capacity of the investors to advance moneys for purchase of above shares at a high premium. The credit worthiness of those investors companies is questionable and the explanation offered by the assessee, at any stretch of imagination cannot be construed to be a satisfactory explanation of the nature of the source. The assessee has miserably failed to establish genuineness of the transaction by cogent and credible evidence and that the investments made in its share capital were genuine. As noted above merely proving the identity of the investors does not discharge the onus on the assessee if the capacity or the credit worthiness has not been established.

38. In the light of the above discussion, we hold that the assessee has failed to discharge legal obligation to prove the genuineness of the transaction and the credit worthiness of the investor which has shown to be so by a "round tripping" of funds. For all the above reasons, the revenue succeeds.

39. In the result the appeal is allowed, the order passed by the learned Tribunal is set aside and the order passed by the CIT(A) dated 28.11.2019 is restored and the substantial questions of law are answered in favour of the revenue.

11.1 Further, in another case of **Principal Commissioner of Income-tax v. One Point Commercial (P.) Ltd. [2024] 161 taxmann.com 737 (Calcutta)** also, it has also been held as under:

The impugned order passed by the Tribunal has recorded that from the bare perusal of the documents placed, it is revealed that all the share applicants are income tax assesseees, they are filing their income tax returns, share application form and allotment letter is available on record which were filed in response to the notice under section 133(6), share application money was made by account payee cheques, details of the bank accounts belonging to the share applicants and their bank statements have been furnished and all the share applicants are having substantial creditworthiness represented by their capital and reserves. Though such is the findings recorded by the Tribunal, it is not supported by facts. The

Assessing Officer has held that the assessee was a private limited company which cannot issue shares in the same manner in which public limited company does and in so far as creditworthiness of the share subscribers is concerned, there must be positive evidence to show the nature and source of resources of the share subscribers and if the assessee was serious enough to establish his case, it ought to have complied with the notices/letters issued by the Assessing Officer and ought to have produced the directors of the subscribing companies before the Assessing Officer so that they could explain the sources from which the share subscription was made. It is stated that there is no complaint either from the end of the assessee-company or from the end of the alleged subscriber company. This finding recorded by the Assessing Officer as affirmed by the Commissioner (Appeals), if required to be set aside by the Tribunal, reasons have to be assigned. Therefore, the conclusion arrived at by the Tribunal is insufficient to support its ultimate conclusion in allowing the assessee's appeal. Therefore, the matter has to be remanded back to the Tribunal for fresh consideration. [Para 4]

Accordingly, the appeal is allowed. The order passed by the Tribunal is set aside and the matter is remanded to the Tribunal to take a fresh decision on merits and in accordance with law and pass a reasoned order. [Para 5]

11.2 Both the decisions are squarely applicable to the facts of the case. Similar issue also came up before the ITAT Kolkata Bench for the case of **Nexcare Agency Pvt. Ltd. Vs. ITO Ward 7(1), Kolkata, dated 26.07.2024**. The relevant extract of the aforesaid order is as under:

5.1. The profit and loss account filed by the assessee paints a grim picture about the qualitative aspect of commercial activity which does not seem to justify a premium of Rs. 490/- on a share with face value of Rs. 10/-. Thus total revenues of Rs 1,26,350 for the year ending on 31.3.2012 and Rs. 96,020 for the year ending on 31.3.2011 are visible, which cannot be said to indicate a healthy bottom-line or even a robust business model. Considering this fact, it would be all the more prudent to examine the genuineness etc. of the 11 concerns which chose to repose considerable faith in the commercial future of the assessee to trust them with huge sums of money. It was on a somewhat similar situation when the Hon'ble Jurisdictional High Court upheld the doubtful nature of share premium monies being given to companies having doubtful commercial credentials in the case of *PCIT vs. BST Infratech Ltd.* reported in [2024] 161 taxmann.com 668 (Calcutta). Hon'ble Calcutta High Court had occasion to observe that in the said case investors had no reason to



invest huge amounts in business of that assessee and the entire transaction was done to circumvent the provisions of the Act. It has been held that the action of the assessing officer in treating such share application money u/s 68 of the Act as undisclosed cash credit was justified. The relevant portion from this order deserves to be extracted as under:

“36. In *Swati Bajaj*, the court held that based on the foundational facts the department has adopted the concept of "working backward" leading to the assessee. The department would be well justified in considering the surrounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over and then arrive at a decision.

37. Thus, the CIT(A) was right in adopting a logical process of reasoning considering the totality of the facts and circumstances surrounding the allegations made against the assessee taking note of the minimum and proximate facts and circumstances surrounding the events on which charges are founded so as to reach a reasonable conclusion and rightly applied the test that a reasonable/prudent man would apply to arrive at a conclusion. On facts we are convinced to hold that the assessee has not established the capacity of the investors to advance moneys for purchase of above shares at a high premium. The credit worthiness of those investors companies is questionable and the explanation offered by the assessee, at any stretch of imagination cannot be construed to be a satisfactory explanation of the nature of the source. The assessee has miserably failed to establish genuineness of the transaction by cogent and credible evidence and that the investments made in its share capital were genuine. As noted above merely proving the identity of the investors does not discharge the onus on the assessee if the capacity or the credit worthiness has not been established

38. In the light of the above discussion, we hold that the assessee has failed to discharge legal obligation to prove the genuineness of the transaction and the credit worthiness of the investor which has shown to be so by a "round tripping" of funds. For all the above reasons, the revenue succeeds.

39. In the result the appeal is allowed, the order passed by the learned Tribunal is set aside and the order passed by the CIT(A) dated 28.11.2019 is restored and the substantial questions of law are answered in favour of the revenue.”

5.2. We also draw considerable strength from the case of *PCIT vs. NRA Iron & Steel (P.) Ltd.* reported in [2019] 412 ITR 161 (SC) in which share application money was approved for action u/s 68 of the Act even where the share applicants had filed confirmations and attempted to show that the transactions have taken place through normal banking channels, etc. In this case, the Hon'ble Apex Court has dealt with the issue from a legal perspective and some of the passages deserve to be extracted for reference:

“ This Court in the land mark case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC) and, Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down 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 creditworthiness, then the Assessing Officer 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. [Para 8.2]

With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. Merely, proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established. [Para 8.3]

The Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries. In the instant case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the shareholders were either non-existent, or lacked creditworthiness. [Para 9]

The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness

of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the creditworthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of namelenders.

iii. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68. [Para 11]

In the instant case, the Assessing Officer had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee. The genuineness of the transaction was found to be completely doubtful.

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90 lakhs to Rs. 95 lakhs in the assessment year 2009-10, for purchase of shares at such a high premium.

iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the assessee company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10 per share.

iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under section 68. [Para 12]

The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since

the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which, would justify addition of the said amount to the income of the assessee. [Para 14]

On the facts of the present case, clearly the assessee company - respondent failed to discharge the onus required under section 68, the Assessing Officer was justified in adding back the amounts to the assessee's income. [Para 15]"

5.3. It is seen that in another case on somewhat similar facts, the Hon'ble Calcutta High Court in the case of Bal Gopal Merchants (P.) Ltd. vs. PCIT reported in [2024] 162 taxmann.com465 (Calcutta) has held that action u/s 68 of the Act was justified.

6. A close reading of the case laws cited (supra) reveals that mere filing of confirmations and the income tax details etc. are not enough to justify payment of monies as share premium when the financial aspects of the recipient company would not merit such investments under any kind of prudent consideration. In the present case while 4 out of 11 share applicants were not traceable on given addresses and one more did not respond to the summons, it is evident that even those share applicants who did file certain documents, were not sufficient in the eyes of law to discharge the burden cast on the assessee regarding proving the genuineness of the transaction. The profit and loss account statement extracted (supra) would normally paint a grim picture to any prudent investor, however, in this case it seems to have encouraged 11 entities to transfer huge sums of money by way of share premium.

6.1. Considering the case laws cited (supra) the financial health of the assessee and the inadequate discharge of onus, we hold this case to be a fit case for application of Section 68 of the Act and thereby confirm the impugned addition.

12. Having considered the submissions filed, the facts of the case and the judicial pronouncement discussed above, there is no justification for the huge premium charged by the assessee nor the assessee has been able to establish the same before the Ld. AO nor even before the Ld. CIT(A). As discussed above, mere identity of the creditor is not sufficient but the genuineness of the transaction as well as the creditworthiness of the creditor has to be established which the assessee has miserably failed to do. The onus is heavy on the assessee in case of private placement of shares as the details are in the knowledge of the assessee and it ought to have



established the creditworthiness of the share applicants/ shareholders and the genuineness of the transactions. The directors also failed to appear before the Ld. AO. Most of the applicants are not having any regular source of income except for income under the head income from other sources nor have strong financials to justify the investment with huge premium, as would be evident from Annexure 'SP' which forms part of the order. Neither the applicants are likely to receive any dividend nor the assessee has carried out any valuation to justify the huge premium charged. Accordingly, the transactions relating to issue of shares are not genuine nor the creditworthiness of the creditors has been established. Hence in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT v BST Infratech Ltd. (supra) and others and the discussion made out by the Ld. CIT(A) to demonstrate that the applicants are shell companies, there does not appear to be any justification to interfere with the order of the Ld. CIT(A) and his order is hereby confirmed and ground nos. 2 and 3 of the appeal are accordingly rejected.

In the result, the appeal of the assessee is dismissed."

16. Since the entire share application money has been received in cash and the date of transaction was not even filed before the Ld. AO nor before the Ld. CIT(A) nor even now in the additional evidence filed before us, therefore, the documents are self-serving documents and on failure of the Director to appear before the Ld. AO when the examination was to be carried out and to subject himself to examination as there was non-compliance after partial recording of statement, the entire share application money being received in cash, no credence can be given to the evidence filed as the entire scheme is a make-believe transaction and the transactions of receipt of share application money are not genuine, more so when proceedings against the company for irregularities were being conducted. Further, as regards the SIT yet to give its final verdict, the facts have been elaborately brought out in the order of Hon'ble High Court and have been reproduced in the order of the Ld. CIT(A); therefore, we are of the view that considering the preponderance of probability which governs the proceedings under the



Income Tax Act, 1961, even though the assessee may get relief in a criminal procedure which requires a proof beyond reasonable doubt and the standard of proof is on a much higher scale while in the case of the assessment proceedings the surrounding circumstances, the test of human probabilities and the preponderance of probabilities have to be considered for making the assessment of income, we find no justification for any interference in the order of the Ld. CIT(A) whose order is hereby confirmed and the Ground Nos. 1, 2 and 3 raised by the assessee are dismissed.

17. Ground no. 4 being general in nature does not require any separate adjudication.

18. In the result, the appeal filed by the assessee is hereby dismissed.

Order pronounced on 9th June, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 09.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

- 1. Accrecent Way Marketing Private Limited, House No.10, Bye Lane No.1, Amtala Path, Rehabari, Guwahati, Assam, 781008.**
- 2. Deputy Commissioner of Income Tax, Circle-3, Guwahati.**
3. CIT(A)-2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata