

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.4804/Del/2016
(ASSESSMENT YEAR 2011-12)

Asst. CIT, Central Circle-31, New Delhi.	Vs.	M/s New India City Developers Pvt. Ltd. B-44, 2 nd floor, Jaganpura, New Delhi-110014 PAN-AAACK0016B
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Amisha S. Gupt, CIT-DR
Date of Hearing	06/05/2025
Date of Pronouncement	09/07/2025

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-30, New Delhi in Appeal No.08/14-15/1585 vide order dated 20.06.2016 passed u/s 250(6) of the Income Tax Act, 1961 ('the Act', in short) for Assessment Year 2011-12.

2. Brief facts of the case are that the assessee is a Private Limited Company and filed its return of income on 29.09.2012 declaring total income at Nil income. The case was selected for scrutiny under CASS by way of issue of notice u/s 143(2) of the Act on 29.09.2012. Thereafter, various notices u/s 142(1) were issued from time to time which were replied by the assessee and after considering the submissions made, income of the assessee was assessed at Rs.17,90,83,000/- by making addition of Rs.1,97,68,500/- on account of share

capital and share premium and further addition of Rs.15,93,14,500/- was made u/s 68 in respect of advances received and shown under the head other liability.

3. Against such order, the assessee preferred the appeal before the Ld. CIT(A) who vide impugned order dated 20.06.2016 has allowed the appeal of the assessee and deleted the addition so made.

4. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before the Tribunal on the strength of following grounds of appeal:

- “1. On the facts and in the circumstances of the case, The CIT(A) has erred in law and on facts in deleting the disallowances of Rs.1.97,68,500/- on account of unexplained credits in the books of the assessee in the form of share capital and share premium u/s 68 of the IT Act 1961.*
- 2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on fact in deleting the disallowances of Rs 15,93,14,500/-on account of new receipt of advance against project u/s 68 of the IT. At, 1961.*
- 3. That the order of the CIT(A) is perverse erroneous and is not tenable on facts and in law.*
- 4. That the grounds of appeal are without prejudice to each other.*
- 5. That the appellant craves leave to add alter, amend or forgo any/all of the ground(s) of appeal before or at the time of the hearing of the appeal.”*

5. Before us, Ld. CIT-DR with regard to ground of appeal No.1 submits that assessee received Rs. 5,00,00,000/- for which assessee was asked to produce the details of share applicants. The assessee filed the confirmations of the share applicant. Ld. CIT DR further argued that that one of the applicant company namely M/s Herry Poultries Pvt. Ltd. had not paid the amount directly to the assessee company but there are transfer entries from certain other accounts and were used as consideration for the allotment of shares at premium in the hands of the said company M/s M/s Herry Poultries Pvt. Ltd. The claim of the assessee is that Rs.97,68,500/- were transferred from the account of M/s Mega Business Centers Pvt. Ltd. to the account of M/s Herry Poultries Pvt. Ltd. which was not shown as the source of subscribing the share capital. He further submits that similarly Rs.1,00,00,000/- were transferred in the account other share applicant

company namely M/s Paragon Overseas Pvt. Ltd. were transferred from the account of M/s Mega Business Centre Pvt. Ltd. and M/s Ayush Portfolios Pvt. Ltd. and no satisfactory explanation was given by the assessee with respect to such transfer in the account of such party. The Ld. CIT-DR further submits that Ld. CIT(A) for the sole reason that these amounts were not credited in the books of accounts in the year under appeal has deleted the additions made by AO. Ld. CIT DR thus submitted that since, funds transferred from other accounts to the accounts of share applicants were utilized for the allotment of shares at premium, therefore, the AO has rightly made the additions and therefore, requested for confirmation of the additions made by the AO.

6. With regard to the ground of appeal No.2, Ld. CIT-DR submits that the current liabilities were increase from 69.83 Cr. to 237.38 Cr for which assessee was asked to furnish the details increase in the liability. As per ld. CIT DR, the AO observed that during the year assessee received of Rs.50,93,4500/- from nine companies upon receipt of the confirmations of these parties, common peculiar facts was noticed that in the accounts of all the nine companies, funds were transferred from certain other accounts. The Ld. CIT-DR further submits that at page 6 of the assessment order, Ld. AO has tabulated the income declared by all the nine companies who gave the advances. According to this either these companies had not filed return of income or shown Nil income. The Ld. CIT-DR further submits that these companies have not engaged in the regular business activity and assessee has failed to file their complete audit report, Balance Sheet etc. therefore, their creditworthiness remained doubtful. The Ld. CIT-DR also stated that before ld. CIT(A) it was claimed by the assessee that out of total amount of Rs.15,93,14,500/-, a sum of Rs.5,20,74,500/- were transferred through journal entries in the accounts of these nine parties and no fresh funds were received during the year. Thus, to the extent of Rs.5,22,74,500/- being not received during the year under appeal no addition could be made. With regard to the remaining amount of Rs.10,70,40,000/-, the Ld. CIT(A) by admitting the additional evidences in shape to bank statements etc. of these parties, deleted

the additions made. Ld. CIT-DR drew our attention to page 6 of the assessment order wherein the AO has specifically observed that no banks statement etc. were filed nor the assessee filed the complete details, copy of balance sheet, audit report of companies, however, at page 29 of the appellate order, the Ld. CIT(A) has observed that the assessee has filed all the documentary evidences such as ITR, Balance Sheet, Board Resolution, Confirmation of account, ledger account, auditor's report etc. and further observed that the bank statements of these companies from whose accounts, the amounts were transferred in the name of nine creditors were also filed. Since no such details were filed before the AO thus according to Ld. CIT-DR, it is incorrect on the part of the Ld. CIT(A) in admitting all such evidences without providing an opportunity to the AO to examine and comment upon the same. The Ld. CIT-DR, therefore, prayed that the matter may be sent back to the file of Ld. AO for verification of the documents filed by the assessee before the Ld. CIT(A) for necessary verification.

7. On the other hand, the assessee vide letter dated 21.10.222 filed a written submission with request that the same may be please consider while deciding the appeal. The written submissions so filed reads as under:

"1. The First Issue involved in the present departmental appeal is with regard to addition of Rs.1,97,68,500/- made by Ld. AO on account of as alleged undisclosed income in respect of share capital and share premium u/s 68 of the Act.

*Ld. AO has discussed the above issue at Para-2 and 3 Page 1-4
Ld. CIT Appeal dealt with this issue at Para-5 Page-2 to 18.*

Brief facts of the case are that the assessee company increased its share capital by Rs. 5 Crore during the year under consideration out of which Ld. AO has made an addition of Rs.1,97,68,500/-. Details of above parties are mentioned at Page 2 of the Assessment order. It may kindly be perused from Para-2 of the Assessment Order that with regard to M/s Harry Pollutery Pvt. Ltd assessing officer made an addition of Rs. 9768500/- and regarding Paragoan overseas P Ltd AO made addition of Rs 1,00,00,000/- and that is how assessing officer has made an aggregate addition of Rs 1,97,68,500/- (1,00,00,000 + 97,68,500).

The first and foremost argument of the assessee company is that section 68 cannot be invoked in this case as the assessee company increased its share capital by way of journal entry/book entry and this was so submitted in detailed manner during the course of assessment and appellate proceedings along with evidences.

Detail submission have been furnished in this regard before Ld. CIT Appeal which are reproduced at Para 5.2 Page 5-15 and the same may kindly be taken as read and relied herewith.

It is submitted that all the facts with regard to the above issue has been discussed and dealt with during the course of assessment proceedings also but the assessing officer had gone into altogether different tangent and made the impugned addition just on the basis of surmises, conjectures and presumptions.

All the adverse observations of the assessing officer dealt with in the following paragraph. In Para-3.1 Page 2-4 has made various adverse observations which are even not connected to the issue. Further it is not established by the assessing officer that why section 68 can be invoked in the circumstances as explained above.

In nutshell the assessing officer has gone to that extent that assessee failed to prove the Identity, Creditworthiness and genuineness of the transaction of credit appearing in the books of assessee. It is also observed by Ld. AO that mere filling of PAN, Copy of ITR Etc. do not fill the obligation of discharging the onus. It is submitted that the assessing officer is all together given different finding whereas the present case is on different footing. It is submitted above also that no credits have been made in the books of assessee and that too during the year under consideration and therefore filling of PAN, Copy of ITR etc. have not bearing on the finding of assessing officer at all. In the present case even section 68 does not come into play therefore there is no question arises of proving the identity, credit worthiness and genuineness of transaction as per section 68. The observation of assessing officer is highly unjustified.

One of the observation of assessing officer is that bank statement was not furnished by the assessee. Again the assessee placed reliance on the submissions made above paragraph wherein it has been clarified that section 68 is not applicable and therefore the assessing officer cannot fastened the liability of furnishing the bank statement on the door of the assessee company.

One of the observation made by Ld. AO is that the company do not have any legitimate income and not doing any business activity. First of all it is submitted that there is no credit in the year under consideration. Secondly creditworthiness of the company should have been seen from the balance sheets maintained for the year under consideration and the past also. The addition cannot be made and sustain only for the reason that those companies are not doing any business and do not have any legitimate income as the assessee company has not any control over those companies.

One of the observation made by Ld. AO is that no resolution was furnished by the assessee company. Firstly, there is no need to furnish any resolution as there is no credit in the year under consideration secondly and on without prejudice basis it is submitted that all the evidences have been furnished by the assessee before both the lower authorities as alleged by AO in the assessment order. Ld. AO did not consider and appreciate the evidences furnished by the assessee company whereas Ld. CIT Appeal after appreciating the evidences and submissions furnished by the assessee company has deleted the addition.

The assessing officer has also placed reliance on the judgement CIT Vs N.R. Portfolio P Ltd, Date of Order 21st Dec 2012 Delhi High Court.

It is submitted that this judgement is not applicable in the given fact and circumstances of the case as in the case of N.R. Portfolio P Ltd fresh capital has been introduced by the assessee company through banking channel in the year under consideration itself whereas in the present case of the assessee company no fresh capital/premium has been received by the assessee company. However, the same has been received through transfer/book entry which has duly been explained.

Therefore, the lower authorities. Therefore, the judgement of N.R. Portfolio P Ltd is not applicable in the present case inter alia for this reason alone.

The assessee is also placed reliance on the following latest judicial decisions wherein it has been held that in case of increase of share capital/premium by way of book entry, section 68 is not applicable at all.

► ITO Ward 1(4) Vs M/s Josan Deposits & Advances P Ltd. ITA No 2096/KoL/2017 A.Y. 2008-09.

"8. We have considered the rival submissions and also perused the relevant material available on record. First of all we note that the assessee company had issued its shares during the year under consideration at premium to certain companies in lieu of the shares held by the said companies and thus there was no inflow of cash involved in these transactions. And this transactions were entered into in the books of account of the assessee company by way of journal entries and it did not involve any credit to the cash account. The learned CIT DR at the time of hearing has not brought anything on record to rebut or controvert this finding of fact. He however has contended by relying on the decision of Hon'ble Madhya Pradesh High Court in the case of V.I.S.P. (P) Ltd. (supra) that section 68 was still applicable in the present case involving credit to the share capital and share premium amount. It is however observed that the facts involved in the case of V.L.S.P. (P) Ltd. were different in us much as the liability in question in the said case represented trading liability of the assessee accruing as a result of purchases made by the assessee during the relevant year and since the said liability was found to be a bogus liability, addition made by the AO was held to be sustainable by the Hon'ble Madhya Pradesh High Court, so this case law does not help the Revenue.

9. We note that the Ld. CIT(A) has relied upon the decision of Hon'ble Calcutta High Court in the case of Jutia Investment Co. (supra) to give relief to the assessee. In the said case [Jatia Investment Co.], the three NBFCs had taken loans from proprietary concern belonging to the same group. Since the said loans were required to be liquidated as per the RBI guidelines and there was no cash available with the NBFCs to repay the loans, the shares held by the three NBFCs were transferred to a partnership firm namely Jatia Investment Co., and the amount receivable against the said sale of shares was adjusted by the NBFCs against the loan amount payable to proprietary concern. The partnership firm of M/s. Jatia

Investment Co. thus received shares from the three NBFCs and also took over the loans payable by the said NBFCs to the proprietary concern. These transactions were entered into in its books of account by the partnership firm through cash book by debiting the investment in A.Y. 2008-09 shares and crediting the loan amount of the proprietary concern. This credit appearing in the books of account of the partnership firm, M/s. Jatia Investment Co. was treated by the AO as unexplained cash credit u/s 68 of the Act. And subsequently when the matter reached the Hon'ble Calcutta High Court, it was held by their Lordship that when the cast, did not pass at any stage and since neither the respective parties received any cash nor paid any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise. In our considered opinion, the ratio of this decision of the Hon'ble Jurisdictional High Court in the case of Jatia Investment Co. (supra) is squarely applicable in the facts of the present case and the Ld. CIT(A) was fully justified in relying on this decision for deleting the addition made by the AO u/s 68 by holding that the said provision was not applicable. We fully concur with the view of the Ld. CIT(A) and the case laws relied on by the Ld. CIT(A) to give relief to the assessee. Therefore, we are inclined not to interfere with the order of L.d. CIT(A) and confirm the order of Lil. CIT(A).

10. In the result, appeal of the revenue is dismissed."

► *ITO Ward 8(2) Vs Elative Building Solutions P Ltd. ITA No 2498/Del/2017 A.Y. 2012-13.*

"6. The AD noted that in some cases of Hon'ble High Court has held that if the AO is not satisfied with the documents filed by the assessee to prove the identity, credit worthiness and genuineness of the transactions as provided in section 68, then, the AO can exercise his powers conferred upon him under the IT Act to make further enquiries/investigations. From the acknowledgement of the income-tax returns filed before him, he noted that these are not satisfactory looking to the volume and nature of alleged share capital and share premium shown to have been received from them. He, therefore, issued summons u/s 131(1) to the five corporate entities at the address given in their respective affidavits/confirmations. He also asked the assessee to produce the principal officers of the above companies. Since the assessee failed to discharge the onus cast on it by substantiating the identity and credit worthiness of the investor companies and the genuineness of the transaction, the AO disbelieved the share capital and share premium at Rs.6,76,00,000/- (correct figure Rs.6,75,00,000/- and invoking the provisions of section 68 made addition of the same. While doing so, he held that mere production of incorporation details, PAN Nos, or the fact that third person 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. The AO similarly made addition of Rs.8,50,000/- in the name of M/s Wamil Clothing Pvt. Ltd. to be unexplained credits in the books of the assessee as the summons u/s 131 ITA No.2498/Del/2017 was received back unserved. He accordingly determined the total income of the assessee at Rs.6,84,54,504/- as against the returned loss of Rs.2,281/-."

➤ ITO Ward 6(1) Vs M/s DSR Impex P Ltd. ITA No 2087/Kol/2017 A.Y. 2012-13.

".. Respectfully following the judgment of the Co-ordinate Bench on the similar facts in the case of M/s Anand Enterprises Ltd. (supra) we note that the shares have been issued in exchange of shares therefore no any cash is involved in these transactions. Hence the provision of section 68 does not attract therefore the addition made by the Assessing Officer has rightly been deleted by the Id. CIT(A).

9. We note that during the appellate proceedings, la CIT(A) called remand report from assessing officer. We note that in the remand report AO examined the issues and nothing adverse was reported. We note that Hon'ble High Court of Madras, in the case of Smt. B. Jayalakshmi, (2018) 96 taxmann.com 486 (Madras) held that where Commissioner (Appeals) on basis of remand report of Assessing Officer, allowed claim of assessee, revenue was not entitled to maintain an appeal before Tribunal against said order of Commissioner (Appeals). That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the grounds of appeal raised by the Revenue is dismissed.

10. In the result, the appeal of the Revenue is dismissed."

In view of above circumstances, it is humbly prayed that Ld. CIT Appeal has rightly deleted the addition made by Ld. AO and may kindly be held so.

2. The next issue in the present departmental appeal is with regard to Advance against project of Rs. 15,93,14,500/- by treating it as alleged undisclosed income of the assessee under section 68 of the Act.

Ld. AO has discussed this issue at Para 4 Page 4-7.

Ld. CIT Appeal has dealt with this issue at Para-6 Page 18-30.

Brief facts of the case are that the assessee company is engaged in the business of Real Estate. During the year under consideration the assessee company has received advances against the property from the 9 parties for the purpose of business only and that too by way of book entry as well as credits in the year under consideration, details of which are mentioned at Page 4 of the assessment order.

The first and foremost submission of the assessee company is that the entire amount of Rs.15,93,14,500/- has not been received/credited in the books of assessee. In fact, an amount of Rs.10,70,40,000/- only has been credited by the assessee as advance in the books of accounts and the remaining amount of Rs. 5,22,74,500/- has been credited by way of book entry. The above bifurcation of 15,93,14,500/- has been mentioned at Page 22 of CIT Appeal order. Therefore, at the outset on the amount of Rs.5,22,74,500/- section 68 is not applicable as the assessee has already submitted detailed submissions in above first issue, the same may kindly be read and relied herewith.

As far as advance of Rs.10,74,40,000/- is concerned the assessee company had submitted all the relevant documents proving the identity, genuineness and credit worthiness of the parties during the course of assessment and appellate proceedings and had discharged its onus as per section 68 of the Act.

Detailed submissions in this regard have been furnished before Ld. CIT Appeal which are reproduced at Para 6.2 Page 21-26 and the same may kindly be taken as read and relied herewith.

Ld. CIT Appeal has given finding at Para 6.4 Page 26-30 wherein all the adverse observations of the assessing officer has also been dealt with and thereafter rightly decided the issue in favour of assessee.

Adverse observations of the assessing officer are dealt as under: In Para 4.2 Page 5-6 the assessing officer has made various adverse observations which are met by Ld. CIT Appeal in their order.

The assessing officer has also placed reliance on N.R. Portfolio P Ltd and Onassis Axles P Ltd Delhi. As far as the addition of Rs.5,22,74,500/- is concerned both the above judgement are not applicable as there is no credit in the books of assessee of the said amount during the year under consideration. On the amount of Rs.10,70,40,000/- also both the above judgement are not applicable as they are on different facts. In the said judgement the assessee company had not discharged their burden as envisaged under section 68 and also manipulated the facts and evidences whereas the facts of the present case are different, more particularly when the assessee company had discharged its onus as per section 68 of Income Tax act 1961 and proving the identity of the parties/persons, genuineness of the transaction and creditworthiness of the parties with the help of overwhelming evidences furnished during the course of assessment and appellate proceedings. Therefore, addition can't be made under section 68 of the Act.

In view of above circumstances, it is humbly prayed that Ld. CIT Appeal has rightly deleted the addition made by Ld. AO and may kindly be held so."

8. Heard the Departmental Representative and perused the submission made by the assessee and the material available before us. Regarding the addition of Rs.1,97,68,500/- made on account of issue of fresh share capital, it is seen that during the course of proceedings on the directions of the Bench on earlier occasions, assessee filed the copies of ledger accounts of various parties from where funds were transferred in the account of M/s Herry Poultries Pvt. Ltd. and M/s Paragon Overseas Pvt. Ltd. i.e. the applicant companies. From the perusal of these accounts, we find that the funds were received by the assessee in preceding years from all these companies and during the previous year relevant

to the assessment year before us, no fresh funds were received. For invoking the provisions of section 68 of the Act, the preliminary condition is that the amount should be credited in the books in the year under appeal which fact is not present in the case of the assessee. The Ld. CIT(A) after appreciating this fact deleted the additions. The observations as made by ld. CIT(A) in para 5.4(v) are reproduced as under:

“(v) In the appellate proceedings, it has also been submitted by the appellant that the required documents such as ITR, Balance Sheet, Board Resolution, Confirmation of account, ledger account, auditor's report etc. were filed, in order to establish the identity and genuineness of the 2 companies. As regards to creditworthiness, it is submitted by the appellant that the credits of Rs. 97,68,500/- and Rs. 1,00,00,000/-, were merely transferred from ledger account of 2 companies M/s Mega Business Centre Pvt. Ltd. and M/s Ayush Portfolios Pvt. Ltd., respectively.

From the above, following facts emerged:

(a) The appellant has filed before A.O. in assessment proceedings, the documents such as ITR, Balance Sheet, Board Resolution, confirmation of account, ledger account, auditor's report etc., in order to substantiate its claim regarding identity, genuineness and creditworthiness of these 2 companies, which were shareholders as on 01.4.2010 also.

(b) The addition of Rs. 1,97,68,500/- in the name of shareholders M/s Herry Poultries Pvt. Ltd. and M/s Paragon Overseas Pvt. Ltd, represents, mere journal entries during the period under consideration and there is no actual amount received during year under consideration. The amounts were already credited in the books of account of the appellant in earlier years, in the name of 2 companies, who have instructed the appellant to transfer their funds in the name of above 2 shareholder companies, out of brought forward balances as on 01.4.2010. Therefore, source of funds stands explained.

From the above, it is clear that amounts against share capital, were already credited in the books of account of the appellant, in earlier years and in the year under consideration, the same were transferred through journal entry in the name of 2 shareholder companies, out of the brought forward balances as on 01.4.2010. Therefore, advance to the extent of Rs.1,97,68,500/-, stands explained and no addition can be made u/s 68 of the Act, in the year under consideration ie. A.Y. 2011-12.

In view of the above facts and circumstances, I am of the considered opinion that the appellant has duly explained the source, identity and creditworthiness in relation to share capital/ share premium. Accordingly, I agree with the arguments of the appellant and findings of the A.O., are erroneous. Therefore, provisions of section 68 of the Act, are not attracted and accordingly, addition of Rs. 1,97,68,500/-, is deleted.

Accordingly, ground no. 3 and 5, are hereby allowed.”

9. From the perusal of the observations made by Ld. CIT(A) and after considering the copies of the ledger accounts filed by the assessee, we find that assessee has been able to demonstrate that the amounts were credited in the books of the assessee company in preceding years and there were journal entries from the account of M/s Mega Business Centres Pvt. Ltd. to the account of M/s Herry Poultries Pvt. Ltd. of Rs.p7,68,500/- on 10.07.2010 and from the account of M/s Ayush Portfolios Pvt. Ltd. a transfer entry of Rs.1,00,00,000/- on 10.07.2020 to the account of M/s Paragon Overseas Pvt. Ltd. which were used by these two companies for subscribing the share at premium. Further from the perusal of the ledger account of M/s Mega Business Centres Pvt. Ltd. and M/s Ayush Portfolios Pvt. Ltd., it is seen that in both the accounts no fresh funds were received during the year under appeal and there were opening balances out of which the funds through journal entry were transferred to the account of both the share applicant companies namely M/s Herry Poultries Pvt. Ltd. and M/s Paragon Overseas Pvt. Ltd. Further the revenue has not brought any material to controvert the finding of ld. CIT(A). In view of these facts, we find no infirming the order of Ld. CIT(A) who has rightly deleted the additions made u/s 68 of eth Act by holding that that fresh funds/ credits were received during the year. Accordingly, we uphold the order of the Ld. CIT(A) on this count and Ground of Appeal No.1 of Revenue is dismissed.

10. In ground of appeal No.2 with respect to ground No.2, from the perusal of the order of Ld. CIT(A) and Assessing Officer, we find that the AO in assessment order in para 4.2 has made following observations:

“4.2. The assessee's above submissions have been carefully considered.

From the transactions in this regard, the following facts have emerged:

(i) The assessee company is an unlisted private limited company.

(ii) The lenders are also private unlisted limited companies.

(iii) From the above mentioned two companies, total money has not been received directly from them.

(iv) On perusal of balance sheets and P/L A/cs of the lender companies submitted by the assessee, it seen that they are not engaged in any regular business activity and therefore have no legitimate income with them for lending money to others. The details of income shown by these companies in the relevant year are as under:

Sl. No.	Name of person	Income as per return of income
1	<i>Delite Consultancy Services Pvt. Ltd.</i>	<i>Nil</i>
2	<i>Jaimata Realtors Pvt. Ltd.</i>	<i>Nil</i>
3	<i>Jigyasa Mercantile Pvt. Ltd.</i>	<i>Not filed</i>
4	<i>Mission Viego Agro Pvt. Ltd.</i>	<i>Nil</i>
5	<i>Nahid Finlease Pvt. Ltd.</i>	<i>Nil</i>
6	<i>Preference Properties Pvt. Ltd.</i>	<i>Nil</i>
7	<i>Rancho Place Estate Pvt. Ltd.</i>	<i>Nil</i>
8	<i>Suprabhat Buildtech Pvt. Ltd.</i>	<i>Not filed</i>
9	<i>Standard Hotels Pvt.Ltd.</i>	<i>Not filed</i>

Thus from the above table, it is seen that the companies are not doing any business activities. Further, it is also seen that the assessee has not filed complete details like copies of audit report, balance sheet, bank statement, copies of ITR of all the companies mentioned above. Therefore the details filed by the assessee are also not complete

(v) No bank statement has been submitted in respect of these companies barring a few. The reason of transfer of the said amounts on behalf of these companies has not been given.

(vi) As these companies do not have any legitimate income and are not doing any business activities, they look like some paper companies acting as a conduit to provide accommodation entries to the companies which are in need of such accommodation entries.

(vii) In the case of private limited companies, to lend money to a private limited company. certain legal requirements have to be met. The company which wants to lend to a private limited company has to pass a resolution in this regard. The assessee has not produced any evidence of any such resolution having been passed.

(viii) It is the onus on the assessee to prove the identity, creditworthiness and genuineness of transactions of any credits appearing in the books of the assessee. Here the assessee has totally failed to discharge its onus. Mere submission of PAN, copy of ITR etc. does not fulfil the obligation of discharging of onus.”

11. From the perusal of the above observations of the AO, it is clear that no details were filed in order to establish the identity, creditworthiness and genuineness of the transactions of credits from these nine companies. Further, we have gone through the order of Ld. CIT(A) who in para 6.4(v) has made the following observations:

“(V) During appellate proceedings it was also submitted without prejudice to the above argument that in A.Y. 2010-11, addition of Rs. 13,00,000/- was made u/s 68 of the Act on account of project advances, in the name of M/s Mountain Land

Developers Pvt. Ltd. On appeal, this addition was deleted by Ld.CIT(A)-XII in Appeal No. 185/13-14, vide order dated 01.8.2014 on the ground that the A.O. could not produce any adverse material to repudiate the veracity of transaction. It is submitted that during the year under consideration, the amount of Rs. 13,00,000/- was merely transferred from brought forward balances as on 01.4.2010, in the favour of M/s Delite Consultancy Services Pvt. Ltd. for 7,60,000/- and M/s Preference Properties Pvt. Ltd. for Rs. 5,40,000/-. In view of these facts, it is submitted by the AR that these amounts, have already been considered by the A.O., in A.Y. 2010-11 and therefore, merely on account of transfer through journal entry, again the addition cannot be made in the subsequent A.Y. 2011-12, which is under consideration. On the same basis, the remaining amount of Rs.5,09,74,500/-(Rs.5,22,74,500-Rs.13,00,000), which has also been transferred through journal entries after 01.04.2010, cannot be added in the subsequent A.Y. 2011-12, which is under consideration.

From the above, following facts emerged:

- (a) In respect of these 9 companies, the appellant has placed on record all the documents such as ITR, Balance Sheet, Board Resolution, Confirmation of account, ledger account, auditor's report etc., in order to substantiate its claim regarding identity, genuineness and creditworthiness.*
- (b) The amount of addition to the extent of Rs. 5,09,74,500/- in the name of 9 alleged lender companies, represents mere journal entries and there is no actual receipt of amount during year under consideration. The amounts were already credited to the books of account of the appellant in earlier years. Therefore, source of funds to the extent of Rs. 5,09,74,500/- stands explained.*
- (c) The addition to the extent of Rs. 7,60,000/- in respect of M/s Delite Consultancy Services Pvt. Ltd. and Rs. 5,40,000/- in respect of M/s Preference Properties Pvt. Ltd., were already considered in AY 2010-11.*
- (d) The addition to the extent of Rs. 10,70,40,000/- in the name of 3 alleged lender companies, in respect of M/s Jai Mata Realtors Pvt. Ltd., M/s Jigyasa Mercantile Pvt. Ltd. and M/s Suprabhat Buildtech Pvt. Ltd., were credited during the year under consideration. The appellant has placed on record the bank statements and other documents, in order to substantiate the identity, genuineness of the transactions and creditworthiness of the parties. Therefore, source of funds to the extent of Rs. Rs. 10,70,40,000/- stands explained.*

From the above, it is clear that amounts received to the extent of Rs. 5,22,74,500/, against the advances, were already credited in the books of account of the appellant, in earlier years and in the year under consideration, the same were transferred through journal entries, out of the brought forward balances as on 01.4.2010. Therefore, advance to the extent of Rs.5,22,74,500/-, stands explained and no addition can be made u/s 68 of the Act, in the year under consideration i.e. A.Y. 2011-12.

As regards to the advances to the extent of Rs. 10,70,40,000/-, received during the year from M/s Jai Mata Realtors Pvt. Ltd., M/s Jigyasa Mercantile Pvt. Ltd. and M/s Suprabhat Buildtech Pvt. Ltd., the appellant has submitted the bank statements of the parties. On perusal of the bank statement it is clear that they have sufficient balances, out of which the funds of Rs. 10,70,40,000/-, were

transferred to the appellant company. Therefore, advances to the extent of Rs.10,70,40,000/-, stands explained and therefore, provision of section 68 of the Act are not attracted.”

12. From the perusal of the above observations of the Ld. CIT(A), it appears that the Ld. CIT(A) while deleting the additions, the ld. CIT(A) relied upon the these fresh evidences filed before him in the shape of ITR, Balance Sheet, Confirmations, Ledger Accounts, Audit Report, Bank Statements of all the parties from whom the advances were received including the parties from whose account funds were transferred in the accounts of those parties in whose name advances are appearing in the Balance Sheet.

13. Since, these details were not available before the AO as has been observed by the AO in the order as reproduced above, the Ld. CIT(A) ought to have been obtained the remand report from the Assessing Officer before accepting these documents as admissible evidences which has not been done in the present case. From the perusal of the details filed, we find that no such prayer of filing of additional evidences u/r 46A was filed by the assessee before the Ld. CIT(A) nor it is a case where such details were called for by the ld. CIT(A) himself. In view of these facts, we agree with the argument of Ld. CIT-DR that the issue needs reconsideration. Accordingly, we set aside the order of ld. CIT(A) this issue to the file of Ld. CIT(A) with a direction to call the remand report from the Assessing Officer and after considering the same decide the issue in accordance with law. The ground of appeal No. of the revenue is partly allowed for statistical purposes.

14. In the result, appeal of the revenue is partly allowed.

Order is pronounced in open court on 09.07.2025.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 09.07.2025
PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI