

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIGEORGE MATHAN, JM**

ITA No.1035 to 1038/KOL/2025

(Assessment Year:2012-13, 2014-15 to 2016-17)

**Samrat Finvestors Private
Limited**
20/1, Maharshi Debendra Road,
2nd Floor, Room No.13A,
Kolkata-700007, West Bengal

(Appellant)

ITO, Ward 5(2)
110, Shantipally, Aayakar
Bhawan Poorva, Kolkata-700107,
West Bengal

Vs.

(Respondent)

PAN No. AADCS4698G

Assessee by : Shri Soumitra Choudhury, AR
Revenue by : Shri Sanat Kumar Raha, DR

Date of hearing: 27.09.2025
Date of pronouncement: 16.10.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the orders of the Commissioner of Income-tax (Appeals) (hereinafter referred to as the "Ld. CIT(A)"] dated 09.01.2025, 15.01.2025 & 16.01.2025 for the AY 2012-13, 2014-15, 2015-16 & 2017-18.

02. At the outset, we note that there is a delay of 44 days in filing the appeals for which condonation petition along with affidavits were filed. The reasons stated for the delay in filing these appeals were that the counsel was not aware of the Tribunal matters and therefore, did not advise assessee to prefer the appeal before the Tribunal against the order of Id. CIT (A). It is only subsequently in the first week of May 2025, that some other taxation matter was discussed with some other

counsel and he advised the assessee for filing the appeal as such immediately with condonation of delay.

03. Having considered the reasons attributable to the late filing the appeals, we are of the considered opinion that the delay is for bonafide and genuine reasons and therefore, the delay is condoned and appeals are admitted for adjudication.

A.Y. 2012-13

ITA No. 1035/Kol/2025

04. At the time of hearing, the Id. Counsel for the assessee pressed the issue raised in ground no.5 to 7, 9 and 10, which are extracted as under: -

"5. For that on the facts of the case, the A.O. has complied with the direction of Pr. CIT'S Order u/s. 263 dated 27.09.2016 by calling upon all the directors of the shareholders companies which is mentioned in the assessment order u/s. 263/143(3) dated 29.12.2017, therefore, the whole addition u/s. 68 amounting to Rs.77,96,70,000/- is completely arbitrary, unjustified and illegal.

6. For that on the facts of the case, the Ld. CIT(A) was wrong in not considering the facts that the directors of allottee shareholders companies appeared on different dates against summons u/s. 131 and their statements have been recorded and all the evidences with paper books regard to the receipt of the share application money as well as the source thereof was explained and kept on record after due perusal and examination mentioned in the assessment order, as such the finding of Ld. CIT(A) is completely arbitrary, unjustified and illegal.

7. For that on the facts of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.77,96,70,000/- on account of share application money with premium by wrongly treating the same as unexplained cash credit u/s 68 which is completely arbitrary, unjustified and illegal.

9. For that on the facts of the case, the Ld. CIT(A) ought to have considered that the assessee company had discharged its onus by furnishing all the relevant documents in connection with the share capital raised and also proved the identity, creditworthiness of the share application and genuineness of transactions, thus his action is completely arbitrary, unjustified and illegal.

10. For that the issue relating to the raising of share capital is concluded in favour of the assessee by the judgment of the Hon'ble Supreme Court in the

case of Lovely Export (P) Ltd. 216 CTR 195 holding that addition on account of share capital cannot be made in the hands of the recipient company."

05. The facts in brief are that the Assessee is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India. The assessee filed its return of income on 31.03.2013 declaring a loss of Rs.3,69,798/-. The return was selected for scrutiny assessment and an assessment order was passed on 16-03-2015 u/s. 143(3) of the IT Act 1961 and the income was assessed at Rs.78,01,48,760/-. The Assessee was incorporated on 28/03/1996. The assessee had raised share 71,15,670 shares, out of these 64,00,000 shares were issued as Right share to the existing shareholders while remaining 7,15,670 were issued to other parties. Thereafter, revision proceedings u/s. 263 were initiated against the assessee company by the Id. PCIT and finally a revisionary order u/s. 263 was passed by the Pr. CIT, Kolkata – IV on 27.09.2016 setting aside the order u/s. 143(3) dated 16.03.2015 directing the Ld. A.O. to complete the assessment afresh. The AO completed the assessment post the order u/s 263 dt. 27.09.2016 and then order was passed u/s 143(3)/263 of the IT Act 1961 on 29.12.2017 determining the income at Rs.78,05,23,760/-.
06. The Id. AO called upon the assessee to prove the identity, creditworthiness of the transactions and genuineness of the transactions by various details/ evidences. The A.O. also issued notices u/s 133(6) to share applicants contributing share capital including share premium of Rs.77,96,70,000/- . All the shareholders subscriptions had submitted their replies along with evidences. Copies of the same are available in the paper book from page no. 1 to 3459 in the paper book. Thus, the 34 share applicants had filed the ITR acknowledgement, Final accounts and bank statement, along with other details at the time of assessment proceedings, which proves that the transactions are genuine and investor had creditworthiness to

invest in the assessee company. The various documents viz. share application, ITR Acknowledgement, final accounts, bank statement, allotment advice, incorporation certificate, statement of source of fund Form 18 for address proof, copies of assessment orders of some applicants etc. relating to the share applicants were furnished. Notices u/s 133(6) of the Act were issued by Ld. AO to share subscribers during the course of assessment proceedings and the share subscribers have duly complied to the notices issued. The Ld. Assessing officer had also not doubted any of these documents and accepted the same without making any adverse remark on them 'The said transactions were confirmed by these parties against the notice issued by the Ld. Assessing officer u/s 133(6) of the I.T. Act, 1961.

07. The aggrieved assessee filed an appeal before the Id. CIT (A) against the order of Id. AO which was also dismissed by the first appellate authority after taking into account the submission and contention of the assessee. The Id. CIT (A) noted that the assessee has received the share subscription from 34 parties/ private entities aggregating to ₹78,66,70,000/-. In Para no.6.2.1, the Id. CIT (A) extracted the details of investments/ subscription received by the assessee and noted that assessee submitted all the documents before the Id. AO as well as before the Id. CIT (A). However, the Id. CIT (A) noted that assessee has failed to justify the high share premium. The Id. CIT (A) even noted that the Id. AO had issues summon to the subscribers and recorded a statement of the directors of the subscribing companies but despite that he Id. AO made addition on the ground that creditworthiness of the investing companies were questionnaire and shares were issued at a abnormal high price. The Id. CIT (A) also noted that the investors company were received funds from some other companies and thus providing to the assessee company without

having their own resources or operating income etc. the Id. CIT (A) in Para no.6.2.2 noted that the assessee filed the bank statements of the subscriber entities as well as source of funds and other relevant documents including share certificates, audited statements, assessment orders of the subscribers. The Id. CIT (A) noted that however, in the bank statement of the subscriber there were receipts of funds. The Id. CIT (A) in table 1 noted that certain instances were for every debit entries, there was a correspondent credit entry and in table 2 discussing the layering of funds in Para no.6.2.4. The Id. CIT (A) discussed that the finance capacity of the subscribers were very poor and the financial creditworthiness of the subscribers could not justify the investments of shares in such a high premium in the assessee company. The Id. CIT (A) even extracted the data in respect of 4 companies in para no.6.2.4, wherein the revenue from operation was nil, the subscribers were incurring losses on account of expenses incurred, EPS was Nil and cash flow was also meagre without there being any fixed assets in the subscriber company. In para no.6.2.5 discussed the assessment framed u/s 143(3) of the Act in the case of seven subscribers, wherein the addition in respect of bogus share capital was made in the hands of the subscribers. Finally, the Id. CIT (A) held that the funds credited in the books of the assessee were not proved to be genuine and thus, justified the addition made by the Id. AO. The Id. CIT (A) while dismissing the appeal of the assessee also relied on series of decision as discussed in para no.6.2.11 and finally, dismissed the appeal of the assessee by observing as under: -

"6.2.12. In view of the aforesaid judicial pronouncements as well as the discussions held above, it can be inferred that the assessee has failed to discharge its initial burden to establish the creditworthiness and genuineness of the transaction in support of the said share capital of Rs.77,96,70,000/-. It is a settled law that whether any sum credited in the accounts of the assessee through banking channel or not and whether any investment confirmation from such share subscribing entities is present on record or not, the "onus" to prove

the identity, Genuineness & creditworthiness of the creditors and authenticity of the transaction is on the assessee but in the instant case this "onus" of proving creditworthiness and genuineness was not discharged by the assessee in an effective manner. These three limbs of identity, Genuineness & creditworthiness are to be proved independently beyond doubt. The assessee has proved the identity of the shell companies vis-à-vis share subscribers but failed to prove their creditworthiness and genuineness of the transactions. The explanation offered to prove the creditworthiness and genuineness of the bogus share subscribers was not found satisfactory which can be verified from ITRs of the bogus share investors. The amount of funds transferred to the assessee in the form of share capital were grossly disproportionate to the gross total income & known sources of income of the bogus share subscribers. Hence, it is evident that the transactions in the present appeal is another example of the counter use of the deception of share capital to bring unaccounted money through banking channels into the books of the assessee company without paying due tax. Therefore, the addition made by the AO of Rs.77,96,70,000/- is upheld. Hence, this ground of appeal raised by the assessee is dismissed."

08. The Id. AR vehemently submitted before us that both the authorities below have failed to appreciate the facts in correct perspective. The Id. AR submitted that the assessee raised share capital by issuing 71,15,670 equity shares out of which 64 lacs shares were issued as Right share to the existing shareholders while 7,15,670 were issued in the normal course during the year thereby raising a premium of ₹70,85,13,300/-. The Id. AR submitted that the assessee has filed all the details and evidences comprising names, addresses, confirmation investments by the subscribers, copies of ITR, acknowledgements, audited financials of the subscribers, extract of bank accounts of the subscribers, master data, etc. The Id. AR even submitted that the Id. AO issued notice u/s 133(6) of the Act, to the share applicants, who subscribed to the share capital including share premium of ₹77,96,70,000/- and all the share subscribers have responded to the said notices by filing the reply along with evidences as called for by the Id. Assessing Officer. The Id. AR submitted that all these replies were available in the paper book from page no.1 to 3459. The Id. AR stated that the 34 share applicants had filed ITR acknowledgements, audited financial accounts, bank statement along with other details

such as the assessment orders u/s 143(3) of the Act and thus, proved the three ingredients of Section 68 of the Act. The Id. AR therefore prayed that the assessee has proved the identity, creditworthiness of the investors and genuineness of the transactions. The Id. AR therefore submitted that once the assessee has furnished the details of the share transactions along with all the details /evidences qua the subscribers and the Id. AO has not pointed out any mistake / defects in the said evidences, then the addition u/s 68 cannot be made. In defense of his argument the Id. AR relied on the decision of Hon'ble Calcutta High Court in case of Pr. CIT Vs. Sreeleathers 448 ITR 332.

09. The Id. AR also submitted that the summons u/s 131 of the Act were also issued during the assessment proceedings, which were duly served upon the share subscribers and the share subscriber duly complied with the summons u/s 131 of the Act and therefore, the identity of the subscribers cannot be doubted and even statements of the subscribers were recorded. The Id. AR submitted even if there is a non-compliance u/s 133(6) of the Act/ 131 of the Act, which is not the case before the Tribunal no adverse inference can be drawn. The Id. AR relied on the following decisions: -

- "(i) *CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC);*
- (ii) *CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom);*
- (iii) *Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol);*
- (iv) *ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012)*
and
- (v) *Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020."*

010. The Id. AR also referred to the chart showing the full details as to investor demonstrating the amounts invested by them, statement recorded u/s 131 of the Act and assessments, framed u/s 143(3)/ 143(1) of the Act. The Id. AR submitted that the share applicant duly

explained the sources of funds from which the investments were made. Therefore, the documents filed by the applicants duly proved the identity, creditworthiness and genuineness of the transaction. It was also submitted that as per the balance sheets of the share applicants, the amount of investments in the assessee company was much less than their net worth and the investments were also made through banking channel. The Id. AR submitted that as stated earlier the directors of the allottee companies appeared before the Id. AO and their statements u/s 131 of the Act were recorded, the copies whereof are available in the paper book of page no.3406 to 3449. The Id. counsel, therefore submitted that these transactions could not be doubted by the Id. Assessing Officer. The Id. AR submitted that in all the case the assessee filed share application forms, allotment letters, ITRS, investments by account payee cheques and in none of the cases the cash was ever deposited before the subscription and the subscribers having substantial net worth/ creditworthiness in the form of share capital and free reserves. The Id. AR submitted that addition in respect of share application/ share capital/ share premium cannot be made u/s 68 of the Act where the assessee has proved the identity, creditworthiness and genuineness of the transactions by placing a reliance on the decision of CIT Vs. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (BOM), CIT vs. vs. Pranav Foundations Ltd. [2014] 51 taxmann.com 198 (Madras)/[2015] 229 Taxman 58 (Madras) vide order dated 12-08-2014.

011. The Id. AR also submitted that the assessee company has proved the source of funds of the subscribers and the theory of investigating the source to source is not applicable to the instant A.Y. 2012-13. The Id. AR submitted the provision of Section 68 of the Act prior to amendment by Finance Act, 2012, with effect from 01.04.2013 does

not empower the Id. AO to make any enquiry into the source of source of funds. The Id. AR in defense of his argument relying on the decision of Hon'ble Bombay High Court in case of CIT vs. Gagandeep Infrastructure Private Ltd. (2017) 394 ITR 680 (Bom), wherein it has been held that the proviso to Section 68 of the Act was introduced by the Finance Act, 2012, w.e.f. 2013 and therefore, is effective from A.Y. 2013-14 onwards and not for the earlier assessment years prior to A.Y. 2013-14. The Id. AR also relied on the decision of Hon'ble Apex court in the case of Commissioner of Income-tax vs. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC) dated 11-01-2008 wherein the Hon'ble Court in the context amended Section 68 of the Act has held that where the Revenue urges that amount of share application money has been received from bogus share applicants then it is for the income tax officer to proceed by reopening the assessments of such shareholders and assessing them to tax in accordance with law. The Hon'ble Court held that it does not entitle the Revenue to add the same to assessee's income as unexplained cash credit. Finally, the Id. AR prayed that the ground no.5 to 7 and 9 and 10 may be allowed by setting aside the order of Id. CIT (A) and directing the Id. AO to delete the additions as the assessee has satisfactorily explained all the incidents u/s 68 of the Act.

012. The Id. DR on the other hand relied heavily on the order of Id. AO as well as the Id. CIT (A). The Id. DR vehemently controverting the argument as presented by the Id. AR submitted that the Id. AO has carried out a very detailed inquiry and recorded categorical finding that these companies were not having any creditworthiness to make the investments in the assessee company as these were not having any operating income and even the fixed assets which makes it clear that these were in fact bogus/ shell companies and investments were

made out of share capital and reserves available which were built up through raising the money from other companies by way of share capital and share premium. The Id. DR submitted that admittedly the assessee filed all the details/ evidences before the Id. AO as well as before the Id. CIT (A) qua the share subscribers and even undoubtedly the subscribers responded to the notice u/s 133(6) of the Act and filed all the details/ evidences besides the summon u/s 131 of the Act being complied with. The Id. Counsel for the assessee submitted that even the statements of the directors of the subscribing companies were recorded and they admitted to have invested in the assessee company but in case of shell companies as all the documentary evidences / proofs are perfectly made, therefore, filing of all these documents and compliances to summons/ notices could not be taken as sacrosanct which proved the identity, creditworthiness of the subscribers and genuineness of these transactions. The Id. DR submitted that the Id. AO recorded a clear-cut finding to this effect which were upheld by Id. CIT (A) in the appellate proceedings, Therefore, the order passed by Id. CIT (A) may kindly be upheld by dismissing the appeal of the assessee.

013. We have heard the rival contentions and perused the records carefully as placed before us. The Assessee was incorporated on 28/03/1996. The assessee had issued 71,15,670 equity shares, out of these 64,00,000 shares were issued as Right share to the existing shareholders while remaining 7,15,670 were issued by other parties during the year under consideration.

Sl No.	Name of the share applicants	Amount (Rs)
1.	Amarlaxmi Deal Trade pvt. Ltd.	3,20,00,000
2.	Baghbaan deal trade pvt. Ltd.	3,20,00,000
3.	Accurate Shoppers Pvt. Ltd.	2,79,80,000
4.	Active Dealmark Pvt. Ltd.	85,00,000
5.	Anita Promoters Pvt. Ltd.	5000000

6.	Axon Mercantile Pvt. Ltd.	4490000
7.	Billion leasing & finance Pvt. Ltd.	3000000
8.	Burlington Barter Pvt. Ltd.	33033333
9.	Deercool Vinimay Pvt. Ltd.	6000000
10.	Dewdrops Mercantiles Pvt. Ltd.	75800000
11.	Eastwest Enclave Pvt. Ltd.	51750000
12.	Flowtop Merchandise Pvt. Ltd.	3000000
13.	Intimate commotrade Pvt. Ltd.	9500000
14.	Kinetic Financial Consultants Pvt. Ltd.	9200000
15.	Linkstar Promoters Pvt. Ltd.	3000000
16.	Madhu Tradecom Pvt. Ltd.	15000000
17.	Marshal Conclave Pvt. Ltd.	11800000
18.	Moontree Tie-up Pvt. Ltd.	23533333
19.	Original Tradelink Pvt. Ltd.	3550000
20.	Panchmukhi Tradecom Pvt. Ltd.	13000000
21.	Panchratan commotrade Pvt. Ltd.	8550000
22.	Pragya Commodities Pvt. Ltd.	122900000
23.	Ritudhara Distributors Pvt. Ltd.	3000000
24.	Sankatsathi Commerce Pvt. Ltd.	9600000
25.	Shivmangal Dealcomm Pvt. Ltd.	5000000
26.	Shivrashi Barter Pvt. Ltd.	3000000
27.	Siddheshwari Vyapaar Pvt. Ltd.	37000000
28.	Sliverson Dealcomm Pvt. Ltd.	5000000
29.	SKP Comtrade Pvt. Ltd.	40600000
30.	Skytouch Investment Advicors Pvt. Ltd.	21350000
31.	Sri Narayan Mercantile Pvt. Ltd.	129100000
32.	Starmark Tie up Pvt. Ltd.	7600000
33.	Topwell Vinimay Pvt. Ltd.	5000000
34.	Waterlink Distributors Pvt. Ltd.	17900000
	Total	786670000

014. We note that during the assessment proceedings the assessee had filed before the all the details as called for comprising the followings:

1. Confirmation of accounts having description of source of investment.
2. Copy of ITR filing acknowledgment.
3. Audited financials of subscribers
4. List of Investment of subscriber companies
5. Extract of bank statement of subscribers.
6. Latest master Data as downloaded from Ministry of Corporate Affairs.
7. Signatory Details of subscriber companies"

015. We also note that the AO issued notices u/s 133(6) of the Act to all the subscribers which were duly replied by all the subscribers along with the evidences as required by the AO. Copies of all these replies and evidences are available in the paper book. Therefore once the assessee had filed all the evidences qua the subscribers and notices issued u/s 133(6) of the Act by the AO were also responded by the subscribers confirming the transactions, then the addition u/s 68 of the Act cannot be made. The case of the assessee finds support from the decision of the Hon'ble Calcutta High Court in the case Pr. CIT-9, Kolkata vs. Sreeleathers [448 ITR P-332] dated 14.07.2022 wherein Hon'ble Court has held :

'In the absence of any such finding, it is held that the order passed by the Assessing Officer was utterly perverse and rightly interfered by the Commissioner (Appeals). The Tribunal re-appreciated the factual position and agreed with the Commissioner (Appeals). The Tribunal apart from taking into consideration, the legal effect of the statement of AKA also took note of the fact that the notices which were issued by the Assessing Officer under section 133(6) to the lenders were duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the Assessing Officer and there is no discussion on this aspect. Thus, the tribunal rightly dismissed the appeal filed by the revenue. [Para 5]'

016. We also note from perusal of assessment order that, the summons issued u/s 131 of the Act during assessment proceedings were also served upon the share subscribers. Thus, it is evident that the share subscribers were existing at their respective addresses. Thus, notices u/s 133(6) as well as summons u/s 131 of the Act were duly served upon them. In view of this fact identity of share subscribers cannot be doubted. In our opinion upon non-compliance of notices u/s 133(6)/summons u/s 131 of the Act, no adverse inference can be drawn. Reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT v. Kamdhenu Steel & Alloys Ltd. [2012] 19 taxmann.com 26/206 Taxman 254/[2019] 361 ITR 22, wherein the Hon'ble Court

has held that where the assessee has filed all evidences concerning to the money received and have shown that payments were through account payee cheques then it could be said that the assessee has discharged the initial burden and just because some of the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68 of the Act without bringing any additional and substantive materials to prove that the money raised does not satisfy the requirement of section 68 of the Act.

017. The Assessee relied on the decision of the Hon'ble Supreme Court in the case of Orissa Corporation 159 ITR 360 which was followed by the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523, wherein it was held when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

018. The Hon'ble High Court, Calcutta in the case of Crystal Networks (P.) Ltd. v. Commissioner of Income-tax 353 ITR 171 has held that when the basic evidences are on record the mere failure of the creditor to appear cannot be basis to make addition. Further reliance was placed in the case of Nemi Chand Kothari 136 Taxman 213, (supra), wherein the Hon'ble Guahati High Court has given a further twist to the issue of onus on assessee under section 68, by holding that the same should be decided by taking into consideration the provision of section 106 of the Evidence Act which says that a person can be required to prove only such facts which are in his knowledge. The Hon'ble Court in the said case held that, once it is found that an assessee has actually taken money from depositor/lender who has been fully identified, the assessee/borrower cannot be called upon to explain, much less prove the affairs of such third party, which he is not even supposed to know or about which he cannot be held to be accredited with any knowledge. In this view, the Hon'ble Court has laid down that section 68 of Income-tax Act, should be read along with section 106 of Evidence Act.
019. Similarly, the Hon'ble Calcutta High Court in the case of Crystal Networks (P.) Ltd. v. CIT [2013] 35 taxmann.com 432/353 ITR 171 has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions, the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. That Hon'ble Calcutta High Court in the case of Pr. CIT vs. M/s. Naina Distributors Pvt. Ltd. [ITAT /113/2023 & IA No. GA/1/2023] has held that non-appearance of the director cannot be made a ground for addition in the hands of the assessee under Section 68 of the Act

when other evidence relating to the raising of share capital qua the share subscriber were available on record as furnished by the assessee and also cross verified by the assessing officer pursuant to the enquiry conducted in response to the notices issued under Section 133(6) of the Act.

020. Further the assessee has duly furnished all the evidences necessary to substantiate creditworthiness and genuineness of transactions, i.e., for discharge of onus cast upon it u/s 68 of the Act as is evident from Page-2 in the assessment order, which is extracted as under:-

'Shri Mukesh Gupta, FCA and AR appeared from time to time and the relevant aspects of the return and the issue involved were discussed and explained ,. The documents/particulars requisitions by the notice u/s. 142(1) of the I.T. Act and the statement of accounts and explanations requisitioned during the course of proceedings were produced/submitted which were examined and verified with the statement of accounts filed with the details available in the return of income other account statements filed/furnished vis-à-vis the relevant issues of the case.'

021. It is noteworthy that the Ld. AO in the order passed has not found any deficiency in the submissions made and evidences furnished by the assessee. The details of 78,12,670 equity shares issued of Rs.10/- each at a premium of Rs. 190/- to 34 shareholders , details money invested , documents furnished , their statements recorded u/s 131 of the Act and status of their assessments are tabulated below:-

SL. NO.	NAME OF THE SHARE APPLICANTS	AMOUNT(Rs)	Documents filed in paper book	Statement recorded u/s. 131 in Paper Book	Assessment made
1.	AMARLAXMI DEALTRADE PVT LTD	3,20,00,000.00	88-277	Face value	143(3)
2.	BAGHBAAN DEALTRADE PVT LTD	3,20,00,000.00	278-445	Face Value	143(3)
3.	ACCURATE SHOPPERS PVT LTD	2,79,80,000.00	446 to 642	3431 to 3433	143(3)
4.	ACTIVE DEALMARK PVT LTD	85,00,000.00	643 to 710	3406 to 3408	143(3)



5.	ANITA PROMOTERS PVT LTD	50,00,000.00	711-754	3411 to to 3413	143(1)
6.	AXON MERCANTILE PVT LTD	44,90,000.00	755-825	3411 to to 3413	143(3)
7.	BILLION LEASING & FINANCE PVT LTD	30,00,000.00	826-863	3411 to to 3413	143(1)
8.	BURLINGTON BARTER PVT LTD	3,30,00,000.00	864-1025	3426 to 3428	143(1)
9.	DEERCOOL VINIMAY PVT LTD	60,00,000.00	1026-1070	3416 to 3418	143(3)
10.	DEWDROPS MERCANTILES PVT LTD	7,58,00,000.00	1071-1258	3416 to 3418	143(3)
11.	EASTWEST ENCLAVE PVT LTD	5,17,50,000.00	1259-1405	3431 to 3433	143(3)
12.	FLOWTOP MERCHANDISE PVT LTD	30,00,000.00	1406-1470	3406 to 3408	143(3)
13.	INTIMATE COMMOTRADE PVT LTD	95,00,000.00	1471-1531	3431 to 3433	143(3)
14.	KINETIC FINANCIAL CONSULATNTS PVT LTD	92,00,000.00	1532-1576	3431 to 3433	143(3)
15.	LINKSTAR PROMOTERS PVT LTD	30,00,000.00	1577-1640	3421 to 3423	143(3)
16.	MADHU TRADECOM PVT LTD	1,50,00,000.00	1641-1727	3431 to 3433	143(3)
17.	MARSHAL CONCLAVE PVT LTD	1,18,00,000.00	1728-1791	3445 to 3447	143(3)
18.	MOONTREE TIE-UP PVT LTD	2,35,00,000.00	1792-1842	3431 to 3433	143(3)
19.	ORIGINAL TRADELINK PVT LTD	35,50,000.00	1843-1881	3436 to 3438	143(3)
20.	PANCHMUKHI TRADECOMM PVT LTD	1,30,00,000.00	1882-1961	3445 to 3447	143(3)
21.	PANCHRATAN COMMOTRADE PVT LTD	85,50,000.00	1962-2038	3445 to 3447	143(3)
22.	PRAGYA COMMODITIES PVT LTD	12,29,00,000.00	2039-2368	3441 to 3442	143(3)
23.	RITUDHARA DISTRIBUTORS PVT LTD	30,00,000.00	2369-2443	3436 to 3438	143(3)
24.	SANKATSATHI COMMERCE PVT LTD	96,00,000.00	2444-2518	3436 to 3438	143(3)
25.	SHIVMANGAL DEALCOMM PVT LTD	50,00,000.00	2519-2555	3421 to 3423	143(3)
26.	SHIVRASHI BARTER PVT LTD	30,00,000.00	2556-2613	3421 to 3423	143(3)
27.	SIDDHESHWARI VYAPAAR PVT LTD	3,70,00,000.00	2614-2721	3436 to 3438	143(3)
28.	SLIVERSON DEALCOMM PVT LTD	50,00,000.00	2722-2772	3426 to 3428	143(1)
29.	SKP COMTRADE PVT LTD	4,06,00,000.00	2773-2889	3445 to 3447	143(3)
30.	SKYTOUCH INVESTMENT ADVICORS PVT LTD	2,13,50,000.00	2890-2973	3445 to 3447	143(1)
31.	SRI NARAYAN MERCANTILE PVT LTD	12,91,00,000.00	2974-3207	3421 to 3423	143(3)
32.	STARMARK TIE-UP PVT LTD	76,00,000.00	3208-3273	3445 to 3447	143(3)
33.	TOPWELL VINIMAY PVT LTD	50,00,000.00	3274-3320	3426 to 3428	143(1)
34.	WATERLINK DISTRIBUTORS PVT LTD	1,79,00,000.00	3321-3405	3445 to 3447	143(3)

		77,76,70,000			
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022. We even note that the share subscribers were having substantial creditworthiness which is represented by the free reserves and share capital, therefore there is no substance in the findings of the lower authorities that the subscribers lacked creditworthiness. With respect to creditworthiness not being there in case of subscribers, we are of the opinion that the mere fact that they had meagre recurring income is not relevant and creditworthiness cannot be doubtful when their own funds are several times the investment made in the assessee company. The case of the assessee find support from the decision of Hon'ble Delhi High court in the case of CIT Vs M/s Mayawati 338 ITR 563(Del).

023. Considering the fact of the assessee's case in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of the Id. CIT()A and direct the Assessing Officer to delete the addition. Ground No.5-7 and 9 & 10 are allowed.

024. The other grounds raised by the assessee is not been adjudicated at this stage.

025. The appeal of the assessee in ITA No. 1035/Kol/2025 for A.Y. 2012-13 is allowed on legal issue.

A.Y. 2014-15

ITA No. 1036/Kol/2025

026. At the time of hearing the Id. Counsel for the assessee pressed ground no.2,3 and 4 which are extracted as under-

"2. For that on the facts of the case, the Ld CIT(A) erred in confirming the order of the A.O. when notice u/s. 148 dated 30.07.2022 was barred by limitation, notice u/s. 148A(b) having been initiated after 6 years from the assessment year, the assessment year in question was not covered by TOLA and as admitted by the Ld ASG in the case of Rajeew Bansal (SC) and so held in the said judgement.

3. For that on the facts of the case, the impugned order is at best capable of being classified as a case of mere change of opinion, and the 148 notice issued on 30.07.2022 after a lapse of 6 years, although the assessment was completed u/s. 143(3) on 31.12.2016 and all the material facts disclosed truly and fully before the A.O. at the time of scrutiny assessment, hence the assessment is bad in law should be quashed.

4. For that on the facts of the case, the Ld CIT(A) erred in confirming the order of the A.O. when the notice u/s. 148A(b) issued was barred by limitation since the materials were forwarded after the deadline fixed by the Hon'ble Apex Court and further complete materials were never sent along with the show cause notice."

027. The common issue raised in the above three grounds is against the notice u/s 148 of the Act dated 30.07.2022, being barred by limitation, as the assessment proceedings were initiated after six years from the end of relevant assessment year

028. The facts in brief are that the assessee filed the return of income on 30.11.2014, declaring total income at ₹5,24,996/-. Thereafter, the case of the assessee was reopened by issuing notice u/s 148 of the Act on 30.07.2022, which was not complied with by the assessee. Thereafter, the notice u/s 142(1) of the Act along with questionnaire were issued and in response, the assessee filed the return of income on 14.02.2023. Thereafter, notice u/s 143(2) dated 14.02.2023, was issued to the assessee to file documentary evidences, which was replied by the assessee. The learned AO noted that the assessee has received money of ₹3,88,29,138/- from certain entities which were found to be struck off by the ROC. The learned AO noted that these companies have neither any fixed nor claimed any expenses under various heads of expenditure and thereafter, they are shell companies. Finally, the learned AO treated the money credited in the

bank accounts the assessee of ₹3,88,29,138/- as unexplained cash credit and added u/s 68 of the Income-tax Act, 1961 (the Act).

029. In the appellate proceedings, the learned CIT (A) affirmed the order of the learned AO on merit, however, the issue of notice u/s 148 being time barred was not raised and thus, not adjudicated by the learned Commissioner of Income-tax (Appeals).

030. After hearing the rival contentions and perusing the materials available on record, we find that the assessment in this case was framed u/s 143(3) of the Act vide order dated 31.12.2016. Thereafter, the notice u/s 148 of the Act was issued on 28.04.2021 and ITR was filed on 07.05.2021. Thereafter, the assessee filed the objection on the validity of notice issued u/s 148 of the Act, challenging the same on the various grounds. The assessee submitted that in Para no.2 that the new scheme of reassessment has come in place with effect from 01.04.2021, therefore was any reopening notice u/s 148 of the Act on or after 01.04.2021, has to be in accordance with the new provisions of Section 148 and 148A of the Act. The assessee requested the Id. AO to drop the proceedings immediately. Thereafter, the learned AO issued notice u/s 148A(b) of the Act on 31.12.2022, which were replied by the assessee by uploading the submission on online portal on 01.07.2021. The order u/s 148A(d) of the Act was passed on 30.07.2022 and the notice u/s 148 of the Act, was issued u/s 30.07.2022. We find that {Taxation and Other Laws [Relaxation and Amendment of Certain Provisions] Act} TOLA is not applicable. In the present case as has been admitted in the case of Union of India and other Vs. Rajeev Bansal [2024] 469 ITR 46 (SC), dated 03.10.2024. Therefore, the notice u/s 148 of the Act dated 30.07.2022, is barred by limitation and so is the assessment framed consequently u/s 143(3)/ 147 of the Act. We note that as per the Section 149(1) of the

Act, the time limit for issue of notice u/s 148 of the Act for A.Y. 2014-15 before 01.04.2021, would be as per the old provision of Section 148 of the Act as existed the prior to 01.04.2021. As per the provision of section 147 of the Act as prevalent prior to 01.04.2021, the assessment in respect of assessment year which is already completed u/s 143(3) of the Act can be reopened u/s 148 of the Act within a period of four years from the end of the relevant assessment year. Under the present case i.e. A.Y. 2014-15, the assessment was framed u/s 143(3) of the Act vide order dated 31.12.2016 and therefore, period of limitation from the end of the relevant assessment year would be on or before 31.03.2019. The proviso to Section 147 of the Act also provides that prior to 01.04.2021, an assessment completed u/s 143(3) of the Act can be reopened upto six years from the end of the relevant assessment year if the escapement of income is there due to the failure on the part of the assessee to fully and truly disclose material facts for assessment of income for the relevant assessment year. We note that the assessee had already made full disclosure in the return of income filed u/s 139(1) of the Act on all transactions of sale of shares which resulted in loss as well as transactions relating to loss on Future and Option (F&O) transactions in derivatives. We even note that subject matter of proceeding u/s 143(3) of the Act was as to whether the loss has claimed by the assessee were bogus or could be allowed. Since, the Tribunal has already held the loss claimed to be valid and thus, allowed the claim of the assessee then the escapement cannot be attributed to the assessee. In our opinion, in such scenario, the proviso to Section 147 of the Act would not be applicable and therefore, the period of limitation for issue of notice u/s 148 would be 31.03.2019. Apparently, the notice issued for the first time on 28.04.2021, is clearly barred by limitation as per the provisions of Section 147 read with section 148 read with section 149

of the Act as it is existed prior to 01.04.2021. Therefore, considering the facts of the assessee's case, we are inclined to hold that the assessment is barred by limitation and is quashed. Ground nos.2,3 and 4 in this appeal are allowed.

031. As we have already quashed the assessment, other grounds raised by the assessee in the memorandum of appeal are not being adjudicated at this stage.

032. The appeal of the assessee in ITA No. 1036/KOL/2025 for A.Y. 2014-15 is allowed on legal issue.

A.Y. 2015-16

ITA No. 1037/Kol/2025

033. The issue raised in this appeal is similar to one as decided by us in ITA No. 1036/Kol/2025 for A.Y. 2014-15. Accordingly, our decision would, mutatis mutandis, apply to this appeal of assessee in ITA No. 1037/KOL/2025 for A.Y. 2015-16 as well. Hence, the appeal of the assessee is allowed.

A.Y. 2016-17

ITA No. 1038/Kol/2025

034. At the time of hearing, the Id. Counsel for the assessee pressed ground no.2,3,4 which are extracted below: -

"2. For that on the facts of the case, the Ld CIT(A) erred in confirming the order of the A.O. when notice u/s. 148 dated 29.07.2022 was barred by limitation, notice u/s. 148A(b) having been initiated after 6 years from the assessment year, the assessment year in question was not covered by TOLA and as admitted by the Ld ASG in the case of Rajeev Bansal (SC) and so held in the said judgement.

3. For that on the facts of the case, the impugned order is at best capable of being classified as a case of mere change of opinion, and the 148 notice issued on 29.07.2022 after a lapse of 6 years, although the original assessment made u/s. 143(3) on 28.12.2017 and all the material facts disclosed truly and fully

before the A.O. at the time of scrutiny assessment, hence the assessment is bad in law should be quashed.

4. For that on the facts of the case, the Ld CIT(A) erred in confirming the order of the A.O. when the notice u/s. 148A(b) issued was barred by limitation since the materials were forwarded after the deadline fixed by the Hon'ble Apex Court and further complete materials were never sent along with the show cause notice."

035. The facts in brief are that the return of income filed on 17.10.2016, declaring the total income at ₹4,87,484/-. Notice u/s 148 of the Act was issued on 28.04.2021. Thereafter, Hon'ble apex court in the case of Union of India Vs. Ashish Aggarwal 444 ITR 1 (SC), has held that notices issued under old regime after 01.04.2021, to 30.06.2021, shall be deemed to be notices issued u/s 148 A(b) of the Act of the new regime and the new provision would be applicable. Accordingly, the learned AO issued notice u/s 148A(b) of the Act on 30.05.2022 in which the learned AO noted that there was information on insite portal which showed that assessee is beneficiary of accommodation transactions amounting to ₹21,78,610/-, during the year under consideration. The assessee was given two weeks' time to respond to the said notice and the assessee filed the reply on 26.09.2022. Thereafter the learned AO passed the order u/s 148A(d) of the Act on 30.05.2022 in which the learned AO concluded that assessee has no proper explanation with respect to escapement of income in A.Y. 2016-17 and it is clear that assessee had prima facie no valid proof nor evidence to defend the alleged escaped income of ₹21,78,610/- and the same remained unexplained for lack of corroborative document/ prima facie remained escaped income in this case in A.Y. 2016-17. The notice u/s 148 of the Act was issued on 30.07.2022 and the assessee complied with the said notice by filing the return of income declaring the same income as was declared originally. Finally, the assessment was completed by the learned AO u/s 147 read with section 144B of the Act vide order dated 17.05.2023 by making

addition of ₹1,13,91,344/- on account of bogus accommodation entries in respect of bogus loans.

036. The learned Authorized Representative vehemently submitted before us that the notice u/s 148 of the Act is hopelessly barred by limitation on the ground that in the order passed u/s 148A(d) of the Act dated 30.07.2022, the learned AO came to the conclusion that escapement is ₹21,78,610/- which is apparently below ₹50 lacs and therefore, barred by limitation in terms of provisions of section 149(1)(9) of the Act. Consequently, the notice issued u/s 148B and all other consequential proceedings are bad in law. In defence of his arguments the Id. Counsel for the assessee relied on the decision of Delhi High Court in case of Ganesh Dass Khanna vs. Income-tax Officer [2024] 460 ITR 546 (Delhi) dated 10-11-2023. The learned Authorized Representative also relied on the decision of Hon'ble Madras High Court in case of Mrs. Thulasidass Prabavathi vs. Income-tax Officer [2025] 174 taxmann.com 508 (Madras) in WP no. 19010 of 2022 and 18331 and 18332 of 2022 dated 24.01.2025. The Id. Counsel for the assessee therefore prayed that the notice u/s 148 of the Act as well as the assessment framed is barred by limitation as in terms of section 149(1)(a) of the Act which provides that the reopening could be made beyond three years but not more than 10 years if the escapement amounts to or likely to amount to ₹50 lacs or more. Meaning thereby that in case of clause (a) to 149(1) of the Act, the reopening could be made within a period of three years of the income escaped was noted by AO is less than ₹50 lacs but in the present case the income escaped as per the AO was ₹21,78,610/-. Therefore, the reopening of assessment is barred by limitation. The case of the assessee find support from the decision of Delhi High Court in case of Ganesh Dass Khanna vs. ITO (supra) as well as Madras High Court in case of Mrs.

Thulasidass Prabavathi vs. ITO (supra). Consequently, we quash the reopening of assessment as well as the assessment framed.

037. As we have already quashed the assessment, other grounds raised by the assessee hence not been adjudicated at this stage.

038. The appeal of the assessee in ITA No. 1038/Kol/2025 for A.Y. 2016-17 is allowed on legal issue.

039. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 16.10.2025.

Sd/-
(GEORGE MATHAN)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 16.10.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata