

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI "F" BENCH :: MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 4388/MUM/2024
(Assessment Year : 2013-14)**

DCIT, Central Circle-3(3), Mumbai.	Vs.	Juicy International Pvt. Ltd. {now known as Avaada Ventures Pvt. Ltd. }, 406, 4 th Floor, Hubtown Solaris, N S Phadke Marg, Andheri East, West Flyover, Mumbai-400 069. PAN: AACJ 8216 D
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mani Jain & Shri Prateek Jain, Ld. CAs
Revenue by : Shri Aditya M. Rai – Ld. Sr. DR.

Date of Hearing : 18.07.2025
Date of Pronouncement : 16.10.2025

O R D E R

Per: NARENDER KUMAR CHOUDHRY, JM

This appeal has been preferred by the Revenue Department against the order dated 01/07/2024 impugned herein passed by the Commissioner of Income Tax (Appeals)-51, Mumbai (in short, 'Ld. Commissioner') u/sec. 250 of the Income Tax Act, 1961 (in short, 'Act') for the A.Y. 2013-14.

2. In this case, the Assessee had declared its total income at Rs. 72,11,640/- by filing its return of income for the assessment year under consideration on dated 25/09/2013, which was selected for scrutiny and therefore the Assessing Officer (AO) by issuing statutory notices, asked for certain details, which were submitted by the Assessee and verified by the AO and kept on record.

3. On perusing the details filed by the Assessee, it was observed by the AO that the Assessee company is stated to be engaged in the business of carrying out retail business of food and juice products, fruit and food pulp and manufacturing of goods and juices and has credited the total receipts includes other income to the tune of **Rs. 1,27,04,041/-** to the profit and loss account maintained and after debiting expenses under various heads, such as employee benefit expenses, finance cost, depreciation and amortization expenses, other expenses etc. offered the total income of **Rs. 72,11,640/-** to tax.

4. Further, the AO during the course of assessment proceedings found that the Assessee has received amount of **Rs. 37,37,00,000/-** in total from issuing shares on premium, to the following parties: -

<i>i.</i>	<i>Nimbus dealers Pvt. Ltd.</i>	<i>Rs. 18,86,00,000/-</i>
<i>ii.</i>	<i>Luxury Vinimay Pvt. Ltd.</i>	<i>Rs. 13,50,00,000/-</i>
<i>iii</i>	<i>Rashidhan Infrastructure P. Ltd.</i>	<i>Rs. 5,01,00,000/-</i>

5. The AO therefore in order to verify the details of money received from the issuance of share on premium, sought for following documents:

- i. Valuation report
- ii. Form-2
- iii. Confirmation
- i. ROI
- ii. Balance sheet
- iii. Profit and loss account; and,
- iv. Bank statement of parties from whom money has been received.

6. The Assessee, in reply, filed the valuation report, return of income of companies, confirmation and bank statements of the above parties.

7. The AO, in order to further verify the genuineness of the transactions, identity and creditworthiness of the parties, issued summons u/sec. 131 of the Act to the Directors of the above mentioned companies on 22/02/2016, asking their physical presence along with following details/documents:

- 1. Details of investment made in shares of M/s Juicy International Pvt. Ltd in AY 2013-14 and source thereof.*
- 2. Letter of share allotment made to you by M/s Juicy International Pvt Ltd in AY 2013-14.*
- 3. Details of share certificate number and the folio numbers of each of the certificates.*
- 4. Produce original share certificates allotted to you in M/s Juicy International Pvt. Ltd.*
- 5. Ledger in your books of accounts showing payment against issue of share by M/s Juicy International Pvt. Ltd.*
- 6. Complete bank statement for the period 01/04/2012 to 31/03/2013 and highlighting the investment transaction with M/s Juicy International Pvt. Ltd in AY 2013-14.*

7. Your PAN and office where you are assessed to income tax along with your P&L a/c, Balance Sheet and annexures for AY 2013-14.
8. Audited books of accounts for FY 2012-13, relevant to AY 2013-14 and minutes of meeting of the AGM conducted for last six years.
9. Details of the dividend received from M/s Juicy International Pvt. Ltd during last six years.”

8. In response to the summons issued u/sec. 131 of the Act, Mr. Vikash Agarwal being common Director of all the three companies appeared before the AO on 04/03/2016, whose statement was recorded and the same was placed on record. The major extract is reproduced as under: -

"(1) M/s Nimbus Dealers Pvt. Ltd.:

"Q.23 Please produce the details of transaction of investments in shares of M/s Juicy International Pvt. Ltd.

Ans. The details of investment in F.Y. 2012-13 in M/s Juicy International Pvt. Ltd. is as under:-

Date	Trn No.	Bank	Amount
06/11/2012	HDFCH 12311352002	HDFC Bank Ltd	5,00,00,000
07/11/2012	HDFCH 12312386314	HDFC Bank Ltd	5,00,00,000
08/11/2012	0097U12313008553	HDFC Bank Ltd	5, 11,00,000

Sir, I am providing herewith a copy of bank statement for the period 01/04/2012 to 31/03/2013 highlighting the transactions. Out of this payment we have been refunded back an amount of Rs. 10,00,000/- as under:-

Sr. No.	Date	Amount in Rs.
1	25.03.2013	10,00,000

(2) M/s Luxury Vinimay Pvt. Ltd.

"Q.23 Please produce the details of transaction of investments in shares of M/s Juicy International Pvt. Ltd.

Ans. The details of investments are as under:-

Date	Trn No.	Bank	Amount
12/11/2012	HDFCH 12317018778	HDFC Bank Ltd	3,00,00,000
12/11/2012	HDFCH 12317018895	HDFC Bank Ltd	10,,79,00,000

Sir, I am providing herewith a copy of bank statement for the period 01/04/2012 to 31/03/2013 highlighting the transaction. Out of this payment we have been refunded back an amount of Rs. 29,00,000/- as under:-

Sr. No.	Date	Amount in Rs.
1	17.01.2013	10,00,000
2	15.03.2013	4,00,000
3	25.03.2013	15,00,000



9. The AO thereafter mentioned the details of some of the companies and their Directors in para 4.1 and 4.2 of the assessment order and observed that the said companies have been approved as accommodation entry companies by the Investigation Wing, Kolkata. During the course of search operation u/sec. 132, statements of the Directors of the some companies were recorded on oath, in which they have admitted that there are having no business activities and they providing only accommodation entries.

10. The AO, though acknowledged the fact that Mr. Vikash Agarwal (Director of M/s. Luxury Vinimay Pvt. Ltd.) during the course of statement recorded u/sec. 131, has provided the details of source of funds along with corresponding bank entries in regard to purchase of shares of the Assessee, however thereafter, he recorded the statements of Mr. Naresh Chapparia, Mr. Rajesh Bhutoria and Mr. Dinesh Kr. Dhandhania {Directors of some other companies} and after going through their statements, modus operandi and source of funds of above mentioned two companies namely Nimbus dealers Pvt. Ltd. and Luxury Vinimay Pvt. Ltd., from whom share application money was also received, held that it becomes evident and self-explanatory that there is no identity, genuineness and creditworthiness of these companies. It is only the Assessee's own money, which has been routed by way of allotment of shares on premium.

10.1 Further, as per the provisions of section 68 of the Act, the Assessee is required to explain the nature and also the source of the credit appearing in its books. The explanation offered by the Assessee is, in his opinion is not satisfactory and therefore, the sum so credited may be charged to income tax, as the income of the Assessee of that previous year.

11. Thereafter, the AO quoted various judgments including the judgments of the Hon'ble Apex Court in the case of CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC) and Sumati Dayal vs. CIT 214 ITR 801, wherein it has been expounded that revenue authorities are also supposed to consider the surrounding circumstances and apply the test of human probability. The transactions apparent were held to be not real ones.

12. The AO though also acknowledged the facts that the Assessee has filed the return of income, confirmation from parties, issuance and receipt of a cheque by furnishing a copy of statement of bank account, incorporation details, PAN nos. and ITR details of companies, who invested in shares and also established the fact that the transactions were routed through banking channel, however, the AO still held that creditworthiness is not proved showing only return of income, confirmation from parties, issuance of receipt of a cheque or by furnishing copy of bank statement, when circumstances requires that there should be some more evidence of positive nature to show that the purchaser had made genuine investment, after due diligence or for personal reasons.

13. The AO further held that on the question of creditworthiness and genuineness, there is no doubt that money was received through banking channel, but did not reflect actual 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.

14. The AO thereafter, by observing that as per the provisions of section 68 of the Act, the onus of providing identity, genuineness and creditworthiness of the source of a sum of money found to have been received by an Assessee, is on him/her and it is open to the Revenue to hold that it is the income of the Assessee and no further burden lies on the Revenue to show that the income is from any particular source.

15. The AO ultimately by relying on the facts of the case and various judgments and statements recorded by Investigation Wing of the Kolkata Directorate, held that the apparent was not real in the present case and ultimately made the addition of Rs. 32,75,00,000/- being the sum total of unexplained cash credits in the form of share application money received from **M/s. Luxury Vinimay Pvt. Ltd.** (Rs. 13,50,00,000) and **M/s. Nimbus Dealers Pvt. Ltd. (Rs. 18,86,00,000/-)** by the Assessee, u/sec. 68 of the Act.

16. The AO also made addition of Rs. 28,82,818/- being disallowance u/sec. 14A of the Act by observing and holding as under: -

5.1 From the details filed by the assessee during the course of the scrutiny proceedings. It is noticed in the Balance Sheet of the assessee has made investments in exempt income yielding assets amounting to Rs.75,63,76,504/- as on 31.03.2013. The ensuing dividend of Rs. 3,04,034/- has been claimed as exempt by virtue of Sec 10(34) of the Income Tax Act, 1961. However, the assessee has not attributed any expenses which have been Incurred to carry out the activity of Investments, though It is an accepted fact that for carrying out any such activity, some kind of expenditure is bound to be Incurred. In this regard, the assessee was, during the course of the assessment proceedings, asked to show cause why

expenses attributable to investment in exempt-income yielding assets, should not be disallowed u/s 14A r.w. Rule 8D of the Income-tax Act, 1961. In response thereto, assessee stated that there are no expenses incurred in regards to investments from which exempt income can be earned therefore disallowance u/s.14A r.w.r. 8D is not applicable.

5.2 The submissions put forth by the assessee have been carefully considered. In this respect, it is pertinent to note that the disallowance u/s.14A of the Act is in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act. The section nowhere states that such exempt Income has to be earned during the previous year. The only condition to be fulfilled that there should be expenditure and such expenditure should be incurred in relation to Income which does not form part of the total Income. One can incur expenditure for the purpose of earning dividend but may not actually earn the dividend during the previous year. The provisions of section 14A of the Act do not aimed at exempt Income per se but target the process employed to earn exempt income and expenditure incurred in relation to such process. The process may or may not result into actually earning the exempt income. The assessee has invested into the shares. The process was capable of generating exempt in the form of dividend. Though, it may be claimed that no actual expenditure is Incurred for these Investment, the assessee was bound to incur expenditure for the same.

5.3 It Is evident that the assessee cannot earn any income from Investments without systematic management. Investment decisions are very complex in nature. It requires substantial market research and day-to-day analysis of market trends and decisions at the most appropriate time. The term 'expenditure' occurring in Section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial. Further, as regards applicability of Rule BD of the I.T. Rules, the Hon'ble Bombay High Court has, in a judgment delivered on 12.08.2010 in ITXA No.626/2010 & Writ Petition No.758/2010 in the case of Godrej & Boyce Manufacturing Co. Limited, Mumbal vs. Dy.CIT-10(2), Mumbai & others, ruled in favour of the department.

5.4 In view of the above discussion, disallowance u/s.14A is computed in accordance with the method prescribed in Rule 8D of the I.T. Rules, 1962 as under:

Juicy International Pvt. Ltd. A.Y. 2013-14		
(i)	The amount of expenditure directly relating to income which does not form part of total income	-
(ii)	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii)	(A X B/C) NA
(iii)	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	0.5% of Rs.57,65,63,493/- Rs.28,82,818/-
Total Expenditure disallowed u/s.14A		Rs.28,82,818/-
Note		
(i)	A = Interest (included in finance cost) debited to Profit & Loss A/c= NA	
(ii)	B = Average of exempt income-bearing investments = Rs.19,83,75,240/-	
(iii)	C = Average of total assets appearing in the Balance Sheet on the first and last day of the previous year =NA	
B	Average value of investments -	
	= $\frac{\text{Opening balance of Investments} + \text{Closing Bal. of Investments}}{2}$	
	= $\frac{39,67,50,479 + 75,63,76,504}{2} = \text{Rs.57,65,63,492/-}$	

5.5 The amount of expenditure attributable to the activity of making exempt-income yielding Investments is determined in accordance with Rule 8D of the Income Tax Rules, 1962 at Rs.28,82,818/-. The same is disallowed u/s.14A and added back to the total income as well as to the book profit of the assessee and also adjusted to book profit u/s 115JB. In view of the provisions of clause (f) of Explanation 1 to Section 11538 of the Act. However, since the entire business loss of Rs.14,68,364/- is being disallowed in para 6 below of this order, no separate addition is being made in this respect. In case, at any of the appellate stages, the disallowance of business loss is held to be allowable, then disallowance u/s 14A of Rs.14,68,364/- gets added to the total income of the assessee.

17. The AO also made the disallowance of Rs. 14,68,364/- being disallowance of business loss claimed by the Assessee mainly on the reason that there is no Revenue from operations and the Assessee in the profit and loss account has credited the income from house property of Rs. 1,24,00,007/- and dividend income of Rs. 3,04,034/-.

18. The Assessee, being aggrieved with the said additions/disallowances, challenged the same by filing first appeal before the Ld. Commissioner by raising various grounds and with regard to share application money received, more or less has claimed as acknowledged by the Ld. Commissioner in impugned order, which read as under -

“9.4 During the course of appellate proceeding, appellant explained that the share application and share premium received by it, was from three entities namely M/s. Nimbus Dealers Private Limited, M/s. Luxury Vinimay Private Limited & M/s. Rashidhan Infrastructure Pvt. Ltd. To establish the identity and creditworthiness of these parties, it had filed details such as ITR, CIN Details, Confirmation, Financial statements and ROC documents. Similarly, to establish the genuineness of the said transaction, it had filed Bank statement of these parties. Accordingly, appellant had tried to prove source of money received by it from these three entities.

9.5 Further, with regards to source of money in hands of shareholders, appellant has made two-fold submission. At first, the appellant contended that source of investment in the hands of the shareholders was predominantly the sale proceeds of the mutual funds while nominal amount was received from the sale of shares. To substantiate the same, appellant has duly filed bank statement of the shareholders, Mutual Funds ledger accounts in the books of shareholders, Bank statement and ledger account of the parties to whom the shares were sold by the assessee. These documents were filed as additional evidences.”

19. The Assessee in addition also made additional submissions to the effect that source of money mentioned by the AO being sale proceeds from sale of shares, is also genuine. The Assessee in order to substantiate its claim, also filed additional evidence i.e. ITR acknowledgments and financial statements of the parties, to whom shares have been sold by shareholders.

20. As the Assessee had submitted various documents in the form of additional evidences, along with petition dated 19/02/2024 for

admission of such evidence and, therefore, the Ld. Commissioner as per the provisions of Rule 46A of the Income Tax Rules, 1962 (for short, 'Rules'), remanded such additional evidence to the AO for verification and comments.

21. The AO consequently by conducting remand proceedings and verifying the additional evidence, submitted its remand report dated 15/05/2024, the relevant portion of the same, is reproduced herein below for brevity and ready reference: -

“Evidences:

4.1 It is submitted that as per the rule, the appellant shall not produce any additional evidence other than the evidence produced during the course of proceedings before the Assessing Officer except

a) where the AO has refused to admit evidence which ought to have been admitted; or

b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Office; or

c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal or d. where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

It is to be noted that the AO gave multiple opportunities to the appellant to submit the relevant and satisfactory information. Vide order sheet noting dated 25.01.2016, the appellant was asked to provide full details in respect of the money received from issuance of share on premium. The submissions dated 04.02.2016 & 05.02.2016 filed by the appellant in response to the said notice were duly considered by the AO. Thereafter, a show-cause notice was issued to the appellant on 23.03.2016 proposing the said additions as detailed above. The appellant was given ample time of 05 days till 28.03.2016 to file its reply. Since satisfactory explanation was not presented by the appellant and it was unable to explain the source of funds in the hands of shareholders of the appellant company i.e. Nimbus Dealers Pvt. Ltd. & Luxury Vinimay Pvt. Ltd., the AO proceeded with the addition.

During the course of assessment proceeding, it was the onus of the appellant to provide sufficient documentary evidences to substantiate its claims.

5 Comments of the AO on merit of the additional evidences:

5.1 Without prejudice to the above, it is submitted that the appellant during the appellate proceedings submitted following additional evidences:

a Copy of Form no. 2 filed regarding allotment of shares to M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited.

b Documents relating to source of funds of the shareholders parties i.e. M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited.

c. Documents relating to sale of shares by shareholders parties M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited.

5.2 In this regard, it is submitted that on perusal of the documents relating to source of funds of M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited, the party wise findings is discussed in the subsequent paras

5.2.1. With regard to M/s. Nimbus Dealers Private Limited, the appellant had submitted documents explaining the source partly from redemption of mutual funds and partly from sale of shares

With respect to the redemption of mutual funds of Rs. 14.77 Crs., it is submitted that the amount received from the redemption of mutual funds is not denied, however, the appellant has not brought on record as to the source of investment made by the said company in the mutual funds.

With regard to the sale of shares of Rs.0.36 Crs., appellant has submitted that M/s. Nimbus Dealers Private Limited has received sale consideration on sale of shares of M/s. Unity Commercial Pvt. Ltd. and M/s. Swarnim Tradecom Pvt. Ltd. to M/s. Ayush Fiscal Pvt. Ltd and MAs. Sukun Vanijya Private Limited respectively. It is submitted that on perusal of financial statements of M/s. SukunVanijya Private Limited, it is noticed that the share capital of the said company for year under consideration was just Rs. 1,23,400/- There are no fixed assets in the company. Further, there is huge increase in the turnover as compared to the previous year with low income (Total turnover and total income for AY 2012-13 is Rs. 26,81,274/- & Rs. 22,029/- respectively and for AY 2013-14, total turnover is Rs. 1,20,07,356/- total income of Rs. 3,04,158/- respectively). Similarly, with regard to M/s. Ayush Fiscal Private Limited, there is no fixed asset and high increase in turnover (Total turnover for AY 2012-13 is Rs. 9,14,221/- and for AY 2013-14, total turnover is Rs. 70,71,832/-)

In respect of the same, it is pertinent to mention that such characteristics as stated above are peculiarly attributable to entities engaged in providing or availing accommodation entries. Thus, the stand of appellant regarding genuineness of source of funds with respect to sale of shares is itself incorrect and hence any admission of additional evidence shall not be made.

Also, the address and perusal of the financial statement as stated above shows that both the parties are shell entities based in Kolkata and therefore, it is clear that these parties have been used to provide accommodation entries.

5.3 Now, with regard to M/s. Luxury Vinimay Private Limited, the appellant had submitted documents explaining the source from sale of shares, redemption of mutual funds and return of share application money earlier advanced to M/s. Rashidhan Infrastructure Pvt. Ltd.

5.3.1 With regard to the sale of shares of Rs. 0.40 Crs., appellant has submitted that M/s. Luxury Vinimay Private Limited has received sale consideration on sale of shares of M/s. Plaza Vinimay Pvt. Ltd. to M/s. Orbit Dealmark Pvt. Ltd and M/s. SukunVanijya Private Limited It is submitted that on perusal of financial statements of M/s. Sukun Vincom Private Limited, the share capital of the said company for year under consideration was just Rs. 1,35,050/- There are no fixed assets in the said company.

Further, there is huge increase in the turnover as compared to the previous year with low income (Total turnover and total income for AY 2012-13 is Rs. 2,459/- & Rs. 583/- respectively and for AY 2013-14, total turnover is Rs.34,88,825/- total income of Rs. 9,205/- respectively). Similarly, with regard to M/s. Orbit Dealmark Private Limited, there is no fixed asset in the company and further supported by lower income (Total turnover for AY 2012-13 is Rs. 11,60,870/- and for AY 2013-14, total turnover is Rs. 29,58,410/-).

5.3.2. Further, as regard to the return of share application money earlier advanced to M/s. Rashidhan Infrastructure Pvt. Ltd. of Rs. 3 Crs., it is submitted that the said company has a meager amount of fixed assets and high turnover as compared to previous year.

5.3.3 In respect of the same, it is pertinent to mention that such characteristics as stated above are peculiarly attributable to entities engaged in providing or availing accommodation entries. Thus, the stand of appellant regarding genuineness of source of funds with respect to sale of shares is itself incorrect and hence any admission of additional evidence shall not be made. Also, the address and perusal of the financial statement as stated above show that both the parties are shell entities based in Kolkata and therefore, it is clear that these parties have been used to provide accommodation entries.

In light of the above, it is clear that M/s Orbit Dealm Pvt. Ltd., M/s. Sukun Vanijya Private Limited and M/s. Rashidhan, infrastructure Pvt. Ltd. are shell entities. Therefore, the mere fact that the transactions have been routed through banking channels does not justify the genuineness of sale of shares and return of share application money.

5.3.4 Further, with respect to the redemption of mutual funds of Rs. 10.40 Crs., it is submitted that the amount received from the redemption of mutual funds is not denied, however, the appellant has not brought on record as to the source of investment made by the said company in the mutual funds.

5.4. Further, with regard to the documents submitted by the appellant explaining the source of funds of M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited in respect of sale of shares, it is submitted that the said entities had invested in the shares of unlisted companies and the part of them was redeemed during the year under consideration which has been discussed above. The said proceeds were invested by them in the appellant company. In this regard, it is stated that the appellant has submitted the ITR Acknowledgement and Financial Statements of the entities along with the bank statement of M/s, Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited respectively.

5.4.1 In respect of the same, it is submitted that on perusal of the list of companies to whom shares were sold, it is stated that the addresses and financial statement of the said entities show that these are shell entities based in Kolkata and these parties have been used to provide accommodation entries. Further, referring to the financials statements of the various entities, it is clearly seen that they also show similar characteristics which are attributable to the companies involved in the providing/availing accommodation entries. Thus, when the said entities are bogus, the source of funds is again held to be bogus.

6. In view of the above, it is submitted that the submission of additional evidences by the appellant nowhere justifies the genuineness of the share capital received by it from M/s. Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited, Also, it is pertinent to mention that detailed analysis with respect to M/s Nimbus Dealers Private Limited and M/s. Luxury Vinimay Private Limited being shell entities has been done in the assessment order passed u/s. 143-3) of the Act

7. Thus, the above discussion and findings clearly establish that the appellant has received accommodation entry in the form of share capital."

22. Ld. Commissioner also forwarded the copy of the remand report to the Assessee, who in response to the same filed its reply dated 04/06/2024, which has also been reproduced by the Ld.

Commissioner, at para 9.9 of the impugned order, which read as under: -

“1. During the appellate proceedings before your honour, the appellant has submitted certain additional evidences in respect of the addition made in the assessment order.

2. Thereafter, the matter was remanded back to the Id.AO for his comment. Subsequently, the appellant has received the AO's remand report on 22.05.2024 dated 15.05.2024. The various contentions taken by the Id. AO in the impugned report and our rejoinder are as under-

3 In this regard, it is submitted that Id. AO has made addition on account of share application money received from M/s. Nimbus Dealers Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. amounting to Rs. 32.75 Crs. In our submission filed before your Honour, we had provided the source of the said investment in the hands of the shareholders and evidences with respect to the same were also provided. The same is summarized and tabulated as under.-

Sr. no	Particulars	Received from Nimbus Dealers Pvt. Ltd.	Received from Luxury Vinimay Pvt. Ltd.
1	Received in earlier period	3,85,00,000	-
2	Sources out of redemption of mutual funds	14,77,06,085	10,40,35,258
3	Sale of shares to M/s. Aush Fiscal Pvt. Ltd.	11,00,000	
4	Sale of shares to M/s. Sukun Vanijya Pvt. Ltd.	25,00,000	
5	Sale of share to M/s. Orbit Dealmark Pvt. Ltd.	-	15,00,000
6	Sale of shares to M/s. Sukun Vincom Pvt. Ltd.	-	25,00,000
7	Redemption of share application money given to M/s. Rashidhan Infrastructure Pvt. Ltd.	-	3,00,00,000
	Total sources	18,98,06,085	13,80,35,258
	Amount invested in appellant	18,86,00,000	13,50,00,000

4 In the remand report, Id. AO has stated the sufficient opportunity was provided during the assessment proceedings and therefore, the additional evidences should not be admitted. In this regard, it is submitted that id. AO has himself stated that only 5 days were

provided to submit the voluminous data at the fag end of the assessment proceedings it is pertinent to mention that the details asked were pertaining to third party evidences and therefore, the time provided by lo AO was not adequate as per law. Accordingly, the additional evidences may kindly be accepted.

5. In the remand report, Id. AO has commented on the source of the shareholders who have invested in the appelland company.

6 With respect to M/s. Nimbus Dealers Pvt. Ltd., it has already been pointed out that out of the total amount of Rs. 18,86,00,000/- invested in the appelland company, an amount of Rs. 3.85 Crs. has been received in earlier years and the same has nowhere been disputed by the Id. AO in the remand report. Therefore, the addition made u/s 68 with respect to the said amount in the current year is illegal and deserves to be deleted.

7. With respect to the remaining amount, it has been confirmed by the Id. AO that the source to the extent of Rs. 14.77 Crs. related to the redemption of mutual funds. Therefore, once the source of the funds invested in the appelland company is on account of redemption of mutual funds, the genuineness of the same cannot be doubted. However, Id. AO has commented that the appelland has not bought on record the source of investment in the said mutual funds. In this regard, it is submitted that the contention of the Id. AO is unfounded. As per the provisions of sec. 68, the appelland is only required to show the source of investment in the hands of the appelland and not thereafter. If the contention of the Id. AO is accepted, then proving of such sources would be endless. Accordingly, the contention of Id AO is misplaced.

8. Without prejudice to the above submission, it is submitted that the ultimate source in the hands of shareholders are from the share capital which has been received by them in the earlier period which has been explained in our submission. In this regard, it is submitted that the said source has already been subjected to the assessment proceedings for AY 2012-13 and the share capital issue was duly verified by the AO. After verification, the said share capital was accepted as genuine. In this regard, the copy of the submission made before AO by shareholders and assessment order passed for AY 2012-13 is enclosed herewith at page nos. 72-96 of the paper book. No doubt whatsoever has been raised by their AO on this source of funds. Therefore, the question of doubting the source of mutual funds cannot arise.

9. With respect to the remaining source of Rs. 0.36 Crs., Id. AO has confirmed that the said amount was received by the shareholders company through sale of shares to different parties. Further, he has commented that the company who have purchased the shares and paid the sale consideration, do not possess enough assets as per their balance sheet and show high increase in turnover. He has further alleged that such characteristics are attributable to entities engaged in providing accommodation entries which is further supported by the fact that their address is based in Kolkata. Such an exercise would defeat

the purpose of the Act, Accordingly. Id. AO has alleged that the genuineness of the source of funds is not established.

10. In this regard, foremost, it is submitted that the contention of the Id. AO is entirely misplaced. As per the provisions of section 68, the additional requirement of the law requires the appellant to prove the source of the source. In the case of the appellant, the appellant has proved the source in the hands of the shareholders by showing that the source is out of the sale of shares which has not been doubted. The appellant has also discharged its onus by submitting the ITR, financials and bank statement of the buyer party. Therefore, once the said sale has been accepted, the source of shareholders cannot be not doubted. The law doesn't require to prove the credit worthiness of the buyer who has paid the funds to the shareholders. Accordingly, the contention of the Id. AC is incorrect

11 Without prejudice to the above, the appellant has also submitted the financials of the buyer parties to show the genuineness of the transactions. As per the said financials: M/s Ayush Fiscal Pvt Ltd. has own funds comprising of share capital and free reserves of Rs. 8.37 Crs. and turnover of 1.20 Crs. which is sufficient to pay an amount of Rs. 0.11 Crs. to the shareholders company for purchase of shares. Similarly, as per the financials of M/s. Sukun Vnaijya Pvt. Ltd., it has own funds of Rs. 2.34 Crs. and turnover of Rs. 0.70 Crs. which is sufficient to pay an amount of Rs. 0.25 Crs. to the shareholder company for purchase of shares. Therefore, the credit worthiness of the said companies cannot be doubted.

12. Further, Id. AO has alleged that the financials and addresses of the buyer companies show that the same are engaged in the business of providing accommodation entry. In this regard, it is submitted that the said argument of the Id. AO is purely based on guesswork and his own whims and fancies. There is no prescribed format under the Act which would show that a particular entity is a shell company or not. It is up-to AO to show as to have a particular entity is a shell company. However, no independent enquiry has been made by the AO to prove the same. Also, operating from Kolkata cannot lead to a presumption that the company is a shell company. Accordingly, it is submitted that the allegation made by the Id. AO is entirely baseless.

13. In view of the above discussion, it is submitted that the share capital received from M/s. Nimbus Dealers Pvt. Ltd. is duly explained.

*14. **Now coming to second shareholder M/s. Luxury Vinimay Pvt. Ltd.,** Id. AO has made similar argument with respect to the source in the hands of the shareholders. With respect to the major source, Id. AO has confirmed the fact that an amount of Rs. 10:40 Crs. has been sourced out of redemption of mutual funds, genuineness of which cannot be doubted. As regards, source of the funds to invest in the mutual funds, it is already explained that the said fact is not required as per law. In any case, it is submitted that the ultimate source in the hands of shareholders are from the share capital which has been*

received by them in the earlier period and the said source has already been subjected to the assessment proceedings for AY 2012-13 wherein the share capital issue was duly verified by the AO and was accepted as genuine. In this regard, the copy of the submission made before AO by shareholders and assessment order passed for AY 2012-13 is enclosed herewith at page nos. 72-96 of the paper book. No doubt whatsoever has been raised by their AO. Therefore, the question of doubting the source of mutual funds cannot arise.

15. With respect to the other source, Id. AO has commented that the appellant has received an amount of Rs. 0.40 Crs, out of sale of shares to two parties. However, he has alleged that the said parties do not possess enough assets and has high increase in turnover. Ld. AO has also alleged that the characteristics of the said company show it is a shell company which is supported by the fact that it operates from Kolkata.

16. In this regard as already explained above, the appellant is only required to explain the source of the funds in the hands of the shareholders and not the source in the hands of the party who has paid the amount of shareholders. Therefore, the allegation of the Id. AO is baseless. Without prejudice to the above, it is submitted that the appellant has already submitted the copy of the financials of the buyer parties before the id AO. As per the said financials, M/s. Sukun Vincom Pvt. Ltd. has own funds of Rs 3.51 Crs. and turnover of Rs. 0.35 Crs. which is sufficient to pay an amount of Rs. 0.25 Crs to the shareholder company for purchase of shares Similarly, M/s. Orbit Dealmark Pvt. Ltd. has own funds of Rs. 5.18 Crs and turnover of Rs. 0.30 Crs. which is suffice to pay an amount of Rs. 0.15 Crs. to the shareholder company for purchase of shares. Therefore, creditworthiness of the parties cannot be doubted.

17. Also, it has been explained that the allegation of the Id. AO is holding the companies as shell companies is entirely baseless and made without any independent verification at his end.

18. In view of the above discussion, it is submitted that the share capital received from M/s. Luxury Vinimay Pvt. Ltd. is duly explained.

19. Further, it is submitted that the appellant had also submitted documents in respect of funds received on account of other sale of shares done by the shareholder companies since they were also doubted by the Id. AO in the assessment order. The said documents included the ITR, financials and bank statement of the parties who have purchased shares from the shareholder companies. In the remand report, Id. AO has made similar general observations that the financials of the said entities show pattern of shell companies and they are also based in Kolkata. In this regard, it is reiterated that Id. AO has made such allegation on his own assumption without bringing on record any evidence to prove the same. The said companies are genuine company engaged in regular business activity and no independent verification has been done by Id. AO before making such allegations. There is no

formula provided under the Act based on which a company can be termed as a shell company without pointing out any deficiency. Moreover, if the id. AO's allegations relating to office situated at Kolkata are accepted, then it would mean that the entire people of the Kolkata are providing accommodation entry without doing any genuine work which certainly cannot be the case. Such baseless assumption cannot form a reason to doubt the veracity of the companies. Accordingly, it is submitted that the contention raised by the Id. AO are baseless and deserves to be rejected.

20. In view of the above, it is submitted that the contention of the ld. AO is incorrect and addition made by the Id. AO may kindly be deleted."

23. Thereafter, the Ld. Commissioner by considering the additional evidence filed, ultimately admitted the same by passing appropriate order, which read as under: -

"9.10 I have considered the facts of the case, submissions of the appellant along with the remand report and its rejoinder. At the outset, it is necessary to consider the issue of admission of additional evidences which has been objected by the AO. I have gone through the details of notices issued during the assessment proceedings. I observe that the appellant was show caused regarding the share capital only towards the fag end of the assessment proceedings and was only provided five days to reply to the said notice which included details pertaining to the relevant parties. This clearly shows that proper opportunity was not provided to the appellant during the assessment proceedings. As per Rule 46A (1), the said evidences are admissible under sub rule (d) wherein sufficient opportunity was not provided. In any case, the additional evidences are also admissible under sub rule (b) and (c) which provide admission of evidences wherein there is presence of sufficient cause. The case of the appellant falls under the above said sub rules. Accordingly, I admit the additional evidences submitted by the appellant."

24. Thereafter, the Ld. Commissioner by considering the merits of the case in detail, peculiar facts and circumstances and relevant judgments concerning the issue involved, ultimately deleted the addition of **Rs. 32,36,00,000/-** made by AO on account of share application money received by the Assessee by observing and holding as under: -

"9.11 The issue here relates to the receipt of the share application money of Rs. 32.36 Crore from M/s. Nimbus Dealers Pvt. Ltd. and M/s.

Luxury Vinimay Pvt. Ltd. During the course of assessment proceedings, AO observed that the appellant had not satisfactorily proved the onus casted as per the amended provisions of section 68 in respect of "source of source" i.e. the source in the hands of the shareholders. Accordingly, he added the entire share capital as cash credit u/s 68 of the Act.

9.12 In this regard, it is first necessary to understand the provisions of section 68 which is reproduced hereunder -

"68. Where any sum is found credited in the books of an appellant maintained for any previous year, and the appellant offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the appellant of that previous year:

[Provided that where the appellant is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such appellant-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited, and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory"

9.13 It is a settled position that the appellant is required to prove the identity, creditworthiness and genuineness of the party to discharge the onus casted upon it by the provisions of section 68 of the Act. The Finance Act, 2012 has added a proviso to the said section wherein it has been provided that in case of share application money or share capital, the appellant is also required to be prove the nature and source of its shareholders.

9.14 The above amendment in section 68 has been dealt with by Mumbai Tribunal in the case of Chemicon Engineering Consultant (P.) Ltd. reported in [2022] 142 taxmann.com 297 which is as under.-

"8. Having heard both the parties and after perusing the material placed before us, it is noted that the issue for our consideration raised by both sides is whether the addition made u/s 68 of the Act was right or erroneous before adverting to the facts, let us first look at section 68 of the Act. We note that the relevant assessment year (A. Y] before us is A. Y 2013-14 wherein we note that a Proviso has been inserted by Finance Act 2012 w.ef 1-4-2013 in section 68 of the Act which is applicable for this relevant AY and for ready reference, the relevant and

applicable in this case of section 68 of the Act with the aforesaid proviso is reproduced as under:

.....

9. *The phraseology of Section 68 of the Act is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the appellant of that previous year. In this case, the Legislative mandate is not in terms of the word 'shall' be charged to income-tax as the income of the appellant of that previous year. The Supreme Court while interpreting similar phraseology used in Section 69 of the Act has held that in creating the legal fiction, the phraseology used therein employs the word "may" and not "shall". Thus, the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the appellant as also held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 103 Taxman 382/237 ITR 570.*

10. *Hence, the initial onus is upon the appellant to establish three things necessary to obviate the mischief of Section 68 of the Act. These are:*

- (i) identity of the investors,*
- (ii) their creditworthiness/investments; and*
- (iii) Genuineness of the transaction.*

11. *The said provision casts the initial onus to prove the nature of credit on the recipient i.e. the appellant. There is a marked distinction between 'onus of proof' and 'burden of proof'. The 'burden of proof' lies on a person who has to prove a fact initially and if he fails to prove it, when asked to do so by the AO, then AO can draw adverse inference against the appellant u/s 68 of the Act. But if the appellant discharges its obligation and prove the nature & source of the credit entries to AO's satisfaction, then the 'onus of proof' shifts. However, for the purposes of Section 68 of the Act, the 'burden to prove' begins with the appellant and once the appellant submits evidence in support of the credit and makes out a prima facie case, then the 'onus of proof' shifts to the Revenue. Such shifting of 'onus' is a continuous process in the evaluation of evidence. If the evidence on record weighs in favour of the appellant [based on preponderance of probability which is the standard of proof required in income tax assessments] or that the explanation put forth cannot be said to be completely unsatisfactory, then the onus cast upon the appellant u/s 68 of the Act can be said to have been discharged. In view of the foregoing, we are of the considered view that the initial burden on the appellant was only to substantiate the source of its share application monies and if it is found that the identity and creditworthiness of the share applicants along with the genuineness of the transaction is established, then the addition u/s 68 of the Act would be unwarranted.*

12. Now the next aspect which requires our consideration, is the proviso to section 68 of the Act, which was inserted by the Finance Act, 2012, which now put further burden upon the assesses to substantiate the 'source of source' of funds. We note that even though the Parliament has inserted the proviso In section 68 of the Act, by the Finance Act, 2012, w.e.f. 1-4-2013, we must bear in mind that there is no change or amendment in the substantive provision of section 68 of the Act wherein if any sum is found by the AO to have been credited in the books of an appellant in the relevant financial year, then when called upon by him (AO) to the appellant to explain the nature and source of the credit; and pursuant to which if the appellant fails to explain to the satisfaction of AO the nature and source of the credit, then the AO may treat the credit as income chargeable to tax. In other words, if the appellant is able to explain the nature and source of the credit to the satisfaction of AO, then AO cannot use this provision to charge the credit appearing in the books of the appellant as income for the purpose of taxation under the Act. It is settled position of law that 'satisfaction' contemplated in section 68 of the Act is that of a reasonable prudent person (AO) and not that of an unreasonable person. So, when the AO calls upon the appellant to explain the nature and source of the credit found in appellant's book, then initial burden is on the appellant to bring material on record to show the nature and source of the credit i.e. Identity, creditworthiness and genuineness of the transaction in question. And once an appellant is able to discharge the initial burden which lies upon it, then the onus shifts to the AO to disprove/rebut the material adduced by the appellant to substantiate the nature and source of the credit transaction. And if the AO is not able to disprove/rebut the evidence brought on record by the appellant to prove the nature and source of the credit entry, then section 68 of the Act cannot be used by the AO to charge the credit appearing in the books of the appellant as income for taxation. This position of law we note remains the same even after the insertion of Finance Act 2012, wherein additional requirement/burden is brought in by the Parliament in the cases of an appellant which is a corporate entity (not being a company in which the public are substantially interested) claims to have received share application money, share capital, share premium or any such amount, then with effect from 1-4-2013, while giving the explanation to the AO regarding the nature and source of such sum credited in its books, the share subscribers has to offer the proof of 'source of source' of the share application money, share capital, share premium. So, we note that till AY 2012-13, the requirement of law as per section 68 of the Act was that when there is a credit entry in the books, then appellant was required to satisfy the AO in respect of the nature and source (i.e. First source from which it received) and that position of law remains in force till now also, except that after 1-4-2013 (i.e. AY 2013-14) onwards when an appellant company (not a public company) if they collect share application money, share capital, share premium then an additional burden is imposed by the first proviso to bring to the notice of AO the "source of source" of the credit entry i.e. source of the share applicant which had been invested in the appellant company. In other words from AY 2013-14 and onwards, in the event if an appellant company when called upon by the AO to explain the nature of the credit

in its books claims that the credit entry is share application money, share capital and share premium, then the additional requirement of law as per the proviso to section 68 of the Act kicks in and share subscriber should be able to show the source from which it was able to invest in the appellant company. And if the 'source of source' of share application/capital/premium is shown to AO and if he is satisfied with the explanation, then the deeming provision will not apply.

9.15 As per the above decision, in case the appellant proves the nature and source in the hands of the shareholders to the satisfaction of the AO, then provisions of section 68 will not be applicable. The satisfaction of the AO shall be of a reasonable prudent person (AO) and not that of an unreasonable person. Thus, when the appellant is able to show the nature and source of credit of its shareholders, then the same shall not be considered as unexplained credit and the onus shifts on AO to show that the credit is not genuine.

9.16 It is observed that during the year under consideration, appellant has received share application and share premium from three entities namely M/s Nimbus Dealers Private Limited, M/s. Luxury Vinimay Private Limited & M/s. Rashidhan Infrastructure Pvt. Ltd. However, AO has made addition only in respect of two entities namely M/s. Nimbus Dealers Private Limited & M/s. Luxury Vinimay Private Limited.

9.17 Now coming to the facts of the appellant's case, it is observed that AO has not doubted the immediate source of share capital which was received from M/s Nimbus Dealers Private Limited & M/s. Luxury Vinimay Private Limited in the assessment order and the details submitted in respect of these two shareholders have been accepted

9.18 During the assessment proceedings, the statement of Shri Vikash Agarwal who was the director of shareholder companies, was recorded wherein he confirmed the transaction and provided the bank statement to show the source of funds. On analysis of the said bank statement, AO observed that the shareholders have sold shares to various parties and the said consideration has been invested in the appellant. In respect of M/s. Nimbus Dealers Pvt. Ltd., AO has contended that the said shareholders have sold shares to 61 parties. Out of the said parties, directors of few parties have recorded statement before Kolkata Investigation wing that they were engaged in providing accommodation entries. Similarly, in case of M/s. Luxury Vinimay Pvt. Ltd., AO has contended that the said shareholders have sold shares to 55 parties. Out of the said parties, directors of few parties have recorded statement before Kolkata Investigation wing that they were engaged in providing accommodation entries. In this regard, AO has relied upon the statement of three persons namely Mr. Naresh Chapparia, Mr. Rajesh Bhutoria and Mr. Dinesh Kr Dhandhanian. Relying upon the said statements, AO has held that the capital received by the appellant is not genuine.

9.19 In this regard, in the appellate proceedings, the appellant has pointed out that the source arrived at by the AO in the assessment

order is not correct. In the submission, the appellant has submitted that bank statement of the shareholders and has stated that the major source of the funds in the hands of the shareholders is mutual funds. Further, it has been pointed out that an amount of Rs. 3.85 Crs. has been received in earlier period. The relevant portion of the submission of the appellant is as under-

Sr.No	Particulars	Received from Nimbus Dealers Pvt. Ltd.	Received from Luxury Vinimay Pvt. Ltd.
1	Received in earlier period	3,85,00,000	-
2	Sources out of redemption of mutual funds	14,77,06,085	10,40,35,258
3	Sale of shares to M/s. Aush Fiscal Pvt. Ltd.	11,00,000	
4	Sale of shares to M/s. Sukun Vanijya Pvt. Ltd.	25,00,000	
5	Sale of share to M/s. Orbit Dealmark Pvt. Ltd.	-	15,00,000
6	Sale of shares to M/s. Sukun Vincom Pvt. Ltd.	-	25,00,000
7	Redemption of share application money given to M/s. Rashidhan Infrastructure Pvt. Ltd.	-	3,00,00,000
	Total sources	18,98,06,085	13,80,35,258
	Amount invested in appellant	18,86,00,000	13,50,00,000

9.20 The above details were sent in remand proceedings to the AO for his comments. In the remand report at para 5.2 and 5.3, AO has verified and confirmed the above facts regarding the source in the hands of the shareholders. Therefore, the above factual matrix furnished by the appellant regarding the source is accepted. Accordingly, the above source in the hands of the shareholders needs to be tested as per the provisions of section 68 of the Act.

9.21 The head wise source in the hands of the shareholder companies are discussed as under:-

a. **Received in earlier period:** It is noted that the appellant has received Rs. 3,85,00,000/- from M/s. Nimbus Dealers Pvt. Ltd in the earlier year. This fact is verifiable from the ledger account of the party as well as the financials of the appellant. As per the provisions of section 68, any sum credited in the books of account in the relevant year can be considered as unexplained credit. However, the amount received in earlier period cannot be subjected to provisions of section 68 in the current year. Accordingly, the same is directed to be deleted.

b. Redemption of mutual funds: As per the source of funds invested in the appellant, an amount of Rs. 14.77 Crs in the hands of M/s. Nimbus Dealers Pvt. Ltd and Rs 10.40 Crs. in the hands of M/s. Luxury Vinimay Pvt. Ltd has been sourced out of redemption of mutual funds. The appellant has submitted the relevant ledger account and mutual fund statement in this regard. The Mutual fund Mis. Nippon India Mutual Fund (earlier known as Reliance Mutual fund) is a recognised fund by SEBI and the identity, genuineness and creditworthiness of the fund cannot be doubted The AO has also not made any independent enquiry in this regard or brought on record any cogent finding or material evidence to prove any infirmity in these transactions. Accordingly, I find that as per the amended provisions of section 68, the appellant has duly discharged the onus to explain the nature and source in the hands of the shareholders to the extent of Rs. 25.17 Crs.

In the remand report, though AO has not doubted the nature and source with respect to mutual funds, he, has stated that the appellant has not explained the source of such investment in mutual funds find that the contention of the AO is not correct since the provisions of amended section 68 only requires to prove the nature and source in the hands of the shareholder and not the source of source of the shareholder. As already mentioned above, the AO has not brought on record any cogent finding or material evidence to prove any infirmity in these transactions Accordingly, it is held that the onus has been duly discharged by the appellant.

c. Redemption of share capital : In respect of M/s Luxury Vinimay Pvt. Ltd, an amount of Rs. 3 Crs. has been sourced out of funds received from M/s. Rashidhan Infrastructure Pvt. Ltd. on account of Redemption of share application money given earlier period. In this regard, the appellant has submitted the ITR, balance sheet, bank statement and ledger account in the books of M/s. Rashidhan Infrastructure Pvt. Ltd to support the above contention Also, the appellant has submitted the copy of financial of M/s. Luxury Vinimay Pvt. Ltd. of 31st March 2012 wherein the advance given to M/s. Rashidhan Infrastructure Pvt. Ltd. is reflected.

On perusal of the above details, I find that the appellant has submitted the supporting documents to prove the nature and source of credit in the hands of the shareholder and duly discharged its onus. I also find that the appellant itself had received share capital from M/s. Rashidhan Infrastructure Pvt. Ltd. amounting to Rs. 5.01 Crs. which has duly accepted by the AO as genuine and no addition has been made in the appellant's case

In the remand report, AO has stated that the said company has meagre assets and high turnover whose characteristics are similar to entities engaged in providing or availing accommodation entries. find that the said comments are contradictory to the AO's own stand wherein he has accepted the entity as genuine in respect of share capital invested in the appellant. Further, I find that AO's allegation are not based on any

concrete findings or independent enquiry and an entity cannot be termed as non-genuine merely on account of low assets or high turnover. Accordingly, I hold that nature and source to the extent of Rs. 3 Crs. is genuine and duly explained by the appellant.

d. Sale of shares : Further, with regards to balance amount of source, it is observed that in case of M/s. Nimbus Dealers Pvt. Ltd., source of investment to the extent of Rs. 36,00,000/- is from sale of shares to M/s. Ayush Fiscal Pvt. Ltd. & M/s. Sukun Vanijya Pvt. Ltd. Similarly, in case of M/s, Luxury Vinimay Pvt. Ltd. source of investment to the extent of Rs. 40,00,000/- is from sale of shares to M/s. Orbit Dealmark Pvt. Ltd. & M/s. Sukun Vincom Pvt Ltd. In support of the same, the appellant has submitted the ITR, ledger account, financials and bank statement to prove the nature and source in the hands of the shareholders. The documents show that the amount has been received on account of sale of shares to the parties.

In the assessment order, AO has stated that the sale of shares have been made to parties who were engaged in providing accommodation entries. In this regard, AO has relied upon the information received from the Kolkata investigation wing wherein statement of three persons namely Mr. Naresh Chapparia, Mr Rajesh Bhutoria and Mr. Dinesh Kr. Dhandhanian has been relied upon. Relying on the said statement, AO has stated that the said persons were director of the various buyer entities as mentioned above and they have admitted of providing of accommodation entries. The copy of the statement has been reproduced in the assessment order.

In this respect, the appellant has submitted that the statement was recorded at the back of the appellant and was never provided with the copy of the statement. It has been stated that the appellant has no knowledge regarding the ultimate fate of such statement and under what circumstances these statements were recorded and whether such statements were subsequently retracted. Also, nowhere the said persons have mentioned and made reference to the transaction with the appellant or name of the appellant. Therefore, blindly applying the statement of a third party is not justified. It has been further stressed that the AO has not provided the appellant to cross examine. Appellant has also pointed out that though these statements belong to different person, replies/answers of the questions given by them appear to be identical including the language/grammar which causes a serious doubt on the veracity of the statements. Appellant has also submitted that the AO has not established any cash trail to support its allegation there was actual involvement of unaccounted cash. Appellant has also relied upon various decisions to buttress its claim

I have gone through the statements, contention of the AO and submission by the appellant. I find that the said persons have nowhere specifically accepted that the transaction entered into by the appellant is not genuine. Also, I find that except relying on the statement recorded by Kolkata Wing, AO has not made any independent enquiry to prove the transaction entered into by the appellant is not genuine. I also find

that AO has failed to establish any link of the said person with the appellant or cash, trail to prove his allegation. On account of such deficiencies, action of AO in making addition merely relying upon the statement is not correct.

I also find that the statement of the one of the directors has been found to be retracted by Kolkata Tribunal in the case of Adhunik Gases Ltd. and others vide ITA No. 47/Kol/2015 wherein Tribunal has held statement of Shri Rajesh Buthoria cannot be relied upon. The relevant portion of the decision is reproduced for your ready reference-

“6.1 Ld. AR for the appellant has vehemently submitted that during the search and seizure operation, the Search party did not find any new documents or material ie no any incriminating document was found nor seized from the appellant’s premises. During the course of survey, the survey team did not find any incriminating document except statement recorded by them of Shri Naresh Kumar Chhaparia, Ld. AR pointed out that neither the search party nor the survey party of the Income Tax Department found out any new or incriminating material except to statement recorded by them in the appellant's case under consideration. The search was conducted on 6.10.2010 and assessments u/s. 143(3) of various group concerns/sister concerns were completed before 6.10.2010. The period within which notice u/s. 143(2) could be issued by the department also expired. The assessment proceedings of various group companies and sister concerns of the appellant were completed before the date of search. During the course of survey a statement was recorded by the survey team which pertains to Shri Naresh Kumar Chhaparia. During the course of appellate proceedings, before the Id. CIT(A), Id. AR for the appellant requested Id. CIT(A) to cross-examine the statement of Shri Naresh Kumar Chhaparia. Mr.Naresh Kumar Chhaparia subsequently retracted by an affidavit stating that statement recorded by the survey team is wrong and should not be relied upon because the statement had been taken by the survey team with threat and coercion.

9. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the appellant, as the propositions canvassed by the Id. AF for the appellant are supported by the judgments of jurisdictional ITAT and Hon'ble High Courts Ld. AR has pointed out that no incriminating documents was found either during survey or during search procedure. The statement of Shri Naresh Kumar Chhaparia should not be relied on, because he is a double speaking person. The assessment proceedings were completed before the date of search Besides, the time limit to issue notice u/s. 143(2) was also expired. In order to initiate assessment proceedings u/s 153A, there should be a new or incriminating document. The assessment which is already completed u/s. 143(3)/143(1) should not be reopened. Therefore, considering the

scheme of Section 132 and Section 153A, we are of the view that there should be some new document/incriminating document to invoke the provisions of Section 153A. Ld. DF for the revenue had pointed out that there is a direct nexus among the companies, which has been established by the statement of Mr. Naresh Kumar Chhaparia, which cannot be relied on, as he was a double speaking person. Therefore, considering the factual position and the judgments cited by Id. AR, we are of the view that the additions made by the AO u/s. 153A and confirmed by the Ld. CIT(A) needs to be deleted. Therefore, we delete the addition." Therefore, plain reliance on the above statement to make addition is not correct.

I also find that statement of Shri Vikash Agarwal who was the director of shareholder companies was also recorded by AO wherein he has nowhere accepted of having involved in the business of accommodation entries. It is pertinent to note that the statement of Director holds significance in deciding the allegation of the AO.

Further, the documents in relation to the above entities were sent to AO in the remand proceedings. In the remand report, AO has mentioned that the buyer entities do not possess enough assets as per their balance sheet and show high increase in turnover. He has further alleged that such characteristics are attributable to entities engaged in providing accommodation entries and they are also based in Kolkata which further supports the case of AO.

In this regard, the appellant has stated that the allegations of the AO are incorrect. The appellant has submitted the financials of the buyer parties to show the genuineness of the transactions. As per the said financials, appellant has stated that M/s. Ayush Fiscal Pvt. Ltd. has own funds comprising of share capital and free reserves of Rs. 8.37 Crs and turnover of 1.20 Crs. which is sufficient to pay an amount of Rs. 0.11 Crs. to the shareholder company for purchase of shares. Similarly, as per the financials of M/s. Sukun Vnaujya Pvt. Ltd., it has own funds of Rs. 2.34 Crs and turnover of Rs. 0.70 Crs which is sufficient to pay an amount of Rs. 0.25 Crs. to the shareholder company for purchase of shares. Similarly, the appellant has stated that M/s. Sukun Vincom Pvt. Ltd. has own funds of Rs. 3.51 Crs. and turnover of Rs. 0.35 Crs. which is sufficient to pay an amount of Rs. 0.25 Crs. to the shareholder company for purchase of shares. Similarly, M/s. Orbit Dealmark Pvt. Ltd. has own funds of Rs. 5.18 Crs. and turnover of Rs. 0.30 Crs. which is suffice to pay an amount of Rs. 0.15 Crs. to the shareholder company for purchase of shares. Therefore, as per appellant, creditworthiness of the parties cannot be doubted.

I have considered the contentions of the AO in the remand report and reply filed by the appellant. I find that the parties have enough funds to purchase the shares and the contention of AO is not correct. Further, I find that AO's allegations are not based on any concrete findings or independent enquiry and an entity cannot be termed as non-genuine merely on account of low assets or high turnover or that they are based in Kolkata.

In view of the above findings, I hold that the appellant has duly discharged the onus to prove the nature and source of credit in respect of sale of shares amounting to Rs 0.76 Crs.

9.22 Accordingly, I hold that the appellant has duly substantiated the nature and source in the hands of the shareholders in respect of share capital received as per the onus cast on it by the proviso to section 68 of the Act. Once the assessee has discharged its burden by furnishing the relevant documents in support of the source of source of funds, in compliance with the proviso to section 68, the onus of disproving or finding defects in these documents then shifts to the AO as held by the Hon'ble Mumbai ITAT in the case of Chemicon Engineering Consultant (P.) Ltd [2022] 142 taxmann.com 297. It was then the duty of the AO to bring on record cogent material/evidence, which could show that the source of source of funds was unreliable or not genuine, which has not been done by him. The AO has made generalised allegations, which are not based on any concrete findings or independent enquiry. The AO has not established any cash trail to support his allegation of there being any involvement of unaccounted cash. The AO has rather chosen to simply rely on certain third party statements where also nothing has been brought on record to show that these third parties/persons made any specific reference to the assessee or the transactions in questions. Such an action of the AO is thus not justified under the law.

9.23 It is further observed that appellant has also made a submission wherein it has submitted documents in relation to the entire sale of shares by the shareholder companies. To substantiate its claim, the appellant had filed the details of share sale transactions in the form of additional evidences. These details were also remanded to the AO. In the remand report, AO has made similar allegation with respect to low assets and high turnover and based in Kolkata to contend that the same are not genuine. As already held in earlier paras, the contention of the AO cannot be accepted and therefore, the sale of share by shareholder companies cannot be doubted. Further, it is also observed that with respect to ultimate source of funds in the hands of the shareholders, the same was on account of share capital received in earlier period which was also subjected to scrutiny assessment in earlier period and such transactions have been duly verified and accepted by the department.

9.24 Accordingly, I find that appellant has duly discharged the onus casted on it for proving the identity, creditworthiness and genuineness of the transactions under consideration. The additional burden cast on the assessee in view of the proviso to section 68 of the Act has also been duly discharged as necessary evidence has been furnished to substantiate the "source of the source". In view of the above discussion, I direct AO to delete the addition of Rs. 32,36,00,000/- Accordingly, Grounds No. 1, 2 and 3 are allowed.

25. Learned Departmental Representative (DR) with regard to the decision of the Ld. Commissioner in deleting the addition of Rs. 32,36,00,000/- has contended and argued that the AO duly questioned the identity, genuineness and creditworthiness of so-called shareholders/investors and in absence of creditworthiness of so-called shareholders/investors, as they do not have any real business and therefore there is no clarify on the business of two entities. Further, during the A.Y. 2013-14, M/s. Nimbus Dealer Pvt. Ltd. has shown Rs. 33,48,559/- only. Similarly, M/s. Luxury Vinimay Pvt. Ltd. has shown income of Rs. 37,55,423/- in A.Y. 2013-14 and sources the funds from "Reserves and Surplus" of Rs. 35,53,09,287/-. Almost the entire reserves have been used for shareholding in the Assessee company and Rasidhan Infrastructure Pvt. Ltd. which is an accommodation entry business, having no real business of their own. Further, the so-called shareholders/investors are part of a large accommodation entry providing syndicate. With effect from 01/04/2013, as per proviso to section 68 as added, the Assessee was supposed to disclose the source of source, whereas Directors of the companies namely; Naresh K. Chhaparia, Rajesh Bhutoria, Dinesh Dhandhanian had admitted that their companies are "jamaa-kharchi" companies and providing accommodation entries. Thus, the Assessee has failed to establish the source of source to the satisfaction of the AO. The retraction by the Directors of those entry providing companies, do not entail any genuineness-creditworthiness of the companies, which have no real business, has no substance.

The Ld. DR further argued, with regard to M/s. Nimbus Dealer Pvt. Ltd., the source of source of a large sum has been claimed to be mutual fund redemption, which were acquired two months before the redemption by the first layer only and there is no details

or explanation regarding the nature and source of funds for these mutual fund units, as to why the same were redeemed within a short period of just 2-3 months (purchased on 18-25/09/2012 & redeemed on 05-07/11/2012).

26. Learned DR further in support of aforesaid contentions and the decision of the AO making the addition under consideration, also relied on the judgments in the case of Sumati Dayal (supra), Riddhi Promoters (P.) Ltd. vs. CIT [2015] 58 taxmann.com 367 (Del.) and PCIT vs. NRA Iron & Steel (P.) Ltd. [2019] 412 ITR 161 (SC).

27. Learned DR on the aforesaid submissions, thus has claimed that the share capital received by the respondent company from Kolkata based companies, being bogus accommodation entries remained unexplained, and therefore, the matter deserves to be decided in favour of the Revenue by reversing the decision of the Ld. Commissioner and restoring the decision of the AO, qua the issue under consideration.

28. On the contrary, learned counsel for the Assessee has claimed that initially the Assessee examined the share application money of Rs. 37,37,00,000/- in respect of three entities, those are: -

i.	Nimbus dealers Pvt. Ltd.	- Rs. 18,86,00,000
ii.	Luxury Vinimay Pvt. Ltd.	- Rs. 13,50,00,000
iii.	Rashidhan Infrastructure P. Ltd.	- <u>Rs. 5,01,00,000</u>
	Total	<u>Rs. 37,37,00,000</u>

However, the AO ultimately made no addition qua share application money of Rs. 5,01,00,000/- received from Rasidhan Infrastructure Pvt. Ltd., but observed that source of investment in

the hands of M/s. Nimbus Dealer Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. are not genuine, basically, on the reason that source of funds in the hands of the shareholders, are the money received from sale of shares to Kolkata based companies/entities, which are not genuine and engaged in the business of the accommodation entries. The AO also relied on the investigation carried out by Kolkata Investigation Wing and statements of third parties, without giving any opportunity for cross examination or contradiction.

29. The Ld. Counsel further claimed that the Assessee in support of its case qua share application money, has duly filed details with regard to identity of the shareholders, copy of ITR acknowledgments and CIN number of the parties, copy of bank statements of the shareholders, copies of ROC compliances along with the share certificates in respect of issue of new share capital along with valuation of the shares, which were not doubted by the AO.

With regard to creditworthiness, the Assessee's Counsel has claimed that the Assessee has duly established financial capacity of the subscribers by providing copy of their financial statements. Further, during the course of assessment proceedings, statement of Mr. Vikash Agrawal being one of the Directors was also recorded u/sec. 131 of the Act, wherein he has clearly explained the nature of the transactions along with relevant documents. The AO has not doubted immediate source of share capital. The main contention of the AO was that shareholders have received funds from non-genuine parties, whereas it is a fact that the details of the source in the hands of shareholder were also filed, as confirmed by the AO in his remand report. It is also an admitted fact that an amount of Rs. 3.85 crore was received by the Assessee from M/s. Nimbus Dealer

Pvt. Ltd. in earlier period, as is evident from financials. Therefore, the question of any addition of such amount during the assessment year under consideration, does not arise. Further, the amounts of Rs. 14.77 crore and 10.40 crore respectively received from M/s. Nimbus Dealer Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. have been sourced out of redemption of share application money given by M/s. Luxury Vinimay Pvt. Ltd. and Rasidhan Infrastructure Pvt. Ltd. in earlier years and the details of same, such as ITR financials, bank statements, ledger account of M/s. Luxury Vinimay Pvt. Ltd. and M/s. Rasidhan Infrastructure Pvt. Ltd. were provided before the authorities below and it is a fact that no addition on account of share capital received from M/s. Luxury Vinimay Pvt. Ltd. and Rasidhan Infrastructure Pvt. Ltd. have been made by the AO. Therefore, the transactions carried out with Rasidhan Infrastructure Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. cannot be doubted. Further, the Assessee has also established source of Rs. 0.36 crore and 0.40 crore received from M/s. Nimbus Dealer Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. respectively, sources out of sale of share to different parties and in support of this contention, the Assessee has submitted the copies of ITR, financials, bank statement and ledger account of the sale parties. Though, the AO in his remand report has alleged that the said parties, who have purchased the shares, do not have adequate assets and have high turnover and having characteristic of an accommodation entry provider, however, the said allegation is baseless and without any basis, as the said entities had adequate own funds, out of which it has paid amounts to the Assessee for the sale consideration.

30. Learned Counsel for the Assessee at last submitted that the Assessee by filing relevant documents, has duly discharged its prima-facie onus casted on it u/s 68 o the Act. Further, with

respect to ultimate source of funds in the hands of shareholders, the Assessee has established that the sum was on account of share capital received in earlier period, which was also subjected to scrutiny assessment in earlier period and such transactions have duly been verified and accepted by the department and this fact is duly noted by the Ld. Commissioner in para 9.23 of the impugned order.

The Ld. Counsel for the Assessee in support of above contention, also relied on the judgments passed by the Hon'ble Tribunal in the cases of Chemicon Engineering Consultant (P.) Ltd. [2012] 142 taxmann.com 297 and Renu Protech P. Ltd. [2021] 128 taxmann.com 242; and Mega Collections P. Ltd. [2023] 151 taxmann.com 403.

31. DECISION

Heard the parties and perused the material available on record. We observe, as it appears from the orders passed by the Authorities below that in order to verify the share capital received from the following parties: -

i.	Nimbus dealers Pvt. Ltd.	-	Rs. 18,86,00,000
ii.	Luxury Vinimay Pvt. Ltd.	-	Rs. 13,50,00,000
iii.	Rashidhan Infrastructure P. Ltd.	-	Rs. 5,01,00,000
	Total		<u>Rs. 37,37,00,000</u>

The AO asked the Assessee to furnish the details of money received from the issuance of share on premium, such as, valuation report, Form-2, confirmations, ROI, balance sheet, profit and loss account and bank statement of parties, from whom money has been received.

32. The Assessee in response to the said details asked for by the AO, filed valuation report, return of income of its own and other

companies, confirmations thereof and bank statements of the above parties.

33. The AO thereafter in order to verify the identity, genuineness and creditworthiness of the parties, issued summons u/sec. 131 of the Act to the Directors of the above mentioned companies, asking the following details along with their presence: -

- "1. Details of investment made in shares of M/s Juicy International Pvt Ltd in AY 2013-14 and source thereof.*
- 2. Letter of share allotment made to you by M/s Juicy International Pvt Ltd in AY 2013-14.*
- 3. Details of share certificate number and the folio numbers of each of the certificates.*
- 4. Produce original share certificates allotted to you in M/s Juicy International Pvt. Ltd.*
- 5. Ledger in your books of accounts showing payment against issue of share by M/s Juicy International Pvt. Ltd.*
- 6. Complete bank statement for the period 01/04/2012 to 31/03/2013 and highlighting the investment transaction with M/s Juicy International Pvt Ltd in AY 2013-14.*
- 7. Your PAN and office where you are assessed to income tax along with your P&L a/c, Balance Sheet and annexures for AY 2013-14.*
- 8. Audited books of accounts for FY 2012-13, relevant to AY 2013-14 and minutes of meeting of the AGM conducted for last six years.*
- 9. Details of the dividend received from M/s Juicy International Pvt. Ltd during last six years."*

34. In response to the summons issued u/sec. 131 of the Act, Mr. Vikash Agrawal being common Director of three companies, appeared before the AO on 04/03/2016, who recorded the statement Mr. Agrawal. Mr. Vikash Agrawal has also replied to the queries sought for by the AO and also filed the relevant documents, as sought for, the same were taken on record by the AO. Further,

the AO also extracted the statements of Mr. Naresh K. Chhaparia Mr. Rajesh Bhutoria and Mr. Dinesh Dhandhanian, as recorded by the Investigation Wing at Kolkata.

35. Thereafter, the AO after going through the statements of the Directors, modus operandi and source of funds of above mentioned two companies namely Nimbus Dealers Pvt. Ltd. and Luxury Vinimay Pvt. Ltd. from whom share application money has been received, observed that it becomes evident and self-explanatory that there is no identity, genuineness and creditworthiness of these companies. It is only the Assessee's own money, which has been routed by way of allotment of shares on premium.

36. The AO, though, acknowledged the fact that the Assessee has filed copy of ITRs of the share subscribers, confirmations from the share subscribers/ entities, issuance of receipt of cheque, bank statements etc. however, he held that creditworthiness cannot be proved by showing only return of income, confirming from the parties, issuance of receipt of cheque or furnishing bank statements, when circumstances requires that there should be some more evidence of positive nature to show that the purchaser had made genuine investment after due diligence or for personal reasons. The final conclusion must be pragmatic and practical, which takes into account holistic view of the evidence including the difficulties, which the Assessee may face to unimpeachably establish creditworthiness of the shareholders. The share subscribers do not have their own profit making apparatus and were not involved in business activity, but money was routed through bank accounts which means deposits by way of cash and issue of cheques. The bank account therefore, did not reflect creditworthiness or even genuine of the transaction. The correct position of law is that the

Revenue authorities or the judiciary 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 returns in case of a private limited company, may not be sufficient, when surrounding and attending facts predicate a cover up. Thus, it can be seen that Assessee is not able to provide satisfactory reply to any of the queries put forward to him. As per the provisions of section 68 of the Act, the onus of providing identity, genuineness and creditworthiness of the source of a sum of money found to have been received by an Assessee, is on him/her. Where the nature and source of a receipt, whether it be of money or other property cannot be satisfactorily explained by the Assessee, it is open to the Revenue to hold that it is the income of the Assessee and no further burden lies on the Revenue to show that the income is from any particular source.

37. The AO thus considering the aforesaid facts and circumstances and relying on certain judgments and statements of the Directorate of the companies as recorded by Investigation Wing, Kolkata Directorate and by holding that the apparent was not real in the present case and various judgments relied on by him lend full support to the findings, ultimately made the addition of Rs. 32,75,00,000/- being the sum total of unexplained cash credits in the form of share application money received from M/s. Luxury Vinimay Pvt. Ltd. (Rs. 13,50,00,000/-) and M/s. Nimbus Dealers Pvt. Ltd. (Rs. 18,86,00,000/-) by the Assessee, u/sec. 68 of the Act. The Ld. Commissioner on appeal, deleted the aforesaid addition.

38. We have given thoughtful consideration to the facts and circumstances and the document's filed by the Assessee and rival contentions of the parties again and observe that according to the mandate u/sec. 68 of the Act, the addition can only be made, when the Assessee has failed to establish the identity, genuineness and creditworthiness of the parties and as per the amendment brought in section 68 of the Act w.e.f. 01/04/2013, the 'source of source' as well.

39. Now, coming to the instant case, we deem it appropriate to bifurcate the amounts considered by the authorities below and the Assessee as well:

<i>Sr. No.</i>	<i>Amount received from NDPL</i>	<i>Amount received from LVPL</i>	<i>Details of sources</i>
1	3,85,00,000	-	Received in earlier period
2	14,77,06,085	10,40,35,258	Sourced out of redemption of mutual funds
3	-	3,00,00,000	Redemption of share application money given to M/s. Rashidhan Infrastructure Pvt. Ltd.
4	36,00,000	40,00,000	Sale of shares to third parties
	18,98,06,085	13,80,35,258	Total source
	18,86,00,000	13,50,00,000	Share capital invested

40. First, we will adjudicate "as to whether the Assessee has established the identity and genuineness of the transactions or not". We observe from the orders passed by the authorities below and the documents available on record, the Assessee in order to substantiate its claim qua identity of the parties and genuineness of the transactions, has duly filed the relevant documents, such as, ITRs of the investors/share subscribers, their PAN nos., their

financials, their bank statements, their confirmations, documents pertaining to share allotments, details of share certificates and folio numbers, original share certificates, ledger in the books of accounts of such share subscribers showing payments, issue of shares by the Assessee, complete bank statements for the period from 01/04/2012 to 31/03/2013 highlighting the investment/transactions with the Assessee during the AY 2013-14, profit and loss account and balance sheets, audited books of accounts for the year under consideration etc.. The Assessee also provided his own return of income, financials, relevant documents pertaining to share allotments and bank statements and ledger accounts etc.

33. Thus, the Assessee by producing aforesaid documents has duly established the identity and genuineness of the transactions and therefore prima-facie discharged its own casted u/sec. 68 with regard to the identity and genuineness of the transactions.

34. Coming to the amount of **Rs. 3,85,00,000/-** the Assessee has claimed that the said amount was received by the Assessee from M/s. Nimbus Dealers Pvt. Ltd. during the earlier assessment year, but not during the assessment year under consideration, and therefore the same on verification by the Ld. Commissioner has been deleted and thus the said amount is now not in dispute. The Ld. DR also did not refute this claim of the Assessee and therefore, in our view, no addition qua this amount of Rs. 3,85,00,000/- is sustainable and thus has rightly been deleted by the Ld. Commissioner, and therefore the decision of Ld. Commissioner qua this part of addition, is affirmed accordingly.

35. Coming to the second amounts of **Rs. 14,77,06,085/- and Rs. 10,40,35,258/-** sourced out of redemption from mutual funds

respectively by M/s. Nimbus Dealers Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd. We observe that the Assessee in order to establish 'source of source' of such amount by providing copy of bank statements, ledger account of the mutual fund and mutual funds statements, has established and discharged its onus casted u/sec. 68 of the Act. Ld. DR simply on the presumption and assumption has claimed that the said mutual funds were acquired only 02-03 months before the redemption by the first layer and there is no details or explanation regarding the nature of source of funds for purchasing of these mutual fund units and as to why the same were redeemed within a short period of 2-3 months.

We observe that the Assessee is supposed to establish 'source of source' i.e. upto two layers of source, but cannot be fastened with the liability to prove the **"source of source of source or thereon subsequent layers"**. It is also mandate of the Hon'ble Apex Court that the Revenue cannot place itself in the arm chair of the Businessman and decide the reasonableness. In our considered view, it is the prerogative of the Assessee to conduct its business, as per its own desire, expertise, wisdom, experience and in accordance with law. Therefore, simply on the reason that the mutual funds were acquired just before 2-3 months of redemption and no details or explanation regarding the nature of source of funds for investment in mutual fund units has been established and no explanation has been provided *"as to why mutual funds were redeemed within a short period of 2-3 months"*, has no substance to sustain the addition. Thus, in our considered view, the Assessee has also discharged its onus casted u/sec. 68 of the Act qua source of source of the amounts/share application money to the tune of Rs. 14,77,06,085/- & Rs. 10,40,35,258/- respectively received from M/s. Nimbus Dealers Pvt. Ltd. and M/s. Luxury Vinimay Pvt. Ltd.,

who invested by redemption of the mutual funds. The Assessee has also established from the financials of M/s. Nimbus Dealers Pvt. Ltd. that such company has its own funds of Rs. 35.3 crores, against which it has invested Rs. 18.86 crores in the Assessee's company. Similarly, M/s. Luxury Vinimay Pvt. Ltd. has own funds of Rs. 36.13 crores, against which it has invested Rs. 13.50 crores in the Assessee's company.

As observed above, it is prerogative to the Assessee to run its own business as per its own desire, expertise and experience and not at the whims of the Department, therefore, the investment in shares by the said companies in the Assessee's company, cannot be doubted.

36. Further, the Assessee has also been able to produce the relevant documents with regard to the amount of Rs. 36.00 Lac received from M/s. Nimbus Dealers Pvt. Ltd. and 40.00 Lac from M/s. Luxury Vinimay Pvt. Ltd. by producing the relevant documents, such as, financial statements of the parties, who have purchased respective shares, bank statements and relevant documents etc. The said documents were also considered by the AO in the remand proceedings and thus has duly acknowledged in the remand report dated 15/05/2024. The AO also doubted the transaction simply on the fancies that some of the parties are based at Kolkata and therefore used to provide accommodation entries. However, it is a fact that the AO has not made any independent enquiry to prove the transactions entered into by the share subscribers, is not genuine. Even otherwise, no link has been established qua cash trail between the Assessee and companies, who had purchased the shares of share subscribers involved in this case. Admittedly, the AO has not doubted the immediate source of share capital received

from the parties under consideration. It is also a fact that Mr. Vikash Agrawal being a Director of shareholding company, in his statement recorded by the AO u/sec. 131 of the Act, has duly confirmed the transactions and provided the relevant documents sought for by the AO. Further, it is also an important fact that though the AO in the remand report has observed that M/s. Rashidhan Infrastructure Pvt. Ltd. has meagre assets and high turnover, whose characteristics are similar to the entities engaged in providing or availed accommodation entries, however, the AO by not making any addition qua share application money of Rs. 5.01 crores invested by M/s. Rashidhan Infrastructure Pvt. Ltd., has duly acknowledged the transaction carried out by and/or said company as genuine, and therefore, the amount of Rs. 3 crores sourced out of funds received from M/s. Rashidhan Infrastructure Pvt. Ltd. on redemption of share application money given in earlier period by M/s. Luxury Vinimay Pvt. Ltd. also cannot be doubted.

37. It is also a fact that in statements as relied on by the AO, those persons have nowhere specifically accepted the transaction entered into by the Assessee is not genuine. Even otherwise, the AO except relying on the statement recorded by Kolkata Investigation Wing, has not made any independent enquiry to prove the transaction entered into by the Assessee as non-genuine and involvement of any cash trail. Admittedly, the statement of Mr. Naresh Kumar Chhaparia, as relied on by the AO was also in controversy in the case of Adhunik Gases Ltd (supra) and the Hon'ble Tribunal by considering the statement Mr. Naresh Kumar Chhaparia, has held that Mr. Naresh Kumar Chhaparia subsequently by filing affidavit retracted his statement and therefore, the statement of Mr. Naresh Kumar Chhaparia cannot be relied upon. Admittedly Mr. Vikash Agrawal, in his statement recorded, has also

nowhere accepted of having involved business accommodation entries. Even otherwise, the transactions merely on account of low assets or high turnover or the parties are based at Kolkata without any independent enquiry and concrete findings, cannot be established as non-genuine.

38. On the aforesaid consideration, analyzations and findings, we are in concurrence with the decision of the Ld. Commissioner in holding as under

"That Assessee has duly substantiated the nature and source in the hands of the shareholders in respect of share capital received as per the onus cast on it by the proviso to section 68 of the Act. Once the assessee has discharged its burden by furnishing the relevant documents in support of the source of source of funds, in compliance with the proviso to section 68, the onus of disproving or finding defects in these documents then shifts to the AO as held by the Hon'ble Mumbai ITAT in the case of Chemicon Engineering Consultant (P.) Ltd [2022] 142 taxmann.com 297. It was then the duty of the AO to bring on record cogent material/evidence, which could show that the source of source of funds was unreliable or not genuine, which has not been done by him. The AO has made generalised allegations, which are not based on any concrete findings or independent enquiry. The AO has not established any cash trail to support his allegation of there being any involvement of unaccounted cash. The AO has rather chosen to simply rely on certain third party statements, where also nothing has been brought on record to show that these third parties/persons made any specific reference to the assessee or the transactions in questions. Such an action of the AO is thus not justified under the law. It is further observed that appellant has also made a submission wherein it has submitted documents in relation to the entire sale of shares by the shareholder companies. To substantiate its claim the appellant had filed the details of share sale transactions in the form of additional evidences. These details were also remanded to the AO. In the remand report, AO has made similar allegation with respect to low assets and high turnover and based in Kolkata to contend that the same are not genuine. As already held in earlier paras, the contention of the AO cannot be accepted and therefore, the sale of share by shareholder companies cannot be doubted. Further, it is also observed that with respect to ultimate source of funds in the hands of the shareholders, the same was on account of share capital received in earlier period which was also subjected to scrutiny assessment in earlier period and such transactions have been duly verified and accepted by the department."

39. We further observe that even otherwise the decisions relied on by the Ld. DR and the AO in the cases of Sumati Dayal and Durga Prashad More (supra) are not applicable to the peculiar facts and circumstances of this case, as the Assessee in this case not only established the identity and creditworthiness of the parties and genuineness of the transactions but also proved the "source of source" of the share application money and there also exist no shrouded facts and circumstances.

40. Thus, on the aforesaid analyzations, we reiterate again that the Assessee has duly discharged its prima-facie onus casted on it to prove the identity, genuineness of the transactions and creditworthiness of the parties including the 'source of source', the additional burden casted in view of the provision of section 68 of the Act, and therefore the addition of Rs. 32,36,00,000/- made by the AO was not warranted and has thus rightly been deleted by the Ld. Commissioner, by considering the relevant documents, submissions, provisions of law and the judgments applicable to the facts of the case. Therefore, the decision of the Ld. Commissioner in deleting the aforesaid addition, in our considered view, is neither suffers from any perversity or impropriety nor illegality and thus, requires no interference.

41. Now, coming to the second issue, which pertains to disallowance of Rs. 28,82,818/- u/sec. 14A r.w.s. 8D of the Income Tax Rules, 1962 (in short, 'Rules') made by the AO and deleted by the Ld. Commissioner.

We observe that the AO in the assessment order has noted the fact that from the balance sheet of the Assessee, it was noticed

that the Assessee has made investment in exempt income yielding assets amounting to Rs. 75,63,76,504/- as on 31/03/2013 and also claimed dividend income of Rs. 3,04,034/- being exempt u/sec. 10(34) of the Act, without attributing any expenses incurred to carry out the activity of investment, though it is a fact that for carrying out any such activity, some kind of expenditure is bound to be incurred. Therefore, the AO in order to examine the issue, show caused the Assessee "*as to why expenses attributable to investment in exempt income yielding assets should not be disallowed u/sec. 14A r.w.r 8D of the Act*".

42. The Assessee in response to the show-cause notice, claimed that it has not incurred any expenses with regard to investment for earning the exemption income and therefore no disallowance u/sec. 14A r.w.r. 8D, is applicable.

43. The AO not being satisfied with the reply of the Assessee and by relying on the judgment passed by the Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Manufacturing Co Ltd vs. DCIT in W.P. no. 758/2010 decided on 12/08/2010, has held that Assessee cannot earn any income from investment without systematic management, as the investment decisions are very complex in nature and therefore, it requires substantial market research and day today analysis of market trends and decisions at the most appropriate time. The term 'expenditure' occurring in section 14A would take in its sweep not only direct expenditure but also all forms of expenditure, regardless of whether they are fixed, variable, direct, indirect, administrative and managerial or financial. The AO ultimately computed the disallowance of **Rs. 28,82,818/-** being 0.5% of the average value of investment of Rs. 57,65,63,493/- which does not form part of total income, as

appearing in the balance sheet, as on the first day and last day of the previous year and added in the income of the Assessee.

44. The Ld. Commissioner by considering and respectfully following the judgments of the Hon'ble Bombay High Court in the cases of Godrej & Boyce Manufacturing Co Ltd. [2010] 328 ITR 81 (Bom.) and the Hon'ble Madras High Court in the case of Chettinad Logistics P. Ltd (80 taxmann.com 250) which subsequently got affirmed by the Hon'ble Apex Court dismissing SLP, *“wherein the Hon'ble High Courts have held that Rule 8D cannot over-ride the provisions of section 14A and if provisions of section 14A itself are not applicable, then there is no question of invoking Rule 8D and computing the disallowance and the provisions of section 14A cannot be invoked if no exempt income has been earned for the relevant year. Further, in the case of M/s. Nirved Traders Pvt. Ltd (ITA No.149/2017, decided on 23/04/2019), the Hon'ble Bombay High Court has also held that the disallowance u/sec. 41A was to be restricted to the tax exempt income earned during the year and the Assessee has not earned any income, which was exempted from tax, then disallowance of expenditure u/sec. 14A r.w.r. 8D would not be permissible”*, ultimately held that the disallowance u/sec. 14A cannot exceed the tax exempt income and therefore, he direct the AO to restrict the disallowance to the divided income of Rs. 3,04,034/-.

45. We have given thoughtful consideration to the peculiar facts and circumstances and rival contentions of the parties on the issue under consideration. Learned DR relied on the Finance Act, 2022 whereby the Explanation was inserted in section 14A of the Act and claimed that even if no exempt income is earned, still the disallowance u/sec. 14A can be made. We observe that various courts all across the nation including the Hon'ble Delhi High Court in

the case of *Pr. CIT (Central)-2 v. Era Infrastructure (India) Ltd.* (2022) 448 ITR 674 has clarified that an Explanation inserted by the Finance Act, 2022, is applicable prospectively, but not retrospectively and applies only from Assessment Year 2022-23 onwards, by observing and holding as under: -

“The Memorandum Explaining the Provisions of the Finance Bill, 2022 ((2022)440 ITR (St.) 226) explicitly stipulates that the amendment made to section 14A of the Income-tax Act, 1961 will take effect from April 1, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The amendment of section 14A which is “for removal of doubts” cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood”.

Thus, the decision of the Ld. Commissioner in directing the AO to restrict the disallowance to the dividend income of Rs. 3,04,034/- which is based on the factual aspect and legal principles, as set out by the Courts referred to above, does not require any interference, as the same is neither suffers from any perversity or impropriety nor illegality.

46. Coming to the another aspect-ground raised by the Revenue with regard to applicability of the provisions of section 115JB of the Act qua the addition of Rs. 28,82,818/- u/sec. 14A of the Act. We observe that Special Bench of ITAT, Delhi in the case of **ACIT vs. Vireet Investments P. Ltd. (82 taxmann.com 415)** has settled the issue by holding that the disallowance u/sec. 14A cannot be added while computing the book profits u/sec. 115JB and thus, the grievance of the Revenue Department on this aspect as well, is also unsustainable and therefore requires no consideration.

47. On the aforesaid analyzations and considerations and findings, the order under challenge is sustained by dismissing all grounds of appeal, raised by the Revenue Department.

48. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on 16.10.2025.

**Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

**sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

vr/-

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai.
The DR, ITAT, Mumbai 'F' Bench

//True Copy//

By Order

Dy./Assistant Registrar
ITAT, Mumbai.