

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

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA No.990/KOL/2023
(Assessment Year:2012-13)**

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Ltd.**

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(Appellant)

Income Tax Officer, Ward 5(3)

Aaykar Bhavan, P-7,
Chowringhee Square, Eight
Floor, Kolkata-700069,
West Bengal

Vs.

(Respondent)

PAN No. AACCE1409J

Assessee by : Shri Somnath Ghosh, AR

Revenue by : Shri Raja Sengupta, DR

Date of hearing: 13.08.2025

Date of pronouncement: 11.11.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 31.07.2023 for the AY 2012-13.

02. The only issue raised by the assessee in the various grounds of appeal is against the order of Id. CIT(A) confirming the addition as med by the AO in respect of share CapitaLand share premium.

03. The facts in brief are that assessee filed its Return of Income for the Assessment Year 2012-13 on 30.11.2012 declaring total income of Rs. 6,730/-. Return was duly processed u/s 143(1) of the I.T. Act,

1961. The assessee derived income from Investment in shares and securities. The case of the assessee was selected for scrutiny and notice u/s 143(2) of the Act was issued to the assessee on 23.09.2013, Thereafter, notice u/s 142(1) of the Act along with questionnaire was issued, which was complied with by the assessee by furnishing the details/evidences as called for by the AO in respect of share capital and share premium. The AO also issued summons u/s 131 of the Act to the directors of the shareholders companies and produce all the records. Though the documents were filed by the subscribers but none of them appeared personally. The AO concluded that the identity , creditworthiness of the subscribers and genuineness of the transactions could not be verified. The AO treated the share capital/share premium of Rs. 25,34,35,603/- as unexplained cash credit and added the same to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 14.03.2015.

04. Aggrieved assessee preferred an appeal before the Id. CIT (A). The Id. CIT (A) dismissed the appeal of the assessee after taking into consideration the arguments and written submissions filed during the course of assessment proceedings. The Id. CIT (A) extracted the written submission of the assessee from para 5.2 page 7 to 25 of the appellate order. However, the Id. CIT(A) in the operative part wrongly mentioned the facts in relation to the unsecured loans raised by the assessee which is totally wrong and factually incorrect because the issue involved is as regards share capital/share premium. The written submission of the assessee are as under: -

"5.2. SUBMISSION: -During the appellate proceedings, the appellant has furnished following written submission through e-filing portal dated 15.12.2022.

"1. Regarding addition of Rs. 252390000/- U/s. 68 towards share capital and premium received by assessee company.

In respect of all subscribers, vide its letter dated 18.03.2015 assessee explained that all the details called for have been submitted by the respective subscribers in their submission in compliance to notice U/s. 133(6) of the I.T. Act 1961 and also in reply to summons under section 131 by some subscribers. The AO did not adversely comment on the documents and evidences filed before him. The assessee proved that all the shareholders were assessed to tax and their audited balance sheets along with the copy of bank statement, acknowledgement of filing of return and ROC data are on record. The AO examined them but observed that the same fell short of proving the onus. The AO did not spell out as to how the same fell short of discharging the onus.

The AO has not brought on record any evidence to prove to the contrary nor adversely commented on the evidences filed and how such overwhelming evidences fell short of discharging the onus. Therefore, the AO could not have said that the identity, genuineness and creditworthiness of the shareholders were not proved because when PAN is issued, all the shareholders were assessed to tax, their identity cannot be disputed, the transaction took place by account payee cheques, hence genuinity of the transaction cannot be doubted which was evidenced from the bank statement of the assessee as well as shareholders and source of funds contributed cannot be doubted nor any adverse comment was made on the source of the funds which were filed before the AO.

Moreover, all the companies are active companies in the MCA master data. All subscribers are also active in the roll of Income tax department and filing their I.T. Returns. Hence even otherwise their contribution cannot be disputed.

It is submitted that the AO asked for producing share had already been submitted by them to the assessing officer in respect of their subscription towards application money. As far as personal appearance of the subscribers is concerned, the same has nothing to do with the onus of proof of the cash credit u/s 68. Infact the appearance of the directors of the shareholder companies had also nothing to do with the proof of cash credit.

The non-appearance of the directors cannot be a ground for making the addition of the cash credit u/s 68 as has been held in the case of Cygnus Developer Pvt Ltd by Kolkata Bench of ITAT wherein the Hon'ble ITAT has relied on the judgement of Allahabad High Court and coordinate Bench. Therefore, the addition made on the said basis is also not in accordance with law. The IT Act only requires that the assessee has to prove the nature and source of the credit. The assessee has proved that the amount was received towards the share application and the source as well as the source of source was also proved which is apparent from

the replies given by the shareholders. In any case, there was no legal obligation on the assessee to produce directors of the applicant companies and the same cannot be a ground for making addition u/s 68 before the AO as has been held by the

the Hon'ble Allahabad High Court in the case of Rajkumar Agarwala and ITAT in the case of Devendra Kumar Sant. In the case of Pr. CIT Vs Laxman Industrial Resources Limited pronounced on 14th March, 2017 the Hon'ble Delhi High Court has held that where the assessee had provided several documents to substantiate the identity, creditworthiness of share applicants and genuineness of the transactions and the AO failed to conduct any scrutiny of the documents, the appeal of the department was dismissed.

Further, in the case of Pr. CIT vs Hi-Tech Residency (P) Ltd (96 taxmann.com 402), the grievance of the Revenue before the Hon'ble Delhi High Court was that the none of the investors in the share capital of the assessee had personally appeared before the AO and for that reason the addition made by the AO u/s 68 was justified. While dismissing the appeal of the Revenue, the High Court held as follows:

"4. The Court finds that the exercise for determining the identity, genuineness and creditworthiness of the investors of the share capital of the Assessee as well as lenders was undertaken in an elaborate manner by the CIT (A). Comments from the AO were sought. Detailed reasons have been given by the CIT (A) to come to the conclusion that the Assessee had discharged its onus of establishing the identity, genuineness and creditworthiness of both the investors as well as the lenders. This has been concurred with by the ITAT in the impugned order which is again an extremely detailed one. 5. The concurrent factual findings of both the CIT (A) and ITAT have not been shown to be perverse by the Appellant. This is virtually the fourth stage of the litigation. 6. Question (1) is accordingly answered in the negative, i.e., in favour of the Assessee. "

It is noted that the SLP filed by the Revenue against this judgment has been dismissed by the Hon'ble Supreme Court.

The Delhi Bench of ITAT in Optical Pvt Ltd. on 2.9.2016 decided that non- appearance of directors cannot be a ground for making the addition.

Further if the individual balance sheets of the shareholders is considered itis apparent that all of them had substantial capital to make the contribution.

The addition made is therefore not in accordance with law. Reference in this connection is invited to the following judgements: -

In the case of Pr. CIT Vs. Laxman Industrial Resources Limited pronounced on 14th March, 2017 the Hon'ble Delhi High Court has held that where the assessee had provided several documents to substantiate the identity, creditworthiness of share applicants and genuineness of the transactions and the AO failed to conduct any scrutiny of the documents, the appeal of the department was dismissed.

The Hon'ble Supreme Court in the case of Paradise Inland Shipping Co Ltd. reported in 2018 93 taxmann. Com 84 has held that when the assessee has filed all the evidences and documents from public offices and brought on record the assessment orders passed in the case of said companies, addition cannot be made u/s 68.

It is pertinent to mention here that it is apparent from following table that the subscriber companies had sufficient net worth for the amount invested in assessee company which satisfy their creditworthiness as they had invested only a small part of their net worth into the assessee company.

SN	Name & Address	PAN	Sum invested in the assessee company	Net Owned Fund (Rs.) as on 31.03.2012	Relevant Documents in support of it (Paper Book-Serial No.)
1.	Amtek Financial Consultants (P) Ltd	AAJCA0529N	8000000/-	340066307/-	ANNEX-A
2	Associated Infraprojects Pvt. Ltd.	AAHCA3760H	27500000/-	100063327/-	ANNEX-B
3	Consolidated Infracon Pvt. Ltd.	AADCC5179N	30000000/-	100071509/-	ANNEX-C
4	Dynamic Infrastructure Pvt. Ltd.	AACCD3402E	10000000/-	60180260/-	ANNEX-D

5	Dynamic Tie Up Pvt. Ltd.	AABCD7691Q	100000/-	90160740/-	ANNEX-E
6	Falcon Tradecom Pvt. Ltd.	AABCF3385P	7500000/-	50964039/-	ANNEX-F
7	JagmangalVanijya Pvt. Ltd.	AACCJ4914F	75350000/-	367950579/-	ANNEX-G
8	Jaltarang Tie Up Pvt. Ltd.	AACCJ1268L	7500000/-	100526672/-	ANNEX-H
9	JayshreeTradecom (P) Ltd.	AACCJ1416A	11440000/-	50994986/-	ANNEX-I
10	Nidhi Suppliers Pvt. Ltd.	AACCN9383N	12500000/-	100277664/-	ANNEX-J

It is submitted that the assessee has duly discharged its onus of proof of cash credit; the onus was shifted on the department by prima facie proving that the money has flown from the share applicants, they are identifiable, duly assessed to tax and in their assessment the aforesaid share capital contribution was accepted. On the issue there are number of judgments.

The facts of the case are similar to the recently decided cases namely CIT Vs. Gangeshwari Metal Pvt. Ltd. reported in 361 ITR Page 10, (Delhi). It was held that where the Assessee in support of transaction of receipt of share application money brought on record various documents such as name and addresses of the share applicants, their confirmatory letters, PAN No. etc., the said transaction is to be considered as genuine as the assessee has furnished all the documents to prove the identity of the shareholders and also the genuineness of the transaction by showing the entries in the books through account payee cheques addition cannot be made. (wherein Nova Promoters on behalf of the department was also cited) Lalpura Construction (P) Ltd. Rajasthan High Court ((2014 Tax Pub (DT) 393) decided on 25.2.2013, Nipuan Auto P Ltd., reported in 361 ITR 155 Matrix Export Holdings P Ltd., 2014 (Tax Pub (DT) 3169. The appellant also refers to the following judgments: -

In the case of CIT v. Divine Leasing and Finance Ltd. 299 ITR 268 it was held that since the entire gamut of case law as on that date was visited, we may initiate our discussion by taking note of this case. In this case, the Court highlighted the menace of conversion of unaccounted money through the masquerade or such channels of investment in the share capital of a company and thus stressed upon the duty of the Revenue to firmly curb the same. It was also observed that, in

the process, the innocent assessee should not be unnecessary harassed. A delicate balance must be maintained. It was, thus, stressed:

"15. There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessed it should not be harassed by the Revenues insistence that it should prove the negative.

In the case of Commissioner of Income Tax v. Dolphin Can pack Ltd. (2006) 283 ITR 190 and quoted the following observation:

".....credit entry relates to the issue of share capital; the ITO is also entitled to examine whether the alleged shareholders do in fact exist or not. Such an inquiry was conducted by the AO in the present case. In the course of the said inquiry, the assessee had disclosed to the AO not only the names and the particulars of the subscribers of the shares but also their bank Super added to all this was the fact that the amount received by company was all by way of cheques. This material was, in the opinion of the Tribunal, sufficient to discharge the onus that lay upon the assessed."

"18. In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The assessed has to prima facie prove to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the the creditworthiness or or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable Explanation by the assessed. (5) The Department would not be justified indrawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessed nor should the AO take such repudiation at face value and construe it, without more, against the assessed. (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation."

Judgment of the Bombay High Court in the case of CIT v. M/s. Creative World Telefilms Ltd. (in ITA No.2182 of 2009 decided on0020e412.10.2009). The relevant portion of this order is reproduced below:

"In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PA/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement not traceable. In our considered view, the

Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by Assessing Officer. In the above circumstances the assessee to the the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal.

Karnataka High Court in Madhuri Investments Pvt. Ltd. v. ACIT (in ITA No.110 of 2004, decided on 18.02.2006). In this case also, some of share applicants did not appear and notices sent to them were returned with remarks 'with no such person. The High Court held as under: -

"6. Having heard the learned counsel for the parties, we notice that whenever a company invites applications for allotment of shares from different applicants, there is no procedure contemplated to find out the genuineness of the address or the genuinity of the applicants before allotting the shares. If for any reason the address given in the application were to be incorrect or for any reason if the said applicants have changes their residence or the notices sent by the assessing officer has not been received by such applicants, the assessee company cannot be blamed. Therefore, we are of the view that the Tribunal was not justified in allowing the appeal of the revenue only relying upon the statement of Sri Anil Raj Mehta, a Chartered Accountant.

In CIT v. Arunananda Textiles Pvt. Ltd. (in ITA No. 1515 of 2005, decided on 2.3.2010), the Karnataka High Court went to the extent of observing that it was not for the assessee to place material before the Assessing Officer in regard to creditworthiness of the shareholders. Once the company had given the addresses of the shareholders and their identity was not in dispute, it was for the Assessing Officer to make further inquiry.

Rajasthan High Court in the case of Commissioner of Income Tax v. AKJ Granites (P) Ltd. reported as 301 ITR 298 (Raj.) held that no presumption can be drawn that money belong to the assessee unless some nexus is established that share application money for augmenting the investment in business has flown from assessee's own money.

In the case of Commissioner of Income Tax v. Value Capital Services P. Ltd. (2008) 307 ITR 334 (Delhi)., the Court held that the additional burden was on the Department to show that even if share application did not have the means to make investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee.

In the case of Steller Investment Ltd reported in 251 ITR 263 (SC) wherein was confirmed it was the judgement of Delhi High Court (192 ITR 287) was held that:

"Even if it be assumed that the subscribers share capital were not genuine, under no circumstances the amount of share capital could be regarded as undisclosed income of the company.

In the case of CIT Vs Lovely Exports (P) Ltd. (2008) 216 CTR 195 the Hon'ble Supreme Court held as under: -

"We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AO, then the Department, is free to proceed to reopen their individual assessments in accordance with Law. Hence, we find no infirmity with the impugned judgment. Subject to the above, special leave petition is dismissed".

The High Court of Delhi in CIT v. Dwarkadhish Investment (P) Ltd 194Taxman 43 (Delhi) observed that,

"In any matter, the onus of proof is not a static one. Though in section 68 proceedings, the initial burden of proof lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or Income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the revenue the right to invoke section 68. One must not lose sight of the fact that it is the revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the 'source of source.

Reliance has been placed in the case of Interarc Estate Private Limited which was pronounced by the Rajasthan High Court on 14.11.2017 whereby it was held that,

"19. A perusal of the aforesaid finding goes to show that deletion has been made on appreciation of evidence, which was on record Finding that there was existence of investors and their confirmation has been obtained, were found to be satisfactory. All these conclusions are conclusions of fact based on material on record and, therefore, cannot be said to be perverse so as to give rise to question of law, which may required to be considered in this appeal under s. 260A of the IT Act.

Reliance has been placed in the case of Dhanlaxmi Equipment Private Limited which was pronounced by the Rajasthan High Court on 23.10.2017 whereby it was held that,

There is no evidence directly or indirectly with the Assessing Officer that the assessee had routed undisclosed money in the guise of share application money or loan. The Id. DR's argument have also not convinced us that these parties were in accommodation entries in form of loan and share application money after charging certain commission as such no survey/search has been carried out on the creditors to prove that these companies are habitual to provide loan/share application money even there is no evidence with the Id DR for making such allegation during the course of written submissions.

In the case of Sancheti Projects Pvt Limited (Kolkata High Court) in ITA No. 140 of 2011(G.A. 1574 of 2011) also the share capital was accepted in similar circumstances.

The facts of the before the High Court of Delhi Vide in ITA No. ITA 120/2012 In the case of NIPUN BUILDERS & DEVELOPERS PVT. LTD were different. It was an assessment u/s 143(1)/147 (on the basis of a report of the investigation wing of the income-tax department) wherein it was held that u/s 68 the onus is upon the assessee to prove the three ingredients, i.e., identity and creditworthiness of the person from whom the monies were taken and the genuineness of the transaction and that the assessee and the Assessing authority - to adopt a reasonable approach. Once the monies are received and shares are issued, it is not as if the share-subscribers and the assessee-company lose touch with each other and become incommunicado. It is a continuing relationship. It cannot be contended, that if the summons issued u/s. 131 to the subscribing companies at the addresses furnished by the assessee returned unserved, the AO is duty bound to enforce their attendance with all the powers vested in him. An assessee cannot take an unreasonable attitude towards his onus u/s. 68. When the subscribing companies have not been found existing at the addresses given by the assessee, it is open to the AO to even hold that the identity of the share-subscribers has not been proved, let alone their creditworthiness and the genuineness of the transactions. There has to be explanation for the deposits in the accounts of share applicants and their source. There must be some positive evidence to show the nature and source of the resources of the share for him to come before the AO and confirm his sources from which he subscribed to the capital. Merely filing a letter at the "dak" counter of the AO, is not compliance with the direction of the AO who had issued notice to the assessee to produce the principal officers of the subscribing companies.

The judgement in the case of CIT VS. Hotel Silver Cascade ITA 302 of 2009 decided on 8.6.2016 Calcutta High court may be cited. It was held that,

a) that the assessee could not produce the share application forms submitted by some of the applicants of share, and (b) that the assessee was unable to produce those shareholders before the Assessing Officer. On these two grounds the Assessing Officer made additions under Section 68 with respect to the money which the assessee received on account of share application. The CIT(A) concurred with the views of the Assessing Officer. In an appeal preferred by the assessee, the learned Tribunal deleted the additions for the following amongst other reasons:

"Thus the AO has admitted that the assessee has established the identity of the share applicants and also that the share applicants are assessed to income tax. Once the assessee has established identity of share applicant and furnished their income tax file number the assessee has discharged the burden of proving the share application money. While taking this view we also derive support from the decision of Hon'ble Apex Court in the case of CIT vs Orissa Corporation P. Ltd (159 ITR 78) (SC). We, therefore, respectfully following the above decisions of the Hon'ble Apex Court in the case of Lovely Export (P) Ltd. & Orissa Corporation P. Ltd. (supra) hold that the A.O. was not justified in treating the share

application money as unexplained cash credit u/s. 68. The additions made by the AO for unexplained cash credit for the assessment year 1999-2000, 2000-01, 2001-02 and 2003-04 are deleted.

Hon'ble Punjab & Haryana High Court in the case of CIT vs. G.P. International Ltd., (2010) 325 ITR 25 (P &H) held as under: "AO having not doubted the identity of the persons from whom the assessee company has shown receipt of share application money, impugned transactions cannot be treated as non-genuine merely because some of the applicants did not respond to the notice issued by the AO 18 under s. 133(6) and, therefore, addition was not sustainable.

Hon'ble Delhi High Court in the case of CIT vs. (2010) 329 ITR 271 held as under:

Victor Electrodes Ltd.,

"When the assessee had filed copies of resolution passed by the board of directors of applicant companies, besides their bank statements and IT returns which were not found to be non-genuine, without making further inquiry from the internal record of the Department or from the concerned banks, the addition could not be made on the ground that the directors or representatives of the applicant companies were not produced."

Hon'ble Delhi High Court in the case of CIT vs. Orbital Communication (P) Ltd., (2010) 327 ITR 560 held as under:

"In view of the decision of the Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195, the Tribunal was justified in upholding the order of the CIT(A) deleting addition made on account of share application money when substantial evidence was produced by the assessee to establish the identity of share applicant."

Hon'ble Delhi High Court in the case of CIT &OR's. Vs. Five Vision Promoters Pvt. Ltd., & Ors. (2016) 380 ITR 289 (Del.) in which it was held as under:

"Provisions of s 68 can be invoked only where assessee offers no explanation at all or explanation offered is unsatisfactory; and addition thereunder can be made only on that condition."

Hon'ble Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & 20 ITA.No Investment Ltd., (2016) 237 Taxman 104 (Del.) held as under:

"In terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub-creditors."

In CIT vs. Gangour Investment Lid. 335 Court of Delhi held that assessee company having filed the subscription forms of the investors, including TT Ltd., a group company, containing details and information with respect to their

addresses as well as PAN, thereby establishing their identity and also supplied a copy of the statement of bank accounts of TT Ltd., it has discharged its onus in respect of the veracity of the transaction and therefore, the addition u/s.68 made by the AO in respect of the impugned investment made by TT Ltd, has been rightly deleted.

The jurisdictional High Court in the cases *Crystal Networks (P) Ltd vs CIT* reported in 353 ITR 171 (Cal) had held that when the basic evidences are on record, the mere failure of the creditor to appear before the Assessing Officer cannot be the basis to make addition. The relevant observations of the Hon'ble Court are as under: -

"8. Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that Income-tax Officer did not consider the material evidence showing the creditworthiness and also other documents, viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidis. These evidences were duly considered by the Commissioner of Income-tax (Appeals). Therefore, the failure of the person to turn up pursuant to the summons issued to any witness is immaterial when the material documents made available, should have been accepted.

The Hon'ble Jurisdictional High Court in the case of *CIT vs Leonard Commercial (P) Ltd* in ITAT No. 114 of 2011 dated 13.6.2011 (Cal) had held as under: -

"The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs.8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the 13 Assessing Officer on account of share capital, share application money and investment in HTCCCL respectively.

After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed. It further appears that all the payments were made by the applicants by account payee cheques.

It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund.

In our opinion, both the (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars.

The Kolkata bench of ITAT in the case of ITO vs Wiz-Tech Solutions Pvt Ltd in ITA No. 1162/Kol/2015 dated 14.6.2018 had held as under: -

"28. From the details as aforesaid which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) income tax assessee's, (ii) they are filing their return of income, (iii) the share application form and allotment letter is available on record, (iv) the share application money was made by account payee cheques, (v) the details of the bank accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions the AO found deposit in cash before issuing cheques to the assessee company, company, (vii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above.

29. As noted from the judicial precedents cited above, where any sum is found credited in the books of an assessee then there is a duty casted upon the assessee to explain the nature and source of credit found in his books. In the instant case, the credit is in the form of receipt of share capital with premium from share applicants. The nature of receipt towards share capital is seen from the entries passed in the respective balance sheets of the companies as share capital and 16 investments. In respect of source of credit, the assessee has to prove the three necessary ingredients i.e. identity of share applicants, genuineness of transactions and creditworthiness of share applicants. For proving the identity of share applicants, the assessee furnished the name, address, PAN of share applicants together with the copies of balance sheets and Income Tax Returns. With regard to the creditworthiness of share applicants, as we noted supra, these Companies are having capital in several crores of rupees and the investment made in the appellant company is only a small part of their capital. These transactions are also duly reflected in the balance sheets of the share applicants, so worthiness is proved. Even if there was any doubt if any regarding the creditworthiness of the share applicants was still subsisting, then AO should have made enquiries from the AO of the share subscribers as held by Court in CIT vs DATAWARE (supra) which on 'ble jurisdictional High has not been done, so no adverse view could have been drawn. Third ingredient is genuineness of the transactions, for which we note that the monies have been directly paid to the assessee company by account payee cheques out of sufficient bank balances available in their bank accounts on behalf of the share applicants. It will be evident from the paper book that the appellant has even demonstrated the source of money deposited into their bank accounts which in turn has been used by them to subscribe to the assessee company as share application. Hence the source of source of source is proved by the assessee in the instant case though the same is not required to be done by the assessee as per law as it stood/ applicable in this assessment year. The share applicants have confirmed the share application in response to the notice u/s 133(6) of the Act and have also confirmed the payments which are duly corroborated with their respective bank statements and all the payments are by account payee cheques.

We would like to reproduce the Hon'ble High Court order in CIT vs. Gangeshwari Metal P.Ltd. in ITA no. 597/2012 597/2012 judgement dated 21.1.2013, the Hon'ble High Court after considering the decisions in the case of Nova Promoters and Finlease Pvt. Ltd. 3421TR 169 and judgement in the case of CIT vs. Lovely Exports 319 ITR (St) 5(SC) held as follows: -

"As can be seen from the above extract, two types of cases have been indicated. One in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect: -

"Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs. 1,11,50,000/- may not be added to its income the said amount of assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs. 55,50,000/- and not Rs. 1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs. 55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance sheet etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs.55,50,000/- received by the assessee are treated as unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income/ penalty proceedings under Section 271(1)(c) are being initiated separately.

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case.

However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act 1961. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law "

The case on hand clearly falls in the category where there is lack of enquiry on the part of the A. O. as in the case of Gangeshwari Metals (supra).

In the case of Finlease Pvt Ltd. 342 ITR 169 (supra) in ITA 232/2012 judgement 22.11.2012 at para 6 to 8/ it was held as follows.

"6. This Court has considered the submissions of the discussion by the Commissioner of Income Parties. In this case reveal that the assessee has filed document including certified copies issued by the ROC in relation to the share application affidavits of the directors, form 2 filed with the ROC by such applicants' confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the 18 statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of S.68 of the Income Tax Act 1961. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators, such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under Section the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material.

In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we hold that an addition cannot be sustained merely based on inferences. Applying the propositions laid down in these case laws to the facts of this case, we are inclined to uphold the order of the Ld. Commissioner of Income Tax (Appeals)

To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall

be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly, all the three conditions as required u/s. 68 of the Act i. e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to 19 AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do not want to interfere in the impugned order of Ld. CIT(A) which is confirmed and consequently the appeal of Revenue is dismissed. "

The Hon'ble Bombay High Court in the case of Pr. CIT vs. Paradise Inland Shipping Pvt. Ltd (Bombay High Court has held that The Companies which invest share capital cannot be treated as bogus if they are registered and have been assessed. Once the assessee has produced documentary evidence to establish the existence of such companies, the burden shifts to the Revenue to establish their case. Reliance on statements of third parties who have not been subjected to cross examination is not permissible. Voluminous documents produced by the assessee cannot be discarded merely on the basis of statements of individuals contrary to such public documents. This judgment was confirmed by the Hon'ble Supreme Court.

It has been held in by the Bombay High Court vide judgement dated 20.03, 2017 in case of CIT vs; Gagandeep Infrastructure Pvt Ltd where in the Hon'ble court has held that:

5.9 As regards the valuation of shares, I find that the appellant has filed valuation report in support of same and also the judgments cited and submissions made by the appellant vide point no.9 of written submissions proves its point regarding the justification of amount of share premium. In para 5.15 of the assessment order the Ld. A.O. has raised issue of high premium without any due diligence. The provisions of S. 56(2)(vii)(b) of the Act and Rules 11U and 11 VA were inserted w.e.f. 01.04.2013 i.e. assessment year 2013- 14 onwards. Thus, for the year under consideration the Ld. A.O. has to examine only the identity, creditworthiness and genuineness of the transactions only.

Moreover, when the assessment of the shareholders have been completed u/s 143(3) no addition can be made in the hands of the assessee as has been held in the following cases: -

1. M/s. Baba Bhootnath Trade & Commerce Ltd. vs. ITO in ITA No.1494/Kol/2017: Assessment Year 2012-13, order dt. 05/04/2019

2. ITO vs. M/s. Axisline Investment Consultants Pvt. Ltd. in ITA No. 408/Kol/2017; Assessment Year 2012-13, order dt. 01/07/2019

3. *M/s. Shreenath Holding Pvt. Ltd. vs. ITO in ITA No. 2390/Kol/2019; Assessment Year 2012-13, order dt. 26/02/2020*

4. *ITO vs. M/s. Happy Structure Pvt. Ltd. in ITA No. 1977/Kol/2016; Assessment Year 2012-13, order dt. 22/05/2019*

5. *M/s. Satyam Smertex Pvt. Ltd. vs. DCIT, ITA No. 2445/Kol/2019; Assessment Year 2012-13, order dt. 29/05/2020*

We need not repeat the judgment of Hon'ble Supreme Court in the case of Paradise Inland Shipping Co Ltd. reported in 2018 93 taxmann Com 84 has held that when the assessee has filed all the evidences and documents from public offices and brought on record the assessment orders passed in the case of said companies, addition cannot be made u/s 68.

It is further submitted that Ld. AO erred in relying on some judgement when the said judgments were different on facts of the case and were not applicable.

2. Regarding disallowance of Rs. 1045603/- under section 14A of the I.T. Act 1961 r.w. Rule 8D:

In this context I would like to state your goodself that the issue has already come up of before the Courts in the context disallowance under section 14A also and view has been taken by the High Courts and the Tribunals that no disallowance is called for where the assessee has made investments out of his own funds available with the assessee are quite sufficient to make investment. In this regard following decisions can be referred to: -

CIT v. Winsome Textile Industries Ltd. [2009]319 ITR 204 (Punj. &Har.)

CIT v. Suzlon Energy Ltd. [Tax Appeal No. 223 OF 2013, dated 03.04.2013]

Yatish Trading Co. (P) Ltd. v. Asstt. CIT [2011] 129 ITD237/9 taxmann.com 164(Mum.)

CIT v. K RahejaCorpn (p) Ltd. [IT Appeal No. 1260 of 2009, dated 08.08.2011] ***MarutiUdyog Ltd. v. Dy CIT*** [2005] 92 ITD 119(Delhi.)

Paranjape Autocast (P) Ltd. v. Dy. CIT [IT Appeal Nos. 1090 & 1091 (Pune) of 2010, dated 25.06.12]

ITO v. Strides Arcolab Ltd. [2012] 138 ITD 323/24 taxmann.com 89 (Mum.)

Yamuna Prasad Peshwa v Dy CITIT Appeal No.416 (Jodh.) of 2009, dated 09.12.2011]

Dy. CIT v Maharashtra Seamless Ltd. [2011] 48 SOT 160 (URO)/16 taxmann.com 97 (Delhi)

In the case of Balarampur Chini Mills Ltd. v. DCIT [2011] 140 TTJ (Kol.)73. It has been held that where the assessee claims that no expenditure has been incurred by it for the purpose of earning income not chargeable to tax, and the A.O. does not find anything which negates the claim of the assessee, no disallowance u/s 14A can be made. Under the circumstances Rule 8D cannot be applied mechanically.

In the case of Relaxo Footwears Ltd. v. Addl. CIT 50 SOT 102(Del.), it was held that satisfaction of the A.O. is a pre-requisite to invoke the provision of Rule 8D. In Maxopp Investment Ltd. v. CIT [2011] 203 Taxman 364 (Del.): [2012] 247 CTR (Del) 162: 15 taxmann.com 390 it has been held that whenever the issue section 14A arises before an assessing officer, he has to ascertain the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income. Where the assessee claims that no such expenditure has been incurred, the Assessing Officer will have to verify the correctness of such claim. If he is satisfied with claim, there will be no question of any dispute. In such an eventuality, the A.O. cannot embark upon a determination of the amount of expenditure to be disallowed for the purpose of section 14A(1). However where he is not satisfied with the claim of the assessee, he will have to hear the assessee and thereafter record the reasons for not accepting the claim.

As mentioned in the case of Godrej and Boyce Mfg. Co. Ltd. T [2010] 194 Taxman 203(Bom.), a reasonable disallowance can be made only after considering all the facts. In case of Maxopp investment Ltd. It has been held that claim of the assessee has to be examined in the first place in terms of its correctness. If the A.O. has not done so, he cannot apply rule 8D.

Similar view has been expressed in I.P. Support Services India (P) Ltd. [TS-573-HC-2015(Del.)], Subramanya Construction & Development Co. (ITA No. 404/Bang/2013), DCIT v. Ashish Jhunjunwala ITA No. 1809/Kol/2012 dated 14.5.2013.

*As matter of clear legal mandate it has already been held by the Tribunals in number of cases that the Assessing Officer is required to record satisfaction as to why the disallowance offered by an assessee is not correct before invoking Rule 8D. In this regard recent decision of the Hon'ble Mumbai Bench of the Tribunal in the case of **Kodak India (P) Ltd.v.Addl. CIT [Appeal No.7349/Mum./2012, dated 30.03.2013]** can be referred to wherein the Hon'ble Bench has observed as under :-*

"106. In our opinion, Rule 8D is not automatic, it is for the AO to examine, at the outset, the correctness of the claim of the assessee, whether he has incurred any expenditure or not and has to give a definite finding, as to how the claim of the assessee is unacceptable. If, on examination, it is found that such expenditure is lower than the disallowance, as computed under Rule 8D, then actual expenditure, as estimated by the AO would

have to be disallowed. If, on the other hand, the assessee is able to substantiate on facts, that the exempted income does not bear any cost/expenditure, in such cases, disallowed under section 14A, may become invalid.

107. As observed above, Rule 8D cannot be invoked directly and mechanically, i.e. without giving a detailed and speaking reasons. Bald statement, made by AO that he has reoffered to the accounts, does not give him an automatic jurisdiction to invoke the provisions of section 14A read with Rule 8D. Disallowance, made on such basis is not permissible,"

In the light of above holding of the Tribunal and also the logical interpretation of section 14A and Rule 8D of the income Tax Rules, it is stated that it is the requirement of the law that facts of each case have to be examined by the Assessing Officer and the expenditure, as is relatable to the exempt income, is to be disallowed. As and when the Assessing 1. As and when the Assessing Officer rises the query during the course of the assessment proceedings a detailed explanation should be given along-with full facts justifying the disallowance offered in the return. In case the assessee is able to justify the amount of disallowance with reference to facts, the Assessing Officer will have no power to invoke the basis provided in Rule 8D and the disallowance as offered by the assessee has to be accepted by the Assessing Officer.

In view of the above facts and judicial pronouncements the addition made by the AO is not sustainable and may please be deleted."

05. While dismissing the appeal of the assessee the Id. CIT (A) observed and held as under:

6.1 On the first issue in question, AO has made disallowance u/s 14A of the Act, even though no exempt income is earned during the year under consideration. Recently, Hon'ble Delhi High Court has given decision on this issue in the case of **Pr. CIT (Central)-2 Vs. M/s Era Infrastructure (India) Ltd. ITA No. 204/2022 & CM APPL.31445/2022 Dated 20.07.2022** giving relief to assessee; relevant portion of which is reproduced as under:

"4. Learned counsel for the petitioner also submits that in view of the amendment made by the Finance Act, 2022 to Section 14A of the Act by inserting a non obstante clause and an explanation after the proviso, a change in law has been brought about and consequently, the judgments relied upon by the authorities below including **PCIT vs. IL&FS Energy Development Company Ltd** (supra) are no longer good law. The amendment to Section 14A of the Act is reproduced herein below:-

"Amendment of section 14A.

In section 14A of the Income-tax Act,

(a) in sub-section (1), for the words "For the purposes of, the words "Notwithstanding anything to the contrary contained in this Act, for the purposes of shall be substituted; (b) after the proviso, the following Explanation shall be inserted, namely:-

"[Explanation.-For the removal of doubts, it is hereby clarified that "[Explanation.—For_the_removal notwithstanding anything to the contrary contained in this Act, the provisions

of this section shall apply and shall be deemed to hav as applied in a

case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.]"

5. However a perusal of the Memorandum of the Finance Bill, 2022 reveals that it explicitly stipulates that the amendment made to Section 14A will take effect from 1st April, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The relevant extract of Clauses 4, 5, 6 & 7 of the Memorandum of Finance Bill, 2022 are reproduced hereinbelow:

"4. In order to make the intention of the legislation clear and to make it free from any misinterpretation, it is proposed to insert an Explanation to section 14A of the Act to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

5. This amendment will take effect from 1st April, 2022.

6. It is also proposed to amend sub-section (1) of the said section, so as to include a non-obstante clause in respect of other provisions of the Income- tax Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

7. This amendment will take effect from 1st April, 2022 and will accordingly apply in relation to the assessment year 2022-23 and subsequent assessment years.

(emphasis supplied)

8. Consequently, this Court is of the view that 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.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in **Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359** and **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1**, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in **PCIT vs. IL&FS Energy Development Company Ltd** (supra) and **Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378/TR 33**.

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide by the final decision of the Supreme Court in the SLP filed in the case of **PCIT vs. IL & FS Energy Development Company Ltd** (supra)."

6.2. In view of the fact that appellant has not earned any exempt income and following the decision in the above case; I hereby direct the AO to delete the addition made u/s 14A of the Act. Hence, grounds of appellant raised on this issue are **allowed**.

6.3. With respect to addition made u/s 68 of the Act, the facts of the case and the decision of the Assessing Officer has been examined in the context of the grounds of appeal, submission made by the appellant and the various documents submitted with the written submission. It is seen that the appellant is aggrieved by the addition made u/s 68 of the Income Tax Act of the loan credits in the appellants books of account on the ground that the creditworthiness and the genuineness of the transaction was not proved by the appellant. The appellant is also aggrieved by the disallowance of the claim of interest paid on the loans added to the income. The appellant has also objected to the charging of tax on the addition made u/s 68 of the Income Tax Act at the rate provided u/s 115BBE of the Income Tax Act.

6.4. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or 'genuineness' of the money credited in his books of accounts. This approach finds support from the scheme of Section 68, which provides that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee 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 that assessee for that previous year. The burden is thus on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is kind of explanation that the assessee is expected to give. As noted by Hon'ble Delhi High Court, in the context of issuance of share capital and in the case of **PCIT Vs Youth Construction Pvt Ltd [(2013) 357 ITR 197 (Del)]**, "it involves three ingredients, namely, the proof regarding the identity of the share applicants, their creditworthiness to purchase the shares and the genuineness

of the transaction as a whole". That is the approach adopted by Hon'ble Courts above all along. In the case of CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596 (Cal)], Hon'ble Calcutta High Court has held that under the scheme of Section 68 "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal)], it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". It is thus also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. The genuineness of the transaction as a whole is thus a very important and critical factor in the examination of explanation of the assessee, as required under section 68 of the Income Tax Act.

6.5. In this context the facts of the case bring out the following:

(a) The appellant was found to have accepted loans of Rs. 8,05,25,376/- in AY 2017-18. The appellant had explained that out of the said loans, he had accepted fresh loans of Rs 1,08,79,000/- during the year under scrutiny. The appellant submitted various details in response to the questionnaire issued. The lender wise position noted by the AO and the appellant's submission on the addition is as under:

(i) Alpaben D Doshi: Rs 10,00,000/-

The AO observed that the lender was having low income of Rs 2,30,070/- in AY 2017-18. The lender's residence was observed to be in modest locality and the residence was owned by some other person. The loan in question was advanced out of the funds deposited on the same day. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender alongwith genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents show that the income of the lender is indeed low and that the funds advanced as loan were indeed deposited on the same day. Further from the Capital Account submitted, it is clear that there are no assets apart from advances to various persons and balance in bank and TDS receivable. The interest earned appears to be receivable and the income disclosed below the taxable limit. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(ii) Ankitabhai D Dhenkar 5,00,000/-

The AO observed that the lender was having low income of Rs 2,96,980/- in AY 2017-18. The loan in question was advanced out of the funds deposited on the same day. The average balance in the account was much lower than the

amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 5,00,000/-. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(iii) Jagaji Sarupji Mavariya HUF 10,00,000/-

The AO observed that the lender was having low income of Rs 2,45,980/- in AY 2017-18. The loan in question was advanced on 25/07/2016 out of funds deposited on 22/07/2016. Incidentally, the date of credit was a Friday and date on which funds were cleared was the following Monday. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 10,00,000/-. The Capital Account of the of the lender shows a balance of Rs. 12,40,619/- and therefrom Rs.10,00,000/- were claimed to be advanced to the appellant. There are no other assets apart from loan to the appellant, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(iv) Kiritbhai H Patel- 7,50,000/-

The AO observed that the lender was having low income of Rs 2,98,833/- in AY 2017-18. The loan in question was advanced on 28/07/2016 out of funds deposited on 26/07/2016 & 27/07/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 7,50,000/-. The Capital Account of

the of the lender shows a balance of Rs 12,40,619/- and therefrom Rs 10,00,000/- were claimed to be advanced to the appellant. There are no other assets apart from loans, bank balance & cash in hand. Moreover, a joint examination of the passbook and balance sheet bring out factual discrepancies. There are two more entries of loans advanced in the same fashion i.e. the deposit immediately preceding loans to Paresh G kachariya (HUF) and VinubhaiSojitra (HUF). These loans do not appear in the Balance Sheet. Hence, the Balance Sheet is unreliable. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(v) Nareshbhai B Vanra 5,00,000/-

The AO observed that the lender was having low income of Rs 2,77,464/- in AY 2017-18. The loan in question was advanced on 26/07/2016 out of funds in 5,00,000/- is received The average balance in the account was much lower than balance and immediately on 27/07/2016 an amount of s in the said account the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender alongwith genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 5,00,000/-. The Capital Account of the of the lender shows a balance of Rs 16,09,719/-. However, the amount advanced is out of funds previous balance which is immediately recouped received on transfer and in absence of the Capital Account is immediately recouped and unless the source of funds so deposited can be ascertained, it cannot be said that Rs 5,00,000/- were advanced to the appellant from Capital Balance. There are no other assets apart from loans, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(vi) Sangitaben M Doshi 7,00,000/-

The AO observed that the lender was having low income of Rs 2,41,910/- in AY 2017-18. The loan in question was advanced on 27/07/2016 out of funds deposited on 25/07/2016 & 26/07/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, affidavit of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are

found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 7,00,000/-. The Capital Account of the of the lender shows a balance of Rs 18,45,022/-. However, the amount is advanced out of funds received on transfer and in absence of specific entry in Capital Account, the source of funds so deposited cannot be ascertained. There are no other assets apart from loan to the appellant, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed. on of the AO is confirmed.

(vii) Urvishaben V Sojitra: Rs 5,00,000/-

The AO observed that the lender was having low income of Rs 2,92,110/- in AY 2017-18. The loan in question was advanced on 28/07/2016 out of funds deposited on 26/07/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender alongwith genuineness of the transaction. This included the copy of tax return, These documents computation of income, bank account extract etc. substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 5,00,000/-. The Capital Account of the of the lender shows a balance of Rs 15,92,123/-. However, the amount is advanced out of funds received on transfer and in absence of specific entry in the Capital Account, the source of funds so deposited cannot be ascertained. There is one more entries of loans advanced in the same fashion i.e. the deposit of cash immediately preceding loan to Paresh G Kachariya (HUF). It is pertinent to note that the loan to Paresh G Kachariya (HUF) does not appear in the balance Sheet. Therefore, the Balance Sheet is not reliable. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(viii) Virag S Mehta 5,00,000/-

The AO observed that the lender was having low income of Rs 3,16,750/- in AY 2017-18. The loan in question was advanced on 25/07/2016 out of funds deposited on 21/07/2016 & 25/07/2016. The average balance in the account was much much lower than the amount advanced. Hence, the Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, confirmation of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and

of income which could have the documents filed do not reveal any other source made it possible to lend the amount of Rs 5,00,000/-. The Capital Account of the of the lender shows a balance of Rs 8,10,740/-. The lender is also in receipt of unsecured loans of Rs 1,08,000/-. However, the amount is advanced out of funds received on transfer and the Capital Account does not sufficiently explain the incoming and outgoing funds. The bank account shows that there are substantial cash withdrawals which far exceed the withdrawals and the cash in hand. There are more entries of loans advanced in the same fashion i.e. the deposit of funds immediately preceding loan. There are no other assets apart from loan to the appellant, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(ix) *Virtiben Anilbhai Shah* 6,50,000/-

The AO observed that the lender was having low income of Rs 2,96,150/- in AY 2017-18. The loan in question was advanced on 25/07/2016 out of funds deposited on 19/07/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, confirmation of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 6,50,000/-. The Capital Account of the of the lender shows a balance of Rs 14,61,026/-. The lender has advanced loans to persons in one family only. The amount is advanced out of funds received on transfer and the Capital Account does not sufficiently explain the incoming and outgoing funds. There are more entries of loans advanced in the same fashion i.e. the deposit of funds immediately preceding loan. There are no other assets apart from loan to the appellant, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(x) *Arjanbhai Jivrajbhai Sutariya* **** *1,79,000/-

In the case of this addition of Rs 1,79,000/- recognised as credit u/s 68 of the I T Act, it is observed that from the ledger extract submitted by the appellant and confirmed by the creditor i.e. *Arjanbhai Jivrajbhai Sutariya*, that there was an opening credit balance of rs 21,79,000/- in the books of accounts of the assessee. An amount of Rs 1,79,000/- was repaid out of the said balance of Rs 21,79,000/- payable by the appellant. The said amount does not pertain to the year under scrutiny and therefore was not within the ambit of the provisions of Sec 68 of the Income Tax Act. Therefore, the addition made is not tenable on facts and in law. Hence, AO is directed to delete the addition.

(xi) Bhautikbhai A Sanghavi 5,00,000/-

The AO observed that the lender was having low income of Rs 3,18,740/- in AY 2017-18. The loan in question was advanced on 28/07/2016 out of funds deposited on 27/07/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, confirmation of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender does not even have taxable income and the documents filed do not reveal any other source of income which could have made it possible to lend the amount of Rs 5,00,000/-. The Capital Account of the lender shows a balance of Rs 17,66,330/-. However, the amount is advanced out of funds received on transfer and the Capital Account does not sufficiently explain the incoming and outgoing funds. There are more entries of loans advanced in the same fashion i.e. the deposit of funds immediately preceding loan. There are no other assets apart from loan to the appellant, bank balance & cash in hand. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(xii) Bhupatbhai T Mavani HUF 6,00,000/-

The AO observed that the lender was having low income of Rs 5,31,420/- in AY 2017-18. The loan in question was advanced on 31/01/2017 and 18/02/2017 out of funds of Rs 7,50,000/- deposited in cash on 28/11/2016. The substantial cash deposit in light of moderate income during the year and receipts of Rs 9,15,400/- during the year definitely raise questions on the source of funds. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness was found to be unsubstantiated. The required to prove the appellant has contended that he has submitted document Unsubstantiated. The identity & creditworthiness of the lender along with genuineness of the transaction. This included the copy of tax return, computation of income, bank account extract, confirmation of the lender confirming the transaction etc. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The amount is advanced out of funds deposited in cash and the Capital Account does not sufficiently explain the incoming and outgoing funds. The cash book submitted clearly shows that the balance after deposit of Rs 750000/- in cash in the bank had resulted in credit balance of rs 2,16,803/-. In the circumstances the absence of creditworthiness is admitted by the lender. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(xiii) Kirtalben B Mavani 5,00,000/-.

The lender is apparently the wife of the appellant. It is seen from documents produced that the lender is engaged in Sewing & Embroidery business. The gross receipts are Rs 12,32,500/- and the net profit is Rs 8,25,888/- i.e. 67%. The unusually high profit coupled with absence of any substantial claim of expenditure of salary/labour and machinery required does not make the claim plausible. Prima facie the return and the financial statements are an exercise in capital building. Hence, the AO's finding of lack of creditworthiness arises from the failure of the assessee to produce any plausible explanation for such unusual income earning. The appellant has also not produced the bank statements to substantiate the creditworthiness. The lender being the appellant's wife the failure to produce the bank statement clearly highlights the failure to prove the creditworthiness of the lender. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. Therefore, the documents are clearly insufficient to prove the creditworthiness of this lender. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

(xiv) Tejas Petroleum 30,00,000/-: The AO observed that the lender was having low income of Rs 3,16,750/- in AY 2017-18. The loan in question was advanced on 15/06/2016 out of funds deposited on 15/06/2016. The average balance in the account was much lower than the amount advanced. Hence, the lender's creditworthiness to advance a large sum of Rs 30 lakhs was found to be unsubstantiated. The appellant has contended that he has submitted documents required to prove the identity & creditworthiness of the lender alongwith genuineness of the transaction. This included the copy of confirmation, PAN card of lender and bank account extract. These documents substantiate the observations of the AO and the questions raised by AO are found to be substantiated. The lender is running a petrol pump business generating substantial cash. However, the loan advanced does not appear to be out of the sale proceeds as there is single transfer of rs 30 lakhs on the day on which loan was advanced. The documents produced do not explain how the funds were generated for advancing the loan. Therefore, the documents are clearly insufficient to prove the creditworthiness. In view of this, genuineness of transaction and creditworthiness is not established and action of the AO is confirmed.

6.6. There are a number of common threads in the manner in which loans were advanced by most of the lenders. Most of the lenders are having retail trading business which generate profits below taxable limits. The advance of loans is immediately preceded by transfers in the bank accounts or cash deposits insome cases. The documents produced do not plausibly explain the nexus of the funds advanced with the business receipts or other receipts of the lender appearing in the return of income filed. Most of the advances of loans have taken place at the end of or in the last week of July 2016. The no of coincidences in the facts of the case are extremely rare and hence the Assessing officer was entitled to ask for further explanation.

6.7. While substantiating a number of loans the appellant has produced notarised affidavits of the lenders. Primarily, an affidavit is not evidence under

the India Evidence Act unless it is corroborated by documentary evidence supporting the averments of the affiant. Under the Income Tax Act, it is a piece of information which is required to be carefully examined as the affiant has stated it on solemn affirmation. The affiants have affirmed that source of funds is out of their normal activities, past savings and from income derived during the year. However, on examination of the bank accounts it has been noted that funds are advanced out of deposits preceding the advance of loan. No nexus of the funds received on transfer with normal activities of lenders could be established from the documents submitted. Therefore, a crucial averment in the affidavits in context of the source of the loans advanced which has bearing on the creditworthiness of the lender was not supported by plausible evidence. Therefore, the affidavits filed cannot be treated as evidence in support of the claims of the appellant.

6.8. While examining the genuineness of the transactions entered into by the assessee, we may bear in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)], to the effect that "Science has not yet invented any instrument to test the reliability of the the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Similarly, in a later decision in the case of Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)], Hon'ble Supreme Court rejected the theory that it is for allegor to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities..... Similarly the observation.....that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available..... In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts hasbeen rejected unreasonably".

It will be superficial in approach in case while examining the claim of the appellant solely on the basis of documents filed and overlook the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra), "it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". Hon'ble Supreme

Court has, in the case of PCIT Vs NRA Iron and Steel Pvt Ltd [(2019) 412 ITR 161 (SC)] observed that "The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee".

6.9. Decision in this regard is to be taken not only in the light of the face value of the documents sighted before appellate authority but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. In the appellant's case the documents have been examined on the anvil of preponderance of probabilities and evidence produced is found to be insufficient to prove the case of the appellant. Hence, the grounds raised by the appellant on the issue of addition u/s 68 of the IT Act fail except in case of the addition made u/s 68 of the Income Tax Act of loan of Rs 1,79,000/- stated to be accepted from ArjanbhaiJivrajbhaiSutariya. The addition of Rs 1,79,000/- is deleted for reasons discussed. The balance addition is confirmed.

6.10. The next issue raised by the appellant is regarding the disallowance of the claim of interest of Rs 4,54,020/- on the loans found to be accommodation entries and added to the income of the appellant. The failure to establish the genuineness of payment of interest by the appellant resulted in disallowance of the claim by the AO. In these proceedings the addition of loans treated as accommodation entries has been confirmed. Therefore, it follows that the interest claimed to have been paid on such loans accepted is not allowable as u/s 36(1)(iii) as it would amount to allowance of interest on own capital which is not allowable. However, interest if any disallowed on the addition made of loan of ArjanbhaiJivrajbhaiSutaria would not be disallowable as the loan was accepted in earlier year and has not been treated as accommodation entry. Therefore, subject to the said remark the ground of appeal in respect of the disallowance of interest is rejected.

6.11. The next issue raised by the appellant is on the issue of charging of interest on the addition made u/s 68 of the income Tax Act. The ground is contingent of the allowance of claim of the appellant for deletion of addition made u/s 68 of the Income Tax Act. The appeal on this count has failed. Therefore, the addition made u/s 68 of the IT Act would attract the provisions of Sec 115BBE of the IT Act. As the same is a mandatory provision, the ground of appeal raised is not tenable. Hence, the ground of appeal raised is rejected.

7. GROUND NO. 5: -In this ground the appellant has craved leave to add, alter or adduce further ground/s of appeal at the time of hearing. No such option was exercised by the appellant, during the appellate proceedings, and, as such, this ground is treated as dismissed for statistical purpose.

In the result, the appellant's appeal is PARTLY ALLOWED.

06. Ld. Counsel for the assessee vehemently submitted before the bench that the order passed by the Ld. CIT(A) is wrong and against the facts on record and various decisions given by different judicial forums. The Ld. AR, while referring to the evidences filed by the assessee as well as by the subscribers, submitted that the assessee as well as the subscribers have filed all the evidences proving the identity and creditworthiness of the subscribers as well as genuineness of the transactions. The Ld. AR referred to the replies filed in response to summons u/s. 131 of the Act by the subscribers and submitted that the AO has not pointed out any defect or deficiency in these evidences, which abundantly proved that the three conditions of section 68 of the Act were fully satisfied. The Ld. AR stated that where the assessee has filed all the evidences qua the subscribers consisting of names and addresses, PANs, audited accounts, bank statements etc. and AO has not carried out any further verification, then the addition cannot be made merely on the ground that there was no compliance to summons issued u/s. 131 of the Act by recording physical presence. The Ld. AR stated that even the information sought by the AO in the summons issued u/s. 131 of the Act were duly complied in two cases. In defense of his argument the Ld. AR relied on the following decisions:

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

07. The Ld. D.R strongly controverted and opposed the arguments as put forth by the Ld. A.R by submitting that the share application money was received by the assessee from various subscribers who were not having any creditworthiness. The Ld. D.R submitted that replying to the summons issued u/s 131 of the Act did not mean that the ingredients as envisaged in section 68 of the Act were duly satisfied. Besides the Id DR stated that the enquiries and investigation could not be carried out by the AO when the subscribers did not appear personally in compliance to summons issued u/s 131 of the Act. Therefore the Ld. D.R ,therefore, submitted that the addition was rightly made by the AO and also confirmed by the Ld. CIT(A) after taking into account the reply of the assessee and the various circumstantial evidences. However, the Id. DR candidly admitted that though the written submissions were rightly extracted in the appellate order by conclusion was drawn on wrong facts.

08. After hearing the rival contentions and perusing the materials available on record, we find that during the year the assessee has issued shares to 17 share applicants consisting of six individuals/ HUFs and 11 bodies corporates. The shares were issued at a face value of 10 each at a premium of ₹990/-. The assessee raised by way of share capital/ share premium by issuing 2,52,390 equity shares comprising of ₹25,23,900/- as share capital and ₹24,98,66,100/- by way of share premium. In all, the assessee issue 2,52,390/-equity shares thereby realizing ₹25,23,90,000/- from subscription of equity shares. The Id. AO during the course of assessment proceedings required the assessee to furnish the evidences/ documents qua the share subscribers proving identity, creditworthiness of the creditors and genuineness of the transactions, which were accordingly furnished by the assessee comprising the names, addresses, ITRs ,certificates of

incorporation, audited financial statements, share application from share allotment letters, bank statements, assessments u/s 143(3) of the Act, source of source certificates, replies to summons u/s 131 of the Act in respect of 17 investors. Pertinent to mention that the Id. AO issued notice u/s 131 of the Act to the directors of the shareholder companies to personally appear before the Id. Assessing Officer. However, none appeared and according to the Id. AO due to non-appearance of the directors of the assessee company/ investors, the identity, creditworthiness of the shareholders could not be verified. Finally, the Id. AO by rejecting the evidences filed by the assessee and also the replies received in response to summons u/s 131 of the Act came to the conclusion that the investment by various investors was nothing but assessee's own money in the grub of share application money and accordingly, the same was added to the income of the assessee by treating it as unexplained cash credit in the assessment framed u/s 143(3) dated 14.03.2015. In the appellate proceedings, the Id. CIT (A) partly allowed the appeal of the assessee by deleting the addition made u/s 14A of ₹10,45,603/- however the addition in respect of share capital/ share premium of ₹25,23,90,000/- was confirmed that too by extracting the facts of some other assessee in respect of unsecured loans.

09. We have perused the appellate order and find that the Id. CIT (A) in para no.5.2 from page no.7 to 25 where the Id CIT(A) extracted the submissions of the assessee noting in the appellate order the facts qua the each and every subscribers from para no.6.3 till 6.11. We note that the Id. CIT (A) from para no.6.3 at page no.30 to para no.6.11 at page no.41, passed a detailed order dismissing the appeal of the assessee but to our great surprise the Id. CIT (A) in Para no.6.5 discussed the 11 parties which are different from the share

subscribers of the assessee company and were in fact qua unsecured loans by these parties. A perusal of the order of the Id. CIT (A) reveals that the Id. CIT (A) has wrongly extracted the operative part of some other assessee, which were in respect of unsecured loans raised from these parties and thus, dismissed the appeal of the assessee which is a total non-application of mind by the Id. CIT (A) despite discussing the facts qua the assessee qua each and every subscriber from the page no.7 to 25 of the same. We confronted the matter to CIT DR and the Id. DR fairly agreed to the fact that the Id. CIT (A) has by mistake discussed the facts in the operative part from para no.6.3 till 6.11 in respect of some other assessee, who have raised the unsecured loans from 14 parties and requested for some time and according conceding to the request of the DR, time was allowed .

010. On the next date of hearing, the case was heard from both the sides at length and all the evidences placed on record were examined minutely. We find that in this case the assessee has file all the evidences qua the share subscribers as stated hereinabove before the authorities below and the Id. AO has not pointed out any defect or deficiency in the same except the fact that the subscribers did not attend the office of the Id. AO personally in compliance to summons issued u/s 131 of the Act and therefore, the identity, genuineness of the transactions could not be verified. In our opinion, the order passed by the Id. AO making the addition merely for the ground that the summons was not complied with is not sufficient ground to make addition especially when the assessee as well as subscribers furnished all the evidences and no enquiry was carried out by the AO nor defect in the documents furnished were pointed out. Therefore, the addition made cannot be sustained.

After the case was heard, it was brought to our notice that the Id. CIT (A) has rectified his order and dismissed the appeal of the assessee in the rectified order a copy of which was also placed before us. In the said order, the Id. CIT (A) simply affirmed the order of the Id. AO. We again fixed the matter for clarification for taking cognizance of the same. The Id. CIT(A) simply affirmed the order of AO on the ground that there was no compliance to summons u/s 131. The said appellate order is also against the ratio laid down in the various decisions as cited above. Consequently, we set aside the order of Id. CIT(A) and direct the AO to delete the addition by allowing the appeal of the assessee.

011. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11.11.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 11.11.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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