



IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1249 to 1252/PUN/2024
Assessment Years : 2013-14, 2014-15, and 2015-16

Anant Keshav Rajegaonkar, G-3, Crown Commercial Complex, Sharanpur Road, Opp. NMC Rajiv Gandhi Bhavan, Nashik - 422 002 Maharashtra PAN : ACPPR9345E	Vs.	The ACIT, Central Circle-2, Nashik
Appellant		Respondent

Appellant by	:	Shri Pramod S Shingte
Respondent by	:	Shri Amol Khairnar
Date of hearing	:	17.12.2025
Date of pronouncement	:	28.01.2026

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeals at the instance of assessee pertaining to A.Yrs. 2013-14, 2014-15 and 2015-16 are directed against the separate orders dated 25.04.2024 and 26.04.2024 framed by National Faceless Appeal Centre, Delhi (NFAC) arising out of respective assessment orders/penalty orders passed u/s.143(3)/271(1)(c) of the Act.

2. Identical grounds have been taken by the assessee in most of these appeals, therefore, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.



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3. Firstly we will take up ITA Nos. 1249, 1251 and 1252/PUN/2024 in which assessee has raised some common grounds and the same are reproduced below :

“Grounds in ITA No.1249/PUN/2024 :

1. *On the basis of facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of agricultural income of Rs. 99,643/-made u/s. 68 of the Act. The CIT(A) is not justified in rejecting the claim of the appellant of agricultural income for the incorrect reason that the appellant was not having any agricultural land, particularly when there was no dispute as regards the possession of agricultural land by the appellant and more particularly when the appellant has furnished copies of 7/ 12 extracts of the agricultural lands.*
2. *On the basis of facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.6,00,00,000/- made by the AO u/s.68 of the Act.*
3. *On the basis of the facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.6,00,00,000/- u/s. 68 of the Act made by A.O. without confronting the material on the basis of which, the impugned addition is confirmed by the CIT(A).*
4. *The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.*

Grounds in ITA No.1251/PUN/2024 :

- “1. *On the basis of facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.82,50,000/- made by the AO u/s. 68 of the Act.*
2. *On the basis of the facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs. 82,50,000/- u/s. 68 of the Act made by A.O. without confronting the material on the basis of which, the impugned addition is confirmed by the CIT(A).*
3. *The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.”*

Grounds in ITA No.1252/PUN/2024 :

1. *On the basis of facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is not justified Rs. in*



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confirming the addition of Rs.3,13,50,000/ made by the AO u/s. 68 of the Act.

2. On the basis of the facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.3,13,50,000/- u/s.68 of the Act made by A.O. without confronting the material on the basis of which, the impugned addition is confirmed by the CIT(A).

3. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.1,83,58,184/- on account of capital gain earned by the appellant on sale of shares of M/s. Pearl Agriculture Ltd. by holding that the said sale transaction of shares as bogus and non-genuine particularly when the appellant has provided all the basic evidences in support of genuineness of the transactions.

4. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.1,83,58,184/- on by invoking the provisions of section 68 of the Act, which were taxed by the AO as business profit, particularly when no notice u/s. 251(2) was issued by the CIT(A).

5. On the basis of facts and in the circumstances of the case and as per law, the Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.7,21,810/- on account of unaccounted commission paid when in fact the appellant has provided all the basic evidences that all the transactions in relation to sale of shares of M/s. Pearl Agriculture Ltd. have been carried out through banking channels.

6. On the basis of facts and in the circumstances of the case the additions made by the AO of Rs.5,01,27,730/- may please be deleted

7. The appellant craves for the addition to, deletion, alteration, modification of the above grounds of appeal.”

4. From perusal of the above grounds, we find that apart from other issues common issue regarding addition u/s.68 of the Act has been raised by the assessee for the amount received from M/s. Frontier Mercantile Private Limited (in short 'FMPL' at ₹6.00 crore, ₹82.50 lakh and ₹3,13,50,000 for A.Y. 2013-14 to A.Y. 2015-16 respectively. For the purpose of adjudication, ITA No.1249/PUN/2024 for A.Y. 2013-14 is



taken as the lead case to decide this common issue of addition u/s.68 of the Act.

5. Brief facts of the case are that the assessee is an individual and is engaged in providing Architectural Consultancy Services under the name and style of M/s. Anant Associates and also received salary from Anant Technocrats Private Limited. Income of ₹38,92,460/- declared in the return of income for A.Y. 2013-14 filed on 29.03.2014. Case selected for scrutiny through CASS followed by validly serving statutory notices u/s.143(2) and 142(1) of the Act. So far as the issue of unexplained cash credit u/s.68 of the Act is concerned, for the year under consideration, ld. Assessing Officer observed that assessee has received advance of ₹6.00 crore from M/s. Frontier Mercantile Private Limited (in short 'FMPL) against sale of property. Assessee has reflected this sum under the head Creditors and Other liabilities. Ld. Assessing Officer observed that the said sum received from FMPL is an advance for sale of property going to be built on Survey Nos.92 and 22, Goverdhan Shivar, Nashik and the copy of Agreement also enclosed. It was submitted that since the alleged sum has been received as advance against property, therefore, interest has not been charged. Ld. Assessing Officer however observed that advance has been received only on the basis of unregistered document. Ld. Assessing Officer also referred to the assessment proceedings in the case of Suyojit Infrastructure Private Limited (in short 'SIPL') for A.Y. 2013-14 wherein also the amount was received from FMPL and ld. Assessing Officer observed in the assessment order of Sujojit Infrastructure Private Limited that FMPL is an entry provider



company. Ld. Assessing Officer also referred to the observations of the assessment order in the case of SIPL appearing from page 3 to 7. Referring to the observations made in the case of SIPL and also observing that FMPL has only share capital of ₹3.26 crore which is not sufficient to provide advance of ₹6.00 crore to the assessee, Ld. Assessing Officer raised doubts on the creditworthiness of the transaction and lastly observed that the present status of land in respect of which the amount was transacted has not been submitted. Ld. Assessing Officer accordingly made addition of ₹6.00 crore u/s.68 of the Act as unexplained cash credit.

6. Similarly, ld. Assessing Officer made addition of ₹82.50 lakh and ₹3,13,50,000/- for A.Yrs. 2014-15 and 2015-16 respectively for the advance received by the assessee from FMPL giving similar finding as given for A.Y. 2013-14.

7. Aggrieved assessee preferred appeal before ld.CIT(A) and again reiterated the facts that the amount received from FMPL is not in the nature of unsecured loan but is advance against sale of property and that the assessee has valid documents for entering into registered Agreement for purchasing property bearing Survey Nos. 92 and 22, Goverdhan Shivar, Nashik. It is also submitted before ld.CIT(A) that ld. Assessing Officer has not conducted any independent enquiry for verification of transaction with FMPL and has merely made addition based on the observations made in the case of another assessee namely Suyojit Infrastructure Private Limited. It was also submitted that advance has been received against the Agreement entered



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into between the assessee and FMPL and that FMPL has given such type of advances to other concerns also and has ventured in the course of business for making good gains from investment in immovable properties. However, ld.CIT(A) was not satisfied with such arguments and he affirmed the addition made by the Assessing Officer observing as follows :

“6.4. In Ground No. 3,4 & 5, the assessee challenged the treatment of advance taken by him from one, Frontier Mercantile Pvt. Ltd. for Rs. 6,00,00,000/- as unexplained cash credit u/s. 68. I have seen that the issue has recurred in AY 2014-15 & 2015-16 too.

6.4.1. On perusal of assessment order of 2013-14, 2014-15 & 2015-16, it is understood that the assessee intended to purchase some land, being marked at Survey No. 92, at Govardhan Shiver at Nashik, Maharashtra, measuring 3.53 acres, by entering into an agreement with the owners of the land, being the family members of Shri Ashoke Damu Jadhav. A total sum of Rs. 5,00,000/- was paid as advance in the period between 24/10/2011 to 05/03/2012. The agreement of purchase was not registered. The total land was agreed to be purchased under 8 separate agreements. Thereafter, without the land being purchased, the assessee claimed to have entered into a sale agreement (MOU/Investment Agreement) with one, Frontier Mercantile Pvt. Ltd. of Kolkata on 10/03/2013. As per the said Agreement (unregistered), the assessee received a sum of Rs. 6,00,00,000/- during the FY 2012-13. It received another sum of Rs. 82,52,000/- during the AY 2014-15 and further Rs. 3,13,50,000/- during AY 2015-16, it claimed to have returned a sum of Rs. 3,52,92,000/- to the said party as deal broke through as not materialized. As per the said agreement dated 10/03/2013, the assessee claimed to have the intention of developing a plot of land at Goverdhan Shivar Nashik, as mentioned above and construct a multi-storeyed Group Housing Project, consisting of residential flats on such land The Agreement says that the other party, Frontier Mercantile Pvt. Ltd. intended to invest a sum of Rs. 10,00,00,000/- for such development against which they will have the right of 35,000 sq. ft. of constructed carpet area in the housing project. The details of the sanction plan or exact no. of flats to be constructed or the area of each of the flat etc. were not mentioned at all. It is also noted that there was no provision for any end date by which such construction activity is to be completed and the possession of the said 35,000 sq. ft. to be handed over to the advancing party. Interestingly, there was no provision for payment of any interest on the said advance at any point of time.



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6.4.2. In the assessment for AY 2013-14, the AO mentioned in the assessment order that due to the following four reasons, he did not accept the transaction as genuine and he also questioned the creditworthiness of the said Frontier Mercantile Pvt. Ltd. The 4 reasons are narrated below:-

1. The advance has been forwarded only on the basis of an unregistered document.
2. The company M/s. Frontier Mercantile Private Limited is a paper company which has been established in assessment of M/s. Suyojit Infrastructure Private Ltd., for A.Y 2013-14.
3. The company Frontier Mercantile Private Limited has a share capital of only 3.26 Cr. whereas it has provided loan of Rs. 6,00,00,000/- to the assessee, which clearly casts doubt over the creditworthiness of the transaction, the onus of which lies on the assessee.
4. The present status of Land in respect of which the amount was transacted has not been submitted till date.

6.4.3. The AO further quoted from the assessment order of another assessee, M/s. Suyojit Infrastructure Pvt. Ltd. for the same AY 2013-14, where the AO of the said assessee gave his categorical findings, as to why the Frontier Mercantile Private Limited cannot to be treated as a party worthy of giving credit. Therefore, he treated the amount of advance claimed by the assessee as unexplained cash credit.

6.4.4. It is interesting to note that our assessee, Shri Anant Keshav Rajgaonkar, is one of the share-holders in Suyojit Infrastructure Pvt. Ltd. It is more interesting that the said lender, Frontier Mercantile Private Limited, later-on changed its status to LLP and at present, such LLP has been dissolved and no more in existence. There is no claim by the assessee that the entire advance was refunded to the said lender any time after AY 2015-16.

6.4.5. The above observations definitely cast doubt on the mentioned transactions.

6.4.6. There is no doubt that the property in question was not owned by the assessee, the fact has also not denied by the assessee. The assessee's disclosed earnings are from professional fees, dividends, remuneration from firms, share of profits from firms and interest on capital from firms. He has also earned remuneration for acting as Director in some companies. None of these sources could generate any legitimate cash. However, as per balance sheet dated 31/03/2003, the assessee had cash in hand for Rs. 72,83,064/- and the said cash in hand as on 31/03/2014 rose to Rs. 1,21,41,761/-. From the disclosed P/L account and balance sheet, the explanation for such huge amount of cash in hand with the assessee remained unexplained. Therefore, there is



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every possibility that the assessee has tried to root its undisclosed income in the balance sheet as legitimate fund by dubious means.

6.4.7. *The assessee's explanation that the amount of Rs. 6,00,00,000/- as received from Frontier Mercantile Private Limited was returned partially through banking channel, cannot be the only explanation for acceptance of the transaction. The said Company Frontier Mercantile Private Limited had a share capital of Rs. 3.26 Crs., whereas it had provided loans and advances to various entities for a sum of Rs.34.76 Crs. It is verified from the list of Registered NBFCs as approved by RBI, the name of Frontier Mercantile Private Limited or Frontier Mercantile LLP is not appearing in such list. Moreover, the complete dissolution of the LLP casts serious doubt on the creditworthiness of the said lender. In the case of Suyojit Infrastructure Pvt. Ltd., the AO gave categorical finding that the source of fund of investment made by Frontier Mercantile Private Limited was doubtful as it received huge amount of unsecured loan from some known paper/shell entities. It is surprising that the said company borrowed fund to advance for a property where the land was not owned by the developer, no plan for the construction of the structure was in place and there was no time limit for completion of the proposed construction. Moreover, the amount lent/advanced was free of any charge of interest. Such benevolent lender is very rare to find in the present complex standard of financial market prevailing in the country.*

6.4.8. *Finally, reliance is placed on the decision of the Hon'ble Supreme Court in the landmark decision of NRA Iron & Steel Pvt. Ltd., in which decision, dated 05/03/2019 of the Apex Court, has put the entire responsibility or onus to prove the genuinity of the transaction or creditworthiness of the lender, fully on the assessee. In this case, the documents presented before the AO were found to be concocted or decorated to give legitimacy to the transaction. I find the following to be particularly doubtful documents in the facts of the case:-*

i) The purchase agreement of such huge amount of land of 3.53 acres, was made by making payment of only Rs. 5,00,000/-, out of which Rs. 1,50,000/- were paid by cash.

ii) Such agreement was never executed or registered.

iii) The so-called MOU for investment by dated 05/03/2019 Frontier Mercantile Pvt. Ltd. was also made through an agreement which was not registered.

iv) There was no clear-cut date of probable completion of the project. Neither was any provision for payment of any interest on such advance in case of delay.

v) As proved in the case of Suyojit Infrastructure Pvt. Ltd., where the assessee himself is a share-holder, the source of fund which



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was lent by Frontier Mercantile Pvt. Ltd. was doubtful and found to be through established shell companies.

6.4.9. Under the mentioned facts and circumstances of the case, I find the action of the AO to treat the advance of Rs. 6,00,00,000/- received from Frontier Mercantile Pvt. Ltd. as unexplained credit to be correct and I confirm such addition.”

8. Aggrieved assessee is now in appeal before this Tribunal.

9. With regard to the issue of unexplained cash credit, ld. Counsel for the assessee in order to prove the creditworthiness and genuineness of FMPL for giving advance to assessee against sale of property made reference to the following note providing information about the transactions, various agreements entered into by Jadhav Family for the purchase of property at Survey Nos. 92 and 22 situated at Goverdhan Shivar, Nashik and the same reads as under :

“Rajegaonkar Frontier Note

- 1. Mr. Anant Rajegaonkar entered into agreement for purchase of land bearing S. No. 22, Govardhan, Nashik and S. No. 92, Govardhan, Nashik from Jadhav family vide different 27 agreements separately entered with the members of Jadhav Family.*
- 2. The payments were made to Jadhav Family through banking channel and the details of the payments are mentioned in the agreements entered with the Jadhav Family.*
- 3. The copies of the cheques through which the payments were made are also made part of the agreements entered with Jadhav family.*
- 4. The said payments to Jadhav Family were made during the financial year 2011-12. i.e. year relevant to assessment year 2012-13.*
- 5. The agreements entered with Jadhav Family are registered with Notary.*



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6. The appellant has maintained Balance Sheet every year and all the payments made to Jadhav family are accounted by appellant in his books of accounts.

7. Total advances for purchase of land S No. 22, Govardhan, Nashik were paid of Rs. 9,30,000/- paid to total 18 parties.

8. Total advances for purchase of land S No. 92, Govardhan, Nashik were paid of Rs. 7,25,000/- paid to total 17 parties.

9. The abovementioned advances are shown by the appellant under the Group "Advances for Land, Plots/Rights, etc. the total of which appearing in Balance Sheet as on 31/03/2013 was Rs. 1,24,38,000/-

10. However, the above transactions couldn't be completed due to disputes created by some of the members of Jadhav Family (e.g. Gitabai S Donde vs Vaman P Jadhav court case No. 652/2008, Shilabai V Bhle vs All Jadhav family case No. 92/11 with Divisional Revenue Commissioner and so on)

11. Meanwhile the appellant was supposed to construct residential and commercial project on the abovementioned land. Therefore, the appellant entered into Investment Agreement on 10/03/2013 with Frontier Mercantile Pvt. Ltd, (hereinafter referred to as 'FMPL), according to which FMPL was to invest Rs. 10 crores for flats admeasuring 35,000 Sq. Fts (ie. 3251.579 Sq. Mtrs).

12. Independent inquiries u/s. 133(6) were conducted by the AO with FMPL, in response to which FMPL has accepted of having invested Rs. 6 crores with the appellant till 31/03/2013. Accordingly, FMPL has also issued their confirmation.

13. All the transactions are entered through banking channel.

Documents

1. All agreements with Jadha Family

2. Balance Sheet of appellant as on 31/03/2013 showing the advances paid to Jadhav family and investment received from FMPL.

3. Investment Agreement entered with FMPL

4. Confirmation of FMPL

5. ITR of FMPL

6. Audited Balance Sheet of FMPL. The grouping loans/advances/investment of FMPL as on 31/03/2013 is not available however the total such advances of Rs. 27.49 crores is shown by the said company i.e. FMPL which includes the amount



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given to appellant. however, the FMPI has clearly confirm in response to independent inquiries conducted by the AO and have also given their confirmation that they have paid the sums to appellant.”

10. Ld. Counsel for the assessee further submitted that out of the alleged sum received from F.Y. 2013-14 to 2015-16 assessee has also refunded ₹3,55,92,000 during F.Y. 2014-15 and the said information was also provided to Id.CIT(A) that since the assessee has been unable to honour the Agreement on account of dispute in the purchase title of the property in question, substantial portion of the alleged sum received from FMPL has been refunded through banking channel. In support, detail of cheque transaction and the ledger account stands submitted in the paper book. Further in order to substantiate the genuineness of the transaction of receiving the advance against sale of immovable property reference made to various documents placed in the paper book running into 399 pages and the details of the same reads as under :

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This is to certify that all above referred documents are same as available before lower authorities.

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11. Ld. Counsel for the assessee specifically referred to the Visar pavti of the Agreements of property situated at Sy. Nos.



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92 and 22, Goverdhan Shivar, Nashik placed at pages 113 to 399 which are registered agreements entered into between the assessee and the seller of the property. All the registered Agreements entered into by the assessee are prior to the receiving of the alleged sum and concluded his arguments stating that genuine transaction has been entered into between the assessee and FMPL for receiving advance against sale of immovable property because the funds were required to develop the property and thereafter to sell the plots/flat/immovable property to other desired buyers. He also submitted that transactions have been entered into through banking channel and that FMPL has sufficient credit worthiness to explain the alleged advance given by them to the assessee. Ld. Counsel for the assessee referred and relied on the following decisions :

1. *PCIT Vs. Bairagra Builders (P) Ltd. (2024) 164 taxmann.com 162 (Bombay)*
2. *H.R. Mehta Vs. ACIT (2016) 72 taxmann.com 110 (Bombay)*
3. *ITO Vs. Cygnus Developers India Pvt. Ltd. ITA No.282/Kol/2012 dated 02.03.2016*

12. On the other hand, ld. Departmental Representative strongly supported the order of ld.CIT(A) and stated that ld. Assessing Officer has conducted a thorough enquiry in the case of SIPL which is a sister concern of the assessee and similar transactions have taken place therein and that FMPL which has subsequently changed into LLP in the name of Frontier Mercantile LLP (FM LLP) has shown the rental income during A.Y. 2012-13 and losses in other years and that FM LLP had no regular business during the year nor has any fixed assets except current assets and losses. He also submitted that the Agreement entered into between the



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assessee and FMPL is unregistered and has no legal sanctity and FMPL is basically an entry provider which is not having any creditworthiness to give such huge amount nor the genuineness of the transaction is proved as the assessee is located at Nashik whereas FMPL is located at Kolkata. Id. DR placed reliance on the following decisions :

1. *PCIT Vs. NRA Iron & Steel (P) Ltd. (2019) 103 taxmann.com 48 (SC)*
2. *Seema Jain Vs. ACIT (2018) 96 taxmann.com 307 (Delhi)*
3. *PCIT Vs. BST Infratech Ltd. (2024) 161 taxmann.com 608 (Calcutta)*
4. *J.K. Global Vs. ITO (2024) 167 taxmann.com 15 (Mumbai-Trib.)*

13. We have heard the rival contentions and perused the records placed before us. We have also gone through the case laws cited and relied on by both the sides. The common issue raised for A.Y. 2013-14 to 2015-16 relates to addition made by the Assessing Officer u/s.68 of the Act for the following sums received by the assessee from FMPL claiming it to be advance against sale of property located at Survey Nos. 92 and 22, Goverdhan Shivar, Nashik :

<i>Sl.No.</i>	<i>A.Y.</i>	<i>Amount</i>
<i>1</i>	<i>2013-14</i>	<i>Rs.6.00 crore</i>
<i>2</i>	<i>2014-15</i>	<i>Rs.82.50 lakh</i>
<i>3</i>	<i>2015-16</i>	<i>Rs.3,13,50,000/-</i>

14. Before us, Id. Counsel for the assessee has contended that the assessee who is into business as Builder and Developer has entered into registered agreements for purchase of immovable property located at Survey Nos. 92 and 22, Goverdhan Shivar, Nashik and copies of these registered agreements are placed at pages 113 to 399 of the



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paper book. It is also submitted that the owner of the property is Jadhav family and there are multiple owners of this property and the list is placed at pages 111 and 112 of the paper book. Perusal of the same indicates that there are multiple owners of the property in question. 7/12 extract of the property is also placed on record. Referring to all these evidences, it has been demonstrated that a genuine transaction of entering into an agreement to purchase the property by the assessee from Jadhav family has been carried out and the object of the assessee is to develop the property and then sell such property with the intention of earning profits. Certainly funds are required for developing the property and in this process it is claimed that the assessee approached FMPL based at Kolkata for getting advance against sale of property. Thereafter, an Investment Agreement entered into between FMPL and the assessee which is placed at pages 27 to 33 of the paper book duly signed by both the parties on non-judicial stamp paper of ₹100 but admittedly this Agreement is not registered. However, the details of the property for which the advance was to be received from FMPL are mentioned in this unregistered Memorandum of Understanding/Investment Agreement. It is stated in Para A and B about the immovable property located at Survey Nos. 92 and 22, Goverdhan Shivar, Nashik and that Promoter Developer proposing to construct a new multi storied building and constructing the flats. Description of the property to be purchased by FMPL at Schedule I reads as under :



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“Schedule - I

Description of the said property :

All that piece and parcel of land admeasuring about H 03=53 Are, Assessed at ₹09.56 paise, situated at village Govardhan, Nashik, within the limits of village panchayat Govardhan, Taluka and District Nashik and within the registration district and sub district of Nashik, being

a) Land admeasuring about H 01 = 96 Are, Assessed at ₹06.37 Paise bearing Gat No.92, and bounded as follows :

On or towards East - Gat No. 93 and 95

On or towards South - Road

On or towards West - Gat No.91 and 98

On or towards North - Gat No.97

b) Land admeasuring about H 01 = 57 Are, Assessed at ₹03.19 Paise bearing Gat No.22, and bounded as follows :

On or towards East - Gat No. 18

On or towards South - Gat No.23

On or towards West - Gat No.27

On or towards North - Gat No.21

15. Now as per the above Agreement FMPL agreed to pay ₹10.00 crore to the assessee towards purchase of flats and gave the first instalment of ₹6.00 crore during the year, during F.Y. 2013-14 and ₹82.50 lakh during F.Y. 2014-15 and ₹3,13,50,000 during F.Y. 2015-16. Ld. Assessing Officer has invoked the provisions of section 68 of the Act treating alleged sum as unexplained cash credit of the amount for making the impugned addition. This observation of Ld. Assessing Officer is mainly on the basis of examination made by him during the course of assessment proceedings of another company named SIPL. (which is stated to be sister concern of the assessee) and during the course of such assessment proceedings of SIPL Ld. Assessing Officer has come to conclusion that FMPL is an entry provider company and it does not have sufficient funds to make such huge



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investment and further no regular business is carried on by FMPL and also the Agreement entered into by the assessee with FMPL is unregistered and therefore since creditworthiness of FMPL and genuineness of the transaction is not proved section 68 has been invoked. Ld. CIT(A) has also affirmed the view point of the Assessing Officer and the finding of Id.CIT(A) has already been extracted (*supra*). We note that section 68 has a direct bearing on the issue raised before us. For the sake of completeness, section 68 is reproduced below :

“Cash credits.

68. 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 the assessee of that previous year :

Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless,—

- (a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

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

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*



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Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

16. From perusal of the above section, we find that for the credits received by the assessee during the year and reflected in the books of accounts and if the assessee fails to discharge the primary onus casted upon it by explaining the nature and source of the alleged sum to the satisfaction of the Assessing Officer then provisions of section 68 are invoked treating them to be unexplained cash credit. Before us, it has been contended by Id. Counsel for the assessee that FMPL is a registered Private Limited company duly registered under the Companies Act and has sufficient creditworthiness in the form of share capital, reserves and surplus brought forward from the preceding assessment years to explain the source of funds and further along with the assessee, FMPL has given unsecured loans/advances to other parties also and giving such advances is in its regular course of business. It is also stated from the assessee's side that funds have been received through banking channel and at subsequent stage there had been some dispute between the assessee and seller of the property and the project could not proceed further and the assessee has refunded substantial advance received by it from FMPL which has subsequently changed to Frontier Mercantile LLP (in short 'FM LLP'). It is also stated by Id. Counsel for the assessee that Id. Assessing Officer has not conducted any independent enquiry with respect to the transaction between the assessee and FM LLP nor any specific information has been called for from FM LLP by issuing notice u/s.133(6) or u/s.131 of the Act and the



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impugned addition has been based merely on the basis of information gathered in the case of another assessee namely SIPL. Based on these facts, it has been contended that the assessee has explained the nature and source of the alleged sum and has proved the Identity, creditworthiness of the cash creditor and genuineness of the transaction and that Revenue authorities have not brought any other material evidence against the assessee.

17. Before moving on to examine the facts of the case to examine whether the assessee has been able to successfully prove the Identity and Creditworthiness of the alleged cash creditor as well as Genuineness of the alleged transaction, we would like to first go through the judicial precedents dealing with similar type of issues. Though Id. Counsel for the assessee has referred and relied on various decisions, we however find that all these decisions have been considered by the Coordinate Bench Kolkata in the case of *ITO Vs. M/s. Express Tradelink Pvt. Ltd. – ITA No.43/Kol/2021, order dated 08.02.2024* dealing with similar issue observing as under:

“8. We have heard rival contentions and perused the material placed before us and carefully gone through the decisions referred and relied by both the sides.

9. The sole effective ground raised by the revenue is against the finding of Id. CIT(A) deleting the addition u/s 68 of the Act made for alleged unexplained share application money in the form of share capital and share premium amounting to Rs.7,26,50,000/-. During the year, the assessee company received share capital including share premium of Rs.7,26,50,000/- from 9 share subscribers who are body corporate entities. A chart depicting the amount invested by each of the share subscribers and the reserves and surplus available with the companies as on 31/03/2009 is extracted below :-

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10. We further observe that during the course of assessment as well as appellate proceedings before the ld. CIT(A), the assessee has complied and has filed all the details, evidences and relevant documents which are necessary to prove the identity and creditworthiness of the share applicants and genuineness of the transactions. Though these details have been filed in the paper book for each of the share subscriber but the same can be summarized as filing of the copy of PAN card, share application form, allotment advices, relevant bank statements, ITRs for Assessment Year 2011-12, audited financial statement, source of funds i.e., the immediate source of fund which has been utilised by alleged share applicants to apply for the equity shares of the company. Assessee has also filed copy of the summons issued u/s 131 of the Act during the course of assessment proceedings and reply of each of the share subscribing companies sent directly to the Assessing Officer and again provided necessary details before the ld. CIT(A). The ld. Counsel for the assessee also referred to the assessment orders u/s 143(3) of the Act in the case of various share subscribing companies which have been passed through scrutiny proceedings for the very same Assessment Years and the alleged transactions have been examined by the concerned Assessing Officer. Perusal of these details which have been filed in the paper book containing 166 pages indicates that whatever documents which the assessee needs to file in order to explain the identity and creditworthiness of the share applicants and genuineness of the transactions have been filed and thereby the primary onus casted upon the assessee by virtue of Section 68 of the Act has been discharged and consequently the burden shifted over to the Assessing Officer to prove the contrary which the ld. Assessing Officer failed.

11. We further observe that the ld. CIT(A) has made a thorough examination of all these facts and also referred to various judicial pronouncements adjudicating similar type of issues and we find it necessary to go through the relevant finding of the ld. CIT(A):-

“5. I have considered the issue in the assessment order and the remand report framed by the AO in light of the arguments made by the appellant. The short issue for my consideration is that whether the share application monies along with premium in the aggregate of `7,26,50,000/- disclosed by the appellant invites the mischief of the provisions of s. 68 of the Act or not. The provisions of s. 68 of the Act deal with cash credit which reads as under:

“68. 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 the assessee of that previous year.



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According to this section, if identity, creditworthiness of the creditor and genuineness of the transaction are not proved and the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as income of the assessee of that previous year. In the instant case, it is observed that the addition was made with the predetermined mindset that share application monies received by the appellant is not genuine as identity and creditworthiness of the shareholders were bogus in nature as if they did not exist and the transactions were an eyewash only for converting its black money into white without paying any tax to the revenue. In the instant case, the appellant had raised share capital in the aggregate sum of `7,26,00,000/- by issuing equity shares of 2,90,200 were allotted to 9 share subscribers with the face value of `10 each at a premium of `240 per share. In the instant case, it is found that all the nine share applicants are body corporates who had subscribed to the aforesaid share capital raised by the appellant and all the payments were made by each of them through a/c payee cheques drawn on their respective bankers. Each of the nine share subscribers are regularly assessed to income tax and the investments made by each of them are duly and fully reflected in their audited books of accounts as well as their income tax return. The appellant had duly filed its return of total income u/s 139(1) of the Act in respect of the assessment year 2009-10. In the course of the appellate proceedings, the appellant in response had produced its audited books of accounts, filed copies of its audited annual accounts including various details and other documents as desired by the AO. The details and documents so produced were remanded to the AO which included, inter alia, full details of each of the nine share applicants, who had subscribed to the aggregate share capital as well as share premium money raised by the appellant during the assessment year under appeal which was categorically admitted by him in the remand report. The AO, on receipt of the aforesaid details from the appellant did not pursue the matter further. He solely doubted the genuineness of the said share capital and the creditworthiness of the share applicants in the teeth of the cast iron evidence to the contrary on mere presumption and added the sum of `7,26,50,000/- in respect of the share capital to the total income of the appellant in respect of the assessment year under appeal.

6. It is observed that the corporate share applicants are registered under the Companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India and are having independent Permanent Account Numbers. The appellant had provided the copies of the Permanent Account Numbers



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of the share subscribers along with the acknowledgment of submission of their return of income and audit report and financial statements which in my humble opinion proves their identities to the hilt. It is also observed that each of the share applicants maintained bank accounts; and copies of their respective bank accounts from which they made payments to the appellant for subscribing to the shares issued to them, was filed by each of them before the AO. Further, from the balance sheet of the share applicants it is seen that they had subscribed to the shares issued by the appellant; and such transactions were duly reflected therein. It is axiomatic that the criteria mandatorily required to be satisfied by the appellant were categorically fulfilled. These facts, in my opinion, clearly prove the genuineness of the transactions. Thus, the evidence adduced on record by the appellant in respect of the share applicants, in my humble opinion, clearly prove their source of funds, and their capacity for making such payments and accordingly, the criteria of their creditworthiness is proved. The AO has not found any defect and/or deficiency in the evidence adduced on record by the appellant.

6.1. It is also observed that the appellant had provided the copies of the acknowledgments evidencing filing of income tax returns by each of them, copies of their audited accounts including Balance Sheets wherein such investments made by each of them in the subscription of shares issued by the appellant are duly reflected as also copies of their bank statements for the relevant period from which such subscription monies were paid by them respectively and copy of the allotment advise received by them from the appellant in respect of shares allotted to them in respect of every share applicant. The annual return for the assessment year 2009-10 incorporating the allotments was filed by the appellant with the Registrar of Companies, Ministry of Corporate Affairs, which categorically proves the fact of allotment of shares to the share applicants. It is further observed that the net worth of each of the share applicants, as disclosed in their Balance Sheets, far exceeded the amount of investments made by them in the shares of the appellant which is incorporated in the charts here under: -

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It is accordingly observed that these facts adequately prove the creditworthiness of the share applicants to make investment in the share capital of the appellant. The aforesaid facts underlined by evidence clearly prove the identity of the share applicants, their capacity and source of funds, as well as the genuineness of the transactions in relation to the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond



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any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant, in the impugned previous year relevant to the assessment year under appeal, as clearly evident from their respective balance sheet adduced on record by the appellant which were filed with the income tax authorities in relation to their own income tax assessments and as such, the genuinity of the sources of such funds are beyond reproach.

6.2. The AO had before him a plethora of evidence adduced on record by the appellant and it is well recognized that if he wished to act in a manner contrary to such proof, he had to disprove them first. At the same time, it is also a well established principle of law that in any matter, the burden is not a static one. The initial burden upon the appellant was duly discharged by it by providing the identity of share applicants by furnishing the copies of their returns along with audited report and financial statements, copies of bank accounts and proving the genuineness of the transactions by showing that money in the banks was debited by account payee cheques, and thereafter, the onus to disprove them shifted to the AO who grievously failed to discharge the same. It is observed that the AO had not issued summons u/s 131 of the Act or notices u/s 133(6) of the Act or made enquiries through his Inspector even after a direction issued to him. It was the bounden duty of the AO to make enquiry about a particular receipt before drawing adverse conclusions to castigate the appellant. However, in the instant case, on receipt of such evidence, the AO did not pursue the issue further. In the case of CIT vs. Orissa Corporation Ltd. (1986) 159 ITR 78 (SC) it was held as under: -

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.”



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The ratio laid down in the aforesaid case is squarely applicable to the case at hand. In the instant case, thus, the AO had not controverted these indisputable evidences adduced on record but acted on his whims and fancies in disregarding them. It is observed that the burden which lay on the appellant, in relation to s. 68 of the Act, has been duly discharged and nothing further remains to be proved on the issue.

Since the conditions precedent for discharging of burden under the provisions of s. 68 of the Act are met, the addition made under such pretext deserves to be deleted.

7. In this respect it is relevant to refer to the decision of the jurisdictional High Court in the case of CIT vs. Sagun Commercial P. Ltd. [ITA No. 54 of 2001 dated 17.02.2011] wherein it was held as under:

“After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion.

We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income-tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed.”

7.1. Further, the Hon’ble jurisdictional High Court in the case of CIT vs. Gayatri Portfolio Fund (P) Ltd [ITA No. 664 of 2004 dated 26.08.2014], it was observed as under:

“We find that the learned Tribunal has confirmed the order passed by the CIT who had overturned the order of the Assessing Officer by making the following observation:

“...We find that the identity of the 5 parties investing in the share capital is not in doubt. They are body corporates and their complete addressees are on record. This is the very first assessment in the life of the assessee company. The amounts were deposited by these 5 corporates per account payee cheques. These parties were not shareholders of the



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assessee company at the time when the case was reopened under section 147 or when the summons were issued to them. We find that the assessee has filed before the A.O. copies of share application forms duly signed along with the complete addresses of the investors along with their I.T. file numbers, account payee cheque numbers and the assessee's bank statements disclosing the deposits of these amounts. In these facts we find that the assessee has discharged its initial onus to prove the identity of the investors as well as their creditworthiness. It is not the case of the Revenue that the investor parties did not exist or that the money was not invested by them through banking channels."

Having found such, the Tribunal had relied on the judgement in Hindusthan Tea Trading Co. Ltd. v. CIT (Cal): 263 ITR 289 (Cal) to uphold the order of the CIT.

In view of the findings above noted, no substantial question of law arises and therefore, the appeal and the application are dismissed."

7.2. Again, the Hon'ble Jurisdictional High Court in the case of CIT vs. Sanchati Projects (P.) Ltd. [ITAT 140 of 2011 dated 08.06.2011] it was observed as under:

"It appears from record that the assessee company during the relevant assessment year under appeal raised its share capital by way of receiving share application money against 1,64,000 equity shares aggregating to Rs.82,00,000/- from 8 different parties. The Assessing Officer, however, treated the share application money of Rs.45,00,000/- received from five different persons as unexplained cash credit in the hands of the assessee.

According to the Assessing Officer, those parties had the same addresses as that of the assessee and they had no fixed assets and utilised their capitals in share application of the assessee company. The Assessing Officer, therefore, was of the view that the money ultimately went to the beneficiary through these companies and there was no advertisement even published by the assessee company inviting share application and no Registrar was engaged for such raising of share capital.

Being dissatisfied the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), however, set aside the said order of assessment and came to the conclusion that all the share applicant/companies were assessed to the tax and their PAN and acknowledgement of I.T. returns along with their audited balance sheets, bank statements showing transactions etc. were made available to the Assessing Officer. It was pointed out that there was no legal bar of more than one company



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being registered at the same address and, thus, according to the Commissioner of Income-tax (Appeals), the doubt raised by the Assessing Officer about all those companies at the same address did not hold good.

Being dissatisfied, the Revenue preferred an appeal before the Tribunal below and by the order impugned herein, the said Tribunal has affirmed the order passed by the Commissioner of Income-tax (Appeals).

After hearing Mr. Nizamuddin, learned advocate appearing on behalf of the appellant and after going through the aforesaid materials, we agree with the Tribunal below that the Assessing Officer failed to establish that the share applicants did not have the means to make investment and that such investment actually emanated from the coffers of the assessee company. The receipt of share capital money had been duly recorded in the books of the assessee company and the payment of share application money was also duly recorded in the audited account of each of the share applicants.

We, thus, find that both the authorities below on the basis of the aforesaid materials on record were quite justified in deleting the aforesaid addition of Rs.45,00,000/- done by the Assessing Officer. We are of the view that the order impugned does not suffer from any defect whatsoever and no question of substantial error of law arises justifying our interference. The appeal is, thus, summarily dismissed.”

There is no evidence adduced on record to show that the identities of the share applicants are not proved and/or that the subscription made by them to the share capital of the appellant was not genuine and/or the source of investment was not fully explained to the satisfaction of the AO. Further, the Hon’ble Jurisdictional High Court in the case of CIT vs. Dataware Private Ltd. [ITAT No. 263 of 2011 dated 21.09.2011] wherein while examining the issue of addition of share application money received by the assessee therein u/s. 68 of the Act, the Hon’ble Jurisdictional High Court held that after getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing Officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the assessing officer of the creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. The Hon’ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor



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and the genuineness of transaction through account payee cheque has been established. In the present case also, no evidence was adduced on record that the investments made with the appellant in the shape of share application monies disclosed in the returns of the share applicants were rejected by their respective Assessing Authorities and accordingly, the issue is set at rest by the decision of the jurisdictional High Court on the issue which is applicable in the present context.

7.3. In this respect, the A/R relied on the decision of CIT vs. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Del) wherein it was held as under:

“A distillation of the precedents yields the following propositions of law in the context of section 68. The assessee has 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 creditworthiness 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 assessee. Further, (1) the department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (2) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without more evidence against the assessee; (3) 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.

7.4. Further this decision of the Hon'ble Delhi High Court was approved by the Hon'ble Supreme Court in CIT vs. Lovely Exports Ltd. (2008) 216 CTR 195 (SC) observing that if share application money is received by an assessee from subscribers, whose names are given to the AO, are allegedly bogus, then the Revenue is free to proceed to reopen their individual assessments in accordance with law. It was held that: -

“2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then



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the Department is free to proceed to reopen their individual assessments in accordance with law.”

8. It is also noted that the Hon'ble Income Tax Appellate Tribunal, Kolkata Benches in several cases has deleted the addition on account of share application in similar circumstances. The relevant portion of the decisions are extracted as under: -

(a) In the case of DCIT vs. Global Mercantiles (P.) Ltd. [2016] 67 taxmann.com 166/157 ITD 924, it was held as follows: -

"3.4. We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed are not reiterated herein for the sake of brevity. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned Ld. CIT(1) on the decision of the Hon'ble Apex Court in the case of CIT v. Lovely Exports (P) Ud reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

3.4.1. We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of CIT v. Roseberry Mercantile (P) Ltd in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated 10.1.2011, wherein the questions raised before their lordships and decision rendered thereon is as under:-

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction.



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After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT v. M/s Lovelv Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

3.4.2. In view of the aforesaid findings and respectfully following the decision of the apex court (supra) and Jurisdictional High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the ground no.2 raised by the Revenue is dismissed.”

(b) In the case of ITO vs. R.B. Horticulture & Animal Projects Co. Ltd. [IT Appeal No. 632 (Kol) of 2011, dated 13-1-2016] it was held as follows: -

"6. We have heard the Learned DR and when the case was called on for hearing , none was present on behalf of the assessee. However, we find from the file that the assessee had filed a detailed paper book and written submissions. Hence the case is disposed off based on the arguments of the Learned DR and written submissions and paper book already available on record. The facts stated in the Learned CIT(A) were not controverted by the Learned DR before us. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned CITA on the decision of the Hon'ble Apex Court in the case of CIT v. Lovelv Exports (p) Ltd reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

6.1. We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of CIT v. Roseberrv Mercantile (P) Ltd in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated



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10.1.2011, wherein the questions raised before their lordships and decision rendered thereon is as under:-

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction." Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT v. M/s Lovely Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed. "

6.2. We find that the issue is also covered by the decision of Hon'ble Delhi High Court in the case of CIT v. Value Capital Services P Ltd reported in (2008) 307ITR 334 (Del), wherein it was held that:

"In respect of amounts shown as received by the assessee towards share application money from 33 persons, the Assessing Officer required the assessee to produce all these persons. While accepting the explanation and the statements given by three persons the Assessing Officer found that the response from the others was either not available or was inadequate and added an amount of Rs. 46 lakhs pertaining to 30 persons to the income of the assessee. The Commissioner (Appeals) upheld the decision of the Assessing Officer. On appeal, the Tribunal set aside the order of the Commissioner (Appeals) and deleted the additions.

On further appeal: Held, dismissing the appeal, that the additional burden was on the department to show that even if the share applicants did not have the means to make the 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. No substantial question of law arose. "

6.3. We find that the argument of the Learned DR to set aside this issue to the file of the Learned AO for verification of share subscribers would not serve any purpose as the ratio decided in the above cases is that in any case, no addition could be made in the hands of the recipient assessee. In view of the aforesaid



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findings and respectfully following the decision of the apex court (supra), Jurisdictional High Court (supra) and Delhi High Court (supra), we find no infirmity in the order of the Learned CIT(A) and accordingly, the grounds raised by the Revenue are dismissed. "

(c) In the case of ITO vs. Cygnus Developers (I) (P.) Ltd. [IT Appeal No. 282 (Kol) of 2012, dated 2-3-2016], it was held as follows:-

"6. On appeal by the assessee the CIT(A) deleted the addition made by the AO observing as follows : -

(6) I have considered the submission of the appellant and perused the assessment order. I have also gone through the details and documents filed by the appellant company in the course of assessment: proceedings vide letter dt. 3-10-2007. On careful consideration of the facts and in law I am of the opinion that the AO was not justified in making, the addition aggregating to Rs.54,00,000/- u/s.68 of the Act being the amount of share application money by holding that the appellant company has failed to prove the identity, and creditworthiness of The creditors as well as the genuineness of transactions. It is observed that all the three share applicant companies i.e. M/s. Shree Shyam Trexim Pvt. Ltd., M/s Navalco Commodities Pvt. Ltd. and M/s. Jewellock Trexim Pvt. Ltd. had filed their confirmations wherein each of them confirmed that they had applied for shares of the appellant - company. All the three companies provided- the cheque number, copy of bank statements and their PAN. It is observed that these companies also filed, copies of their return of income and financial statements for as well as copy of their assessment order u/s. 143(3) of the I. T Act for AY 2005-06. In the case of M/s. Jewellock Trexim Pvt. Ltd. the assessment for AY 2005-06 was completed by the ITO Ward 9(3), Kolkata and the assessments in the case of M/s. Navalco Commodities Pvt. Ltd. and M/s. Shree Shyam Trexim Pvt. Ltd. for A. Y.2005-06 and AY.2004-05 respectively were completed by the ITO, Ward 9(4), Kolkata. Under the circumstances, I am of the opinion that the AO was not justified in holding that the share applicant companies were not in existence. The assessment orders were completed on the address as provided by the appellant company in the course of assessment proceedings. It is not known as to how the AO's inspector had reported that the aforesaid companies were not in existence at the given address. Since the appellant company had provided sufficient documentary evidences in support of its claim of receipt of share application money, I am of the opinion



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that the no addition u/s.68 could be made in the hands of appellant company. On going through the various judicial pronouncements relied upon by the appellant, it is observed that the view taken as above is also supported by them. In view of above the AO is directed to delete the addition of Rs.54,00,000/-. The ground Nos. 2 and 3 are allowed.

7. Aggrieved by the order of CIT(A) the Revenue is in appeal before the Tribunal.

8. We have heard the submissions of the learned DR, who relied on the order of AO. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT v. RajKumar Agarwal vide ITA No. 179/2008, dated 17. 11.2009 wherein the Hon'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO v. Devinder Singh Shant in ITA No.20BIK0112009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of director of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold



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the order of CIT(A) and dismiss the appeal of the Revenue.”

(d) In the case of ITO vs. Megasun Merchants (P.) Ltd. [IT Appeal No. 1038 (Kol) of 2015, dated 29-3-2019], it was held as follows:-

“44. To conclude, 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 drawn by circumstance. 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). 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 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 confirm the order of ld CIT(A) in deleting the addition of Rs.1,60,00,000/-.

45. In the result, the appeal of the Revenue is dismissed.”

9. In the instant case, the doubts expressed in the reasoning of the AO in the instant case is on the premise that the apparent is not real which is based on the decisions of the Apex Court in the cases of CIT vs. Durga Prasad More (1971) 82 ITR 540 and Sumati Dayal vs. CIT (1995) 214 ITR 801 wherein it was expounded that Revenue authorities are also supposed to consider the surrounding circumstances and



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apply the test of human probability. In the case of Sumati Dayal (Supra), the assessee has claimed to have won substantial amount in horse races in two consecutive assessment years. When the matter reached the Settlement Commission, it was held by the majority view that the appellant did not really participate in any of the races, except purchasing the winning tickets after the events. The Chairman of the Settlement Commission expressed dissenting opinion and stated that the assessee has produced the evidence in support of the credits in the form of certificates from Racing Clubs. The Apex Court after considering the ratio of CIT vs. Durga Prasad More (Supra) upheld the majority view of the Settlement Commission and held at page 808 of the Report as under:

“The observation by the Chairman of the Settlement Commission that “fraudulent sale of winning tickets is not an usual practice but is very much of an unusual practice” ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972, whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn. Similarly, the observation by the Chairman 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. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering the surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant’s claim about the amount being her winnings from races is not genuine.”

Thus, it is evident that the facts of the instant case are quite different from the facts in the case of CIT vs. Sumati Dayal (supra). In that case, there were claims for winning of substantial amounts in horse races in two consecutive years and the Hon’ble Supreme Court rejected the assessee’s claim about her winnings from races as genuine and gave finding keeping in view the facts relating to that issue only. While in



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the case of the appellant, it had received share application monies and share premium monies from various corporates who were duly assessed to tax and have disclosed the transactions in their own records. Therefore, the ratio of decision in the case of CIT vs. Sumati Dayal (supra) is not applicable to the case of the appellant. In this respect, it is observed that there was no ground to draw any adverse inference against the appellant, in relation to the provisions contained in s. 68 of the said Act since the appellant had adduced all possible evidence in support of the share capital raised by it and there was nothing more for the director of the appellant to state in that respect. Thus, the justification sought to be construed by the AO in support of his adverse action fails on merit. It is observed that the nature and source of such money received from the share applicants were duly explained by the appellant. Therefore, in my considered opinion, the appellant has discharged its primary onus of proving the identity and creditworthiness of the share applicants and genuineness of the transactions, more so when the share applicants had sufficient funds in their possession from which such investment in share subscriptions were made. Thus, the requirements of the provisions of s. 68 of the Act are duly met by the appellant and therefore, the AO was entirely in error in resorting to the impugned addition thereunder misconceiving the sweep and scope of the case of CIT vs. Sumati Dayal (supra).

9.1. Further, I am aware of the recent decision of the Hon'ble Apex Court in the case of Principal CIT vs. NRA Iron & Steel (P) Ltd (2019) 412 ITR 161 (SC) wherein the addition made on account of share capital towards cash credit was rendered in favour of the revenue. I have gone through the said judgement and I find in that case, the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before me. Certain investor companies did not produce their bank statements proving the source for making investments in the assessee company, which is also not the case before me. Source of funds were never established by the investor companies in the case before the Hon'ble Apex Court, whereas in the instant case, the entire details of source of source were duly furnished by all the respective share subscribers before the AO and the AO did not make any investigation into the subscription received by the appellant. Hence the decision is factually distinguishable and does not advance the case of the AO.

9.2. Further during the course of assessment proceedings, the AO has conceived that the share premium received along with share capital to be unexplained without considering into the facts of the instant case. In my considered opinion, the issue of shares at premium is always a commercial decision which does not require any justification. In any case, the



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premium is a capital receipt which has to be dealt with in accordance with sec.78 of the Companies Act, 1956. In other words, it is a prerogative of the Board of Directors of the appellant to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a premium. It is an accepted position that in case of unlisted companies, share premium is fixed upon mutual agreement. In this context the Hon'ble Income Tax Appellate Tribunal, Mumbai "G" Bench in the case of ACIT vs. Gagandeep Infrastructure P. Ltd. (ITA No. 5784/Mum/11, dated 23.04.2014) has held as under: -

6. After considering the facts and the submissions, the Ld. CIT(A) observed that the AO has not given any reason as to why the investment with a premium is not genuine when the assessee has produced all the details of investors in the form of share application form, bank account details, copies of the return of income alongwith balance sheet. The Ld. CIT(A) further observed that charging of premium is outlook of the investors. If an investor finds that the payment of premium is justified then only he would look to invest otherwise he may not invest in the shares of newly promoted company. The Ld. CIT(A) was of the belief that the department cannot question the charging of premium by the company. The Ld. CIT(A) further observed that the genuineness and the credit worthiness of the investors could have been examined by the AO which he has not made. Drawing support from the decision of the Hon'ble Supreme Court in the case of Loevely Exports Pvt. Ltd. 216 CTR 195, the Ld. CIT(A) deleted the addition holding that the AO has not justified in adding the increase in share capital alongwith share premium as unexplained cash credit u/s. 68 of the Act."

In fact, this decision was approved by the Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure P. Ltd. (2017) 394 ITR 680 (Bom) as follows: -

"We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective



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*effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in *Lovely Exports (P.) Ltd.* (supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.”*

Therefore, charging of share premium cannot be questioned in isolation than that of share capital. Once it is established that the share subscribers are genuine, their creditworthiness is established and the genuineness of the transaction is not doubted, the AO cannot justifiably claim to put himself in the arm-chair of the appellant or in the position of the Board of Directors and assume the role to decide how much premium is reasonable in the given circumstances. This is another reason for which the addition on this account will fail the test of reason.

10. Therefore, considering the totality of the facts and circumstances of the case, I find substance in the argument of the A/R that the appellant has proved its case that the identity of the share applicants are established beyond doubt and there is no adverse finding reached by the AO on this aspect. Admittedly, all the share applicants are existing assesseees under the Act and that some of them were subject to scrutiny assessment during the same period establish the identity and authenticity of the share applicants. About the genuineness of the transactions there is neither any adverse finding in the assessment order nor one which is contrary to the facts brought on record by the appellant during the course of assessment proceeding. The creditworthiness of the share applicants as regards their subscription to the share capital is proved by the source as apparent from their audited balance sheet, return and bank statement. The net worth of such subscribers are in excess of the amounts invested by each of them with the appellant. The addition made by AO is based on extraneous parameters not germane for deciding the issue. The AO had not dealt with the issue



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judiciously and rejected the evidence adduced during the course of the assessment proceedings by the appellant out of hand. Thus, it is held that the investment by the share applicants in the share capital of the appellant do not warrant the inference that such share application along with premium received is unaccounted cash credit. There is no material brought on record to that effect and wild speculation of this genre cannot be passed off as gospel truth. Hence, I am inclined to accept the submissions made by the AR of appellant in this respect. In view of the above, I have no hesitation to hold that the impugned addition made by invoking the provisions of s. 68 by the AO is not justified in the circumstances and accordingly, direct him to delete such addition of Rs.7,26,50,000/- made on this count. Thus, Ground Nos. 1, to 4 of the appeal is allowed.

11. Ground no. 5 is general in nature which requires no adjudication.

12. In the result, the appeal of the appellant is treated as allowed.”

12. After going through these detailed finding and examining the same in the light of the documents filed before us, we notice that all the 9 (nine) shareholder are body corporates and annual returns have been regularly filed on the Ministry of Corporate Affairs portal. All the share applicant companies are regularly assessed to tax. From perusal of the financial statements of the share subscribing companies, we notice that they had sufficient share capital and accumulated Reserves and surplus which are sufficient enough to cover up the share application money invested by them in the equity of the assessee company. In the above given facts and circumstances, we are inclined to hold that the assessee has successfully explained the nature and source of alleged sum and even the source of source has been proved by providing details of the funds received from other sources through banking channel which has subsequently been used to make investment in the equity capital of the assessee company.

13. The ld. D/R has merely given a general statement that these companies are paper/shell companies but no concrete evidence is filed on record which could prove the substance in such submissions failing which the issue in hand can be decided only on the basis of documentary evidence available on record and which clearly states that the assessee has explained the nature and source of the alleged sum thereby proving the identity and creditworthiness of the share subscribers and genuineness of the transactions. So far as the reliance of the Ld. DR on the decision of the Hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di



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Hatti v. CIT [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”

Thereafter the Hon’ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

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

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

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

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

13.1. The Hon’ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and



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even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra), impugned additions are not warranted in this case.

14(a). Our view is further supported by the following judicial pronouncements:-

a) *The Hon'ble Apex Court in the case of CIT vs. Orissa Corporation Pvt. Ltd. (supra), under identical circumstances, has held as follows:-*

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.” {emphasis ours}

b) *The ITAT Kolkata Bench in ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016, held as follows:*

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/ 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007.

Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be



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said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

c) Further the co-ordinate bench in the case of ITO vs. Forceful Estates Pvt. Ltd. in ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023, and for necessary reference, the facts and findings of the Tribunal read as follows:-

"5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

*"5. Conclusion:
Ground No.1 & 2*

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.



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It is observed from the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for the AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that the respective Assessing Officers have all verified the accounts and therefore any amount that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not.

When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act.

In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed.



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Ground no. 3 is general in nature, which does not require adjudication.

6. In the result, the appeal of the assessee is treated as allowed.”

6. A perusal of the above concluding part of the order of the CIT(A) reveals that the ld. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled law, once the addition has been made in the hands of the share subscribers, the investments by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of “Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata” I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the



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corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed."



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14(b). Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal) has held as follows:

“Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states 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 the assessee of that previous year. The crucial words in the provision are “the assessee offers no explanation”. This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee’s transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the



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burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

15. Respectfully following the above decisions, which in our view are squarely applicable on the facts of the instant case, we find that the assessee has successfully discharged the burden of proof primarily casted upon it to explain the identity and creditworthiness of all the alleged share applicants and genuineness of the share transactions and correctness of such details has not been disputed by the Revenue Authorities except making general observations. Therefore, considering the evidences placed by Ld. A/R to explain the nature and source of the alleged share application money, we find no reason to interfere with the detailed finding on facts by the ld. CIT(A) deleting the addition of Rs.7,26,50,000/- made u/s 68 of the Act.

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

18. So far as the judgment of Hon'ble Apex Court in the case of *NRA Iron & Steel (P) Ltd. (supra)* referred and relied on by ld. DR, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "the land mark case of *Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC)* and *Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC)* laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold



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that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.” Thereafter the Hon’ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

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

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

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

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

19. The Hon’ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the



assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee.

20. Now on examining the facts of the case in light of the above catena of judgments referred (*supra*), we find that so far as Identity of the cash creditor is concerned, the same is proved beyond doubt as FMPL (later converted to FM LLP) is registered with Registrar of Companies, having PAN, filing ITR and Books of Accounts are audited.

21. Now coming to the point of creditworthiness, we have gone through the audited Balance Sheet of FMPL placed at pages 34 to 49 of the paper book and we note that for the A.Y. 2013-14 gross receipts of FMPL are ₹42,62,534. We also note that the share capital and reserves and surplus as on 31.03.2012, i.e. at the close of the preceding F.Y. 2011-12 the same stood at ₹14,98,91,936 which included share capital of ₹23,38,000 and reserves and surplus of ₹14,75,53,936. This shows that on the opening day of F.Y. 2013-14 FMPL had sufficient interest free funds in the form of share capital and reserves and surplus amounting to ₹14.99 crore approx. as per the audited balance sheet. We also note that short term loans and advances as on 31.03.2013 are shown at ₹27.49 crore which includes the advances of ₹6.00 crore given to the



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assessee. It is also discernible that it is not the first year of giving the advances but in the preceding financial year also short term loans and advances at ₹15.93 crore approx. stood given by FMPL. Assessee has furnished the audited financial statements of FMPL and the income tax return and there is no evidence putforth by the Revenue authorities in the shape of assessment order framed in the case of FMPL and report of the Assessing Officer of FMPL indicating that it is an entry provider company. Rather ld. Assessing Officer has not called for any information from the Assessing Officer of FMPL nor carried out any independent enquiry for the transaction entered into between the assessee and FMPL. The above facts demonstrate that FMPL has sufficient creditworthiness in the form of accumulated reserves and share capital which has been utilized for giving the alleged sum to the assessee through proper banking channel. We are therefore satisfied that creditworthiness of FMPL has been proved by the assessee with support of financial statements and various documents placed in the paper book therein.

22. Now coming to the point of genuineness of the transaction, we note that assessee is into regular business as Developer and Builder. It has entered into valid registered agreements for purchase of immovable property located at Survey Nos. 92 and 22, Goverdhan Shivar, Nashik from Jadhav family. Admittedly the ownership of this property in question lies with many individuals. However, valid agreements have been entered with each of the owner in Jadhav family and are duly registered. It is only after entering into registered agreements for purchase of the above said land, the assessee's plan of constructing multi storied



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building/flats on the said land has been decided and thereafter for the purpose of arranging the funds for doing the construction activity, assessee has approached FMPL. We note that FMPL is in the regular course of making such investments/giving loans for the purpose of purchasing properties. In the current scenario admittedly it is not required for a company which is into business of investment that it should carry on some trading or regular business activity but only a right investment and at the best time can give fortune in the subsequent years. Taking example of various startup companies where huge investments are made where major business activity is not commenced and merely based on an idea, projection of sales and profits based on such projections, investments are received but only a few are able to get good returns. For the remaining the investments turn out to be losses. Therefore, to initiate and carry out business may be easy but to make profits is much harder.

23. In the given case, FMPL is a registered Private Limited company having sufficient credits and interest free funds available with it and on the other hand assessee which is basically an architect and is in the business of Builder and Developer has entered into an agreement for purchase of immovable property from Jadhav family and the project of building and constructing the flats has been made on the papers. For arranging the funds, investment agreement has been entered into between the assessee and FMPL and the details of immovable property to be purchased are mentioned therein. Therefore, it is not a case of unsecured loan or accommodation entry where the funds are received without giving any collateral security but in the instant case there is a



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registered agreement for purchase of property and the advance has been received towards sale of property to be constructed in future. The terms and conditions in the Investment Agreement clarifies this aspect. Though the agreement is not registered but then it is duly signed and the terms and conditions are to be duly honoured from both the sides and the funds have been received subsequent to entering of such Investment Agreement.

24. Further, we also find that the funds have been received in piece meal basis spread across F.Y. 2013-14 to F.Y. 2015-16 and further when finally the project could not take up due to litigation between Jadhav family members, assessee has finally started refunding the amount to FMPL. The repayment of ₹3,55,92,000 during F.Y. 2014-15 is in itself an evidence that genuine transaction of receiving advance against sale of immovable property was entered into during the impugned assessment years. Based on these facts, we find that genuineness of the transaction between the assessee and FMPL has been carried out.

25. To sum up since the assessee has proved the nature and source of the alleged sum and also proved the Identity and creditworthiness of FMPL and genuineness of the transaction and there being no contrary material been placed by the Revenue authorities before us except the observation of the Assessing Officer that too carried out during the course of assessment proceedings of some other assessee, and therefore the facts placed before us about the transaction entered into between the assessee and cash creditor and assessee having explained the nature and source of alleged



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sum remains uncontroverted. We therefore find that ld. Assessing Officer erred in invoking section 68 of the Act for the amount received from FMPL at ₹6.00 crore for A.Y. 2013-14, ₹82.50 lakh for A.Y. 2014-15 and ₹3,13,50,000 for A.Y. 2015-16 respectively . Thus, finding of ld.CIT(A) is set aside and respective common grounds raised for A.Y. 2013-14 (Ground Nos. 2 and 3), A.Y.2014-15 (Ground Nos. 1 and 2) and A.Y. 2015-16 (Ground Nos. 1 and 2) are allowed.

26. Next issue for our consideration is Ground No.1 raised by the assessee for A.Y. 2013-14 wherein the ld. Assessing Officer has denied the claim of Agricultural income of ₹99,643 made by the assessee in the return of income.

27. We have heard the rival contentions and perused the record placed before us. We note that in the preceding assessment year the assessee has shown agricultural income of ₹1.22 lakh which has been accepted by the Revenue authorities. Copies of 7/12 extract of the agricultural land holding by the assessee is placed on record and remains undisputed by the Revenue authorities. Alleged addition has been made merely for not furnishing the requisite details of agricultural income. Ld. Assessing Officer has himself observed that in the assessment year assessee owns agricultural land and merely owning agricultural land will not entitle the assessee to make any claim of agricultural land. We however considering the fact that for the preceding assessment year assessee has made a claim of agricultural income of ₹1.22 lakh which has been accepted by the Revenue authorities, find no reason to question the genuineness of the agricultural income earned by the



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assessee during the year at ₹99,643. Finding of Id.CIT(A) is set aside and the addition of ₹99,643 is deleted. Ground No. 1 raised by the assessee for A.Y. 2013-14 is allowed.

28. Next issue which remains for our consideration for A.Y. 2015-16 on merits is regarding the claim of assessee having earned long term capital gain u/s.10(38) of the Act at ₹1,80,45,262 from sale of 4,18,000 equity shares of Pearl Agriculture Limited during A.Y. 2015-16.

29. Facts in brief relating to this issue are that the assessee purchased 2,50,000 equity shares of Pearl Agriculture Limited (in short 'PAL') at ₹20 per share on 06.05.2013 duly disclosed in the financial statements for F.Y. 2013-14. Subsequently, shares have been split and thereafter during the year under consideration 4,18,000 equity shares have been sold on the registered stock exchange through the registered share broker and contract notes in respect of sale of securities along with payment of Security Transaction Tax (STT) were available with the assessee for making the claim of exemption u/s.10(38) of the Act. In the computation of income, assessee has declared the transaction of receiving the sale consideration of ₹2,18,15,043 and against it the cost of shares purchased during F.Y. 2013-14 on 06.05.2013 at ₹37,69,781 is mentioned. Shares were sold through LKP securities Ltd. which is a registered broker and after due payment of STT equity shares have been sold. During the course of assessment proceedings, Id. Assessing Officer has examined this transaction. Assessee submitted that the shares in question were received by the assessee on account of preferential allotment which is in accordance with SEBI



and ICDR regulations 2009 and subsequent amendments thereto. However, ld. Assessing Officer observed that prices of the equity shares of PAL have increased to 3.6 times of initial investments and thereafter gave general observation that such type of transactions are carried out through entry providers and have been dealt with by the AO in many cases relating to penny stock companies. Ld. AO has accepted the fact that assessee has received the equity shares as part of the preferential allotment but subsequently dealt with the financials of the company namely PAO from A.Y. 2011-12 to A.Y. 2015-16 and also dealt with the increase and steep decrease in the prices, i.e. increase from April 2013 till September 2014 but then steep decrease from October 2014 to December 2014 and concluded that the assessee has made bogus claim of long term capital gain u/s.10(38) of the Act and treated the profit of ₹1,83,58,183 as income in the nature of trading.

30. Assessee took the matter before ld.CIT(A) but failed to succeed. Now the assessee is in appeal before this Tribunal.

31. Ld. Counsel for the assessee submitted that the assessee made a valid purchase of the equity shares in question as part of the preferential allotment and that the shares were traded on the recognized stock exchange and the assessee has sold the shares through the registered broker and paid the due STT and the shares were held in the Demat account and all the conditions required to be fulfilled u/s.10(38) of the Act have been complied with. He further submitted that the addition made by the Assessing Officer is merely based on the preponderance of probability and there



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being no evidence against the assessee which show that the assessee is involved in the rigging of the prices and that the assessee is involved with entry operators engaged in such type of transactions. Further no such evidence is putforth by the Revenue depicting that the trading of the equity shares of PAL were suspended at that point of time or that there is any report of the SEB against PAL. Referring to the judgment of Hon'ble Bombay High Court in the case of *PCIT Vs. Indravadan Jain HUF (2023) 156 taxmann.com 605 (Bombay)* he submitted that in case where the shares were purchased on floor of stock exchange payments made through banking channel, deliveries taken in Demat account and shares remained there for more than one year, contract notes were issues and shares sold on the stock exchange, then in such cases there can be no reason to add capital gain as unexplained cash credit u/s.68 of the Act. Ld. Counsel placed reliance on the following decisions :

- a. *ITO Vs. Ankit Naresh Tulsian – ITA No.2233/PUN/2024 order dated 28.11.2025*
- b. *Preeti Aggarwal Vs. ITO – ITA No.7435/Del/2018 order dated 28.06.2019*
- c. *CIT Vs. Shyam R. Pawar (2015) 54 taxmann.com 108 (Bombay)*
- d. *Sonal Ashish Shah Vs. ITO – ITA No.2541/PUN/2024 order dated 03.06.2025*

32. On the other hand, ld. DR vehemently argued supporting the following finding of ld.CIT(A) :

“4.2. Ground No. 3,4,5 & 6 of the assessee were against addition of Rs.1,83,58,183/-, which the assessee claimed in its return as exempt, u/s. 10(38) in the ROI, for a sum of Rs.1,80,45,262/-

4.2.1. On the facts of the case, it is seen that the assessee applied for preferential allotment of shares of M/s Pearl Agriculture Ltd. on 08/05/2013. The assessee invested a sum of Rs.50,00,000/- for



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the allotment of 2,50,000 shares of the company, being Rs. 10/- towards the Face Value and a further Rs. 10/- towards premium for such allotment. He made a declaration and undertook to pay any amount payable, as computed, in compliance with the provisions of Regulation 76(3) and 78(5) of SEBI (Issue of Capital and Disclosure Requirement), Regulations, 2009. Thereafter, through a letter dated 18/04/2014, the company informed the assessee that as per the said Regulations, the recomputed price per share has been worked out at Rs. 82.70 and the assessee was required to pay a further sum of Rs. 1,56,75,000/- towards allotment of the preferential issue of shares of the said company. Thereafter, in July, 2014, the shares of the same Pearl Agriculture Ltd. were split in a ratio of 1:10. The no. of shares allotted to the assessee automatically increased to 25,00,000 of rupee 1/-, each (Face Value) from 2,50,000 of Rs. 10/-, each (Face Value). Thereafter, between the period of 27/11/2014 to 11/12/2014, the assessee sold 4,18,000 shares of the said company, at a net consideration of Rs. 2,18,15,044/-. The said sale of shares was through Exchange platform and requisite STT was paid.

4.2.2. The following facts are also taken note of. First of all, as per the order of Hon'ble Bombay High Court, through an approved Scheme of Demerger, the shares of Nouveau Global Ventures Ltd. were split into shares of Pearl Agriculture Ltd. and Pearl Electronics Ltd. w.e.f 09/10/2012. The shares of Pearl Agriculture Ltd. were listed with Bombay Stock Exchange for trading. The split of shares of the company from Rs. 10/- into 10 shares of Rupee 1/- was given effect from 19/08/2014 by Bombay Stock Exchange.

4.2.3. I find that at the time of purchase of the shares through preferential allotment, no STT was paid, although at the time of sale of the shares in November, 2014, the assessee has paid brokerage as well as STT from the sale consideration of the shares. Now, it is a question, whether the calculated capital gain, as claimed in the ROI, u/s. 10(38) is correct or not. It is agreed that the shares of the company were allotted sometime in May, 2013 and it was sold in November, 2014. Therefore, the period of holding the gain, qualifies for Long Term Capital Gain. However, the purchase consideration for the sold shares needs to be recalculated, in terms of the additional payment made, as per the SEBI Regulations.

4.2.4. The following are noted:-

i. Total Purchase Consideration: Rs. 2,06,75,000/-

ii. No. of shares allotted initially : 2,50,000

iii. After the split, the assessee received 25,00,000 of shares of the company in the ratio of 1:10.

Therefore, the Purchase Consideration for each of the shares sold in November 2014, is found to be Rs. 8.27 per share.



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4.2.5. The assessee has sold 4,18,000 of shares out of its possession of 25,00,000 of shares. Therefore, the pro rata purchase consideration of these 4,18,000 shares works out to be Rs. 34,56,860/-. Therefore, the amount of capital gain should have been Rs. 1,83,58,484/-, instead of the amount disclosed by the assessee for Rs. 1,80,45,262/-. It is seen that the AO has taken the correct figure of Rs. 1,83,58,484/-, when he treated the same Long Term Capital Gain as business profit, as adventure, in the nature of trade.

4.2.6. The AO has pain-stakingly demonstrated how the price of the shares had been manipulated and rigged and thus, was of the opinion, that the prices of the shares have been manipulated in a concerted way and the gain received by the assessee which was claimed as exempt income, was not a regular or normal transaction. The AO also relied on the report of the Investigation Wing of the Income Tax Department, where the trading in the scrip of Pearl Agriculture Ltd. had been pointed out along with many other similar penny-stock shares to be nothing but arrangement of accommodation entries by dubious means using the platform of regular share transaction.

4.2.7. The landmark decision of the Calcutta High Court in the case of Swati Bajaj and Ors. in ITA No. 6 of 2022, dated 14/06/2022, had an occasion of analyzing the similar claim of exemption made by numerous assesseees through trading in penny-stock shares. The relevant decision of the said judgment is narrated as below:-

i. At Para 48, the Court held that "We have no hesitation to hold that the plea raised on behalf of the assesseees, that the report of the Investigation Wing should be discarded, cannot be accepted. Report has to be read as a whole, along with its Annexures/Chapters."

4.2.8. Again, at Para 54, the Court held that, if a dubious methodology has been adopted for the purpose of availing certain benefits, not admittedly under the law, the same will not come within the ambit of Tax Planning but shall be a case of Tax Avoidance, for adopting illegal methods.

4.2.9. Again, at para 76 of the order, the Court stated that the assessee's Counsel pleaded that unless there are foundational facts, circumstantial evidence cannot be relied on: The argument does not merit acceptance as worth of information and facts on record, which is the outcome of the investigation of the company's stock-brokers, entry operators, etc. Based on those foundational facts, the Department had adopted the concept of working backwards leading to the assessee. While at the relevant stage, the surrounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over, were all taken into consideration to negate the claim for exception made by the assessee. Therefore, the Department was fully justified in



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taking note of the prevailing circumstances to decide against the assessee.

4.2.10. At para 99 of the order, the Court observed that the totality of the circumstances of the case are to be appreciated because the transactions are shown to be very complex, the meeting of minds of the "players" can never be established by direct evidence and therefore, the surrounding circumstances were required to be taken note of. It has been established by the Department that the rise of prices of the share was artificially done by manipulative practices. The AO has culled out proximate facts of the case and took into consideration the surrounding circumstances which came to light after the investigation and assessed conduct of the assessee, took note of the proximity of the time between the buy and sale operations and also the strong and stiff rise of the price of the shares of the company, when the general market trend was admittedly recessive and thereafter, arrived at a conclusion. Under such circumstances, the Hon'ble High Court held that such conclusion was proper and the AO was correct to make addition u/s. 68 of the Act.

4.2.11. Relying on the above decisions and the clear-cut directions of the Court, I hold the addition made by the AO to be correct on principle. However, as per the decision of the High Court, I hold that the addition should be made as unexplained cash credit u/s. 68 instead of adventure in the nature of trade, as mentioned by the AO in the assessment order. The addition of Rs. 1,83,58,484/- is confirmed u/s. 68 of the Act and the Grounds of Appeal of the assessee fails."

33. We have heard the rival contentions and perused the record placed before us. The issue for our consideration raised by the assessee in Ground Nos. 3 and 4 of the appeal for A.Y. 2015-16 is against the denial of exemption u/s.10(38) of the Act for the long term capital gain earned by the assessee from sale of equity shares of M/s. Pearl Agriculture Limited (in short 'PAL') at ₹1,83,58,183. At the cost of repetition, as discussed above, we note that the assessee purchased the equity shares of PAL during F.Y. 2013-14 under the preferential allotment given by promoters of PAL in accordance with SEBI ICDR regulations 2009 and subsequent amendments thereto. Assessee was allotted



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2,50,000 equity shares and an amount paid on the application @ ₹20 per share and balance amount of ₹62.70 per share paid at a later date. The equity shares have been received in the Demat Account of the assessee and have been held for more than a year before claiming exemption u/s.10(38) of the Act. Assessee has to fulfil the following conditions as enumerated u/s.10(38) of the Act and the same reads as under :

“10(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB :

Provided also that nothing contained in sub-clause (b) shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency:

Provided also that nothing contained in this clause shall apply to any income arising from the transfer of a long-term capital asset, being an equity share in a company, if the transaction of acquisition, other than the acquisition notified by the Central Government in this behalf, of such equity share is entered into on or after the 1st day of October, 2004 and such transaction is not chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004):

Provided also that nothing contained in this clause shall apply to any income arising from the transfer of long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, made on or after the 1st day of April, 2018.

Explanation.—For the purposes of this clause,—



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- (a) “equity oriented fund” means a fund –
- (i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than sixty-five per cent of the total proceeds of such fund; and
- (ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D):

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

(b) “International Financial Services Centre” shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(c) “recognised stock exchange” shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43;

34. Now examining the facts in light of the provisions of section 10(38) of the Act, we find that assessee has furnished the proof of purchase of equity shares, sale of equity shares through registered broker and the transaction effected on recognised stock exchange and payments have been received from stock exchange itself through the banking channel in the bank account registered by the assessee on the said stock exchange. The allegation of the Assessing Officer mainly centres around the steep increase and decrease of the equity share prices along with reference of the financials of the company during F.Y. 2011-12 to F.Y. 2015-17. The turnover during F.Y. 2012-13 is ₹40.09 crore, during F.Y. 2013-14 at ₹23.89 crore and during F.Y. 2025-16 at ₹13.01 crore. Apart from making reference to the financials, ld. AO has not referred to any specific report of the SEBI or the order of the



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SEBI Tribunal wherein the assessee is found to be involved in the price rigging of the equity shares or is connected to any entry operator, if any. Observation of the Id. AO mainly revolves around the equity share price fluctuation. It has been consistently held that where the assessee has fulfilled necessary conditions u/s.10(38) of the Act and has made a valid purchase of the equity shares and has made the sales at stock exchange holding equity shares for more than a year in the Demat Account and the assessee is not found to be involved in any price rigging relating to such company, the claim of long term capital gain has been allowed. We take note of decision of Coordinate Bench, Mumbai in the case of *Preeti Aggarwal Vs. ITO (supra)* where also capital gain was shown from sale of equity shares of Pearl Agriculture Limited, i.e. the very same company. The equity shares have been sold by the assessee. Observation of the Tribunal reads as under :

“6. After hearing both the parties and on perusal of the impugned material placed on record, we find that firstly, assessee has been regular investor in shares and had shown Long Term Capital Gain and Short Term Capital Gain in sale of several scrips. The only controversy is only to the extent of Short Term Capital Gain of Rs. 1,23,173/- which has been treated as bogus. Neither the purchase nor the sale has been doubted for the reason that gross sales have not been added by the Assessing Officer. The assessee had shown purchases of these shares aggregating to Rs.4,67,021/- which have been purchased between March, 2014 to May, 2014 and were sold between May, 2014 to November, 2014 at Rs.5,90,193/ and thereby have shown Short Term Capital Gain at Rs.1,23,173/-. Nowhere the Assessing Officer has pointed out the historical data of prices of these scrips and whether there was an astronomical rise of price from the date of purchases to the date of sales, leading to any dubious nature in marginal of gain of Rs.1,23,173/ on sale of 5550 share. Hence it cannot be inferred that gain was on account of astronomical price rise of the shares. It appears that Assessing Officer has merely gone by the fact that during the investigation carried out by the Department in Kolkata, one of these scrips were found to be used by brokers for providing



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accommodation entries, but that material fact alone without any other further inquiry or any other material to link that assessee to be involved in any sham transaction or beneficiary of any accommodation entry. Theoretical discussion made by the Assessing Officer cannot nail the assessee. The sales turnover of PSIT Infrastructure goes to show that it had the sale turnover at Rs. 328.38 crore in March, 2016 and similarly in case of Pearl Agriculture also sales turnover was Rs. 23.89 crore in March, 2014. Thus, to hold that these companies were purely a paper company without any business credential cannot be accepted. As discussed above, the assessee had dealt in several scrips over the period of time and has been regular investor in shares and has been showing gain and loss in the shares on year to year basis. No other transaction has been doubted except for two small scrips for over all transaction of 1.23 lacs. This goes to show that bonafide and it cannot be held to be that the assessee was involved in some kind of money laundering or any kind of accommodation entry. No material whatsoever has been brought on record to show that assessee has routed her unaccounted money or any other facts are coming on record. Assessee has also incurred Short Term Capital Loss in dealing with more than 250 companies and has incurred Long Term Capital Loss of Rs.53,227/-; and Short Term Capital loss of Rs.2,42,000/-. Such a negligible amount of Short Term Capital Gain cannot be held to be bogus sans any inquiry or material. Accordingly, treating Short Term Capital Gain of Rs. 1,23,273/- as bogus cannot be sustained.”

35. The above observation of the Tribunal clearly indicates that PAL is not a penny stock company and the capital gain offered by the assessee has been accepted. In another decision in the case of *ITO vs. Ankit Naresh Tulsian (supra)* wherein this Tribunal had observed that the assessee has fulfilled the conditions prescribed u/s.10(38) of the Act for making a valid claim of exemption u/s.10(38) of the Act and has allowed the assessee's claim by observing as follows :

“8. We have heard rival contentions and perused the records placed before us. The Revenue is aggrieved with the finding of Ld.CIT(A) deleting the addition made by the Ld.AO u/s. 69A of the Act at Rs. 1,00,08,500/-. Alleged sum has been shown by assessee as LTCG from sale of 200000 equity shares of a company, namely MFTL and claimed exemption u/s. 10(38) of the Act. We observe that assessee challenged the validity of the notice issued u/s. 148 of the Act, dated 28/03/2020 and also the validity of re-assessment proceedings carried out which concluded



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on 28/09/2021 on the ground that assessee had already been subject to examination by Investigation Wing on the very same issue by serving the assessee with notice u/s. 131 of the Act. We note that assessee had already gone through one round of reassessment proceedings initiated, for the same information and after due consideration of the details filed by the assessee, such proceedings were dropped. It has been claimed that there being no independent enquiry made by the Ld.AO and no other fresh material was available with the Ld.AO prior to issue of alleged notice u/s. 148 of the Act, dated 20/03/2020 and, therefore, the alleged reassessment proceedings have been carried out on a mere change of opinion, which is not permissible in the eyes of law as per the ratio laid down by the Hon'ble Apex Court in the case of *Kelvinator of India Ltd. (supra)*. We note that Ld.CIT(A) has dealt with this legal issue placing reliance on plethora of decisions and his finding reads as under:-

“6.1 I have gone through the order of AO and submission made by the appellant. The Ld. AO has treated share dealing made by the appellant as bogus and thereby added back exempted capital gain to taxable income. The Ld. AO also added back the commission as well. Aggrieved by the order of Ld. AO, the appellant has raised multiple grounds of appeal and the same are disposed off collectively as under.

6.2 The appellant had purchased shares of *Mishkafin Finance Ltd* and subsequently these shares were sold for sum of Rs. 1,00,23,500/- The resultant capital gains of Rs.1,00,08,355/-was claimed exempted u/s 10(38). The Ld. AO treated entire capital gain as bogus and add to total income as unexplained money u/s 69A of the Income Tax Act.

6.3 The Ld. AO alleged it to be penny stock and he claimed that the trading in such stock was controlled by few operators and rise in prices of this stock was artificially created. He also gave finding that he re-opened the case based on information received from Director of Income Tax (Inv). He suspected about the same and presumed that the trading was pre-arranged. He finally concluded assessment by assigning following reasons:

- Assessee failed to discharge onus of explaining unusual growth in trading volumes of shares of *Mishkafin Finance Ltd*
- Assessee was ignorant about financial health of penny stock company and artificially rigged prices
- The investigations in the fund flow analysed that cash was routed through many layers of companies
- The transaction were entered with pre-conceived series of steps and true nature of transaction was not present and being artificially structured with intent to evade tax.



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- Revenue cannot accept this make believe arrangement

6.4 The appellant claimed the transaction to be genuine and filed following documents before Ld. AO at the time of assessment:

- Broker note for sale and purchase of shares
- Bank statement depicting payments made for purchase of shares
- Statement of holding shares
- Statement issued by CDSL confirming shares sold
- Bank statement depicting receipt of money after sale of shares

Further, the appellant also asked for cross examination of the material being used against her to claim such capital gain as bogus.

6.5 The appellant also contested that trading was done through online portal wherein she was not aware of the counter party to the transaction and price fluctuation to stock was beyond her control.

6.6 The Ld. AO has made the adjustment by forming opinion on search conducted by some other assessee. He has not performed due diligence in specific to the appellant's case LING

6.7 The Ld. AO has not mentioned any shortcoming in broker notes, bank payments and other supporting documents filed by the appellant. He has also not proved that cash was involved in the appellant's transaction. He passed the order merely under suspicion. Moreover, the Ld. AO has also not provided opportunity of cross examination.

6.8 The Ld. AO alleged that the appellant could not prove why there was surge in volume of stock. Whereas the trading was done through software based platform wherein the trader does not have visibility on counter party buying/selling.

6.9 The above issue has been dealt and adjudicated by many courts as under:

In the case of PCIT Vs. Parasbenkasturchand Kochar, [2021] 130 taxmann.com 177 (SC) AUGUST 2, 2021, SLP dismissed against impugned order of High Court holding that where assessee-individual engaged in trading of shares had discharged his onus of establishing long term capital gains arising out of sale of different shares as fair and transparent by submitting records of purchase bills, sale bills, demat statement etc., same not being earned from bogus companies was eligible for exemption under section 10(38).



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PCIT Vs Indravadan Jain, HUF Income tax ax Appeal No. 454 of 2018 (Bombay HC) -date of order - 12-07-2023

In the aforesaid case, the Hon'ble Bombay High Court upheld the decision of Hon'ble Mumbai Tribunal, wherein the Tribunal had held that since the shares were purchased on the floor of stock exchange and not from broker, payment was made through banking channel, deliverables were taken in DEMAT account where the shares remained for more than one year, contract notes were issued and the shares were also sold on stock exchange, the long-term capital gains claimed as exempt cannot be treated as accommodation entry.

Sri Chand Chatrumal HUF vs ACIT [I.T.A. No.6537/Mum/2018]
"the assessee have filed the best evidence to prove the transaction in question vi z. bills, contract notes, demat Statement and the bank account statements to prove the genuineness of the transaction relating in the purchase of Mis. Panchshul Marketing Ltd and thereafter sale of shares (after amalgamation) of M/s KAFL which resulted in LTCG claim of Rs.19,51,000/-. Therefore, by applying the test of preponderance of probability, the LTCG cannot be disallowed without AO pointing out any infirmities in the evidences produced by assessee, which IIIIfortwlately AO could not point out. So the assessee's claim of LTCG need to be allowed."

Manish Kumar Baid Vs ACIT [ITA 1237/Kol/2017]
"The enquiry by the Investigation Wing and/or the statements of several persons recorded by the Investigation Wing in connection with the alleged bogus transactions in the shares of KAFL also did not implicate the assessee and/or his broker. It is also a matter of record that the assessee furnished all evidences in the form of bills, contract notes, demat statements and the bank accounts to prove the genuineness of the transactions relating to purchase and sale of shares resulting in LTCG. These evidences were neither found by the Id AD to be false or fabricated. The facts of the case and the evidences in support of the assessee's case clearly support the claim of the assessee that the transactions of the assessee were bonafide and genuine and therefore the id AD was not justified in disallowing the assessee's claim of exemption under section 10(38) of the Act."

Kiran Kothari Vs ITO [ITA 443/Kol/2017]
"we note that the assessee had furnished all relevant evidence in the form of bills, contract notes, demat statement and bank account to prove the genuineness of the transactions. relevant to the purchase and sale of shares resulting in long term capital gain. Neither these evidences were found by the AO nor by the Id. CIT(A) to be false or fictitious or bogus. The facts of the case and the evidence in support of the evidence clearly support the claim of the assessee that the transactions of the assessee were genuine and the authorities below was not justified in rejecting the claim of the assessee exempted u/s 10(38) of the Act on the basis of suspicion,



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surmises and conjectures. It is to be kept in mind that suspicion how so ever strong, cannot partake the character of legal evidence"

M/s. ANDAMAN TIMBER INDUSTRIES V/s CCE CIVIL APPEAL NO. 4228 OF 2006

Not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected

CIT vs. Mukesh Ratilal Marolia (Bombay High Court) INCOME TAX APPEAL NO. 456 OF 200 7 7th September 2011

Long-term capital gains on sale of "penny" stocks cannot be treated as bogus & unexplained cash credit if the documentation is in order & there is no allegation of manipulation by SEBI or the BSE. Denial of right of cross-examination is a fatal flaw which renders the assessment order a nullity

Kamla Devi S. Doshi V/s. The Income Tax Officer Ward 16(3) (1), I.T.A. No.1957/Mum/2015 Assessment Year: 2006-07

Bogus penny stocks capital gain: The s. 131 statement implicating the assessee is not sufficient to draw an adverse inference against the assessee when the documentary evidence in the form of contract notes, bank statements, STT payments etc prove genuine purchase and sale of the penny stock. Failure to provide cross-examination is a fatal error

Shri Sunil Prakash V/s. ACIT -15(2) I.T.A./6494/Mum/ 2014, Assessment Year: 2005-06

If the AO relies upon the statement of a third party to make the addition, he is duty bound to provide a copy of the statement to the assessee and afford the opportunity of cross-examination. Failure to do so vitiates the assessment proceedings A transaction evidenced by payment/receipt of share transaction value through banking channels, transfer of shares in and from the Demat account, etc cannot be treated as a bogus transaction so as to attract s. 68.

6.10 In view of the facts and circumstances of the case and having regard to varied judicial pronouncements including jurisdictional High Court and ITAT, I am of the considerate view that the appellant had submitted all the relevant documents before the AO to establish genuineness of purchase and sale of shares

A perusal of assessment order reveals that not a single piece of evidence - direct or circumstantial has been brought on record by the AO which can establish that the appellant or even his broker had indulged in arrangement of accommodation or bogus LTCG or they were in any way involved in price manipulations in any manner. There is no reference to any material whatsoever in the order of assessment in relation to the case of appellant or its broker supporting the allegations levelled by the AO against the appellant.



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There is no confessional statement referred by the AO either given by the appellant or the broker which may indicate that the aforesaid transaction was undertaken to shift alleged artificial gains to the appellant.

I find that the assessee has filed all the evidences comprising summary of sale and purchase of shares, contract notes/broker notes, of Demat account/transaction statement, copies of purchase/sale bills, evidences of payment through banking channels along with bank statements etc. which substantiates the genuineness of the transaction.

Further, there is no evidence on record to establish any cash trail or otherwise which can lead to a conclusion that the appellant colluded with its brokers, companies, its promoters, exit providers to arrange bogus LTCG

Further, the Ld. AO has not carried out investigation of the fact of the case which are specific to the appellant and has also not provided opportunity for cross examination which is against principle of natural justice. The AO has relied on the information given by the Directorate of Income-tax (Investigation) without appreciating that the same cannot be used against the appellant without providing statements and investigation reports and therefore such documents cannot be used against the appellant. In the present case, the Ld. AO has failed to provide the appellant with the materials and statements allegedly used by him to hold the transactions as sham. Thus, the AO has failed to comply with section 142(3) of the Act as well as the principles of audi alteram partem thereby resulting in gross violation of principles of natural justice.

I also find that the AO in this case has not conducted any independent inquiry to establish the veracity of information received by him from the DDIT and he has mechanically issued the notice u/s. 148 of the Act. The Hon'ble High Court of Bombay in the case of Principal Commissioner of Income-tax-5 v. Shodiman Investments (P.) Ltd. reported in 422 ITR337 holding that reopening notice on the basis of intimation from DDIT (Investigation) about a particular entity entering into suspicious transactions, was clearly in breach of the settled position of law that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction

It is also a common knowledge that when the shares are purchased/sold through online mode, the seller and purchaser are unknown to each other and there is no system through which the seller could decide to whom the shares be transferred. The AO has also not conducted any enquiry as to who is the seller/ purchaser of shares and whether any of them have been held to be engaged in price rigging.



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The Ld. AO has also not provided any short coming in the documentation filed by the appellant neither the Ld.AO has provided any finding that there is round tripping of cash in the underlined capital gain.

It is also a settled position of law that addition cannot be made merely on the basis of suspicion, conjectures and surmises. It is a settled position of law that mere suspicion, howsoever strong, cannot take the place of legal proof. Thus, addition made on the basis of mere suspicion and conjecture is bad in law and deserves to be quashed.

Therefore, the additions made by the Ld. AO for sum of Rs. 1,00,08,355/- on account of bogus capital gain are deleted.

Accordingly, the appeal made by the appellant is allowed.”

9. From going through the above findings of the Ld.CIT(A) and the decisions referred therein and also taking note of the facts brought on record before us by the learned counsel for the assessee, we note that assessee while filing return of income, has mentioned the particulars giving rise to LTCG u/s. 10(38) of the Act at Rs. 1,00,08,500/-. Further, the assessee has been issued summons u/s. 131 of the Act, dated 09/04/2015 by the Investigation Wing. The assessee has given reply on two occasions and again certain more information was called for vide letters dated 02/06/2015 and 07/08/2015 to which also assessee has duly replied along with furnishing documents which includes the broker note for sale and purchase of shares, bank statement depicting the payments made for purchase of shares Demat statement showing holding of equity shares in question, statements issued by CDSL confirming the sale of shares and final bank statement depicting the receipt of money. The Investigating Wing called for these informations based on the information received from SEBI about certain companies where the transactions were found to be doubtful on account of price rigging.

10. Further, we observe that after a span of four years, the assessee had again been served notice u/s. 148 of the Act, dated 31/03/2019 regarding the very same reason about the alleged bogus claim of LTCG from sale of equity shares of MFTL. The assessee again furnished all the informations, based on which the Ld.AO found that the claim of the assessee for LTCG is genuine and he dropped the proceedings vide order dated 28/11/2019 u/s. 143(3) r.w.s. 147 of the Act.

11. Surprisingly, on the very same information again a fresh notice u/s. 148 of the Act has been issued on 20/03/2020, the validity of which has been challenged before the Ld.CIT(A). After examining the present set of facts and in the light of judgment of Hon'ble Apex Court in the case of Kelvinator of India Ltd. (supra), we find that it is a clear case of carrying-out re-assessment proceedings on “mere change of opinion” because on the very same



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set of facts and the information available with the Ld.AO which had already been confronted to the assessee and after finding, the claim of LTCG was genuine, proceedings have been dropped. At the time of issuing notice u/s. 148 of the Act, dated 20/03/2020 neither there is any new information available with the Ld.AO nor any independent enquiry has been carried out by the Ld.AO to establish the veracity of information received by him from Director of Income Tax (Inv.). Since, Ld.AO has not conducted any enquiry as to who is the seller/purchaser of the alleged equity shares and whether any of them have been held to be in price rigging, such initiation of re-assessment proceedings in the given case is merely based on change of opinion which is not permissible in the light of settled judicial precedents referred (supra). Therefore, the finding of the Ld.CIT(A) quashing the notice issued u/s. 148 of the Act, dated 20/03/2020 and quashing the assessment order u/s. 147 r.w.s. 144B of the Act dated 28/09/2021 needs no interference.

12. So far as merits of the case are concerned, we observe that in order to claim exemption u/s. 10(38) of the Act, the assessee is required to fulfill the conditions provided under section 10(38) of the Act, which are that the capital asset being equity shares or a company or a units of equity oriented fund is held by the assessee for more than a one year, the transaction of sale of equity shares is carried out on a recognized stock exchange and such transaction is chargeable to STT. The assessee in the instant case has fulfilled all the relevant conditions as provided u/s. 10(38) of the Act. Ld.AO has held the claim of LTCG is bogus based on his observation about steep increase in the prices of equity shares and poor financial of the company and mainly referring to report of the SEBI restraining trading of the equity shares of MFTL on the stock exchange. Before us, learned counsel for the assessee has referred to plethora of judgments in assessee's favour where the genuineness of claim of LTCG from sale of equity shares of MFTL has come up for adjudication.

13. We, however, take note of the recent judgment of Hon'ble Gujarat High Court in the case of M.S. Gokuldharm Enterprise LLP (supra) where substantial question of law before the Hon'ble Court was "Whether on the fact and circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the addition made by the Ld.AO on account of disallowance of exemption of Rs. 8,90,28,838/- claimed by the assessee u/s. 10(38) of the IT Act?". We note that the said claim of LTCG was from sale of 1805700 equity shares of MFTL (the same scrip is in question in the instant appeal before us).

14. We further observe that the Hon'ble High Court has adjudicated the issue of bogus LTCG and observed as follows:-

"3.1 The assessee had filed return of income for the assessment year 2014-15 by declaring income of Rs. NIL. An assessment order was passed making addition on account of long term capital gain. The appeal was partly allowed



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deleting the addition made by the Assessing Officer. The Tribunal dismissed the appeal of the department.

3.2 The facts relating to the long term capital gain of Rs.8,90,25,838/- earned by the assessee are that they related to 1805700 shares of one Mishka Finance and Trading Limited ('MFTL' for short) sold by the assessee during the year for a value of Rs.9,12,18,266/-.

3.3 The SEBI had passed an interim order in relation to this scrip by 'MFTL' holding that preferential allottees and promoters related entities had, with the aid of exit providers, misused the exchange mechanism to exit at a higher price in order to book illegitimate gains with no payment of tax as long term capital gain, as long term capital gain is exempt under section 10(38) of the Act.

3.4 The Principal CIT (A) and the Tribunal found that the SEBI report based on which the Assessing Officer had made additions was an interim report and in the final report there was no adverse finding. The SEBI in the final report had not made any adverse findings.

4. While reversing the order of the Assessing Officer, the CIT(A) observed as under:

"The final report of SEBI has come out on 05.10.2017 wherein it has clearly stated in Para 7 of their report that:

"Upon completion of investigation by SEBI, it is noted that there are no adverse findings against the 104 entities mentioned at S.No. 1-104 in Table No. 2 with respect to their role in the price manipulation/prima facie violations for which Interim Order dated April 17, 2015 was passed and subsequently confirmed in the scrip of Mishka."

A copy of this report was sent to AO as per Rule 46A and remand report dated 22.11.2017 has been received. In para-3 of remand report, the AO has simply mentioned that the share transaction has been skillfully manipulated to claim the exemption u/s. 10(38). In this connection, it is verified that the payment for purchase of shares was made through banking channel, shares were in demat account of the appellant for more than 12 months before they were sold through BOLT of BSE and the proceeds have been received through banking channel, STT has been paid. The main stand of the AO which was picked up from SEBI interim report has also been decimated by the final report of the SEBI itself. The relevant portion of



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para 8 of SEBI report dated 05.10.2017 is reproduced as under::

“8. Considering the fact that there are no adverse findings against the 104 entities mentioned at S.No.1104 in Table No.2 with respect to their role in the price manipulation/ prima facie violations for which interim Order dated April 17, 2015 was passed and subsequently confirmed in the scrip of Mishka warranting continuation of action under section 11B and 11(4) of the SEBI Act, I am of the considered view that the directions issued against them vide interim order dated April 17, 2015 which were confirmed vide Orders dated October 12, 2015, October 21, 2015, April 13, 2016, July 05, 2016 and August 26, 2016, are liable to be revoked.”

The perusal of list of entities mentioned therein indicates appellant’s name at Sr.No.20, hence the appellant has been absolved of any wrong doing. Consequently, the argument of the AO has fallen flat and there is no other independent finding to fasten the tax liability on the appellant.”

5. Confirming this view of the CIT(A), the Tribunal observed that having gone through the assessment order it was evident that it was based on the interim report. The final report of SEBI had absolved the scrip of all charges. Moreover, there was no independent finding on any other aspect casting doubts to show that share prices were manipulated at an unreasonable price when sold.

6. In view of the concurrent findings of the fact recorded by the Principal CIT and confirmed by the Tribunal, no substantial question of law arises. Appeal is accordingly dismissed with no order as to costs.”

15. On duly examining the facts of the instant case in the light of the above judgment and also going through the other judicial precedents referred by the assessee in the legal compilation, we find that the finding of the Hon'ble Gujarat High Court in the case of M.S. Gokuldharm Enterprise LLP (supra) is squarely applicable on the facts of the instant case. Therefore, since the assessee has duly fulfilled the conditions prescribed in section 10(38) of the Act for claiming LTCG and further SEBI which previously gave interim report based on which Ld.AO made the addition but in final report the SEBI absolved the scrip namely, Mishkafin Finance and Trading Company from all charges. This shows that the additions made by the Ld.AO were merely based on preponderance of probability, but thereafter the SEBI has exonerated the scrip from all charges. Therefore, there remains no ground for doubting genuineness of LTCG claimed by the assessee u/s. 10(38) of the Act on sale of equity shares of MFTL. Thus, even on merits of the



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case, Revenue fails to succeed. Effective grounds of appeal raised by the Revenue are dismissed.”

36. Similar view has also been by the Hon’ble Jurisdictional High Court in the case of *CIT Vs. Shyam R. Pawar (2015) 54 taxmann.com 108 (Bombay)*.

37. Now examining the facts of the instant case in light of the above decisions, we find that assessee has fulfilled the conditions prescribed u/s.10(38) of the Act and after having purchased the shares under preferential allotment from the company and made payment through account payee cheques and held the equity shares for more than a year and selling them through recognised stock exchange after making due payment of STT, has earned the alleged long term capital gain. We also note that ld. Assessing Officer has not invoked section 68 of the Act and has merely made the addition denying benefit of section 10(38) of the Act and treating it as income in the nature of trading. This indicates that ld. Assessing Officer has found the alleged transaction to be genuine and only disputed the head of income. We therefore find that a valid claim u/s.10(38) of the Act has been made and ld. Assessing Officer grossly erred in treating it as bogus long term capital gain. Finding of ld.CIT(A) is set aside. Ground Nos. 3 and 4 raised by the assessee for A.Y. 2015-16 are allowed

38. Since the addition made by the Assessing Officer denying the claim of long term capital u/s.10(38) has been deleted by us, therefore, the addition made for the alleged unaccounted commission paid by the assessee for procuring the alleged long term capital gain from sale of equity shares of



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PAL also stands deleted. Thus Ground No. 5 raised by the assessee for A.Y. 2015-16 is also allowed.

39. Now we take up ITA No.1250/PUN/2024 which is filed by the assessee against the levy of penalty u/s.271(1)(c) of the Act for the addition made by the Assessing Officer u/s.68 of the Act for the A.Y. 2014-15.

40. We find that the impugned addition on which the penalty has been levied has already been deleted by us while adjudicating the assessee's appeal ITA No.1251/PUN/2024 for A.Y. 2014-15 and therefore since the quantum addition stands deleted there remains no ground for penalty to survive. Impugned penalty at ₹25,49,250 is deleted. Grounds raised by the assessee are allowed.

41. In the result, all the four appeals of the assessee are allowed as per the terms indicated hereinabove.

Order pronounced on this 28th day of January, 2026.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 28th January, 2026.
Satish



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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Assistant Registrar,
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