

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH 'D' NEW DELHI**

**BEFORE : SMT. DIVA SINGH, JUDICIAL MEMBER &  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 332 & 1277/Del./2010  
Asstt. Year : 2005-06 & 2006-07**

Income-tax Officer,  
Ward 4(2), New Delhi.

(Appellant)

vs. Jar Metal Industries Pvt. Ltd.,  
88, Baldeo Park, Parwana Road,  
Khajuri Khas, New Delhi.  
[PAN: AAACJ0108R]  
(Respondent)

Appellant by : Shri Gaurav Dudeja, Sr. DR  
Respondent by : None

Date of hearing : 28.01.2016  
Date of pronouncement : 22.04.2016

**ORDER**

Per L.P. Sahu, Accountant Member:

These two appeals by the Revenue are directed against the orders of the Id. CIT(A)-VII, New Delhi dated 04.11.2009 and 01.01.2010 for the assessment years 2005-06 and 2006-07 respectively. The Revenue has challenged the deletion of additions u/s. 68 of the IT Act in both the years made by AO on the following counts :

	<u>A.Y. 2005-06</u>	<u>A.Y. 2006-07</u>
Unexplained share application money	1,50,00,000/-	8,60,00,000/-
Unaccounted cash paid as commission for obtaining accommodation entry	73,490/-	4,30,000/-

Unexplained unsecured loans	2,17,43,966/-	-
Interest paid on bogus unsecured loans	14,65,490/-	-

Since both the appeals were heard together and common question of law and facts are involved therein, therefore, for the sake of convenience and brevity, both the appeals are being disposed of by way of this consolidated order. We first take up the appeal for the assessment year 2005-06.

2. The brief facts of the case are that the assessee is a company incorporated under the Companies Act, 1956 with Registrar of Company Delhi & Haryana. The assessee is also registered as non-banking Finance Company (NBFC) with Reserve Bank of India engaged in the business of Investment, sale/purchase of shares, property and loans etc. It filed its return of income on 29.10.2005 declaring taxable income of Rs.9,05,490/-. During the year under consideration, the assessee received Rs.1,50,00,000/- as share application money from four parties/companies and unsecured loan of Rs.2,17,43,966/- from six companies. In response to questionnaire dated 09.10.2006, the assessee filed the details of parties from whom the impugned amounts were raised which are as under :

Sl.	Name & Address of company	Amount of share Application	Amount of unsecured Loans
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		money	
1.	M/s. Bhagwan Krishan Investment & Trading Co. P. Ltd., 509, Usha Kiran Commercial Complex, Azadpur, Delhi.	15,00,000	
2.	M/s. Archit Finscrip Ltd., 412-C Usha Kiran Commercial Complex Azadpur, Delhi	95,00,000	
3.	M/s. Aanchal Builcon Pvt. Ltd., Plot No. 55 Patparganj Indl. Area, Delhi	25,00,000	
4.	M/s. At All Times Yours Securities Pvt. Ltd., 104-A, Mukund House, Commercial Complex, Azadpur, Delhi	15,00,000	60,00,000
5.	M/s. Akik Education Centre Pvt. Ltd., 88, Baldev Park, Parwana Road, Delhi		40,00,000
6.	M/s. CMS Holdings P. Ltd., Plot No. 55 Patparganj Industrial Area, Delhi		25,00,000
7.	M/s. Gaurav Holdings Pvt. Ltd., 412-B Usha Kiran Commercial Complex, Azadpur, Delhi.		15,00,000
8.	M/s. Hajima Resorts Pvt. Ltd., 204-A, Mukund House Commercial Complex Azadpur.		25,00,000
9.	M/s. Junoon Capital Services P. Ltd., 104-A, Mukund House Commercial Complex Azadpur.		50,00,000
	TOTAL :	1,50,00,000	2,15,00,000

The AO after examining the details filed by assessee noticed that the directors of all the above companies are common, the details of which are noted at page 4 of the assessment order. Since the assessee did not file any evidence to prove the creditworthiness of the aforesaid companies, the AO issued summons u/s. 131 to their principal officers/directors for personal deposition on 25.05.2007 and to produce copies of their bank statements showing the above investments. No compliance, however, was made. The AO, thereafter deputed the Inspector to make spot enquiries for verification of genuineness of above companies and transactions carried out by them with the assessee. The Inspector after making spot and local enquiries furnished his report dated 02.11.2007 which is as under in tabulated form :

S.No.	Name	Remarks
1.	M/s Bhagwan Krishan Investment & Trading Co. P.Ltd.	The door of the premises was found locked on visit on 22.10.07. Local inquiries reveal: 1.Doors of the premises are normally always locked 2.No regular business activity here 3,Said to belong to Pradeep Kumar Jindal 4. Board of Banki Bihari Pictures Board on the door.
2	M/s At All Times Yours Securities P. Ltd.	This address is the office premises of Shri PK Jindal with his chamber. Shri Laxman Singh Satyapal was present at the time of visit. He is an employee of Shri PK Jindal and has shown his ignorance about such transactions.
3.	M/s. Archit Finscip Ltd.	The door of the premises was found locked on visit on 22.10.07. Local inquiries reveal: 1. Doors of the premises are normally always locked. 2. No regular business activity carried out here. 3.It belongs to Shri Pradeep Kumar Jindal.
4	M/s Aanchal Buildcon Pvt Ltd	The building owned by Shri PK Jindal/Office premises rented out to companies/ caretaker faintly recalls such a company said to belong to PK Jindal existed a couple of years back.
5.	M/s Akik Education Centre Pvt Ltd	4 houses with the same number/Subodh Kumar Khandelwal owns one of the houses/ It has ground floor + 3 floors/Family stays on the third floor/ the rest are empty halls/ No company with such name ever existed in the premises according to Mrs Seema W/o Subodh. PK Jindal and Subodh Kumar Khandelwal are related (cousins)/ Subodh works for PK Jindal & was out of station at Agra.
6.	M/s Gaurav Holdings (P) Ltd	The door of the premises was found locked on visit on 22.10.07. Local inquiries reveals : 1. Doors of the premises are normally always locked. 2. No regular business activity here. 3.It belongs to Shri Pradeep Kumar Jindal_ as informed.
7.	M/s CMS Holdings Pvt. Ltd.	The building owned by P.K.Jindal/Office premises rented out to various companies/ caretaker faintly recalls such a company said to belong to PK Jindal existed a couple of years back.

8.	M/s Hajima Resorts Pvt Ltd	The premise was found locked. Inquiries reveal that: Occasionally Shri PK Jindal, or his staff come and open it. No regular business from the said premises.
9.	M/s Junoon Capital Services Pvt. Ltd.	Office premises of Shri PK Jindal with his chamber. Shri Laxman Singh Satyapal present at the time of visit. Sh. Jindal was not present.

These remarks reported by Inspector led the Assessing Officer to doubt the existence /identity of the aforesaid share applicants/lenders. The AO also took into account the enquiry report of the inspector made regarding the alleged directors of the aforesaid companies, which reads as under :

**“Smt Meera Mishra:**

*Smt. Meera Mishra, who is a Director in many of the companies floated by Shri PK Jindal, is working as his receptionist. She also originally hail from Agra, the native place of Shri PK Jindal. Her family resides in a Janta type of flat - just two rooms, No - K31/6, Model Town - II, Delhi with her father-in-law Shri Rajinder Mishra and mother-in-law, who in fact own the flat. Her husband Shri Anil Kumar is a driver of a three-wheeler goods carrier. The living standard of her family members is low do not befit the status that she holds as the Director of many companies whose transactions run in terms of lakhs and lakhs of rupees. Her Father- in - law Shri Rajinder Mishra confirmed that she gets only Rs 5000/- pm as her salary. Her two children study in government schools.*

**Shri Laxman Singh Satyapal:**

*Shri Laxman Singh Satyapal who is a Director in many of the companies floated by Shri PK Jindal, is also working as his assistant. He lives in a small rented house in B 113/14, Sant Nagar, Burari and his living conditions are too low for a Director. He is not a man of means to manage/ advance/invest such an huge amount.*

**Smt Madhavi Bhatnagar:**

*Smt Madhavi Bhatnagar, w/o Shri Abhinav Bhatnagar, No. F8/7, Model Town - II, Delhi one of the Directors of the companies floated by Shri PK Jindal is a mere housewife. As reported, She does not know anything about existence and*

*functioning of any of the companies. If any, then it would have been done by Shri PK Jindal, who is a neighbour and friend of her husband. She is only a name lender.*

**Shri Subodh Kumar Khandelwal and Seema Khandelwal:**

*Shri Subodh Kumar Khandelwal is one of the Directors in the companies and is also related to Shri PK Jindal. His wife Seema Khandelwal who is also Director as per records submitted confirmed that Shri Subodh Kumar Khandelwal works for Shri PK Jindal. She informed that she is a mere housewife and is unaware about the activities of the companies.”*

On the basis of these facts, which emerged from the enquiries, the AO observed that the said companies were not found functioning or doing any business activities from the given addresses and Sh. Pradeep Kumar Jindal is the only person to control and manage all the said companies. The directors are for namesake only and they are either employees or relative of Shri P.K. Jindal. The AO also observed that the aforesaid facts are supported by the statements of Shri P.K. Jindal made before the Addl. DIT (Inv.) on 15.04.2004 and again before ITO ward 2(4) on 10.12.2007 during the assessment proceedings of M/s. Bhagwan Krishna Investment Pvt. Ltd. and M/s. Beacon Sales Pvt. Ltd. wherein he has accepted that all above concerns are controlled by him for providing accommodation entries and no active business is carried out by the aforesaid companies. Thus, the AO was satisfied that the impugned transactions of share application money and unsecured loans were not genuine as all the companies from whom the assessee took share application

money/unsecured loans belong to Sh. Pradeep Kumar Jindal and have a business of providing accommodation entries. He, therefore, issued a show cause notice on 31.07.2007 which speaks as under :

"1. The Summons u/s 131 were issued to the parties from whom loans and share application money have been received during the year but the summonses have remained uncomplied with.

2. The companies from whom said alleged loans and share application money have been received during the year belongs to Sh. Pradeep Jindal R/o F 3/12, Model Town, Delhi as per the statement given by Sh. Jindal on 15.04.2004 during the investigation conducted by the Investigation Wing, Delhi (copy enclosed) and it was confessed by Sh. Jindal that all these companies are not doing any business but to provide accommodation entries.

3. .You are hereby given an opportunity to explain why the loans and share application raised during the year should not be treated as bogus and should not be added to your taxable income u/s 68 of the I.T. Act 1961."

In reply to show cause notice, the contention of the assessee had been that the companies are registered with concerned authorities; that they are PAN holders; that the transactions are through banking channels; that the statements of Sh. P.K. Jindal cannot be relied upon as he is neither Director/principal officer/employee of the share holder companies nor is it clear as to under what capacity he gave such statements and that the assessee be given an opportunity to cross-examine with Sh. Pradeep Jindal. The AO did

not find the reply satisfactory and rejected the same on the observations which are summarized under :

(i). The peripheral documents in the shape of PAN, so called acknowledgement of returns do not go to prove the identity and creditworthiness of the investors companies, particularly when the entities in question were not found to be existing on the given addresses in enquiries made on ground level and that none of the parties were produced nor was any evidence to substantiate the identities and capacity of the alleged investors to make the investment.

(ii). Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. The bank accounts of various entities show uniform pattern of transactions in that invariably the issue of cheques is immediately preceded by the deposits of equivalent amounts in the account either in cash or through cheque/transfer entries. Unless the transactions represented by the entries in the bank account are correlated with the business activities and the books of account of the said entity, the above pattern and the frequency of deposits and withdrawals at short intervals lends further credence to the fact of the account having been used only for the purpose of providing accommodation entries.

(iii). The key person of the said companies Sh. Pradeep Kumar Jindal confessed his control over the above companies providing accommodation entries to the beneficiaries, in his statements given before Investigation Wing as well as before ITO 2(4) in the cases of such two companies including M/s. Bhagwan Krishna Investment Pvt., from whom the assessee has also shown to have made share transactions.

(iv). Sh. Pradeep Kumar Jindal is a director in M/s. Akik Education Center Pvt. Ltd. and M/s. Gaurav Holdings Pvt. Ltd. and has signed the verification of returns of income for A.Y. 2005-06, which make the stand of assessee regarding challenge to capacity of Shri Jindal untenable.

(v). In response to assessee's request for cross examination with Shri Jindal, summons were issued to the assessee as well as Sh. Pradeep Jindal to appear on 17.12.2007, but none attended on the given date, which shows the assessee's disinterest to avail the opportunity of cross examination. Not only this, both the directors of the assessee company were summoned for personal deposition many times, but they did not appear in response thereto.

Finally, before making additions, the AO enquired into the bank accounts of the companies through Inspector and made observations on the cash flow charts of every company in question as under :

1. M/s Bhagwan Krishan Investment & Trading Co. Pvt Ltd (Share application money) of Rs 15,00,000/-

Name of the applicant	Date	Amount	Cheque & Bank details
M/s Bhagwan Krishan Investment & Trading Co. Pvt Ltd	03-03-05	15,00,000	Cheque No: 645703 of SBI, Roop Nagar, Delhi

**Flow chart of the cash of Rs 15 Lacs:**

Cash deposit of Rs 15 Lacs	on 03.03.05
↓	
M/s Rani Enterprises, CA No - 40264	on 03.03.05
↓	
M/s Bhagwan Krishan Investment & Trading Co. Pvt Ltd	on 03.03.05
↓	
M/s Jar Metal Industries Pvt Ltd	on 03.03.05 as share application Money & shown in its books of account.

On close examination of the bank statements, it has come to light that in the above instance, cash of Rs 15 Lacs was deposited into the bank account of M/s Rani Enterprises, CA No - 40264 on 03-03-05 in the State Bank of India, Roop Nagar Branch, Delhi. M/s Rani Enterprises then transferred this amount by issuing a cheque of Rs 15 Lac in favour of M/s Bhagwan Krishan Investment & Trading Co. Pvt Ltd. M/s Bhagwan Krishan Investment & Trading Co. Pvt Ltd in turn issued cheque No: 645703 of the same amount in favor of M/s Jar Metal Industries Pvt Ltd which is shown in its books of account as share application money received. All these transactions are completed within the same day and in the same branch of the bank.

**2. M/s. Anchal Buildcon Pvt. Ltd. (Share Appln. Money) of Rs.25,00,000/-.**

Name of the applicant	Date	Amount	Cheque & Bank details
M/s. Anchal Buildcon Pvt. Ltd.	31-03-2005	25,00,000	Cheque No: 061991 Andhra Bank, Model Town-II Delhi

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**Cash flow of Rs.25,00,000/- in Andhra Bank, Model Town, Delhi.**

Cash deposit of Rs.25 Lacs		on 30.03.05
↓		
M/s. CMS Holdings	Rs. 9 Lacs	
M/s. ASG Finlease	Rs.2 Lacs	
M/s. Jindal Construction	Rs.14 Lacs	
↓		
M/s. Anchal Buildcon		
↓		
Jar Metal Industries Pvt. Ltd.		on 30.03.05 as share application money received & shown in its books of account

In the above case, cash was deposited in Andhra Bank, Model Town II, Delhi on 30-03-2005 into the bank accounts of -

1. M/s CMS Holdings Rs 9 Lacs
2. M/s ASG Finlease Rs 2 Lacs
3. M/s Jindal Construction Rs 14 Lacs

And these companies in turn transferred the amount to the account of M/s Anchal Buildcon Pvt Ltd which finally issued cheque No.: 061991 of the same amount in favor of M/s Jar Metal Industries Pvt Ltd which is shown in its books of account as share application money received. All these transactions are also completed within a time span of two days and in the same branch of the bank.

**3. M/s Archit Finscrip Pvt Ltd (share application money)**

Details of the cheques of Rs 20 Lacs, Rs 25 Lacs & 50 Lacs:

Name of the applicant	Date	Amount	Cheque & Bank details
M/s. Archit Finscrip Pvt. Ltd.	04.03.2005	20,00,000	Cheque No: 539142 UBI, Mall Road, Delhi
	31.03.2005	25,00,000	Cheque No.628554 Indian Overseas Bank, Model Town III, Delhi
	31.03.2005	50,00,000	Cheque No.628554 Indian Overseas Bank, Model Town III, Delhi

Cash flow of Rs.20,00,000/-

Cash of Rs.4 Lacs & Cheque of Rs.16 Lacs deposited.



SB A/c of Shri Pradeep Kumar Jindal on 04.03.05



M/s. Archit Finscrip Pvt Ltd.  
Rs.20,00,000/- on 04.03.05

CA No.11307



M/s. Jar Metal Industries Pvt Ltd on 04.03.05 as share application money received & shown in its books of accounts.

Cash flow of Rs 25.00.000/-

Cash deposit of various amounts



M/s Jindal Construction Co. CA No : - 3957 on 30/31-03-05



M/s Archit Finscrip Pvt Ltd, CA No. : - 3960 Rs 25,00,000/- on 31-03-05



M/s Jar Metal Industries Pvt Ltd on 31-03-05 as share application money received & shown in its books of accounts

Cash flow of Rs.50,00,000/-

Cash deposit of various amounts



M/s. Jindal Construction Co. CA No. - 3957, on 30/31.03.05



M/s. Archit Finscrip Pvt Ltd., CA No.- 3960, Rs.50,00,000/- on 31.03.05



M/s. Jar Metal Industries Pvt Ltd on 31.03.05 as share application money received & shown in its books of accounts.

Cash of various amounts were deposited into the CA account No - 3957 which is in the name M/s Jindal Construction Co, 104-Mukand House, Commercial Complex, Azadpur on the 30th & 31<sup>st</sup> of March 2005. From these amounts deposited by way of cash, M/s Jindal Construction Co transferred separate amounts of Rs 25,00,000/- & Rs 50,00,000/- to the

accounts of M/s Archit Finscrip Pvt Ltd, CA No - 3969 and M/s Archit Fincap Pvt Ltd, CA No - 3960 respectively on 31st of March 2005.

M/s Archit Finscrip Pvt Ltd, in turn issued a bankers cheque No-628554 dated 31-3-2005 of an amount of Rs 25 Lakhs in favour of M/s Jar Metal Industries Pvt Ltd. M/s Archit Fincap Pvt Ltd also issued a bankers cheque No- 628601,dated 31-3-2005 of an amount of Rs 50 lakhs in favour of M/s Jar Metal Industries Pvt Ltd. These amounts are shown as share application money in the books of M/s Jar Metal Industries Pvt Ltd.

Cash of Rs 4 Lacs and cheque of Rs 16 Lacs were deposited into the SB a/c of Shri Pradeep Kumar Jindal in the UBI, Mall Road( Model Town), New Delhi. Shri PK Jindal in turn got it transferred to the CA No - 11307 of M/s Archit Finscrip Pvt Ltd. From the account of M/s Archit Finscrip Pvt Ltd, a cheque is issued in favor of M/s Jar Metal Industries Pvt Ltd, which is shown in its books of accounts as share application money.

*It is relevant to note that in the case of M/s Jindal Construction Co., the individual representing the concern as per the account opening form from the bank is Shri Pradeep Knmar jindal, the person who is behind all these operations. In the case of the other two companies i.e.: M/s Archit Fincap Pvt Ltd and M/s Archit Finscrip Pvt Ltd, it has been established that they belong to the group of companies floated by Shri PK Jindal for the purpose of providing entries.*

4. M/s Hajima Resorts Pvt Ltd (Unsecured Loan Loans ) of Rs 25 Lacs

Name & Address	Date	Amount	Cheque & Bank details
M/s. Hajima Resorts Pvt. Ltd.	25.11.2004	25,00,000	Cheque No. (894243) SBI Roop Nagar

**Flow chart of cash of Rs 25 Lacs:**

Cash deposit of Rs 25 Lacs	on 25.11.2004
↓	
M/s Rani Enterprises, CA No – 40264	on 25-11-2004
↓	
M/s Hajima Resorts Pvt Ltd CA No 40265	on 25-11-2004
↓	
M/s Jar Metal Industries Pvt Ltd received & shown in its books of accounts	on 25-11-2004 as loan

In the case of M/s Hajima Resorts Pvt Ltd, A/c No - 40265 with State Bank of India, Roop Nagar, Delhi, cash of Rs 25 Lakhs was deposited into the account of M/s Rani Enterprises, CA No - 40264 on 25-11-2004. This amount was transferred to the account of M/s Hajima Resorts Pvt Ltd by internal transfer in the same bank on the same day. Cheque was issued by M/s Hajima Resorts Pvt Ltd in favour of M/s Jar Metal Industries Pvt Ltd which was shown as loans received in the books of accounts of M/s Jar Metal Industries Pvt Ltd.

It will be relevant to note the fact that the authorised signatory in the case of M/s Rani Enterprises, CA No.- 40264, State Bank of India is Shri Laxman Singh Satyapal. Shri Laxman Singh Satyapal is Director in many companies floated by Shri PK Jindal, the man who controls all these entry operations.

**5. M/s At All Times Your Securities ( Unsecured Loan Loan ) of Rs 60 Lacs:**

Name & address	Date	Amount	Cheque & Bank Details
M/s At All Times Your Securities Pvt. Ltd.	02-02-2005	60,00,000	Cheque No:246322 Vijaya   Bank,Azadpur

**Flow of cash of Rs 60 Lacs**

Cash deposit of Rs 60 Lacs	on 02-02-2005
↓	
M/s Apex International Pvt Ltd, CA A/c No- 0031	on 02-02-2005
↓	
M/s At All Times Your Securities Pvt Ltd, CA A/c No: 0042	on 02-02-2005
↓	
M/s Jar Metal Industries Pvt Ltd.	on 02-02-2005 as loan received & shown in its books of accounts

Cash of Rs 60 lacs was deposited into the bank account of M/s Apex International Pvt Ltd, CA A/c No- 0031 in Vijaya Bank/Azadpur, Delhi on 02.02.05. As it is practiced in all such operations, this sum is again transferred to the account of M/s At All Times Your Securities Pvt Ltd, CA A/c No : 0042 by way of internal transfer. M/s At All Times Your Securities Pvt Ltd then gives this amount as loan to Ms Jar Metal Industries Pvt Ltd by way of cheque No : 246322 which appears in its books of accounts as loans received. All these transaction are completed on the same day and in the same branch of the bank.

**6. M/s Akik Education Centre P. Ltd ( Unsecured Loan Loans) of Rs 40 Lacs**

Name & address	Date	Amount	Cheque & Bank Details
M/s Akik Education Centre P. Ltd	03.02.2005	40,00,000	Cheque No:894438 SBI, Roop Nagar

**Cash flow of Rs 40,00,000/-**

Cash deposit of Rs 40 Lacs	on 03-02-2005
↓	
M/s Rani Enterprises, CA No - 40264,	
↓	
M/s Akik Education Centre Pvt Ltd	
↓	
M/s Jar Metal Industries Pvt Ltd	on 03-02-2005 as loan received & shown in its books of accounts

In the above case, cash of Rs 40 lakhs was deposited on 03-02-05 into the account of M/s Rani Enterprises, CA No - 40264, State Bank of India, Roop Nagar Br which was transferred to the account of M/s Akik Education Centre Pvt Ltd on the same day. M/s Akik Education Centre -Pvt. Ltd. in turn issued cheque No - 894438 for the same sum of Rs 40 Lakhs in favour of M/s Jar Metal Industries Pvt Ltd. which has appeared in its books of accounts as loans received on the same day. All the above accounts belong to the same branch of SBI.

**7. M/s Junoon Capital Services Pvt Ltd ( Unsecured Loan )**

Name & address	Date	Amount	Cheque & Bank Details
M/s. Junoon Capital Services Pvt. Ltd.	27.12.2004	50,00,000	Cheque No:246235 Vijaya Bank, Azadpur

**Cash flow of Rs 50,00,000/-**

Cash deposit of Rs 50 Lacs	27-12-2004
↓	
M/s. Apex International Pvt. Ltd.	CA No- 0031
↓	
M/s Junoon Capital Services Pvt Ltd.	CA No : 0041
↓	
M/s Jar Metal Industries Pvt Ltd	on 27-12-2004 as loan received & shown in its books of accounts.

In the above case, cash of Rs 50 lacs was deposited into the bank account of M/s Apex International Pvt Ltd, CA No- 0031 in Vijaya Bank, Azadpur, Delhi on 27-12-2004. This sum was again transferred to the account of M/s Junoon Capital Services Pvt Ltd, CA A/c No : 0041 by way of internal transfer. This amount is again transferred to the account of M/s Jar Metal Industries Pvt. Ltd by way of cheque No : 246325 which appears in its books of

accounts as loans received. All these transaction are completed on the same day and in the same branch of the bank.

**8. M/s CMS Holdings Pvt Ltd (Unsecured loans)**

Name & address	Date	Amount	Cheque & Bank Details
M/s. CMS Holdings Pvt. Ltd.	25.11.2004	25,00,000	Cheque No:246165 Andhra Bank Model Town, Delhi

*Verification to establish the authenticity of the above transaction from Andhra Bank, Model Town, Delhi has revealed that the cheque does not pertain to the Andhra Bank. The series of cheque numbers of the bank begin from 62325 onwards whereas the present cheque under consideration bears number 246165. Also the other reason is that Andhra Bank in Model Town was only opened on 30-12-2004 whereas the cheque bears a date i.e. : 25-11-2004 which is prior to the date of opening of the branch.*

From the above revealed facts, what it becomes evident that the assessee company has deliberately attempted to mislead the department by trying to give false evidences in support of its false claims of the amount of Rs 25 Lakhs as unsecured loans.

**9. M/s Gaurav Holdings (P) Ltd**

Name & address	Date	Amount	Cheque & Bank Details
M/s Gaurav Holdings (P) Ltd	25.11.2004	15,00,000	Cheque No:606643 Vijaya Bank, Azadpur, Delhi

Inquiries conducted to establish the authenticity of the above-mentioned transaction from the Bank revealed that on the particular date i.e. 25-11-2004, there is no transaction related to the above said company. Thus, the claim of the assessee about the genuineness of the transaction is bogus.”

On the basis of above enquiries, inspector’s report, statements of Shri Pradeep Kumar Jindal, the key person controlling the above companies, non-cooperation on the part of the assessee and the directors of the companies and other attending facts of the case, the AO came to the conclusion that the

assessee handed over cash to Sh. Pradeep Kumar Jindal, cash was deposited in the bank accounts of various such companies and then Sh. Jindal routed these amounts in the accounts of one or two other such companies floated by him having bank accounts in the same branch and finally the so called companies issued cheques to the assessee. He, therefore, after relying upon plenty of decisions of higher courts made additions towards unexplained share application money, unsecured loan, commission and interest paid on bogus loans, as noted above in this order.

3. The assessee challenged the assessment order in appeal before the Id. CIT(A), where the assessee did not appear and the appeal of the assessee was dismissed vide order dated 26.11.2008, thereby confirming the assessment order. The assessee challenged that order of Id. CIT(A) before the Tribunal, where the Tribunal vide order dated 28.05.2009 in 1081/Del./2009, remanded the case to the Id. CIT(A) for deciding the appeal afresh after giving opportunity of hearing to the assessee. In the second round, the Id. CIT(A) allowed the appeal of the assessee vide impugned order. Being aggrieved, the Revenue is in appeal before the Tribunal.

4. During the course of hearing, the ld. DR reiterated the contents of the assessment order and submitted that in presence of such deep enquiries made by the AO regarding each and every companies and transactions, which were found fake, the ld. CIT(A) was not justified in deleting the impugned additions. It was submitted that none of the ingredients of section 68 stood satisfied by the assessee and therefore, the order of the AO deserves to be sustained.

5. None is present on behalf of the assessee before us despite proper service of notice through department on new address of the assessee as well as on both the directors of assessee company. No adjournment application is available on record from the side of assessee.

6. Having considered the submissions of the ld. DR, the contents of the orders of authorities below, the enquiries made by the AO with respect to existence of share applicants/lenders and the transactions made therewith, we find that the ld. CIT(A) is not justified in deleting the impugned additions. The ld. CIT(A) in the impugned order has concluded that the share applicants/lenders were genuine existing companies, but has failed to make any comments on the spot enquiries got made by the AO and its result. A perusal of the assessment order reveals that the AO has rebutted all the documentary evidences furnished by assessee before him. It is worthwhile to

note that the non-cooperative conduct of the assessee in the investigation, examination and assessment proceedings is well depicted from the assessment order itself, inasmuch as the assessee has never bothered to respond even the summons issued to the directors of the assessee company as also the directors / principal officers of the alleged share applicants/lenders. The assessee was given opportunity to cross examine Shri P.K. Jindal on its request by issuing the summons to the assessee as well as Shri P.K. Jindal, but none of them attended as is conspicuous from the assessment order as well as the letter of ITO 4(2) dated 15.05.12 addressed to CIT/DR placed before us in support. Not only this, the assessee has remained absent before the Id. CIT(A) in the first round of appellate proceedings and none has appeared before us also in the present proceedings. Such non-cooperative attitude of the assessee speaks much against him. Once the assessee received certain amounts from share applicants and they did not attend the investigation proceedings despite summons u/s. 131 and the assessee also did not cooperate with the department, the Assessing Officer was justified in taking adverse view against the assessee. The Id. CIT(A) has failed to consider this aspect of the case in right perspective.

7. A perusal of the impugned order reveals that the Id. CIT(A) while holding that all the share applicants were existing companies, has relied on the evidences filed before him in the shape of PAN Card, bank statements of share holders, assessment records/acknowledgements of returns, confirmations, share application forms received from the share applicants etc. The Id. CIT(A), however, utterly failed to consider the spot enquiries and their results reported by the Inspector, as reproduced in the tabulated form in the assessment order, which unequivocally speaks that none of the share holders was found at the given address, no business activities were found there and most of the premises were found belonging to or controlled by Shri Pradeep Kumar Jindal. The result of spot enquiries got made by the AO also stood corroborated by statements of Shri Pradeep Kumar Jindal given before the Investigation Wing as well as ITO 2(4) in the cases of two of such companies wherein he has confessed that all these companies (from whom the assessee has received the amounts as share application money and unsecured loans) are controlled by him for providing accommodation entries to various beneficiaries. Besides this, the enquiries were also made with respect to the directors of various companies from whom the assessee received money in the garb of share application money or unsecured loan, when it was categorically reported that the directors, as narrated above, of the share applicants/lenders

companies were either the employees of Shri Pradeep Kumar Jindal or his relatives. Their living standard was also not found befitting to the status of directors in multiple companies, as noted by the AO on the basis of such enquiries and hence, the AO had good reason to doubt the creditworthiness of the said companies to extend such a huge money to the assessee.

8. As far as the documentary evidence filed by the assessee before the authorities below, we find that in the present scenario, such documentary evidence cannot be relied upon which did not render any help to cross verify the impugned transactions on the ground level enquiry made by the AO. It is notable that unless the transactions represented by the entries in the bank accounts are co-related with the business activities, it cannot be said that the assessee has explained the source of credits or the transactions to be genuine. Our this view stands fortified by the decision of Hon'ble Jurisdictional High Court in the case CIT vs. N. Tarika Properties Investment Pvt. Ltd. (2014) 264 CTR 472(Del.), where in the identical facts and circumstances, the Hon'ble court after considering the decision of Hon'ble Supreme Court in the case of Lovely Export Pvt. Ltd., has held as under :

*26. We have further held that the Court or Tribunal should be convinced about the identity, creditworthiness and genuineness of the transactions. The onus to prove the three factum is on the Assessee as the facts are within the personal knowledge of the Assessee. Mere production of incorporation details,*

*PAN Numbers or income tax returns may not be sufficient when surrounding and attending facts predicate a cover up. The production of incorporation details, PAN numbers or income tax details may indicate towards completion of paper work or documentation but genuineness, creditworthiness and identity of investment and the investors are deeper and obtrusive than mere completion of paper work or documentation.*

*27. As we have held that PAN Numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertainment of the active nature of business activity. PAN Number is allotted as a facility to revenue to keep track of transactions. The PAN Number cannot be blindly and without consideration of surrounding circumstances treated as sufficiently disclosing the identity of the individual. The mere filing of share application is not enough as the said application is not an unimpeachable document and does not on its own prove the genuineness or authenticity of the transaction. It can at best be treated as a corroborative document. Since the share application form is not an unimpeachable document, it cannot on its own be treated as sufficient for cross-verification of the transaction. We have already held that that mere production of PAN Number or assessment particulars does not establish the identity of a person. The identification of a person includes the place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/individual in the eyes of public.*

*29. The bank statements of the investors furnished by the Assessee during the original assessment proceedings were fabricated and misleading. They omitted to show that there was deposit of cash immediately prior to issuance of cheques for preparation of pay orders or DDs in favour of the Assessee regarding subscription of its share capital. False evidence had been adduced by the Assessee during the original proceedings to get undue advantage of giving colour of genuineness to bogus entries through the bank accounts. The deposits were mostly by cash. With regard to the share subscribed by M/s. Bhawani Engineering Pvt. Ltd. and M/s. SJ Hosiery Pvt. Ltd., the Assessing Officer has noticed that the pay order/DDs in respect of both the companies were made out of the bank account of M/s. Bhawani Engineering Pvt. Ltd. The AO has held that the transactions in the bank accounts showed that there was a corresponding withdrawal of the amount in cash on the very same day of the crediting of cheques and there was immediate issuance of cheques/DDs on deposit of cash.*

*30. The Judgment in the case of M/S GANGESHWARI METALS PVT. LTD. (SUPRA), does not advance the case of the respondent inasmuch as in the said*

*judgment it has been held that there are two types of cases, One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The High Court held that case to be falling in the second category. In the present case the assessing officer has not sat back with folded hands but has conducted the enquiry. He has requisitioned and examined the bank accounts and found discrepancy in the bank statement filed by the Assessee at the time of the original assessment and the ones requisitioned. The said judgment is clearly not applicable in the facts of the present case.*

*31. We are of the considered opinion that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction. The surrounding circumstances and inquiries made by the Assessing Officer were significant but the said finding though not disturbed have been ignored. Further the Tribunal has failed to take holistic view and has relied upon neutral and general evidence without noticing other evidence.”*

The aforesaid observations of of Hon’ble jurisdictional High Court are squarely applicable to the facts and circumstances of the case in hand. In the instant case, the Assessing Officer has made proper probe in the matter and has narrated the modus operandi of providing accommodation entries and has corroborated the same by mentioning the cash flow chart derived from bank statements of all the companies examined by AO. We have no good reason not to place credence on the same.

9. The Id. CIT(A) appears to have accepted the contention of the assessee that the enquiry report or the statements of Sh. Pradeep Kumar Jindal have no evidentiary value, as the same were not confronted to the assessee. However,

the Id. CIT(A) has failed to consider that the assessee was summoned time and again, but he did not respond. Secondly, the enquiry report of the inspector as well as conclusions derived there from by AO are well narrated in the assessment order and the assessee has never tried to rebut the remarks of the inspector reported through enquiry report, either before the Id. CIT(A) or before Tribunal. Therefore, the only contention of such evidences having no evidentiary value, cannot be accepted to ignore the ground reality. Accordingly, the assessee has failed to discharge the initial onus to prove the identity and creditworthiness of the creditors and genuineness of the transaction as per section 68 of the Act. Thus, in view of the surrounding circumstances and enquiries made by AO, we are of the opinion that the impugned transactions of share capital and unsecured loan were camouflage and therefore, laying our hands on the decision in the case of McDowell & Co. Ltd. v. CTO, 154 ITR 148 (SC), we set aside the order of the Id. CIT(A) and restore the assessment order. Accordingly, the appeal of the Revenue for A.Y. 2005-06 is allowed.

10. Since the facts and circumstances involved in appeal for A.Y. 2006-07 are same, therefore, our conclusions reached in appeal for A.Y. 2005-06 shall

equally apply to this appeal also. Accordingly, the Revenue's appeal for A.Y. 2006-07 also stands allowed.

11. In the result, both the appeals of the Revenue are allowed.

Order pronounced in the open court on 22.04.2016.

Ss/-

**(DIVA SINGH)**  
Judicial Member

Sd/-

**(L.P. SAHU)**  
Accountant Member

Dated : 22.04.2016

\*aks/-

*Copy of order forwarded to:*

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*