

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
ITA No. 2472/Del/2014
(Assessment Year: 2008-09)**

ACIT, Central Circle-09, New Delhi	Vs.	Tirupati Infra Projects Pvt. Ltd, Plot-D, Distt. Centre, Paschim Vihar, New Delhi PAN: AADCT5825H
(Appellant)		(Respondent)

CO No. 07/Del/2015
(Assessment Year: 2008-09)

Tirupati Infra Projects Pvt. Ltd, Plot- D, Distt. Centre, Paschim Vihar, New Delhi PAN:AADCT5825H	Vs.	ACIT, Central Circle-09, New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. Sandeep Jain, CIT DR
Revenue by:	Sh. PC Yadav, Adv
Date of Hearing	03/11/2016
Date of pronouncement	27/01/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. The revenue has filed an appeal against the order dated 24.01.2014 of the Id CIT(A)-XXXII, New Delhi for the Assessment Year 2008-09, wherein he has deleted the addition of Rs. 10,68,00,000/- on account of unexplained cash credit and also deleted the addition of Rs 1.50 crore with respect to unsecured loan on account of M/s Index Securities & Research Pvt. Ltd. the order of the Id CIT(A) is also challenged by the assessee and cross objection wherein ground raised which are supportive in nature. Subsequently, additional ground of cross objection raised by the assessee contains that in absence of any search being carried out on the assessee proceeding initiated u/s 153A of the assessment order framed in consequence thereof is bad in law. The

additional grounds further raised is in absence of any incriminating material found during the course of search no addition can be made u/s 153A of the Income Tax Act, 1961.

2. The ground of appeal raised by the revenue are as under:-

“1. That the Commissioner of Income tax (appeals) erred in law and on facts of the case in deleting the addition of Rs. 106800000/- made by the AO on account of unexplained cash credit.

2. That the commissioner of income tax (appeals) erred in law and on facts of the case in deleting the addition of Rs. 15000000/- made by AO on account of unsecured loan from M/s Index Securities & Research Pvt. Ltd.

3. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b) The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. The ground of cross objection are as under:-

“1. That it be held that the ld Commissioner of Income Tax (appeals) is justified in deleting the addition of Rs. 106800000/- made by the ITO on account of un explained cash deposits.

2. That it be held that the ld Commissioner of Income Tax (appeals) is justified in deleting the addition of Rs. 15000000/- made on account of unsecured loans from M/s Index Securities & Research Pvt. Ltd.,

3. That it be held that the order of the ld CIT(A) is tenable in law and on facts of the case for the reasons that the respondent has furnished all basic information to prove nature of transaction, genuineness of transaction and credit worthiness of subscribers of share application and lenders.”

4. Assessee has raised the following additional grounds of appeal:-

“1. The appellant has filed cross objection in the appeal filed by the ACIT, Central Circle 9, New Delhi in 7/Del/ 2015 for the assessment year 2008-09.

2. In the said cross objection the assessee has taken four grounds of cross objection.

3. In the case of the assessee, order has been passed u/s 153A/ 143(3) of the Act and the addition has been made despite the fact that no incriminating material was found during the course of search.

4. *However, the assessee while filing cross objections has inadvertently left to take certain legal grounds which goes to the root of the issue before your honours.*
- 5(i) *Further post filing of the cross objections the jurisdictional Delhi High Court has delivered a judgment in the case of CIT vs. Kabul Chawla in 380 ITR 173 (Del) whereby it has been held no addition can be made in the absence of any incriminating material found during the course of search.*
- (iii) *That the above judgment of the jurisdictional Delhi High Court will be squarely applicable to the case of the assessee.*
6. *Accordingly the assessee wants to raise the following additional grounds of cross objection before your honour:*

Additional grounds

5. *On the facts and circumstances of the case, in the absence of any search being carried on the assessee, the proceedings initiated under section 153A and the assessment order framed in consequence thereto is bad in law.*
 6. *Without prejudice to the above, on the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that in the absence of any incriminating material belonging to the assessee being found during the search no addition can be made in assessment framed under section 153A of the Act.”*
5. The Id AR submitted that as the ground of cross objection are legal in nature and does not require any further investigation of facts , therefore same may be adjudicated. The Id DR objected that the assessee has failed to justify the reason that for which these were not raised earlier.
 6. We have carefully considered the rival contention for admission of additional ground of cross objection. The additional grounds of cross objection is legal in nature and does not require any further facts to be brought on record, we admit the additional grounds in the interest of justice.
 7. Now we first come to additional ground raised by the assessee wherein it is submitted that no assessment u/s 153A of the Act can be made on the assessee as there is no search and further no incriminating material was found with respect to addition made by the AO.

8. The briefly stated the facts of the case is that the assessee company is engaged in the business of real estate and filed its return of income on 30th September 2008 declared total income of Rs. 233330/-. On 14.09.2010 search and seizure operation was taken in case of the assessee and group concerns and notice u/s 153A was issued on 18.01.2012. In response to that notice the assessee submitted that return of income filed originally may be treated as return of income in pursuance to notice u/s 153A of the Act. During the course of assessment proceedings it was noted by the AO that statement of Shri Jagmohan was taken during the course of search. Sh. Jagmohan surrendered a sum of Rs. 15 crore out of which Rs. 1 crore was covered under the head of jewellery and Rs. 14 crores was on account of other infirmities. Pre search enquiries resulted that companies from whom the loans were taken by the assessee were Kolkata Based company and whose existence was in question, therefore, the ld AO made addition Rs. 10.68 crore as unexplained cash credit u/s 68 of the Act. Further the ground raised by the assessee is that no addition can be made u/s 153A of the Act without any incriminating material unearthed during the course of search. Above issue has been decided by the ld CIT(A) vide para No. 9 at page 18 to 26 of his appellate order. On this ground of cross objection as it is jurisdictional ground the ld AR submitted that no addition can be made in the hands of the assessee in absence of any incriminating material found during the course of search. He submitted that even the statement of Sh. Jagmohan Gupta which does not reveal that surrender is made on account of investment made by these companies in appellant company with respect to the above cash credit. He therefore stated that there is no incriminating material found during the course of assessment proceedings and hence no addition can be made in the hands of the assessee. He relied upon the order of Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla 380 ITR 573(Del). He further referred to the

decision to the case of Kureel Paper Mills reported in 388 ITR 571 of the Hon'ble Delhi High Court.

9. The Id DR objecting to the submission of the assessee that no incriminating material was found during the course of search. Firstly stated that there is no requirement of any incriminating material for making an addition u/s 153A of the Act and he further stated that independent enquiry conducted by the Id AO also established that the loan taken by the company of Rs. 10.68 crore as bogus. He further submitted that not only during the course of search but prior to the date of search also there was a report dated 19.03.2008 with the AO about the companies being bogus in nature who advanced unsecured loan to the appellant.
10. We have carefully considered the rival contentions. We have also perused the decision of the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla 388 ITR 573 wherein in para No. 37 it is held as under:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

11. As the assessee has already filed return of income within the statutory time limit in issue of notice u/s 143(2) of the Act has also elapsed on 30.09.2009 therefore the assessment was said to be not pending as on the date of search on 14.09.2010. Therefore, in view of this any addition that is required to be made in the hands of the assessee has to be based on the incriminating material found during the course of search. The claim of the assessee is that there is no incriminating material. We reject the above contention of the assessee and state that statement of disclosure made on unaccounted income itself is an incriminating material which supports revenue from making further enquiry into the affairs of the person searched. In the present case the statement of the director of the company Mr. Jagmohan Gupta was recorded on oath and question were asked to him about unsecured loans. The bank account of Axis bank was also shown to him where the several credits of the investor companies were found. the Director of the company could not give proper replies to these questions about the nature of the funds received. When the specific questions were asked about the credits the assessee submitted that adequate disclosure was made during the course of search by the director which covers all the infirmities and assessee requested to not to make further addition on account of these loans. Therefore it is apparent from the statement of the director and from the submission of the assessee during assessment proceedings, it is apparent that disclosure was also

made on account of these loans. In the present case t firstly there was difference in the balance sheet filed by the assessee with The Registrar of Companies and filed with the return of income. Secondly sums were found credited in the bank account of assessee with Axis bank from all these investor companies, which were not explained by the assessee, and subsequently the surrender was made in assessment proceedings, which were confirmed by the assessee during the assessment proceedings. In the present case Sh. Jagmohan Gupta has made a categorical statement for surrendering a sum of Rs. 15 crores during the course of search on Jagat Group of companies where the assessee is also one of the members. Furthermore, the surrender is also corroborated by the statement of Shri Jagmohan Gupta on 19.03.2013 was confronted with itself in balance sheet of the appelland company which is submitted by the assessee along with the return of income and downloaded from the ROC site. The ld AO confronted about the share application money of this company with Axis bank account of the assessee where sums are found credited to which the director Sh. Jagmohan replies as under:-

“Q No.3. I am showing you two balance/ sheets for Assessment Year 2008-09 of TIPL, one submitted by your company with the return of income filed and other downloaded from the ROC site. There are difference in the heads of share application money and unsecured loans. Please comment.

Ans.: This may be a clerical mistake, but the total is same. I will furnish my explanation tomorrow after verifying the records.

Q No. 4 I am showing you the bank statement in Axis Bank, Daryaganj, Delhi A/c. No. 27901020005890, of TIPL for FY 2007-08. There are various credit entries Rs. 2.00 crores on 27.12.2007 from M/s. Dressier

Commodities, M/s. Galaxy Tie, M/s. Jagran Merchant, Rs. 2.71 crores on 31.12.2007 from M/s. Iskon Impex, M/s. Taral Vincom, M/s. Chandimata Mint P. Ltd M/s. Rasika Garments P. Ltd M/s. Khushboo Bearing P. Ltd., M/s. Columbia Granities P. Ltd., and Rs. 97 lakhs on 01.01.2008 from M/s. Taral, and M/s. chandimata. Please explain these credit entries on what account were these amounts received, and why these are not reflected in your b/sheet as on 31.03.2008

Ans: These amounts were received from M/s. Bharat Buildwell Pvt. Ltd for business purposes. I shall furnish the details and b/sheet of M/s. Bharat Buildwell Pvt. Ltd. tomorrow.”

12. Therefore there are incriminating material during search in the form of unreconciled balance sheets, entries remaining unexplained in the Axis bank 's bank statement coupled with the statement of the director of the company offering disclosure which is further being confirmed during the course of assessment proceedings. Therefore we are not in agreement with the assessee that no incriminating material was found by revenue during the course of search. Therefore in this case the statement of the director of the company was further corroborated by wrong return to the income tax department and Ministry of Corporate Affairs and unexplained entries in the bank account for which assessee's director could not explain coupled with the report of the investigation wing with respect to investor companies. In view of the above facts we are of the view that once the assessee itself has accepted that there are unaccounted income which covers any specified entries which may open up Pandora's box and then it cannot be contended that no incriminating material was found during the course of search. Further the order u/s 153A has also been correctly made by ld AO

in view of finding of CIT (A) that search was conducted on premises of the assessee. In views of this we dismiss the cross objection of the assessee.

13. Now we come to the appeal of the revenue in ITA No. 2472/Del/2014, wherein in the first ground addition of deletion of Rs. 10.68 crores on account of unexplained cash credit is challenged. The assessee has received the above amount from 13 companies, which was deposited in Axis Bank Account of the assessee. The Id Assessing Officer made the above addition with respect to all the companies as according to him the assessee did not disclose the above amount and according to him the above companies are based out of Kolkata and their existence are in question. He was further of the view that in case of some other concerns these companies were the investor and summons issued to them were not complied as they were not found existing at their given address. Therefore based on the report of investigation wing in some other concern, he made the addition. Id CIT(A) deleted the above addition after obtaining remand report from the Id. Ao. Therefore revenue is in appeal.
14. The Id DR extensively read the order of the Id Assessing Officer and relied upon that. He also submitted that the parties do not exist at all.
15. The Id AR relied upon the para No. 13 of the Id CIT(A)' order, which has extensively dealt with the above addition.
16. We have carefully considered the rival contentions. The Id first appellate authority has delete the addition wherein he noted that out of the above 13 parties which are located at Kolkata that enquiry letter were issued u/s 133 (6) of the Act to six person only and all of them on 11.02.2013 and 18.03.2013 submitted the information about their annual returns filed with the tax authorities, their bank statement and their annual accounts. The Id first appellate authority also noted that this information received by the Assessing Officer remained

uncontroverted as well as note investigated. The Id CIT(A) further also noted that the flow of funds from the investor companies to the assessee. It was further stated that there is no report available pertaining to the other assessee on whom the Assessing Officer relied very heavily. He dealt with the whole issue extensively as under:-

“13. I have considered the written submissions and the case laws relied upon by the appellant. I have also gone through the contents of the assessment order dated 28.3.2013 and also perused the assessment record and decided the issue on the merit. In the course of the assessment proceedings, the Assessing Officer observed that the appellant company obtained certain amounts as unsecured loans from Kolkata based companies from the following body corporates which are extracted below:

<i>1. M/s AKP Tieup P. Ltd.</i>	<i>50,00,000/-</i>
<i>2. M/s Chandimata Management P. Ltd.</i>	<i>15000000/-</i>
<i>3. M/s Columbia Granites P. Ltd.</i>	<i>2500000/-</i>
<i>4. M/s Drossier Commodities P. Ltd.</i>	<i>5500000/-</i>
<i>5. M/s Galaxy Tieup P. Ltd.</i>	<i>16000000/-</i>
<i>6. M/s Isko n Imp ex P. L td.</i>	<i>1500000/-</i>
<i>7. M/s.Jagran Merchant P. Ltd.</i>	<i>3500000/-</i>
<i>8. M/s. Kanupriya Commercial P. Ltd.</i>	<i>12500000</i>
<i>9. M/s Khushboo Bearing P. Ltd.</i>	<i>2000000/-</i>
<i>10. M/s Paridhi Finvest P. Ltd.</i>	<i>7500000/-</i>
<i>11. M/s Three C Universal Developers P. Ltd.</i>	<i>20000000/-</i>
<i>12. M/s Rasika Garments P. Ltd.</i>	<i>6000000/-</i>
<i>13. M/s Taral Vincom P. Ltd.</i>	<i><u>9800000/-</u></i>

106800000/-

13.1 The above amounts were found credited in the Axis Bank, Daryaganj, Delhi in the account no. 279010200005890 pertaining to the appellant during the period 14.11.2007 to 31.03.2008. A statement on oath was recorded on 19.3.2013 of Sh, Jagmohan Gupta. In the statement, Sh, Jagmohan Gupta admitted that the amounts were received from M/s. Bharat Buildwell Pvt. Ltd. and that he would furnish the details the next day. Besides, this, Sh. Jagmohan Gupta also filed a letter dated 25.03.2013, where it was re-iterated, that in the statement recorded u/s 132(4) at the time of search, that he surrendered an amount of Rs. 15,00,00,000/-, out of which Rs. 1 cr. was under the head jewellery for the year 2010-11 and the balance Rs. 14 cr. was surrendered for the financial year 2010-11 in his individual hands. However out of Rs. 14 cr. no surrender was made with year wise breakup. As such there was no specific surrender made for the year under consideration on behalf of any related persons or companies.

13.1.2. On perusal of the assessment record, I find that in the course of the assessment proceedings, the Assessing Officer issued summons to 22 parties u/s 133(6) which are based in Delhi and Kolkata. Out of the 13 parties located in Kolkata, summons u/s 133(6) were issued to the following 6 persons and no summons were issued to the balance 7 persons.

13.1.3. Vide these summons u/s 133(6), dated 11.02.2013 the 18.03.2013 following information was called for by the Assessing Officer.

- “1. Copy of the bank statement from where payment was made.
2. Copy of the Audited Balance Sheet and profit & loss statement/Audit report for 2008-09.
3. Copy of the ledger of M/s Tirupati Infra Projects Pvt. Ltd. as appearing in your books of accounts for the relevant year.
4. Copy of the PAN Card AND Income Tax Return acknowledgment for the relevant year.
5. Source of investment”

13.1.4. In response to the above summons issued on various dated u/s 133(6), the above mentioned 6 companies which are based in Kolkata filed the following:

- 1) Copy of the acknowledgment of the ITR filed for the assessment year 2008-09 showing the PAN no., address, status, jurisdiction and date of filing the return.
- 2) Copy of the bank statement of M/s. Axis Bank and Bank of Rajasthan, Kolkata for a specific period along with the A/c no.
- 3) Copy of the audit report along with profit and loss account and balance sheet for the year under consideration.
- 4) Copy of the PAN Card.

13.1.5. It is pertinent to mention here, that the Assessing Officer did not mention a word with regard to the enquiry made u/s 133(6) of the I T Act 1961 in his order. On the basis of the information furnished by the AR of the appellant, no further enquiry or investigation was undertaken by the Assessing

Officer bringing evidence on record contrary to that which was furnished by the appellant. In the submissions, made u/s 133(6) the above parties stated that the amount was given to M/s. Tirupati Infra-Projects Pvt. Ltd. i.e. the appellant through M/s Bharat Buildwell Pvt. Ltd. On perusal of the assessment record it is seen that in the course of the assessment proceedings vide letter dated 22.03.2013 the appellant stated as under:

"We are submitting herewith the confirmations from M/s. Bharat Buildwell Pvt. Ltd. for the amount advanced for allotment of shares. The said amount has been paid by the company from the amount received from various companies as asked by you. M/s Bharat Buildwell Pvt Ltd. is a regular income tax assessee and duly filed its income tax return. The copy of the ledger account and copy of balance sheet for assessment year 2008-09 is enclosed."

However on perusal of the bank statements, of the above 6 Kolkata parties submitted in the course of the assessment proceedings, I find that money was transferred through their respective accounts in Kolkata directly to the appellant based in Delhi on 27.12.2007 and 31.12.2007. Therefore the submission made by the appellant as well as the above various parties that money was given to the appellant through M/s. Buildwell Pvt. Ltd. is incorrect and is not supported by any corroborative evidence.

13.1.6. In order to substantiate my view point, the following facts are brought on record in a tabular form to show the flow of money directly from the

Kolkata based companies to the appellant and not through M/s. Bharat Buildwell Pvt. Ltd. as claimed by the appellant.

<i>S, No.</i>	<i>Name of the Company</i>	<i>Name of the Bank</i>	<i>Date of Withdrawal</i>	<i>Amount</i>	<i>To Whom</i>
<i>1.</i>	<i>M/s. Taral Vincom Pvt. Ltd.</i>		<i>31.12.2007</i>	<i>75,00,000/-</i>	<i>M/s. Tirupati Infra Projects Pvt. Ltd. Delhi</i>
<i>2.</i>	<i>Kanupriya Commercial Pvt. Ltd.</i>	<i>Bank of Rajasthan Kolkata Strand Road Kolkata</i>	<i>31.12.2007 - do -</i>	<i>21,00,000/- 22,00,000/- - 80,00,000/- - 45,00,000/- -</i>	<i>M/s. Tirupati Infra Projects Pvt. Ltd. Delhi</i>
<i>3.</i>	<i>Jagran Merchants (P) Ltd.</i>	<i>Axis Bank Shyam Bazaar</i>	<i>31.12.2007</i>	<i>3,50,000/-</i>	<i>M/s. Tirupati Infra</i>

		<i>Kolkata</i>			<i>Projects Pvt. Ltd. Delhi</i>
4.	<i>Dressier Commodities Pvt. Ltd.</i>	<i>Axis Bank Shyam Bazaar Kolkata</i>	<i>27.12.200 7 - -do -</i>	<i>30,00,000/ - 25,00,000/ -</i>	<i>M/s. Tirupati Infra Projects Pvt. Ltd. Delhi</i>
5.	<i>AKP Tie-up Pvt. Ltd.</i>	<i>Axis Bank Shyam Bazaar Kolkata</i>	<i>31.12.200 7</i>	<i>90,00,000/ -</i>	<i>M/s. Tirupati Infra Projects Pvt. Ltd. Delhi</i>
6.	<i>Khusaboo Bearing Pvt. Ltd.</i>	<i>Axis Bank Shyam Bazaar Kolkata</i>	<i>31.12.200 7</i>	<i>90,00,000/ -</i>	<i>M/s. Tirupati Infra Projects Pvt. Ltd. Delhi</i>

In view of the above finding, such an attempt by the appellant to state that share capital was subscribed by M/s Bharat Buildwell Pvt. Ltd. is misleading to portray that the appellant did not know these companies based in Kolkata

but M/s. Bharat Buildwell Pvt. Ltd. knew the source from where it received such amounts. The share capital received from M/s Bharat Buildwell Pvt. Ltd. is a separate issue and is not related to the unsecured loans taken by the appellant from these companies, as there is a direct transfer of funds through the banking channels from them to the appellant. Even though substantial information was provided by the appellant, there was no effort on the Assessing Officer to conduct further enquiries like the directors of these companies, nature of business activities, details of share holders, purpose of the appellant seeking these unsecured loans, relation between the appellant company based in Delhi and those which are based in Kolkata, where utilized, whether the same returned or not, etc. Without bringing any material on record to substantiate his findings, the Assessing Officer simply made an addition of Rs. 10.80 cr on the ground that these companies were Kolkata based.

13.1.7 In the assessment order dated 28.3.2013, the Assessing Officer stated that the existence of the above mentioned parties (Kolkata based) were in question. This inference was drawn by him in the appellant's case based on the enquiries conducted by the DDIT (Inv) Unit-III (4) Kolkata in the case of the another company namely M/s. Divine Infra Con Pvt. Ltd. It was observed by the Assessing Officer that the names of the companies mentioned in the enquiry report of M/s Divine Infracon are common with that of the ones in the appellant's case. The Assessing Officer stated that summons were issued to these companies and they remained unanswered and were found to be non-existent at their given address and therefore treated the amounts received by

the appellant as bogus and made an addition in the hands of the appellant. Even without bringing any evidence on record for making such addition-

- 1) *There is no report pertaining to M/s. Divine Infracon on record on the basis of which the Assessing Officer inferred a warranty for addition.*
- 2) *The AO did not bring on record the names of those companies which were found by him to be common in the case of the appellant as well as in the case of M/s Divine Infracon.*
- 3) *Other than the names of the companies being common, no specific findings were given by the AO pertaining to these companies which led him make an addition, despite of sufficient material on record.*
- 4) *The AO did not bring on record as to which company's existence was in question as few companies which are based in Kolkata responded to his summons issued u/s 133(6) and furnished details as called for by the AO. In such cases, It was the duty of the AO to share holders, purpose of the appellant seeking these unsecured loans, relation between the appellant company based in Delhi and those which are based in Kolkata, where utilized, whether the same returned or not, etc. Without bringing any material on record to substantiate his findings, the Assessing Officer simply made an addition of Rs. 10.80 cr on the ground that these companies were Kolkata based.*

13.1.7 In the assessment order dated 28.3.2013, the Assessing Officer stated that the existence of the above mentioned parties (Kolkata based) were in question. This inference was drawn by him in the appellant's case based on the enquiries conducted by the DDIT (Inv) Unit-III (4) Kolkata in the case of the another company namely M/s. Divine Infra Con Pvt. Ltd. It was observed by the Assessing Officer that the names of the companies mentioned in the enquiry report of M/s Divine Infracon are common with that of the ones in the appellant's case. The Assessing Officer stated that summons were issued to these companies and they remained unanswered and were found to be non-existent at their given address and therefore treated the amounts received by the appellant as bogus and made an addition in the hands of the appellant. Even without bringing any evidence on record for making such addition-

- 1) There is no report pertaining to M/s. Divine Infracon on record on the basis of which the Assessing Officer inferred a warranty for addition.
- 2) The AO did not bring on record the names of those companies which were found by him to be common in the case of the appellant as well as in the case of M/s Divine Infracon.
- 3) Other than the names of the companies being common, no specific findings were given by the AO pertaining to these companies which led him make an addition, despite of sufficient material on record.
- 4) The AO did not bring on record as to which company's existence was in question as few companies which are based in Kolkata

responded to his summons issued u/s 133(6) and furnished details as called for by the AO. In such cases, It was the duty of the AO to conduct further enquiries and bring on record proper evidence independently to prove his suspicion or doubt pertaining to these amounts, which is not the case here.

- 5) *Such report, which was used against the appellant was not confronted, and no opportunity was given to the appellant to explain the adversity found against if any. Such an exercise by the AO would have enabled him to bring out the correct and clear picture pertaining to the existence of the companies based in Kolkata, from where the appellant sought unsecured loans.*
- 6) *Out of the 13 Companies based in Kolkata and referred by the AO, details like ITRs, audit report, balance sheet profit & loss account pertaining to 6 companies are on record which were called for by the AO u/s 133(6) of the I T Act 1961. These are M/s A K P Tie up Pvt. Ltd., M/s. Taral Vinvom Pvt. Ltd., M/s. Kanupriya Commercial Pvt. Ltd., M/s. Jagran Merchants Pvt. Ltd., M/s. Dressier Commodities Pvt. Ltd., M/s. Khusaboo Pvt. Ltd. From the details on record, it is seen that summons u/s 133(6) were not issued to the other parties which are also based in Kolkata as no details pertaining to them are placed on record. These are-*

1) M/s. Chandimata Management Pvt. Ltd.

2) M/s. Columbia Granities Pvt. Ltd.

3) *M/s. Galaxy Tie up Pvt. Ltd.*

4) *M/s. Iskon Impex Pvt. Ltd.*

5) *M/s. Paridhi Finvest Pvt. Ltd.*

6) *M/s. Three C Universal Developers Pvt. Ltd.*

7) *M/s. Rasika Garments Pvt. Ltd.*

7) *In the case of the 6 companies which responded to the summons issued under section 133(6), the Assessing Officer did not carry out any further enquiry/ investigation on the basis of the information provided by them and did not give a clear finding with regard to the unusual features of the said companies and detect the fictitious/sham/bogus transactions between the appellant and the said company. There is no information whatsoever, with regard to the other 7 companies on record. However, without any cogent finding, since all the 13 companies are Kolkata based, the Assessing Officer made an addition on the ground that-*

- i) *That the above mentioned 13 companies referred in the assessment order were not found existing on the given address. If so, to whom were the summons u/s 133(6) of the I T Act were issued in Kolkata by the Assessing Officer and in response to the same submissions made by them were why not probed?*
- ii) *In case of the above 6 companies that responded to the summons issued by the Assessing Officer u/s 133(6), on perusal of the bank statements, I find that money was transferred directly from their respective bank accounts maintained in Axis Bank and Bank of Rajasthan, Kolkata. The Assessing Officer did not make an effort*

to trace the source and genesis from where the money was generated and transmitted to the appellant's bank account in Delhi, who showed the same as "unsecured loan". It is well known that Kolkata is a hub of accommodation entry providers, where unaccounted money transactions are a menace. Knowing the potentiality for detection of such unaccounted transactions, the Assessing Officer in this case was fervourly duty bound to conduct an elaborate, detailed and meaningful independent enquiries rather than making the addition of Rs. 10.80 cr. on the basis of incomplete investigations/enquiry and contents of a report pertaining to another case M/s. Divine Infracon assessed in the same charge. Utilization of information is no bar while framing the assessment order if it is based on the accurate and correct information. In the present case, the Assessing Officer did not bring on record as to which company was found to be common with the name contained in the report of M/s. Divine Infracon. There is no clear finding by the Assessing officer even with regard to the name being common in both the cases. No specific transaction, distinctive features of the entire journey of the money from the bank account of the respective entity in Kolkata to the bank account of the appellant in Delhi has been discussed by the Assessing Officer with supporting documentary evidence.

13.1.8. *On the basis of the above discussion it seen that as per the provisions of section 68 of the I T Act 1961, the appellant complied to the*

extent of establishing the identity of 6 companies by issuing summons u/s 133(6) which were responded by them by confirmations supported with

- (i) Copy of the acknowledgment of ITRs showing PAN, address, status, date of filing, income returned.*
- (ii) Copy of the bank statement from where the amounts were transferred to the appellant company. Transfer of the money was not through disputed channels.*
- (iii) Income returned, supported with audit report, balance sheet and profit and loss a/c to show the creditworthiness of these companies.*

13.1.9 However, the Assessing Officer did not carry out any further enquiries pertaining to these 6 companies to lift the veil and to establish the actual and true color of the transactions lying beneath the superficial layer. The Assessing Officer did not confront the appellant and did not record his dissatisfaction as to which transaction remained unexplained inspite of issuing summons u/s 133(6) of the I T Act. From the details on record, it is evident that prima-facie the appellant discharged its onus to the extent of identifying its lender, even though it was circumvented to misled the department as though the same was given through M/s Buildwell Pvt. Ltd. In these circumstances, in the interest of revenue the Assessing Officer was duty bound to investigate the creditworthiness as the 6 companies filed meager income, and genuineness of the transaction whether such company was used as a conduit to flush the unaccounted money back to the appellant. There is a merit in such enquiry initiated by the Assessing Officer post search, but it could not be elaborated to see the depth and attained a final logical conclusion. There is also nothing on

record to say that the submissions made by the 6 Kolkata based companies u/s 133(6) was rejected by the AO.

13.1.10 There is no information on record as to whether the AO issued summons u/s 133(6) to the other 7 companies based in Kolkata. In the absence of any fruitful and meanfull enquiry, and without bringing any material on record, the addition made by the Assessing Officer for the sake of addition on the ground that these entities are based in Kolkata is not correct and in a way detrimental to the revenue.

13.1.11 Post search investigation/enquiry was partly done by the Assessing Officer by issuing summons u/s 133(6) to few companies based in Kolkata, and without bringing on record the outcome of such an exercise. The Assessing officer relied on the contents of a report made in another case with a belief that the names of the companies are common in both the cases i.e. the appellant and M/s Divine Infracon Ltd. with this doubt, attempt should have been made to verify the transactions involved between those Kolkata based companies and the appellant and bring on record an evidence to substantiate and support his addition.

13.1.12 In view of the above detailed discussion, the addition of Rs.10.80 cr. by the Assessing Officer cannot be sustained due to fact that-

a) Post search investigation/enquiry was done by the Assessing Officer by issuing 133(6) to some companies based in Kolkata from whom the appellant took unsecured loans but no adversity was brought on record by the Assessing officer from the details submitted by them.

- b) *In case of few other companies based in u/s 133(6) but addition was made without bringing any material on record to support such addition.*
- c) *Addition of Rs.10.80 cr. was made on the basis of the report sent by the DDIT (Inv.) Unit-II(4), Kolkata, pertaining to another case on the belief that the name of the companies are placed on record. This information was not confronted with the appellant to know or to ascertain the truth of this report and to what extent the contents of the report are applicable to the appellant.*
- d) *As per section 68 of the IT Act, 1961 the primary onus cast on the appellant was discharged by it where as the secondary onus to be discharged by the Assessing Officer is inconclusive. Even though there is abundant merit in having doubts pertaining to these transactions by the Assessing Officer, yet the same cannot be sustained due to the reasons given above and discussion made on this issue as there is no definite, conclusive finding given by the Assessing Officer with independent, supporting evidence. Therefore, the addition of Rs.10.80 cr. is deleted.*

13.1.13 *The AR of the appellant, in his submissions relied upon the following cases-*

1. *CIT vs. Kamadhenu Steel Hon'ble Delhi High Court*
2. *Duratuf Glass Industries Pvt. Ltd. Delhi ITAT, New Delhi ITA No.5656/DeI/2012.*
3. *CIT vs. Dwarakadish Investment (P.) Ltd. 330ITR 298*

4. *CIT vs Fair Finvest Ltd. [ITA 232/2012]*

5. *CIT vs Gangeshwari Metal Pvt. Ltd. (ITA 597/2012
ORDER DATED 21.1.2013, Delhi High Court)*

13.1.14. With due respect, the ratio of the judgment in the case of M/s Nova Promoters and M/s. N. R. Portfolios of the jurisdictional Hon'ble High Court cannot be applied here in this case due to the fact that in a) 6 companies responded to the summons issued by the AO u/s 133(6), but no material was brought on record by the AO after conducting the enquiry b) As per the record no summons u/s 133(6) were issued to the 7 other companies thereby meaning that no enquiry/investigation was even initiated by the AO."

17. The Id DR could not point out any infirmity in the order of the Id CIT(A) and therefore we confirm the finding of the Id CIT(A) in deleting the above addition. In the result ground No. 1 of the appeal of the revenue is dismissed.
18. Ground No. 2 of the appeal of the revenue is against the deletion of addition of Rs. 150000,000/- as unsecured loan from Index Securities and Research Pvt. Ltd. . During the course of search it was found that this company is managed by the entry operators and the amount of Rs. 1,50,00,000/- is received from that company. Id Assessing Officer doubted genuineness and made the above addition. Id CIT(A) deleted the above addition in view of the confirmation, copies of income tax return and bank statement of the creditors.
19. The Id DR relied upon the order of the Id Assessing Officer and Id AR relied upon the order of the Id CIT(A).

20. We have carefully considered the rival contentions and also noted that vide para 17 of the order of the Id CIT(A) the issue has been extensively dealt with and the addition has been dealt with holding as under:-

“17. I have considered the written submissions and also case laws relied upon the appellant. I have also gone through the assessment order dated 28.03.2014 and perused the assessment record for the year under consideration. On perusal of the assessment record, I find that the Assessing Officer vide dated issued summons u/s 133(6) of the IT Act, 1961 to the said M/s Index Securities and Research Pvt. Ltd. but not a word was mentioned in the assessment order regarding such enquiry made u/s 133(6). In response to the same vide letter received on 25.02.2013, the said company confirmed the amount given to the appellant company and also furnished the following:

- 1. Confirmed copy of the account of the appellant from its books of account.*
- 2. Copy of the PAN Card issued on 24.02.1995 showing the PAN.*
- 3. Copy of the acknowledgment of ITR filed for the assessment year 2008-09 showing the income of the company at Rs.2,74,509/- and TDS paid at Rs.38,03,578/-.*
- 4. Copy of the bank statement.*

17.1. From the above submissions it is evident that the appellant discharged the primary onus cast upon it where as no conclusive evidence brought on record by the Assessing Officer that led him to make an addition of Rs.1.5 cr. The Assessing Officer did not reject the submissions made by the appellant nor

conducted further related enquiry to establish nexus between the appellant and M/s Index Securities & Research Pvt. Ltd., which was stated by him as controlled and managed by Jain Brothers, alleged to be entry operator. Only a reference was made, but no meaningful enquiries were undertaken by the Assessing Officer with regard to the same in the said direction.

17.1.1 On the basis of the material on record, and also as argued by the appellant, it is evident that the appellant had taken the loan in March, 2008 which is interest bearing and TDS was also deducted as per the provisions u/s section 194H. The said loan of Rs. 1.5 cr. was returned in the financial year 2009-10. Hence there is no nexus between the search conducted at Jain Brother's premises on 14.09.2010 with the appellant's transaction of taking and returning the loan amount with M/s Index Securities and Research Pvt. Ltd.. No incriminating material pertaining to the appellant was found at the premises of Jain Brothers.

17.1.2 In view of all these facts, without bringing an adverse material on record, the Assessing Officer's conclusion that the appellant did not discharge its onus is not borne out of the material on record. As per the provisions of section 68 of the IT Act, 1961, the appellant discharged its onus on the identity of the lender, genuineness of the transaction as it was through banking channels and not disputed channel and submitted ITR to show the creditworthiness. Therefore, in the absence of any such finding by the Assessing Officer to say that the loan amount taken from and given back to M/s Index Securities & Research Pvt. Ltd., represented unaccounted money of the

appellant, is unjustified, without bringing any adverse material on record. Therefore, such addition cannot be sustained and hence an amount of Rs.1.5 cr. is deleted.”

21. The Id DR could not point out any infirmity in the order of the Id CIT(A). Therefore, we confirm the order of the Id CIT(A) in deleting the addition of Rs. 1.50 crores on account of the Index Securities and Research Pvt. Ltd. In the result ground NO. 2 of the appeal of the revenue is dismissed.
22. Ground No. 3 of the appeal of the revenue is general in nature and therefore it is dismissed.
23. In the result the appeal of the revenue is dismissed.
24. Finally the appeal of the revenue as well as the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 27/01/2016.

-Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 27/01/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

**ASSISTANT REGISTRAR
ITAT, New Delhi**