

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER
ITA.No.5163/Del./2016
Assessment Year 2010-2011

The ACIT, Central Circle- 26, Room No.323, 3 rd Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. S.P. Singla Construction P. Ltd., D/10, Flat No.22, 1 st Floor, DDA Flats, Sector-7, Rohini, New Delhi. PAN AAGCS5773B
(Appellant)		(Respondent)

For Revenue :	Shri H.K. Chaudhary, CIT-DR
For Assessee :	Shri Ashwani Kumar, C.A.

Date of Hearing :	10.02.2021
Date of Pronouncement :	17.02.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-29, New Delhi, Dated 30.06.2016, for the A.Y. 2010-2011, challenging the Order of the Ld. CIT(A) in deleting the addition of

Rs.11,30,50,000/- out of total addition of Rs.15 crores under section 68 of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Brief facts of the case are that assessee submitted return of income on 28.09.2010 declaring income of Rs.25,74,26,310/- which was processed under section 143(1) of the Income Tax Act, 1961. A search & seizure operation under section 132 of the Act was carried out on 10.12.2012 in the case of the assessee, wherein various premises of the assessee were covered. In response to notice under section 153A of the I.T. Act, the assessee submitted the return of income on 10.05.2014 declaring the same income. The assessee company is stated to have been engaged in the business of civil contractor.

3.1. It was observed by the A.O. that there is a substantial increase in the share capital and introduction of share premium amounting to Rs.15 crores during the year

under consideration and accordingly, the assessee was asked to submit the details to substantiate the identity of the shareholders, genuineness of the transaction and creditworthiness of the investors so as to discharge the onus and substantiate the share capital and premium thereon, as shown to have been received from 35 persons / Group.

3.2. During assessment proceedings, assessee provided various details of Investors such as copy of ITR, bank statements and confirmation etc., However, in some cases either confirmation has not been provided or ITR/bank statements not provided. The said details have been mentioned in a tabulated form for each of the Investor as incorporated in the body of the assessment order. After examination, the A.O. recorded reasons for rejection of such evidences or material in each case and finding thereof. The main reason for addition as pointed-out in the Order is that the Investors have not disclosed adequate income to justify their credibility to make such investments, the funds were credited in the bank account of such investors immediately

before payments to the assessee by cheque towards such share application, there has been consecutive credit and debit entries in the bank statements of the Investors and hence, it was treated by the A.O. as not genuine Investors and conduit to arrange funds. Therefore, the A.O. invoked provisions of Section 68 of the Act stating that payments received by the assessee as share capital/premium thereon is mere document and correctness of the same is questionable. The receipts of funds by the assessee are not normal and against human probabilities. It is also mentioned by the A.O. that “even if legally correct, the whole chain of circumstances is not logically justified”. The A.O. accordingly made addition of Rs.15 crores under section 68 of the I.T. Act, 1961.

3.3. The assessee challenged the addition before the Ld. CIT(A). The detailed written submissions of the assessee is incorporated in the impugned order. The assessee submitted before the Ld. CIT(A) that the reasons putforth by the A.O. for rejecting the evidence and material on record can be summarized as follows :

- *The financials/income of the investors does not justify their credibility to make such huge investments;*
- *Explanation of bank account of investors shows that funds were credited in their accounts immediately before the cheque payment was made to assessee towards share application;*
- *The consecutive credit & debit entries appearing in the bank statements of the investors clearly indicate that it is not a genuine investor and is just a conduit to transfer funds from one source to other destination;*
- *The Assessee has failed to prove genuineness of transactions of receipt of funds as share capital/premium as mere documents were submitted of which correctness was questionable;*

- *The explanation furnished even with documents was not found satisfactory in view of all the reasons discussed at length which prove that receipt of funds by assessee from investors was not normal and against human probabilities;*
- *Even if legally correct, the whole chain of transactions is not logically justifiable.*
- *In the case of the Assessee there is enough evidence which shows that the explanation submitted about nature and source of credit is not correct.”*

3.4. It was explained in the written submissions that assessee has received Rs.2.50 crores as share capital/premium from individuals/HUFs who are either closely related to or friends/business associates of the promoters of the assessee company and a sum of Rs.12.50 crores has been received from various companies incorporated under the provisions of Companies Act. The assessee filed

complete details before A.O. in response to the query of the A.O. to prove identity of the investors, their creditworthiness and genuineness of the transaction in the matter. Therefore, initial onus upon assessee to prove genuineness of the transaction have been discharged by the assessee. It was submitted that the parties from whom share capital/premium has been received during the year are either limited companies incorporated under the provisions of Companies Act or Individuals/HUFs. In this regard, confirmations, bank statements, income tax returns and balance-sheets wherever applicable were duly filed before A.O, copies of the same were also filed before Ld. CIT(A). It was submitted that in so far as depositors/investor companies are concerned no doubt can exist or even arise with respect to their identity since they are incorporated under Companies Act. Thus, their existence and identity have been proved by furnishing their Certification of Incorporation issued by Registrar of Companies. In case of Individual/HUFs Investors complete details were filed along with their names, addresses and PAN, therefore, their

identity have been established. As regards determination of the creditworthiness of the Investors, the A.O. laid stress on the fact that there were no credit balances in the accounts of the Investors and only cheques were credited before issue of the cheque to the assessee company. It was submitted that there is no onus upon assessee to prove source of the source in order to prove creditworthiness of the depositor. They were having sufficient funds in their bank accounts before making investment in assessee company and no cash transaction had taken place in any of the bank accounts of the Investors. Therefore, creditworthiness of the Investors have been proved because of transactions have also been confirmed by the Investors. There is no material available on record to prove or even remotely suggest that share application money received actually emanated from the assessee company. All the transactions are independent and were carried out through normal banking channel and have been confirmed by the Investors. No direct or indirect or substantial evidence have been brought on record to dispute the genuineness of the transaction in the matter. It was also

submitted that since all the Investors are assessed to tax and have confirmed transaction with assessee and they have also confirmed nature of the transaction with assessee along with their source, therefore, assessee has proved genuineness of the transaction in the matter also. There is no evidence to prove that Investor is just a conduit to transfer funds. No incriminating material was found during the course of search so as to prove that assessee received any bogus investment on account of share capital/premium. Therefore, Doctrine of Human Probability would not be applicable in the case of the assessee. In support of his contention, assessee relied upon Judgment of the Hon'ble Delhi High Court in the case of Pr. CIT vs., Kurele Paper Mills Pvt. Ltd., 380 ITR 571 (Del.) in which it was held that when no incriminating material or evidence related to share capital issue was found during the course of search, A.O. was not justified in invoking Section 68 of the I.T. Act. The assessee also relied upon Judgment of the Hon'ble Supreme Court in the case of CIT vs., Orissa Corporation Pvt. Ltd., 159 ITR 78 (SC), Judgment of Hon'ble

Gujarat High Court in the case of CIT vs., Rohini Builders 256 ITR 360 (Guj.), Judgment of Hon'ble Gauhati High Court in the case of Nemichand Kothari vs., CIT 264 ITR 254 (Gau.), Judgments of Hon'ble Delhi High Court in the case of CIT vs., Sivadhooti Pearls Investment Ltd., 237 Taxman 104 (Del.) and MOD Creations Pvt. Ltd., vs., ITO 354 ITR 282 (Del.). The assessee also relied upon several decisions including Judgment of Hon'ble Supreme Court in the case of CIT vs., Lovely Exports Pvt. Ltd., 216 CTR 195 (SC) in support of the contention that assessee received genuine share capital/ premium.

3.5. The Ld. CIT(A) considering the explanation of assessee and material on record confirmed the addition of Rs.3,69,50,000/- in respect of 09 Investors, however, balance of the addition in a sum of Rs.11,30,50,000/- was deleted for remaining 26 Investors. The findings of the Ld. CIT(A) in paras 8.1 to 8.8 of the impugned order is reproduced as under :

8.1 A perusal of the submissions reveals that payments have been given by the investors through banking channels. It is also seen that no cash introduction in the accounts of such share holders has been made. Confirmation has been provided in various cases alongwith the copy of ITR for the relevant assessment years. It is also observed that sufficient funds were available in the accounts of such investors on the date of application for share capital in the appellant company.

8.2 It is also seen that no further investigation has been made by the AO to prove conclusively by gathering evidence that these investors are conduit and the money received in the form of share capital is nothing but the unexplained income of the appellant. In his order, the AO himself has accepted that the documents submitted by the appellant are in order in most of the cases and only the correctness of these documents are questionable. However, it was not brought out that how these documents are not correct or their existence is questionable, when the ITR, PAN, bank account etc. has been provided in most of the cases except few cases to show the genuineness of transaction. The total income shown in the return of income in the case of various investors, being less than the investments made does not prove conclusively that they do not have capacity to invest, especially when payment has been made through account payee cheque and sufficient funds were available in the bank account of such investors, on the date of investment and their source is not found dubious. Credit of funds in the bank account of investor, just before the payments does not prove transaction to be non genuine because the source of fund has been recorded in the bank account and no cash is found to have been deposited and nothing in this regard has been brought out by the AO. The AO has also mentioned that "even if legally correct, the whole chain of transactions is not logically justified", while making such addition. This clearly implies that the receipt of share application in the hands of appellant is considered by the AO as legally correct. Though he has stated that these transactions are not logically



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justifiable, however no such instance or fact brought on record to substantiate that how these receipts are not logically justifiable.

8.3 It is also seen that a search has taken place in the premises of appellant and no such evidence has been found during search to indicate any generation of unexplained income for the year under consideration.

8.4 It is a set law that the appellant has to prove the identity, creditworthiness of depositor and genuineness of transaction by providing details such as PAN, income tax returns, bank account to show the source of funds, confirmation from the depositors and reflection of same in the books of accounts etc. It is observed that in present case the appellant has provided such details, however in some of the cases either no details provided or only part details provided.

8.5 Out of total 35 number of investors/ group as reproduced earlier, in the following cases, income tax return, copy of bank account or confirmation/PAN of investor has not been submitted by the appellant before AO to prove the identity, creditworthiness and genuineness of transactions.

S.No.	Name of investor	Address	No of shares applied for	Total amount invested	Documents enclosed /Remarks
1.	Surender Kumar Singla and others (HUF)	279A, Yamuna Enclave, Panipat	50,000	50,00,000	Confirmation and ITR provided, no bank details provided to show the genuineness of transaction and creditworthiness
2.	Sunil Kumar Singla	279A, Yamuna Enclave, Panipat	25,000	25,00,000	Only confirmation provided, no ITR or bank details provided to show the genuineness of transaction and creditworthiness
3.	Avtar Gupta & others	F-33, Panchsheel Enclave, Zirakpur	50,000	50,00,000	Nothing has been provided to establish identity, to show the genuineness of transaction and creditworthiness
4.	Bal kishan Singla (HUF)		25,000	25,00,000	Only confirmation provided. No bank account or ITR provided to show the genuineness of transaction and creditworthiness
5.	Sandeep Garg HUF & others	Ward no.12, Moonak, Distt. Sangrur	41,500	41,50,000	No confirmation provided. ITR provided but that does not prove the genuineness of transaction and creditworthiness
6.	Alka Mittal & others	#1526, Sector 18D, Chandigarh	49,500	49,50,000	Nothing has been provided to establish identity, to show the genuineness of transaction and creditworthiness
7.	Baldev Singh	JP Colony, Sangrur	20,000	20,00,000	Nothing has been provided to establish



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					identity, to show the genuineness of transaction and creditworthiness
8.	Suresh Kumar Singla & others	Khalifa Street, Sadar Bazar, Sangrur	61,000	61,00,000	Only bank statement has been provided which does not prove the genuineness of transaction and creditworthiness. No confirmation or ITR provided.
9.	Rohit Garg & others	Outside sunami gate sangrur	47,500	47,50,000	Only bank statement provided which does not prove the genuineness of transaction and creditworthiness. No confirmation or ITR provided.
Total				3,69,50,000/-	

8.6 Therefore, in the case of above investors the appellant could not discharged its onus to substantiate the credits in its account in the form of share capital and premium thereon. As stated in different judgments by various courts including Hon'ble Supreme Court in the case CIT vs. Lovely Exports P. Ltd. (Supra), the appellant was required to submit such details i.e. address , PAN, identity of creditor, bank account, ITR etc. to discharge its onus. Since, the appellant is unable to discharge its primary onus to prove the identity, creditworthiness of investors and genuineness of transactions, the same shall be treated as income of the appellant for the year under consideration looking to the presumptions and as per the provisions of section 68 of the Act. Therefore, the total of above mentioned amount of Rs.3,69,50,000/- is treated as income of the appellant for the year under consideration as appellant could not discharge its primary onus to substantiate satisfactorily the source and nature of such credits in its books.

8.7 With regard to the share application money received from other investors, the appellant has discharged the primary onus by providing PAN, confirmation from the investor, bank account of the investor and their copy of return. No adversary has been brought on record by the AO to substantiate that these transactions are not genuine, bogus and unexplained income of the appellant as no further investigation has been made nor any corroborative evidence brought on record in this regard and therefore the additions made on account of receipt from such investors are not sustainable and deserves to be deleted.

8.8 Accordingly, in view of the discussions made in the foregoing paragraphs, and also following the decisions relied upon by the appellant, as mentioned in his submission, especially following the decision of CIT vs. Lovely Exports P. Ltd.



(supra), ACIT vs., Kurele Paper Mills P. Ltd., 380 ITR 571 (Delhi), MOD Creations P. Ltd., 354 ITR 282 (Delhi) etc., the addition amounting to Rs.11,30,50,000/- is deleted. The appellant gets part relief on this ground of appeal.”

4. The Ld. D.R. relied upon the Order of the A.O. and submitted that assessee did not furnish sufficient evidence to prove the creditworthiness of the Investors, their genuineness of the transaction is not proved. The Ld. CIT(A), therefore, wrongly deleted the addition. The Ld. D.R. relied upon the Order of the ITAT, Delhi Bench in the case of ITO vs., Synergy Finlease Pvt. Ltd., ITA.No.4778/Del./2013, Dated 08.03.2019 and Judgment of the Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel Pvt. Ltd., [2019] 412 ITR 161 (SC) on the proposition that if assessee failed to prove the creditworthiness of the creditors and genuineness of the transaction, the addition under section 68 is justified.

5. Learned Counsel for the Assessee reiterated the submissions made before the Ld. CIT(A) and submitted that

whatever addition has been confirmed by the Ld. CIT(A), assessee has opted to settle the matter in VIVAD SE VISHWAS SCHEME, 2020 and assessee's appeal has been withdrawn separately. Learned Counsel for the Assessee submitted that as regards the remaining Investors, in the cases of Individual and HUF assessee furnished their confirmations, bank statements and ITR and wherever balance-sheet have been prepared by the Investor Companies, their balance-sheets have also been filed which shows their worth to make investment in assessee company. Copies of the same are filed in the paper book. He has also filed copy of the documents filed with the Registrar of Companies regarding the allotment of shares. He has, therefore, submitted that assessee has proved identity of the Investors, their creditworthiness and genuineness of the transaction in the matter. The A.O. did not make any investigation on the documentary evidences filed by the assessee and without any reasons or cause rejected the explanation of assessee which have been correctly considered by the Ld. CIT(A) for deleting the addition. The

A.O. cannot ask the assessee to prove the source of the source. He has relied upon Judgments as have been mentioned and referred to in the submissions of the assessee before the Ld. CIT(A).

6. We have considered the rival submissions and perused the material available on record as regards Departmental appeal. In the present case the A.O. noted that assessee has received share capital/premium from 35 Parties/Group. The assessee was directed to file the evidences to prove identity of the Investors, their creditworthiness and genuineness of the transaction. The assessee in respect of these investors filed their confirmation, PAN, ITR and bank statements and wherever applicable filed the copies of the balance-sheet of the Investor companies. The A.O. did not doubt the documentary evidences filed by assessee. No Investor was asked to appear before A.O. for recording their statements regarding genuineness of the transaction in the matter. No cash was found to have been deposited in the accounts of the Investors before making investment in assessee

company. The A.O. did not make any investigation or enquiry with regard to worth of the Investors, whether they are able to make investment in assessee-company. Merely because low income have been declared in the return of income by the Investor is no ground to reject the explanation of assessee and documentary evidences, particularly when no enquiry or investigation have been made with regard to worth of the Investor companies. Merely because credits were appearing in the bank accounts of the Investors through banking channel before making investment in assessee company is no ground to discard the explanation of assessee. Therefore, whatever reasons have been given by the A.O. to differ with the explanation of assessee are not relevant to decide the matter in issue. It is a case of no enquiry by the A.O. either directly from the Investors or on the documentary evidences filed by the assessee. No incriminating material is also found during the course of search related to receipt of share capital /premium so as to show if assessee received any bogus share capital or premium in the matter. There were

sufficient funds available in the bank accounts of the Investors to make investment in assessee-company. The Investors who are assessed to tax and have filed their return of income and all the transactions are carried-out through banking channel. It is well settled Law that A.O. cannot ask the assessee to prove source of the source. We rely upon the following decisions :

1. Dwarkadhish Investment P. Ltd., [2011] 330 ITR 298 (Del.) (HC)
2. Rohini Builders 256 ITR 360 (Guj).
3. Zafar Ahmed & Co. 30 taxman.com 269 (All.)

6.1. Therefore, initial onus upon the assessee to prove identity of the Investors, their creditworthiness and genuineness of the transaction have been discharged by the assessee. The A.O. has, however, did not bring any evidence on record to discredit the documentary evidences filed by the assessee to invoke Section 68 of the I.T. Act, 1961 or to prove that the share capital/premium money came from the coffers of the assessee. The Ld. CIT(A) considered the issue

in detail and found the explanation of assessee to be correct for the purpose of deleting the part addition. The Ld. CIT(A) was, therefore, justified in holding that assessee proved identity of the remaining Investors, their creditworthiness and genuineness of the transaction in the matter. We rely upon the following decisions.

6.2. CIT vs. Fair Investment Ltd., 357 ITR 146 in which it was held that A.O. did not summon investors and did not make efforts. There is no finding that material disclosed was untrustworthy. The Appellate Authorities rightly deleted the addition.

6.3. Decision of Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 in which it was held as under:

“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company.”

6.4. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., &Ors. 361 ITR 220 (Del.) in which it was held as under :

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

6.5. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), in which it was held as under :

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.

6.6. Decision of jurisdictional High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No.169 of 2017 dated 14th March, 2017, in which it was held as under :

“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon’ble Apex Court in the case of Lovely Exports Pvt.Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon’ble High Court in view of the above

findings noted that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

6.7. Decision of the Hon'ble Supreme Court in the case of Earth Metal Electric Pvt. Ltd., vs. CIT dated 30th July, 2010 in SLP.No.21073 of 1999, in which it was held as under :

“We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside.”

6.8. Decision of Hon'ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under :

“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of

the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied.”

6.9. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under :

“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assesses yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be

found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals)

deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”

6.10. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. WinstralPetrochemicals P. Ltd., 330 ITR 603, in which it was held as under :

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to

the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

6.11. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :

“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.”

6.12. Judgment of Hon’ble Delhi High Court in the case of Pr. CIT vs., Kurele Paper Mills P. Ltd., 380 ITR 571 (Del.) in which Hon’ble Delhi High Court held as under :

“Held, dismissing the appeal, that the order of the Commissioner (Appeals) revealed that there was a factual finding that no incriminating evidence related to share capital issued was found during the course of search as was manifest from the Order of the Assessing Officer. Consequently, it was held that the Assessing Officer was not justified in invoking section 68 of the Income-tax Act, 1961, for the purposes of making additions on account of share capital. There was nothing to show that the factual determination was perverse.”

6.13. Considering the facts of the case in the light of material evidence on record which is produced before the

authorities below, it is clear that assessee produced sufficient documentary evidences before A.O. to prove the ingredients of Section 68 of the I.T. Act. The A.O. however, did not make any further enquiry on the documents filed by the assessee and also did not make any inquiry from the Investors directly or indirectly. The A.O. thus, failed to conduct scrutiny of the documents at assessment stage and merely suspected the transaction between the Investors and the assessee. The A.O. has also not brought any evidence on record that even if the share applicants did not have the means to make the investments, the investments made by them actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee. Considering the totality of the facts and circumstances of the case, it is clearly proved that assessee discharged its initial onus to prove the identity of the Investors, their creditworthiness and genuineness of the transaction in the matter. The Ld. CIT(A), therefore, rightly deleted the part addition in respect of 26 creditors with reference to the present Departmental Appeal. The decisions

relied upon by the Ld. D.R. are distinguishable on facts because in these cases assessee failed to prove the creditworthiness of the creditors. However, in the present case of the assessee, assessee has been able to prove creditworthiness of the Investors and genuineness of the transaction in the matter relevant to Department Appeal. We, therefore, do not find any infirmity in the Order of the Ld. CIT(A) in deleting the part addition of Rs.11,30,50,000/- . The Departmental Appeal fails and is dismissed.

7. In the result, appeal of the Departmental dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 17th February, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.