

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष श्री ए.टी. वर्की, न्यायिक सदस्य एवं डॉ ए.एल. सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A.L. Saini, AM]

I.T.A. No. 2179/Kol/2019
Assessment Year: 2012-13

M/s. Intent Dealers Pvt. Ltd. (PAN: AACCI 6471 J)	Vs.	Income-tax Officer, Ward-10(2), Kolkata
Appellant		Respondent

Date of Hearing & Date of clarification	16.12.2019 & 20.03.2020
Date of Pronouncement	20.03.2020
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri A. K. Nayak, CIT, DR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the second round of the action (i.e. second (2nd) exercise of revisionary jurisdiction u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) by the Ld. Pr. CIT-4, Kolkata dated 14.03.2019 for AY 2012-13.

2. The facts in brief as noticed by the Ld. Pr. CIT in his impugned order is that in the instant case, the assessee company filed its return of income for the assessment year 2012-13 on 15-01-2013 declaring total income at Rs.1,421/-. The case was selected for scrutiny by the AO and the assessment order under section 143(3) of Act was passed on 25-03-2015 (hereinafter the original assessment order) determining the total income at Rs.10,41,21,420/-. Subsequently, notice u/s. 263 of the Act was issued by the Ld Pr CIT and consequently order u/s. 263 of the Act was passed on 12-05-2016 (hereinafter referred to as the first sec. 263 order of Pr. CIT) setting aside the original assessment order of AO passed u/s. 143(3) of the Act on 25-03-2015. Thereafter, the Assessing officer while giving effect to the order passed by Ld. Pr. CIT under section 263 of the Act passed reassessment order u/s. 263/143(3) of the Act on 11-06-2016 (hereinafter referred to as the reassessment order of

AO dated 11.06.2016) determining total income at Rs.68,800/-. Thereafter, again the Ld. Pr. CIT called for the reassessment records of the assessee and on the basis of the verification of the material available on records, he was of the opinion that the order of assessment was erroneous so far as it is prejudicial to the interest revenue on the following grounds.-

- (i) The A.O passed the order without carrying out detailed investigation/verification/ independent enquiry regarding identity, creditworthiness of the shareholders & also the genuineness of transactions relating to share capital that was intended to be carried out and merely accepted the submission of the assessee in this regard.
- ii) That AO has also failed to carryout detailed investigation of the shareholders on the very issue that how they decided to invest in such a company which was never known for its line of business and also they invested at huge premium without verifying the financial position.
- (iii) The A.O further failed to examine' the rationale behind raising the said share premium and also did not verify the method adopted by assessee for determining such abnormally huge premium specially keeping in view that prima facie there was no material in the balance sheet of the assessee warranting/justifying such huge premium.
- (iv) The A.O failed to collect the relevant evidences in order to reach a logical conclusion regarding the genuineness of controlling interest.
- (v) The AO failed to examine all the bank accounts for the entire period in the course of verification to find out the money trail of the share capital.
- (vi) The A.O failed to adequately trace out the money trail to ascertain the genuineness of source of fund invested by share holders in the assessee company.
- (vii) On the whole the impugned order dated 11-06-2016 passed u/s. 263/143(3) of the Income Tax Act. 1961 prima facie suffers from lack of independent and adequate enquiry on the aforesaid issues.

3. And the Ld. Pr. CIT issued Show Cause Notice (SCN) to assessee and thereafter the Ld. Pr. CIT notes that the Ld. AR of the assessee appeared and filed written submission which he reproduced from page 3 to 11 and then the Ld. Pr. CIT did not accept the

contention raised by the assessee and held at page 16 at para 6 of his impugned order as under:

“6. I have carefully considered the submission of the assessee and perused the material available on record and found that the issue pointed out in the show cause needs verification. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(c) below section 263(1) of the Act on the ground of lack of enquiry. Accordingly, the assessment made by the Assessing Officer is set aside on the issues as outlined in para 2 above. The A.O. is directed to provide reasonable opportunity to the assessee company to produce documents and evidences which it may choose to rely upon for substantiating its own claim. The AO is further directed to adjudicate the said issue De novo and pass a fresh assessment order in accordance with relevant provisions of law.”

4. Aggrieved, the assessee has raised the following grounds of appeal wherein the legal issue of jurisdiction of Ld. Pr. CIT to invoke and usurp the revisional jurisdiction u/s. 263 of the Act has been raised.

“1. For that the Ld. Pr. CIT erred in invoking the provisions of sec. 263 in the second round when the assessment order passed on 11.7.2016 was not erroneous and accordingly cannot be considered as prejudicial to the interest of revenue.

2. For that the Ld. Pr. CIT erred in invoking the provisions of sec. 263 when the assessment order dated 11.7.2016 was passed in accordance with the directions of the pr. Commissioner of Income Tax as per his order passed on 12.5.2016 and therefore such order cannot be treated as erroneous and accordingly prejudicial to the interest of revenue.

3. for that the Ld. Pr. CIT erred in invoking the provisions of sec. 263 when all the enquiries as directed in the order u/s. 263 were made by the AO and the Ld. PCIT has not pointed out any error of not following the directions in the said order.

4. For that the Ld. PCIT should not have invoked the provisions of sec. 263 for making rowing and fishing enquiry and should have himself examined the details and evidence but no such examination was made and no lack of enquiry was found in the order of the Ld. AO.

5. For that the Ld. PCIT erred in issuing directions for making the reassessment on all together fresh issues which were not the subject matter of the earlier order u/s. 263 which shows that there was no end of litigation, each time raising fresh issues which is not contemplated under sec. 263 as well as under the provisions of the I. T. Act, 1

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO pursuant to the setting aside order of Ld. Pr. CIT-4 dated 12.05.2016 of the original assessment order dated 25.03.2015 framed the re-assessment order dated 11.06.2016, wherein the AO held as under:

“1. The case was examined by the Pr. CIT-4, Kolkata. The Pr. CIT-4, Kolkata has found that the assessment was made without making enquiries and verifications which would have been made and accordingly held that the assessment was erroneous in so far as prejudicial

to the interest of revenue. The Pr. CIT-4, Kolkata has passed the order u/s. 263 on 12.05.2016 setting aside the assessment u/s. 143(3) dated 25.03.2015 with the direction to carry out proper examination of books of accounts and bank accounts of assessee as well as investors and also to examine the source of share application, identity of investor and its genuineness.

2. Accordingly, the case was taken up for fresh assessment. Summons u/s. 131 were issued in the names of directors of the investor companies and the assessee company to appear along with books of accounts and bank statements.

3. In compliance with the summons u/s. 131, the directors of the investor companies appeared personally along with the books of accounts and bank accounts. Statements of the directors of the investor companies were recorded u/s. 131 and placed on record. Books of accounts and bank statements were produced and examined on test check basis.”

6. From a perusal of the reassessment order, we note that the AO pursuant to the first revisional order of Ld Pr CIT dated 25.03.2015, has given effect to the direction of Ld Pr CIT by duly summoning the directors of the investor companies and after recording their statement being satisfied with the identity, creditworthiness and genuineness of the transaction has accepted the claim of assessee in respect of collection of share capital and premium. The aforesaid action/reassessment order of the AO dated 11.06.2016 has been found fault with by ld. Pr. CIT and has again exercised his power of revision u/s. 263 of the Act for the second time in respect of assessment/reassessment order passed by the AO in respect of assessee for AY 2012-13, without even mentioning which direction of his have not been carried out by the AO while giving effect to his first revisional order dated 12.05.2016. The assessee has raised the legal issue of lack of jurisdiction on the part of Ld. Pr. CIT to again revise the reassessment order of AO, without satisfying the condition precedent as prescribed in section 263 of the Act. Before adjudicating the issues arising from the impugned order of the ld. Pr. CIT, we have to remind ourselves as to the scope of revisional jurisdiction by Pr. CIT/CIT u/s. 263 of the Act. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the ld. Pr. CIT. The twin conditions which need to be satisfied are that (i) the order of the Assessing Officer must be erroneous and(ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous i.e. (i) if the Assessing Officer's order was passed on assumption of incorrect

facts; or assumption of incorrect law; (ii) Assessing Officer's order is in violation of the principles of natural justice; (iii) if the AO's order is passed without application of mind; or (iv) if the AO has not investigated the issue before him. In the circumstances enumerated above only the order passed by the Assessing Officer can be termed as erroneous for the purpose of S.263 of the Act. Coming next to the second limb, the AO's erroneous order can be revised by the Ld. Pr. CIT only when it is shown that the said order is prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. The Hon'ble Supreme Court, held that for invoking powers conferred by S.263 the Ld. Pr CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordship in the said judgment held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was further observed that when the Assessing Officer adopts one of the course permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is **unsustainable in law**.

7. Keeping the law laid by the Hon'ble Apex Court in mind supra, when we examine the case at hand, we note that during the first round of assessment (scrutiny) proceedings, the following facts were revealed. That the assessee is engaged in the business of development of properties and that the assessee had issued 4300040 equity shares at Rs.1 each at a premium of Rs.499 per share. So the AO directed the assessee to file details which were complied by the assessee. Thereafter, the AO issued notice u/s. 133(6) of the Act to all the 'investors for confirmation' which fact is evident from the order sheet entry dated 30.09.2014 (refer paper book page 281). Pursuant to the notice of AO u/s. 133(6) of the Act all the shareholders replied along with confirmation and supporting documents to the AO and a copies of which are found placed at page 30 to 280 of the paper book. We note from

the compliance documents furnished by the investors that they had filed their confirmation about the transaction and further submitted the following details viz., (i) the date of payment, (ii) mode of payment, (iii) source of payment, (iv) acknowledgment of filing of return, (v) copy of the bank statement and (vi) copy of address proof and (vii) allotment advice. Thereafter, we note that the AO issued summons u/s. 131 of the Act to the director of Assessee Company to appear before him, which direction of AO was complied with and this fact is evident from order sheet entry dated 03.03.2015 found placed at page 282 of paper book. Then the AO completed the original assessment by making an addition of Rs.10,41,21,420/- dated 25.03.2015 found placed at pages 284-288 of paper book.

8. Thereafter, we note that the original assessment of AO dated 25.03.2015 was set aside back to AO u/s. 263 of the Act by Ld. Pr. CIT by his first revisional order dated 12.05.2016 [which is found placed at page 295 to 311 of paper book] for de-novo assessment but with specific directions to AO while framing the reassessment order vide para 4(ii) of his order. The specific directions of Ld Pr CIT to AO are as under:

- (i) To carry out proper examination of the books of accounts and bank account of the assessee;
- ii) to carry out proper examination of the books of accounts and bank account of the investors;
- iii) AO to examine the source of the share applicants;
- iv) The AO to examine the identity of the investor and its genuineness;
- v) The AO to complete the assessment at the earliest without waiting for the time barring date.

9. In the second round before the AO for de novo re-assessment, the AO as per the specific direction of Ld. Pr. CIT (supra), conducted the reassessment proceeding. As per the specific direction of Ld. Pr. CIT, the AO summoned the director of the assessee company before him, who duly appeared and produced the books of account on 27.06.2016 (refer page 293 of paper book) and furnished the relevant details viz., bank statements etc., which fact the AO has acknowledged in the reassessment order. We also note that the AO during the reassessment proceedings issued summons u/s. 131 of the Act to the directors of all

shareholder companies and acknowledged in the reassessment order that the directors of all share holder companies appeared before him and their statements were duly recorded by him which fact is evident from pages 312, 335, 360, 383, 409, 434, 459, 489 and 514 of paper book wherein we note that they produced the documents called for by the AO viz., their books of accounts and bank statements, audited financials, etc. as is apparent from the questions and answers in their recorded statements by the AO. Further, we note that the AO also questioned them about their source, ROC details, premium, Income Tax Returns and again obtained their profit and loss account and bank statements. Not only that their books and bank statements were examined as appearing in the order sheet entry on different dates found placed at pages 289 to 294 of the paper book, the AO further issued summons u/s. 131 of the Act, pursuant to which the directors of share holding companies had appeared and also filed the ROC documents, address proof, Pan details, bank statements, Income Tax Returns and also their own ID proof. Therefore, we find that the identity of the investors were as a matter of fact examined by the AO and the transactions has also been examined by the AO and we note that the transaction has taken place through banking channel by account payee cheque. We note that the books and bank statements of all the share subscribing parties were also examined by the AO along with audited accounts. So, we note that when the directors of shareholders as well as the assessee company have appeared before AO and their statements have been recorded by the AO as per the direction of Ld. Pr. CIT (in the first 263 order) and in the light of the aforesaid documents discussed their identity cannot be disbelieved *and the AO's satisfaction in respect of identity of the shareholders is a possible view and cannot be termed as unsustainable in law or facts.*

10. Coming to the creditworthiness of the shareholders, our attention was drawn to the balance sheet of the shareholders which was filed before the AO and the Ld. Pr. CIT and before us, we note that their source of investment and net worth as per balance sheet was as on 31.03.2012 is discernible as under:

Name	Source of investment	Capital and Reserves
Daylight Deal Trade P. Ltd.	Page 41 of paper book	Rs.43,00,000/- (page 69 of PB)
Ansh Dealtrade P. Ltd.	Page 80 of paper book	Rs.20.50 crores (page 88 of PB)
Goodlife Sales P. Ltd.	Page 99 of paper book	Rs.20.85 crores (page 119 of PB)

Kavya Suppliers P. Ltd.	Page 129 of paper book	Rs.51.90 crores (page 142 of PB)
Reflect Commodeal P. Ltd.	Page 157 of paper book	Rs.51.80 crores (page 167 of PB)
Remix Vanijya P. Ltd.	Page 178 of paper book	Rs.56.15 crores (page 192 of PB)
Sangini Agencies P. Ltd.	Page 204 of paper book	Rs.46.86 crores (page 219 of PB)
Welsome Dealers P. ltd.	Page 255 of paper book	Rs.21.08 crores (page 271 of PB)
Sky View Tie Up P. Ltd.	Page 230 of paper book	Rs.47.59 crores (page 244 of PB)

11. So, from a perusal of the chart, we note that the assessee and the shareholders have brought to the notice of AO that they (share subscribers) have enough net worth to invest in the assessee company and the directors of the share subscribing companies pursuant to the AO's summons u/s. 131 of the Act have duly appeared and produced their respective audited accounts from which the aforesaid facts are clearly discernible and moreover the share subscribers have also filed before the AO the source from which they subscribed to shares of assessee, bank statement, audited balance sheet etc. Thus the assessee had discharged the onus on it about the creditworthiness of the share holders. So we note that the source of the investments has been clearly brought to the notice of the AO during the assessment/reassessment proceedings. Further, the bank statements of all the share holders as well as that of assessee were filed before the AO, which revealed that the share capital and premium have been subscribed by them through banking channel which goes on to show that the assessee has discharged the onus in respect of genuineness of the transaction. The AO's action of accepting the creditworthiness and the genuineness of the transaction is plausible view and cannot be termed as an unsustainable view in law or facts.

12. Thus, we find that during the reassessment proceeding pursuant to the first revisional order under section 263 of the Act dated 12.05.2016 and pursuant to the specific directions of the Ld. Pr. CIT, the AO in the second round had summoned the directors of shareholders as well as that of assessee and examined the books and the bank statement and other documents furnished by them to discharge the onus on them about the identity, creditworthiness and genuineness of the transactions and the AO has recorded their statement during reassessment proceedings wherein he has questioned and elicited answers

about the identity, creditworthiness and genuineness of the transaction as well as the source of the investment etc. So, from the aforesaid actions carried out by the AO during the reassessment proceeding cannot be found fault with for lack of enquiry and thus, we note that AO has discharged his duty as an Investigator as per the direction of Ld. Pr. CIT dated 12.05.2016 u/s. 263 of the Act (First 263 order) and further we note that the Ld. Pr. CIT while issuing the Show Cause Notice while exercising his revisional jurisdiction for second time has not made even a whisper about the non-compliance/failure on the part of AO in respect of the specific direction given by the Ld. Pr. CIT dated 12.05.2016 while setting aside the original assessment order passed by the AO dated 25.03.2015. And in the impugned order the Ld. Pr. CIT has not found fault with the action of the AO in giving effect to the specific directions given by him while passing the first revisional order on 12.05.2016. Thus, we note that when the AO while framing the reassessment order pursuant to the specific direction of the Ld. Pr. CIT's order dated 12.05.2016 (first revisional order) has complied with the specific directions of Ld. Pr. CIT and based on the inquiry conducted and after perusal of the documents running more than 591 pages which reveals the identity, creditworthiness and genuineness of the share capital and premium collected by the assessee from the share subscribers, the satisfaction of AO as envisaged in sec. 68 of the Act is a plausible view and the share subscribers/directors participating in the reassessment proceedings along with the audited financial statements and other documents referred supra, the assessee had discharged the onus on it about the identity creditworthiness and genuineness of the share capital and premium collected by the assessee from the respective share subscribers. Since the aforesaid exercise was carried out by the AO in the original as well as reassessment proceedings and the documents are in the assessment folder and the statements have been recorded of the directors of the share subscribers, the Ld. Pr. CIT erred in holding the reassessment order of the AO in respect of share capital and premium collected by the assessee as erroneous as well as prejudicial to the interest of the revenue unless the Ld. Pr. CIT based on an enquiry conducted by himself in the second round atleast is able to upset the AO's satisfaction in respect of identity, creditworthiness and genuineness of the share subscribers and his decision not to make any addition under section 68 of the Act. In the light of the aforesaid discussions and on perusal of the documents, we are of the view that AO's view to accept the identity, creditworthiness and

genuineness of the share capital and premium collected from the share subscribers as a plausible view and at any rate can be termed as an unsustainable view on law or facts.

13. For coming to the conclusion that based on the documents and the inquiry conducted by the AO which are on record as discussed in detail supra, the AO's action of accepting the claim of assessee in respect of collection of share capital and premium is a plausible view and at any rate cannot be held to be unsustainable in law or facts. We would like to discuss about section 68 of the Act for the sake of completeness. Section 68 of the Act reads as under:-

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. "

The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570. We note that against the said decision of Hon'ble Gujarat High Court the special leave petition filed by the Revenue has also been dismissed by the Hon'ble Apex Court.

14. So, with the aforesaid understanding of section 68 of the Act, let us examine whether the view of AO in the light of the investigation and results as discussed supra is a possible view and cannot be termed as un-sustainable view in law and facts. For that let us look at few case laws wherein the AO made additions of share capital and premium and when the aggrieved assessee's filed appeals before the Tribunal/High court/Supreme Court the Hon'ble Courts have held that when the assessee discharges the onus on it in respect of the

share subscribers' identity, creditworthiness and genuineness then no addition u/s. 68 of the Act can be made against the assessee. Let us have a look at the following case laws:

15. When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regards our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the COMMISSIONER OF INCOME TAX, KOLKATA-III Versus DATAWARE PRIVATE LIMITED ITAT No. 263 of 2011 Date: 21st September, 2011 wherein the Court held as follows:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

16. We also rely on the decision of the Hon'ble Supreme Court while dismissing SLP in the case of Lovely Exports as has been reported as judgment delivered by the CTR at 216 CTR 295:

"Can the amount of share money be regarded as undisclosed income under section 68 of the Income tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee- company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

17. We also rely on the decision of the Hon'ble Calcutta High Court while relying on the case of Lovely Exports, in the appeal of COMMISSIONER OF INCOME TAX, KOLKATA-

IV Vs ROSEBERRY MERCANTILE (P) LTD., ITAT No. 241 of 2010 dated 10- 01-2011

has held:

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

It appears from the record that in the assessment proceedings it was noticed that the assessee company during the year under consideration had brought Rs. 4, 00, 000/- and Rs.20,00,000/- towards share capital and share premium respectively amounting to Rs.24,00, 000/- from four shareholders being private limited companies. The Assessing Officer on his part called for the details from the assessee and also from the share applicants and analyzed the facts and ultimately observed certain abnormal features, which were mentioned in the assessment order. The Assessing Officer, therefore, concluded that nature and source of such money was questionable and evidence produced was unsatisfactory. Consequently, the Assessing Officer invoked the provisions under Section 68/69 of the Income Tax Act and made addition of Rs.24,00,000/-.

On appeal the Learned CIT (A) by following the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd., reported in (2008) 216 CTR 195 allowed the appeal by holding -that share capital/premium of Rs. 24,00,000/- received from the investors was not liable to be treated under Section 68 as unexplained credits and it should not be taxed in the hands of the appellant company.

As indicated earlier, the Tribunal below dismissed the appeal filed by the Revenue.

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

18. We also rely on the decision of the Hon'ble High Court, Calcutta in the case of Commissioner Of Income Tax vs M/s. Nishan Indo Commerce Ltd dated 2 December, 2013 in INCOME TAX APPEAL NO.52 OF 2001 wherein the Court held as follows:

"The Assessing Officer was of the view that the increase in share capital by RS.52,03,500/- was nothing but the introduction of the assessee's own undisclosed funds/income into the books of accounts of the assessee company. The Assessing Officer accordingly treated the investment as unexplained credit under Section 68 of the Income Tax Act and added the same to the income of the assessee.

Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) being the First Appellate Authority and contended that the Assessing Officer had no material to show that the share capital was the income of the assessee company and as such the addition made by the Assessing Officer under Section 68 of the Act was wrong.

The learned Commissioner of Income Tax (Appeals) after hearing the department and the Assessee Company deleted the addition of Rs. 52, 03,500/- to the income of the assessee company during the Assessment Year in question. The learned Commissioner of Income Tax

Appeals found that there were as many as 2155 allottees, whose names, addresses and respective shares allocation had been disclosed.

The Commissioner of Income Tax Appeals, further found that the Assessee Company received the applications through bankers to the issue, who had been appointed under the guidelines of the Stock Exchange and the Assessee Company had been allotted shares on the basis of allotment approved by the Stock Exchange. The Assessee Company had duly filed the return of allotment with the Registrar of Companies, giving complete particulars of the allottees.

The Commissioner of Income Tax (Appeals) found that inquires had confirmed the existence of most of the shareholders at the addresses intimated to the Assessing Officer, but the Assessing Officer took the view that their investment in the Assessee Company was not genuine, on the basis of some extraneous reasons. The Commissioner of Income Tax (Appeals) took note of the observation of the Assessing Officer that enquiry conducted by the Income Tax Inspector had revealed that nine persons making applications for 900 shares were not available at the given address and rightly concluded that the total share capital issued by the Assessee Company could not be added as unexplained cash credit under 'Section 68 of the Income Tax Act. Moreover, if the nature and source of investment by any shareholder, in shares of the Assessee Company remained unexplained, liability could not be foisted on the company. The concerned shareholders would have to explain the source of their fund.

The learned Commissioner on considering the submissions of the, respective parties and considering the materials, found that the Assessing Officer had applied the provisions of Section 68 of the Income Tax Act arbitrarily and illegally and in any case without giving the assessee adequate opportunity of representation and/or hearing.

Learned Tribunal agreed with the factual findings of the learned Commissioner and accordingly the learned Tribunal dismissed the appeal of the Revenue and affirmed the decision of the learned Commissioner.

Mr. Dutta appearing on behalf of the petitioners cited judgment of the Division Bench of this Court in Commissioner of Income Tax Vs. Ruby Traders and Exporters Limited reported in 236 (2003) ITR 3000 where a Division Bench of this Court held that when Section 68 is resorted to, it is incumbent on the assessee company to prove and establish the identity of the subscribers, their credit worthiness and the genuineness of the transaction.

The aforesaid judgment was rendered in the context of the factual background of the aforesaid case where, despite several opportunities being given to the assessee, nothing was disclosed about the identity of the shareholders. In the instant case, the assessee disclosed the identity and address and particulars of share allocation of the shareholders. It was also found on the facts that all the shareholders were in existence. Only nine shareholders subscribing to about 900 shares out of 6, 12,000 shares were not found available at their addresses, and that too, in course of assessment proceedings in the year 1994, i.e., almost 3 years after the allotment.

By an order dated 2nd May, 2001, this Court admitted the appeal on three questions which essentially centre around the question of whether the Appellate Commissioner erred in law in deleting the addition of Rs. 52, 03, 500/- to the income of the assessee as made by the Assessing Officer. We are of the view that there is no question of law involved in this appeal far less any substantial question of law.

The learned Tribunal has concurred with the learned Commissioner on facts and found that there were materials to show that the assessee had disclosed the particulars of the shareholders. The factual findings cannot be interfered with, in appeal. We are of the view that once the identity and other relevant particulars of shareholders are disclosed, it is for

those shareholders to explain the source of their funds and not for the assessee company to show wherefrom these shareholders obtained funds.”

19. We also rely on the decision of the Hon'ble High Court, Calcutta in the case of Commissioner of Income Tax vs M/s. Leonard Commercial (P) Ltd on 13 June, 2011 in ITAT NO 114 of 2011 wherein the Court held as follows:

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

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

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

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

The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants.

In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged.

We, thus, find that both the authorities below, on consideration of the materials on record, rightly applied the correct law which are required to be applied in the facts of the present case and, thus, we do not find any reason to interfere with the concurrent findings of fact based on materials on record.

The appeal is, thus, devoid of any substance and is dismissed summarily as it does not involve any substantial question of law.

20. So, in the light of the case laws discussed supra, we find that in the case in hand and from the details as discussed (supra) which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) income tax assessee's, (ii) they are filing their return of income, (iii) the share application form and allotment letter is available on record, (iv) the share application money was made by

account payee cheques, (v) the details of the bank accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions the AO found deposit in cash before issuing cheques to the assessee company, (vii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above, consequently we find that AO's view is a plausible view.

21. As noted from the judicial precedents cited above and even at the cost of repetition, we note that as per section 68 of the Act, where any sum is found credited in the books of an assessee then there is a duty casted upon the assessee to explain the nature and source of credit found in his books. In the instant case, the credit is in the form of receipt of share capital with premium from share applicants. The nature of receipt towards share capital is seen from the entries passed in the respective balance sheets of the companies as share capital and investments. In respect of source of credit, the assessee has to prove the three necessary ingredients i.e. identity of share applicants, genuineness of transactions and creditworthiness of share applicants. For proving the identity of share applicants, the assessee furnished the name, address, ROC details, PAN of share applicants together with the copies of balance sheets and Income Tax Returns. With regard to the creditworthiness of share applicants, as we noted supra, these Companies are having capital in several crores of rupees and have the capacity to make the investment in the appellant company. These transactions are also duly reflected in the balance sheets of the share applicants, so creditworthiness is proved. Third ingredient is genuineness of the transactions, for which we note that the monies have been directly paid to the assessee company by account payee cheques out of sufficient bank balances available in their bank accounts on behalf of the share applicants. It will be evident from the paper book that the appellant has even demonstrated the source of money deposited into their bank accounts which in turn has been used by them to subscribe to the assessee company as share application. Even the source of source has been brought to the notice of AO/Pr. CIT. The share applicants have confirmed the share application in response to the notice u/s 133(6) of the Act and have also confirmed the payments which are duly corroborated with their respective bank statements and all the payments are by account payee cheques. Thus we find the AO's action in accepting the share capital and premium is a plausible view and cannot be held to be un-sustainable view in facts or law.

22. We also note that recently the ITAT Kolkata in several cases has deleted the addition on account of share application in similar circumstances. The relevant portion of the decisions are as follows:

(a) The Ld ITAT Kolkata. in DC IT Vs Global Mercantiles Pvt.Ltd in ITA No. 1669/Kol/2009 dated 13-01-2016. In this the decision the Ld. Tribunal held as follows:

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

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

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

IT A No. 1669/Kol/2009-C-AM M/s. Global Mercantiles Pvt. Ltd 11 Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT vs M/s Lovely Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

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

4. The last ground to be decided in this appeal of the Revenue is as to whether the Learned CIT(A) is justified in deleting the addition u/s 68 of the Act made in respect of allotment of shares to 20 individuals for an amount of Rs.57,00,000/- in the facts and circumstances of the case.

4. 1. The brief fact of this issue is that the assessee had received share application monies from 20 individuals in the earlier year which were kept in share application

money account. During the asst year under appeal, the assessee allotted shares to these 20 individuals out of transferring the monies from share application money account to share capital account. The details of 20 individuals are reflected in page 6 & 7 of the Learned CIT(A) order. The Learned AO asked the assessee to produce the shareholders before him. He found that the assessee did not do so but furnished copies of pay orders used for payments to the assessee company and also furnished income tax particulars and balance sheets of all the shareholders. The Learned AO on analyzing all the balance sheets observed that the shareholders have paltry income and small savings and none of them have any bank account and huge cash balances were shown in their hands out of which Pay orders were obtained. Based on this, the Learned AO concluded that these shareholders do not have creditworthiness to invest in the assessee company and brought the entire sum of Rs. 57,00,000/- to tax as unexplained cash credit u/s 68 of the Act.

4.2. On first appeal, the Learned CIT(A) observed that entire share application monies of Rs. 57,00,000/- were received during the previous year 2004-05 relevant to Asst Year 2005-06 from 20 persons and the shares were allotted to them during the asst year under appeal. He observed that the assessee had furnished details of the share applicants giving the date wise receipts, mode of payment, amount, name, address, income tax returns, PA No. of share applicants along with their balance sheet. The Learned CITA also observed that the assessee in its reply to show cause notice before the Learned AO had requested him to use his power and authority for the physical appearance of the shareholders which was not exercised by the Learned AO. Instead the Learned AO continued to insist on the assessee to produce the shareholders before him. He ultimately concluded that the assessee had duly discharged its onus of providing complete details of the shareholders and in any case, no addition could be made u/s 68 of the Act in the asst year under appeal as no share application monies were received during the asst year under appeal. Aggrieved, the Revenue is in appeal before us by filing the following ground:-

"That in the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made u/s 68 in respect of the allotment of shares to 20 numbers of individual investors for an amount of Rs. 57 lakhs, where genuineness of the transactions and creditworthiness of the investors were not established."

4.3. The Learned DR prayed for admission of the additional ground raised before us and vehemently supported the order of the Learned AO. In response to this, the Learned AR fairly conceded to admission of this additional ground and vehemently supported the order of the Learned CIT(A).

4.4. We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. We find that the additional ground raised by the assessee separately before us vide its covering letter dated 9. 12.2011 is admitted as it appears to be a genuine and bonafide error of omission on the part of the Revenue from not raising this ground in the original grounds of appeal filed along with the memorandum of appeal. Moreover, it does not require any fresh examination of facts. Hence the same is admitted herein for the sake of adjudication.

4.4. 1. We find from the details available on record that the share application monies from 20 individuals in the sum of Rs.57,00,000/- has been received by the assessee during the financial year 2004-05 relevant to Asst Year 2005-06 and only the shares were allotted to them during the asst year under appeal. Admittedly no monies were received during the asst year under appeal and hence there is no scope for invoking

the provisions of section 68 of the Act. Hence we hold that the order passed by the Learned CITA in this regard does not require any interference. Accordingly the ground no. 3 raised by the Revenue is dismissed.

(b) The ITAT Kolkata in R.B Horticulture & Animal Projects Co. Ltd, ITA No. 632/Kol2011 dated 13-01-2016. In this the decision the Ld. Tribunal held as follows:

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

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

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

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

"In respect of amounts shown as received by the assessee towards share application money from 33 persons, the Assessing Officer required the assessee to produce all these persons. While accepting the explanation and ITA No. 632/Kol12011--C-AM M/s. R.B Horticulture 6 & Animal Proj. Co. Ltd the statements given by three persons the Assessing Officer found that the response from the others was either not available or was inadequate and added an amount of Rs. 46 lakhs pertaining to 30 persons to the income of the assessee.

The Commissioner (Appeals) upheld the decision of the Assessing Officer. On appeal, the Tribunal set aside the order of the Commissioner (Appeals) and deleted the additions. On further appeal:

Held, dismissing the appeal, that the additional burden was on the department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose. "

6.3. We find that the argument of the Learned DR to set aside this issue to the file of the Learned AO for verification of share subscribers would not serve any purpose as the ratio decided in the above cases is that in any case, no addition could be made in the hands of the recipient assessee. In view of the aforesaid findings and respectfully following the decision of the apex court (supra), Jurisdictional High Court (supra) and Delhi High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the grounds raised by the Revenue are dismissed."

(c) The ITAT Kolkata in ITA No.1061/Kol/2012 in the case of ITO Wd.3(2) Kol, vs. M/s. Steel Emporium Ltd dated 05-02-2016. In this the decision the Ld. Tribunal held as follows:

"10. We have heard both the rival parties and perused the materials available on record. The Ld. DR vehemently supported the order of the AO. Before us the Ld. AR submitted that the assessee raised share application money during the year from 25 applicants. The AO was furnished with the copy of Form 2 of Allotment of Shares to the Applicants as filed with the Registrar of Companies, West Bengal. On the date of receipt of Share applications from the Applicants, they furnished their addresses, which were recorded in the Register of Members. The AO observed that as per ROC records the addresses of the nine companies were different from the address as per Form filed with him. The AO issued notices u/s.133(6) to all the companies at the addresses furnished in Form 2 as filed with him, which were duly served at the given addresses. The AO argued that the letters should not have been served at the given address by the assessee. He served a show a cause notice dated 09.12.2011 asking for the explanation from the assessee as to how the notices u/s. 133(6) could be served to these nine companies who had different address as per ROC records. The AO was explained vide letter dated 20.12.2011 of the assessee that those companies had changed their addresses since filing of Form 2 with the Registrar. Further, it was none of the business of the assessee to question the addresses of the applicants as long as they affirm the address. The applicants were duly incorporated bodies under the Companies Act, 1956 since long. They have been regularly filing their returns of income under the Income Tax Act and are being assessed by the Revenue since long. Some of them are even registered as Non-Banking Financial Companies with Reserve bank of India. They have been filing returns regularly with Registrar of Companies and RBI since long. The letters might have been received at their old addresses because in case of change in the address, people instruct the incumbents at old addresses not to refuse the receipt of letters and receive the same. Just because, a letter was received at the old address instead of present address, it cannot be said that the identity of the applicant has not been verified. All of these companies had duly replied to notice u/s. 133(6) and confirmed the transaction with all the evidences. The AO has not raised any objection on any of the information furnished before him. The AO has not asked the respective Company applicants also to explain the alleged discrepancy in the address. The AO has not brought any material on account of record to disbelief the evidences furnished with him and treat the transaction as not genuine. The assessee submitted the following material at the time of assessment.

- a) *Copy of share applications from the share applicants (copies enclosed)*
- b) *Copy of Form 2 filed with Registrar of Companies, West Bengal (copy enclosed)*
- c) *Copy of Form 18 about the Registered Office of the applicants for change of address subsequent to the date of allotment, i.e. 31.03.2009 (copies enclosed)*
- d) *Members register*
- e) *Share application & Allotment Register*
- f) *Copy of board resolution.*
- g) *Replies from Share applicants to the notice u/s. 133(6) issued to them by the AO seeking information and documents about the sources and to examine their identity, genuineness of the transaction and their creditworthiness. (copy enclosed).*
- h) *Copy of audited accounts.*
- i) *Copy of bank statements.*
- j) *Copy of Income tax acknowledgment of return filed for AY 2009-*
- k) *Copy of PAN Card.*
- l) *Details of sources of funds.*
- m) *Copy of covering letter for delivery of shares.*
- n) *Copy of master data as per ministry of Company Affairs records.*
- o) *Copy of Annual return.*
- p) *Copy of Memorandum and articles of Association.*

Finally the Ld. AR relied on the order of the Ld. CIT(A 10. 1 From the aforesaid discussion we find that the AO has made the addition of the share application money because all the nine companies were having the common address and the notice sent under section 133(6) was received by the single person. Accordingly the AO opined that the assessee has used its unaccounted money in the share application transactions. However we find that all the money received in the form of share capital is duly supported with the requisite document as discussed above. To our mind the basis on which the addition was made by the AO is not tenable. The Ld. DR also could not brought anything on record to controvert the findings of the Ld. CIT(A). In view of above we find no reason to interfere in the order of the Id. CIT(A). Accordingly the ground raised by Revenue is dismissed."

(d) The ITAT Kolkata in ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016. In this the decision the Ld. Tribunal held as follows:

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

"6) I have considered the submission of the appellant and perused the assessment order. I have also gone through the details and documents filed by the appellant company in the course of assessment: proceedings vide letter dt. 3-10-2007. On careful consideration of the

facts and in law I am of the opinion that the AO was not justified in making, the addition aggregating to Rs.54,00,000/- u/s.68 of the Act being the amount of share application money by holding that the appellant company has failed to prove the identity, and creditworthiness of The creditors as well as the genuineness of transactions. It is observed that all the three share applicant companies i.e. M/s. Shree Shyam Trexim Pvt. Ltd., M/s Navalco Commodities Pvt. Ltd. and M/s. Jewellock Trexim Pvt. Ltd. had filed their confirmations wherein each of them confirmed that they had applied for shares of the appellant -company. All the three companies provided- the cheque number, copy of bank statements and their PAN. It is observed that these companies also filed, copies of their return of income and financial statements for as well as copy of their assessment order u/s. 143(3) of the I. T Act for AY 2005-06. In the case of M/s. Jewellock Trexim Pvt. Ltd. the assessment for AY 2005-06 was completed by the ITO Ward 9(3), Kolkata and the assessments in the case of M/s. Navalco Commodities Pvt. Ltd. and M/s. Shree Shyam Trexim Pvt. Ltd. for A. Y.2005-06 and AY.2004-05 respectively were completed by the I TO, Ward 9(4), Kolkata. Under the circumstances, I am of the opinion that the AO was not justified in holding that the share applicant companies were not in existence. The assessment orders were completed on the address as provided by the appellant company in the course of assessment proceedings. It is not known as to how the AO's inspector had reported that the aforesaid companies were not in existence at the given address. Since the appellant company had provided sufficient documentary evidences in support of its claim of receipt of share application money, I am of the opinion that the no addition u/s.68 could be made in the hands of appellant company. On going through the various judicial pronouncements relied upon by the appellant, it is observed that the view taken as above is also supported by them. In view of above the AO is directed to delete the addition of Rs.54,00,000/- . The ground Nos. 2 and 3 are allowed, "

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

8. *We have heard the submissions of the learned DR, who relied on the order of AO. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs Raj Kumar Agarwal vide ITA No. 179/2008, dated 17. 11.2009 wherein the Hon 'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs Devinder Singh Shant in IT A No.20Biko112009 vide order dated 17.04.2009.*

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

23. Thus, in the light of the judicial precedents of the Hon'ble Apex/High court/Tribunal, we are of the view that the action/view taken by the AO after enquiry made by him as per the direction of the Ld. Pr. CIT in the set aside proceedings dated 12.05.2016 pursuant to which the AO has reassessed the assessee after inquiry and accepted the share capital and premium collected by assessee is a plausible view and cannot be held to be unsustainable view in facts or law, therefore, the impugned action of the Ld. Pr. CIT to interfere with the reassessment order of the AO, is without jurisdiction and liable to be quashed.

24. Therefore, in the light of the discussion on fact as well as on law, we are of the considered opinion that AO's action (reassessment) pursuant to the first revisional order of Ld. Pr. CIT dated 12.05.2016, to accept the share capital and premium as a possible view in facts and law as per the ratio laid by the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. Vs. CIT 243 ITR 83 (SC) the AO's action/reassessment order cannot be termed as erroneous and prejudicial to the interest of the Revenue. Therefore, the condition precedent for usurping revisional jurisdiction u/s. 263 of the Act is absent and, therefore, the Ld. Pr. CIT lacked jurisdiction to assume second time revisional jurisdiction u/s. 263 of the Act. Therefore, the assessee succeeds on the legal issue raised and, therefore, on the facts and circumstances discussed (supra), we are inclined to quash the impugned order of Ld. Pr. CIT dated 14.03.2019.

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

Order is pronounced in the open court on 20th March, 2020.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 20th March, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Intent Dealers Pvt. Ltd., 43, Lenin Sarani, 1st floor, New Market, Kolkata-700 013.
- 2 Respondent – ITO, Ward-10(2), Kolkata
3. Pr. CIT-4, Kolkata.
4. ACIT, HQs-4, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar