IN THE INCOME TAX APPELLATE TRIBUNAL INDORE BENCH, INDORE

Before Shri Kul Bharat, Hon'ble Judicial Member and
Shri Manish Borad, Hon'ble Accountant Member

ITA No. 762/Ind/2016 &
ITA No.763/Ind/2016
Assessment Year 1997-98 & 1998-99

Ajit & Ajay Estate &
Resorts Pvt.Ltd ::: Appellant
Vs
Income Tax Officer 2(3),
Indore ::: Respondent

Appellant by	S/Shri Anil Kamal Garg & Arpit Gaur, CAs
Respondent by	Shri R.P. Mourya, Sr.DR
Date of hearing	26.7.2018
Date of pronouncement	30.8.2018

O R D E R

PER SHRI MANISH BORAD, AM

These two appeals filed by the assessee pertaining to Assessment Year 1997-98 & 1998-99 are directed against the order of Ld. Commissioner of Income-tax (Appeals)-I (In short CIT(A)], Indore even dated 29.3.2016 which are arising out of the order u/s

143(3) of the Income Tax Act framed by the ITO-2(3), Indore dated 31.03.1997.

2. Assessee has filed an appeal before this Tribunal raising following grounds of appeal;

Assessment Year 1997-98

1. That, on the facts and under the circumstances of the case, the learned CIT(A) grossly erred in law in upholding the validity of issuance of Notice u/s 148 and initiation of reassessment proceedings u/s 147 of the Income-Tax Act, 1961.

2. That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.11,40,000/- made on account of unexplained share application money by invoking provisions of section 68 of the Income-Tax Act, 1961.

Assessment Year 1998-99

1. That, on the facts and under the circumstances of the case, the learned CIT(A) grossly erred in law in upholding the

validity of issuance of Notice u/s 148 and initiation of reassessment proceedings u/s 147 of the Income-Tax Act, 1961.

2 That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.65,27,000/- made on account of unexplained share application money by invoking provisions of section 68 of the Income-Tax Act, 1961.

3. As both these appeals relates to the same assessee and the issues raised are common they were heard together and are being disposed off by this common order for sake of convenience and brevity.

Ground No.1:

4. At the outset Ld. Counsel for the assessee requested for not pressing above ground of appeal for the Assessment Year 1997-98 and 1998-99 challenging the validity of issuance of notice u/s 148 of the Act as well as the validity of assessment framed thereafter. As Ground No.1 for A.Y. 1997-98 and 1998-99 has not been

pressed by Ld. Counsel for the assessee, we dismiss this ground as not pressed.

5. Now the only common issue which needs our adjudication is with regard to addition of Rs.11,40,000/- and Rs.65,27,000/- made by the Ld. Assessing Officer u/s 68 of the Act for the unexplained share application money which stands confirmed by Ld. CIT(A).

6. Briefly stated facts as culled out from the records are that the assessee is a company engaged in business of property development and running a club. The return of income declaring total income of Rs.43,070/- and Rs. Nil for Assessment Year 1997-98 & 1998-99 were filed on 31.3.98 and 30.11.1998 respectively. On the basis of information coming to the notice of Ld.A.O during the course of assessment proceedings for A.Y. 2000-01 in the case of assessee, notice u/s 148 of the Act for A.Y. 1997-98 and 1998-99 were issued to examine the identity, genuineness and creditworthiness of share applicants subscribing to share capital during A.Y. 1997-98 and A.Y. 1998-99. Notices u/s 148 of the Act were duly served upon the assessee. The case was selected for scrutiny and necessary notices

u/s 143(2) and 142(1) were also served upon the assessee. During assessment proceedings assessee was asked to prove identity, capacity and genuineness of share applicants subscribing to share capital during A.Y. 1997-98 and 1998-99. Assessee only furnished copy of share application but did not furnish supporting evidence to prove capacity of share applicant and genuineness of transaction as required u/s 68 of the I.T. Act.

7. Aggrieved assessee filed appeal for both the years before Ld.CIT(A) and partly succeeded as Ld.CIT(A) deleted addition of Rs.25,000/- for Assessment Year 1997-98 and addition of Rs. 4,00,000/- for Assessment Year 1998-99 which was made by the Assessing Officer u/s 68 of the Act. The Ld. CIT(A) while partly allowing the assessee's appeal called for the remand report from Assessing Officer as well as going through the submissions and comments filed by the assessee observed follows;

Assessment Year 1997-98

> "8. From the record it was noted by Ld.CIT(A) that the assessee furnished before AO vide submission dated 09-03-2004 copy of share application and copy of share certificate

in case of all the share applicants, while affidavit was filed in case of some applicants namely Shri Dilip and Smt. Nirmala Borasi, Shri Vilas Vibhandik, Shri Raja Jagtap, Shri Ashok Jayaswal, Shri Arvind Kumar, affidavit of Son's of Late Shri Ramkumar Panday, Shri Suresh Shyamlal, Shri Yosuf Patel, only. No identity proof is filed in case of Gopal Das, Gorelal Shivchand, Suresh Ram Sadau, Suresh Shyamlal and Virendra Chokse. In other cases identity proof in nature of ration cards election cards armed License were filed, but in most cases PAN was not furnished. Despite the fact that most of amounts were received in cash not a single share applicant, whose deposit was added, was assessed to tax and no source of income *I* creditworthiness was established.

9. First case is that of share applicants Shri Dilip & Nirroala Borasi. They have purportedly purchased 54,000 shares @ Rs.l0 per share and total investment is *Rs.5,40,OOOI-·* They have invested Rs.90,OOOj- on 31-03-1996, Rs.75,000/- on 10-01-1997 and Rs.3,75,000/- on 04-03- 1998. Entire deposits are in cash/ DD's purchased from cash. According to AO, Shri Dilip Borasi is earning only Rs.70,OOO/-from business of property broker and another Rs.90,OOO/- were received by him from sale proceeds of agriculture land. But he could not explain source of rest of the deposits. When share applicant fails to explain source of cash deposits & creditworthiness of depositor questionable the genuineness of such transaction becomes doubtful and addition of such deposit has to be confirmed *u/*s 68 of the LT. Act, especially when such depositor of cash is not assessed to tax which makes onus on appellant even heavier. The deposit of Rs.5.40 lakh in cash from a person who is not

even assessed to tax, and does not have known sources of income to explain such deposit therefore cannot be said to be satisfactorily explained merely on account of filing of copies of share application/share certificate and affidavit which do not contain the details of sources of the deposit made.

10. Similar are cases of other depositors. For example Shri Vilas Vibhandik has deposited Rs. 1 lakh with the appellant as share application money; of which Rs.2 lakh is given in AY 1998-99. He is also not assessed to tax and does not have a PAN. He explained to AO that he is a property broker from where he earns Rs. 1 lakh per annum. He further explained that such amount of share application money is given by him out of funds given by his father who has expired. It is not established by the appellant by filing any evidence to show whether the father had the financial capacity to give Rs. 1 Lac and how and when such amount was given and also how the other legal heirs of the father if any were treated at the time of his death.

11. In the case of Shri Gauri Shanker Borasi amount of Rs.3,65,000/- is shown as invested by him in share application money. His income is a meager *Rs.40,000/-* to *Rs.50,000/-* per annum as rickshaw puller and some agriculture income. He is not assessed to tax and has no PAN. His explanation to AO that such amount is from land sale is not supported by any proof of such sale of land. Further it is also to be noted that the person concerned is only allotted share certificates and a person from such a

background would much rather be inclined to put the money obtained from sale of agricultural land in some income generating investment. He has reportedly invested *Rs.90,000/-* cash on 31-03-1996, Rs.1lakh cash on 12-06-1996, Rs.1 lakh DD from cash on 06-01-1997 and *Rs.75,000/-* cheque on 10-01- 1997. Such investment is mostly in cash which puts heavy onus on appellant to prove creditworthiness of such person regarding such cash when he is not assessed to tax and establish genuineness of such transaction and appellant has failed to discharge such onus.

12. Shri Arvind Kumar who purportedly invested Rs.2,50,000/- is a employee of Vijay Radio with meagre income of Rs.48,000/-per annum. He claimed that he deposited such amount out of his savings. But there is no proof of such saving and his income of Rs. 4,OOO/- per month is barely enough to sustain his house hold expenses. He is also not assessed to tax.

13. Shri Moolchand Shyamlal has invested *Rs.1,10,000/-* He is a mason and his income is only Rs.35,000/- to Rs.40,000/- per annum which is barely enough to sustain his household expenses. Entire amount of Rs.1,lO,OOO/- which was deposited in cash remains unexplained, as he is not assessed to tax and his income is only Rs.3,OOO/- to Rs.3,500j- per month.

14. Shri Ram Kumar Pandey invested Rs.25,000/- in share application of appellant company. Since he expired, his son

appeared before AO and explained that his father was into business of selling bhusa and his yearly income was Rs.1.46 lakh. No evidence has been produced to support that income from sale of Bhusa was Rs.1.46 lacs or that such business was being carried out by the father as the father is no more and the son who stated this is not doing anything. Thus here also the creditworthiness and genuineness of the transaction is not established.

15. Shri Raja Jagtap has invested Rs.25,000/- in share application of appellant company. As he is a property broker who is filing return of income showing income at Rs.80,OOO/- per annum, and he owned up such investment, hence this amount is considered as explained.

16. The appellant could not produce share applicants before AO other than those mentioned above, which are referred to by AO in table given in assessment order at S.No.1,2,3,4,8,9,10,15&16 whose names are Shri Virendra Choukesy, Shri Yusuf Patel, Shri Suresh Shyamlal, Shri Suresh Ramsadan, Shri Gorelal Shivchand, Shri Ashok Jaiswal, Shri Gopal das, Shri Virendra Dubey and Shri Premchand Bor asi. Despite the fact that most of such share application money was received in cash and most of these depositors were not assessed to tax, the share applicants were not produced before AO, hence creditworthiness and the genuineness of transaction is. not established. Considering the fact that except Shri Premchand Borasi none of such depositors is assessed to tax, puts a question

mark on even their creditworthiness.

17. In the case of Shri Premchand Borasi, return shows income of only Rs. 74,198/- which could be enough to sustain his household expenses and is not sufficient to explain deposit of Rs. 75,000/- with appellant company. Being MD of appellant company, onus was even heavier to submit copy of his bank account and to explain his deposit. But appellant failed to do so. The issue of advances received from Shri Premchand Borasi was also considered by the CIT (Appeals)–**II** in the case of the appellant for the A.Y.1999-2000 & 2000-Olin his order in Appeal No. IT-62 & 61/09-10 dated 03-12-2012 and the observations made therein are reproduced hereunder:

"Ground no. 4 of appeal is regarding addition of Rs. 1 lakh in AY 1999-2000 & Rs.2 lakh in AY 2000-01 in hands of appellant u/s 68' of the 1. T. Act for receiving a credit as share application money from appellant's director Shri Premchand Borasi. As per AO, papers to establish identity and genuineness were filed. The AO added this amount because share applicant was not produced and confirmation was filed for AY 2000-01 and not for AY 1999-2000.

I have gone through the submission made by appellant. A copy of his return of income is also filed in this office which shows that in A Y 1999-2000 he has income from salary ofRs.1,20,000/-, Honorarium from Nagar Nigam of Rs.12,000/-, interest income of Rs.720/-, agriculture income of Rs.20,000/- and income from sale of agriculture land of Rs.1,66,04,116/-. But in bank a/c: of appellant no such deposit from sale of agriculture land is seen and therefore, how this land sale is shown in AY 1999-2000 is not explained. But more than that remaining income reflected in capital a/c from all other sources in AY 1999-2000 is only Rs.1,52, 720/ -. But copy of his bank account is not provided prior to 02-05-1998 and after 02-05-1998, there is deposit of only Rs.43,514/- in this account and there is no cheque payment of Rs.1 lakh from this account to appellant. In A Y 2000-01, deposits seen in bank a/c of Shri Premchand Borasi is much more than his known sources of income of Rs.1,60, 000/- reflected in his return. In his bank a/«: there are deposits of Rs.1,01,000/-,Rs.67,500/-,Rs.27,000/-,Rs.1,10,000/-, Rs.26,700/- Rs.31,735/and Rs.4,75,000/- on 01.09.99, 07.10.99, 24.11.99, 25.11.99, 17.01.2000,29.01.2000 and 24.03.2000 respectively. In AY 2000-01, only one cheque payment of Rs.1 lakh is seen in March'2000 which is probably paid to appellant. Hence in AY 1999-2000 and AY 2000-01, bank account of creditor is showing payment of only Rs. Nil and Rs. 1 lakh respectively in A Y 1999-2000 and AY 2000-01. In view of the aforesaid discussion it is held that payment of share capital of Rs. 1 lakh and Rs.2 lakh in AY 1999-2000 & AY 2000-01 by Shri Premchand Borasi to appellant company remained unexplained. In view of the same, such share application money of Rs. 1 lakh and Rs. 2 lakh in AY 1999--2000 & AY 2000-01 is held as unexplained and addition of the same in hands of appellant u/ s 68 of the Act as made by AO is upheld. The onus was heavier on appellant to prove this share application money as it was from the managing director of appellant company, which appellant failed to discharge. As a result Ground no. 4 of appeal is dismissed. "

17.1 The above findings thus also enforce the finding arrived for the year under consideration that the creditworthiness was not established even in the case of Shri Premchand Borasi.

18. Filing of affidavits from some parties also does not explain the matter. Especially as the affidavits are all worded in a standard format and do not indicate the source of the investment in share application. They are hence merely self serving documents not throwing any light on the source of the investment and the circumstances of the transaction. It is because in the view of facts peculiar to this case, most depositors are not assessed to tax and therefore it becomes necessary to explain source of each such deposit and source of such huge cash deposited by them, when such depositors are men of no means with very meager Income.

19. It is now settled that in case of a closely held company like the appellant, onus is much heavier to prove the identity, genuineness and creditworthiness of its depositors z share applicants because as per company law only relatives /friends/known persons are allowed to apply for shares of closely held company. But appellant has failed to discharge this onus and failed to explain the share application money received in this year except that received from Shri Raja Jagtap *(Rs.25,000/-)*· The addition of balance share application money of Rs.11,40,OOO*1- u]* s 68 of the I.T. Act is therefore

upheld based on various reasons given in preceding paras.

19.1 In this regard reliance is placed on the decisions in cases of Sumati Dayal (SC) 214 ITR 801 and Vasantibai N. Shah (Born.) 213 ITR 805 for the proposition that where any sum is found credited in the books of assessee, it may be charged to Income Tax as income of assessee for that previous year if the explanation offered by assessee about the nature and source thereof is not satisfactory. If there is cash deposit before issuing cheques, such addition has to be sustained u/s 68 as held in case of Gyan Chand Anil Kumar (2001) 169 CTR **27** (MP)".

Findings of Ld.CIT(A):

Assessment Year 1998-99

"7.5 From the record it is seen that the appellant furnished before AO copy of share application and copy of share certificate in case of all the share applicants, while affidavit was filed in case of 25 applicants as detailed 1D the chart above. No identity proof was filed in 8 cases as detailed 1D the table above. In other cases identity proof in nature of ration card/ election card/ arm's License were filed. In 21 cases PAN was not furnished. Despite the fact that most of the amounts were received in cash majority of the share applicants, whose deposit was added, were not assessed to tax and adequate source of deposit/ creditworthiness was not established.

7.6 First case is that of share applicant Shri Dilip & Nirrnala Borasi. They have purportedly purchased 54,000 shares @ Rs.10 per share and total investment is Rs.5,40,000 j -. They have invested Rs.90,000/ - on 31-03-1996, Rs.75,OOO/- on 10-01-1997 and Rs.3,75,000j- on 04-03- 1998. Entire deposits are in cash/DD's purchased from cash. According to AO, Shri Dilip Borasi is earning only Rs.70,000j"-from business of property broker and another Rs.90,000j- were received by him from sale proceeds of agriculture land. But he could not explain source of rest of the deposits. When share applicant fails to explain source of cash deposits & creditworthiness of depositor is questionable, the genuineness of such transaction becomes doubtful and addition of such deposit has to be confirmed u/ s 68 of the l.T. Act, especially when such depositor of cash is not assessed to tax which makes onus on appellant even heavier. The deposit of Rs.5.40 lakh in cash from a person who is not even assessed to tax, and does not have known sources of income to explain such deposit therefore cannot be said to be satisfactorily explained merely on account of filing of copies of share application/ share certificate and affidavit which do not contain the details of sources of the deposit made.

7.7 Similar are cases of other depositors. For example Shri Vilas Vibhandik has deposited Rs.4 lakh with the appellant as share application money, of which Rs.2 lakh is given in AY 1998-99. He is also not assessed to tax and does not have a PAN. He explained to AO that he is a property broker from where he earns Rs.l lakh per annum. He further explained that such amount of share application money is given by him out of funds given by his father who. has expired. It is not *established by the appellant by filing any evidence to show whether the father had the financial capacity to give Rs. 1 Lac and how and when such amount was given and also how the other legal heirs of the father if any were treated at the time of his death.*

7.8. In the case of Shri Prem chand Borasi, return shows income of only Rs.74,198/- which could be enough to sustain his household expenses and is not sufficient to explain deposit of Rs.75,000/- with appellant company. Being MD of appellant company, onus was even heavier to submit copy of his bank account and to explain his deposit. But appellant failed to do so. The issue of advances received" from Shri Premchand Borasi was also considered by the CIT(Appeals)-II in the case of the appellant for the A.Y.1999-2000 & 2000-Ol in his order in Appeal No. IT-62 & 61/09-10 dated 03/12/l2 and the observations made therein are reproduced hereunder:

"Ground no. 4 of appeal is regarding addition of' Rs. 1 lakh in A Y 1999-200⁰& Rs. 2 lakh in AY 2000-01 in hands of appellant u/ s 68 of the 1. T. Act for receiving a credit as share application money from appellant's director Shri Prem chand Borasi. As per AO, papers to establish identity and genuineness were filed. The AD added this amount because share applicant was not produced and confirmation was filed for AY 2000-01 and not for AY 1999-2000.

I have gone through the submission made by appellant. A copy of his return of income is also filed in this office which shows that in AY 1999-2000 he has income from salary of Rs.1,20,OOO/-, Honorarium from Nagar Nigam of Rs.12,000/-, interest income of Rs. 720/-, agriculture income of Rs.20,000/- and income from sale of agriculture land of Rs.1,66,04,116/ -. But in bank a/ c of appellant no such *deposit from sale of agriculture land is seen and therefore, how this land sale is shown in A Y 1999-2000 is not explained. But more than that remaining income reflected in capital al c from all other sources in AY 1999-2000 is only Rs.1, 52,720/- But copy of his bank account is not provided prior to 02-05-1998 and after 02-05-1 998, there is deposit of only Rs.43,514/- in this account and there is no cheque payment of Rs.1/lakh from this account to appellant. In AY 2000-01, deposits seen in bank a/c of Shri Prem chand Borasi is much more than his known sources of income of Rs.1, 60, 0001 - reflected in his return. In his bank a/c there are deposits of Rs.1,01,000/-, Rs.67,500/-, Rs.27,OOO/-, Rs.1,10,OOO/-, Rs.26,700/-, Rs.31,735/- and Rs.4,75,OOOI- on 01-09-1999, 07.10.1999, 24-11-1999, 25-11-1999, 17-01-2000, 29-1-2000 and 24-03-2000 respectively. In AY 2000-01, only one cheque payment of Rs.1 lakh is seen in March'2000 which is probably paid to appellant Hence in AY 1999-2000 and AY 2000-01, bank account of creditor is showing payment of only Rs. Nil and Rs. 1 lakh respectively in AY 1999-2000 and AY 2000-01. In view of the aforesaid discussion it is held that payment of share capital of Rs.1 lakh and Rs. 2 lakh in AY 1999-2000 & AY 2000-01 by Shri prem chand Borasi to appellant company remained unexplained. In view of the same, such share application money of Rs.l lakh and Rs. 2 lakh in AY1999-2000 & AY 2000-01 is held as unexplained and addition of the same in hands of appellant u/s 68 of the I. T. Act as made by AO is upheld. The onus was heavier on appellant to prove this share application money as it was from the managing director of appellant company, which appellant Jailed to discharge. As a result Ground no. 4 of appeal is dismissed."*

7.9 The above findings thus also enforce the finding arrived for the year under consideration that the creditworthiness was not established even in the case of Shri Prem chand Borasi.

7.10 In the other cases also as shown in the chart the creditworthiness and genuineness of the transaction not established.

7.11 Filing of affidavits from some parties also does not explain the matter. Especially as the affidavits are all worded in a standard format and do not indicate the source of the investment in share application. They are hence merely self serving documents not throwing any light on the source of the investment and the circumstances of the transaction. It is because in the view of facts peculiar to this case, most depositors are not assessed to tax and therefore it becomes necessary to explain source of each such deposit and source of such huge cash deposited by them, when such depositors are' men of no means with very meager Income.

7.12 It is now settled that in case of a closely held company like the appellant, onus is much heavier to prove the identity, genuineness and creditworthiness of its depositors/ share applicants because as per company law only relatives /friends/known persons are allowed to apply for shares of closely held company. But appellant has failed to discharge this onus and failed to explain the share application money received in this year. The addition of share application money of Rs.65,27,500/- u/s 68 of the LT. Act is therefore upheld based on various reasons given in preceding paras.

7.13 In this regard reliance is also placed on the decisions in cases of Sumati Dayal (SC) 214 ITR 801 and Vasantibai N. Shah

(Born.) 213 ITR 805 for the proposition that where any sum is found credited in the books of assessee, it may be charged to Income Tax as income of the assessee for that previous year if the explanation offered by assessee about the nature and source thereof is not satisfactory. If there are cash deposit before issuing cheques, such addition has to be sustained u/s 68 as held in case of Gyan Chand Anil Kumar (2001) 169 CTR 27 (MP).

8. Aggrieved assessee is now in appeal before the Tribunal against the addition made u/s 68 of the Act by the Assessing Officer at Rs.11,40,000/- and Rs.65,27,500/-confirmed by the Ld.CIT(A) for Assessment Year 1997-98 and 1998-99 respectively.

9. The Ld. Counsel for the assessee commonly pleaded for both the assessment years challenging the findings of Ld.CIT(A) by making following written submissions;

1.00 In this context, at the outset, kind attention of Your Honours is invited to the various written submissions made before the learned CIT(A) which are placed at Page Nos. 32 to 57-0, 62 to 71 & 74 to 92 of our Compilation. We, in addition to our written submissions made hereunder, also wish to place reliance on the above referred written submissions made before the learned CIT(A), on the subject ground.

2.01 Your Honours, in the present case, the learned AO has made the entire addition by invoking provisions of section 68 of the Income-Tax Act, 1961. For a ready reference, the provisions of section 68 are reproduced as under:

"Cash credits

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

2.02 On a plain reading of the provisions of section 68 of the Act, it becomes abundantly clear that the provisions of the section can be put into operation only if either an assessee offers no explanation about the nature and source of any credit entry found credited in the books of the assessee maintained for any previous year or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. Admittedly, section 68 places a burden of proof on the assessee to explain the nature and the source of any credit found in the books but at the same time it has to kept in the mind that the burden casted upon the assessee is only an initial burden. It has consistently been laid down that when an assessee claims that he had borrowed money from a third party the initial onus lies on the assessee to establish (a) the identity of the third party; (b) the ability of the third party to advance money; and (c) prima-facie that the loan is genuine one. If the assessee establishes the aforesaid three pre-conditions, the burden gets shifted to the Department and then it would be for the Department to disprove the same. [CIT vs. Baishnab Charan Mohanti (1995) 212 ITR 199 (Ori)]. However, the degree of burden of proving varies from case to case depending upon the nature of cash credit. The burden of proving is relatively lighter when the credit is in the nature of share capital than the credit in the nature of loan. In the instant case, the nature of impugned credits are that of receipt of share application/ share capital shown by the appellant company in its books of account and therefore, as per the settled law, the appellant company was only required to establish identity of the share applicants and genuineness of the transactions but the appellant company went one step further and it also established the creditworthiness of the share applicants and thus it discharged its burden of proving, as contemplated under the provisions of section 68 of the Act, beyond all doubts. The manner in which the appellant company discharged its initial burden has been discussed in the ensuing paras.

3.01 The appellant company received share application amounting to Rs.11,65,0001- and *Rs.65,27,5001-* from the various persons respectively during the previous years relevant to A.Y. 1997-98 and A.Y. 1998-99. The necessary details have been given at Page No. 93-A and 93-B of our Compilation.

3.02 On a perusal of the list of the share applicants, it shall be observed by Your Honour's that all the share applicants are individual persons. It is submitted that in the case of the appellant company, it is not the allegation that it received share application from any non-existent entity or paper companies.

3.03 During the course of the assessment proceedings, in order to establish the existence of the individual persons, the appellant furnished the copies of share application forms, identity cards, bank statements and income-tax returns of the share applicants for establishing the genuineness of share application money received by it during the relevant previous years.

3.04 The learned AO also issued notices under s.131(1) of the Act to the share applicants. It shall be worthwhile to note that all the summons got duly served upon the concerning share applicants and none of the summons remained un-served which fact by itself speaks in volume regarding the existence of the share applicants as claimed by the appellant. Specimen copies of the summons are placed at page no. 98 & 99, 109, 115, 123, 134, 140, 156, 174 & 183 of our Paper Book.

3.05 That, in response to the summons issued, some of the share applicants filed their reply in writing before the AO by furnishing the necessary details and by confirming the subscription of shares by them in the appellant company. Specimen copies of the letters written by the share applicants to the AO in response to the summons under s.131, as acknowledged by the office of the AO, are placed at Page No. 100, 110, 116, 124, 135, 141, 157, 175 & 184 of our Paper Book.

3.06 That, in response to the summons, most of the share applicants also furnished their affidavits, duly sworn in before the Notary Public, which is apparent from the copy of the remand report given by the AO himself as placed at page no. 72 to 73C of our Compilation. It is submitted that at no point of time, either the AO or the learned CIT(A) has contravened or rebutted the affidavits so filed by third parties.

3.07 That, besides furnishing documentary evidences and affidavits, some of the share applicants had also got themselves personally appeared before the AO and their statements were duly recorded by the AO. Such fact is evident from the bodies of the assessment orders themselves. On a perusal of the relevant part of the assessment orders, at which the gist of the statements of the share applicants recorded, has been given, it would be appreciated by

Your Honour's that all the share applicants have duly confirmed making of investment by them in the appellant company. All such affidavits and personal deposition confirm the genuineness of the transactions claimed by the appellant.

3.08 It is submitted that during the course of the appellate proceedings, the appellant had further furnished copies of certain documents evidencing the identity of share applicants, genuineness of the transactions and creditworthiness of the share applicants before the ld. CIT(A) [kindly refer PB Page no. 97]. The details of the documents furnished by the appellant have also been discussed by the ld. CIT(A) at para (7.4A) at page no. 37 of his Order for A.Y. 1998-99.

4.00 Your Honour's, the learned CIT(A) while passing the appellate order for A.Y. 1997- 98, has erroneously dealt with the cases of share application money received by the appellant for A.Y. 1998-99 and thereby skipped to deal with specific findings in respect of various shareholders relating to A.Y. 1997-98.

5.00 Your Honour's, the learned CIT(A) in last few lines of para (8) at page no. 20 of his Order for A.Y. 1997-98 and para (7.5) at page no. 38 of his Order for A.Y. 1998-99, has wrongly stated that most of the share application money was received by the appellant company in form of cash whereas the position is other way round that the appellant had accepted the share application money, in almost all cases, through banking channels only. Such fact is evident from the table of the share application given by' the AO himself in the body of the assessment order which has been reproduced by the learned CIT(A) at page no. 2 &3 of his Order for A.Y. 1997-98 and at page no. 34 to 37 of his Order for A.Y. 1998-99.

6.00 Your Honour's, the genuineness of the various documentary evidences filed before the learned AO and the learned CIT(A) remained uncontroverted.

7.00 In view of the plenty of the documentary evidences and personal appearances of some of the share applicants, as referred to hereinabove, it shall be appreciated by Your Honour's that the appellant company could be able to establish the identity of the share applicants beyond all doubts.

8.00 In the following judicial pronouncements, it has been held that once the identity of the share applicant is provided and the transaction has taken place through banking channel, the identity of the share applicant gets established:

a) CIT vs. Rock/ art Metal & *Mineral* 198 *Taxman* 497 *(Del.)*

b)CIT vs. Winstral Petrochemicals Pvt. Ltd. 330 ITR 603 (Del.)

c)CIT vs. Oasis Hospitalities Pvt. Ltd. 333 *ITR* 119 *(Del.)*

d)CIT vs. Gangour Investment Ltd. 335 *ITR* 359 *(Del.)*

e)CIT vs. Tulip Finance Ltd. 015 DTR 185 *(Del.)*

9.01 Your Honour's, the appellant had accepted the entire share application money through account payee cheques! drafts or other banking channels. It is submitted that not a single penny was taken by the appellant in form of cash towards share application money. The entire proceeds were duly deposited in the bank accounts of the appellant. The AO!CIT(A) has not contravened such fact.

9.02 Your Honour's, the genuineness of the transactions is further fortified by the copies of the banks statements of the share applicants furnished before the learned AO and also confirmed during the course of recording of statements under s.131 of the Act.

9.03 Your Honour's, the genuineness of the transactions is also evident from the copies of the share application forms duly signed by such share applicants which were furnished before the learned AO during the course of the assessment proceedings.

9.04 Your Honour's, the share applicants have duly confirmed the transactions of making investment by them in the appellant company. It is submitted that some of the share applicants have confirmed the transactions by making response to the notices issued by the AO under s. 131 of the Act. Most of the share applicants had also got their statements recorded before the AO.

10.01 Your Honour's, the creditworthiness of some of the share applicants are evident from the copies of the income-tax returns as were furnished during the course of the assessment proceedings.

10.02 Some of the share applicants are regularly assessed to income-tax and such share applicants are having their independent sources of income. Such fact is evident from the copies of the income-tax returns of the share applicants filed in the paper book.

11.00 <u>PROVISO TO SECTION 68 AS INTROUCED BY THE FINANCE ACT, 2012 IS NOT RETROSPECTIVE</u>

(i) Your Honour's, the provisions of section 68 are substantive and charging in nature. For such proposition, reliance is placed on following decisions:

a) CIT vs. Hari Prasad Chaudhary (1984) 147 *ITR* 791 *(Pat)*

b) Bhogilal Virchand vs. CIT (1981) 127 *ITR* 591 *(Bam)*

c) CIT vs. Bihar Cotton Mills Ltd. (1986) *160 ITR* 275 *(Pat)*

(ii) It is submitted that the first proviso to section 68 enlarges the onus of proving of a closely held company to establish not only the source of sum credited by way of share application money, share capital, share premium etc. in its books of account but also to establish the source of such sum in the hands of the person in whose name such credit is made. It is submitted that even from the Memorandum explaining the rational of adding such proviso, it becomes evident that such proviso is prospective in the nature and through such proviso the legislature intended to place an additional onus on the closely held companies receiving share application money. It is submitted that since the language of the pre-amended section was quite clear and unambiguous and therefore, the amendment so made cannot be regarded as clarificatory or declaratory in the nature. For such proposition reliance is placed on following judicial pronouncements:

a) *DCIT vs. Core Health Care Ltd. (2008) 298ITR* 194 *(SC)*
b) *CITvs. Smt. Godavaribai R. Podar* (1988) *169ITR* 245 *(Born)*
c) *CITvs. Woodward Governor India (P) Ltd. (2007) 294ITR* 451 *(Del)*
d) *CITvs. Rajasthan Mercantile Co. Ltd.* (1995) 211 *ITR 400 (Del)*

12.00 <u>LEGAL AUTHORITIES ON THE ISSUE IN FAVOUR OF THE APPELLANT</u>

12.01 Although in the instant case, the appellant, besides establishing the identity of the share applicants, had also established the genuineness of the transactions as also the creditworthiness of share applicants but as per the ruling of the Hon'ble Apex Court in the case of *CIT vs. Lovely Exports (P) Ltd. (2008)* 216 *CTR (SC)* 195, it was required to establish the identity only. The Hon'ble Apex Court in the case of Mis. Lovely Exports Pvt. Ltd. has held that once the identity of the share applicant is established, no addition under s.68 can be made in the hands of the recipient company. The relevant catch note is reproduced as under:

"Income-Cash credit-Share application money-If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AD, 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."

12.02 This Hon'ble Bench, in the case of *Mis. Anant Steels Ltd. vs. ACIT* [IT(SS)A Nos. 31,28,29 & 30lInd/2010 dated 18.11.2015], has held that once the confirmation letters of the share applicants are filed, no addition can be made on account of share application in the hands of the appellant company. The Hcn'ble Bench at para 7 has observed as under:

"The existence of subscriber to share application is not in doubt as the assessee duly furnished their names, age, address, date of filing the application, number of shares for which respective applications were made, amount given and the source of income of the applicant. In view of these facts, we are of the considered opinion that there is no justification for making the impugned addition because once the existence of the investor/share subscribers is proved, onus shifts on the revenue to establish that either the share applicants are bogus or the impugned money belongs to the assessee company itself. Once the confirmation letters are filed, no addition can be made on account of share application in the hands of the company.

12.03 This Hon'ble Bench, while reaching to the above finding, has relied upon its earlier decision in the case of STL Extrusion Pvt. Ltd. in ITA No.(SS) *259,260/Indl2008* dated 10-05-2010. In the case of STL Extrusions supra, this Hon'ble Bench after considering the decision of jurisdictional High Court in the case of Rathi Finlease Ltd. reported in 215 CTR 429 (MP), at para 7 has held as under:

"In the present appeal, since the assessee has discharged its onus by proving the identity of subscribers and even otherwise had any suspicion still remained in his mind, nothing prevented him to initiate action as per the provisions of the Act. The existence of

subscribers to share application is not in doubt as the assessee duly furnished their names. Age, address, date of filing the application, number of shares for which respective applications were made, amount given and the source of income of the applicant. In view of these facts, we are of the considered opinion. that that there is no justification for making the impugned addition because once the existence of the investor/share subscribers is proved, onus shifts on the revenue to establish that either the share applicants are bogus or the impugned money belongs to the assessee company itself. Once the confirmation letters are filed, no addition can be made on account of share application money in the hands of the company. Our view finds support from the decision in Shri Barkha Synthetics Limited v. *ACIT;* 155 *Taxman* 289 *(Raj). The cases like CIT* v. *GP International Limited;* 229 *CTR (P&H)* 86, *CIT* v. *Steller Investment Limited;* 192 *ITR* 287 *and Sophia Finance Limited,' 205 ITR 98 (Del) supports the case of the assessee. "*

10. The Ld. Counsel relied on following judgments;

(i) Commissioner of Income Tax vs. Peoples General Hospital Ltd. (2013) 356 ITR 65 (MP)

(ii) Principal Commissioner of Income Tax-I V/s Mahakaushal Sugar and Power Industries Ltd. 2017 (2) TMI 389 MP High Court.

(iii) Commissioner of Income Tax-1 V/s Gagandeep Infrastructure Pvt.Ltd 2017 (3) TMI 1263, Bombay High Court.

(iv) Pr. Commissioner of Income Tax-5 V/s Laxman Industrial Resources Ltd 2017(3) TMI 1521 Delhi High Court.

(v) Commissioner of Income Tax-VIII V/s SVP Builders (India) Limited, SVP Developers Limited, S.V. Liquor India Limited. 2015(12) TMI 1185 – Delhi High Court.

(vi) Commissioner of Income Tax Vs Gangeshwari Metal Pvt.Ltd (2013) 84 CCH 037 Delhi High Court.

(vii) Commissioner of Income Tax V Samir Bio-Tech (P) Ltd. (2010) 325 ITR 294 Delhi High Court

(viii) Commissioner of Income Tax V Winstral Petrochemicals (P) Ltd (2011) 330 ITR 603 Delhi High Court.

(ix) Commissioner of Income Tax V Oasis Hospitalities (P) Ltd.2011) 333 ITR 199 Delhi High Court.

(x) Commissioner of Income tax & Anr v Arunananda Textiles (P) Ltd.(2011) 333 ITR 116 (Kar)

(xi) Assistant Commissioner of Income Tax v Venkateshwar Ispat (P) Ltd (2009) 319 ITR 393 High Court of Chhattisgarh

(xii) Hindustan Inks & Resins Ltd V Deputy Commissioner of Income Tax (2011) 60 dtr (Guj) 18 High Court of Gujarat

(xiii) Commissioner of Income Tax V Jay Dee Securities and Finance Ltd (2013) 350 ITR 200 (All) High Court of Allahabad.

11. On the other hand the Departmental Counsel vehemently argued supporting the findings of Ld.CIT(A).

12. We have heard the rival contentions and carefully perused the records placed before us.

13. The common issue in narrow compass for these two Assessment Years 1997-98 and 1998-99 revolves around the identity, genuineness and creditworthiness of the share application money of Rs.11,40,000/- and Rs.65,27,500/- received by the assessee company.

14. We find that for Assessment Year 1997-98 the alleged share capital of Rs.11,40,000/- was received from 15 persons and for Assessment Year 1998-99 the alleged unexplained share application money of Rs.65,27,500/- has been received from 28 persons. Our focus will be limited to adjudicate as to whether the assessee has been successful to prove the identity, genuineness and creditworthiness of the alleged share applicants.

15. Before starting to deal with the facts of the alleged share applicants we will first like to go through the view taken by Hon'ble Apex Court in the case of M/s. Lovely Exports (P) Ltd *(supra)* which has been followed by various Hon'ble courts. We will like to reproduce below the findings of Hon'ble jurisdictional High Court in the case of CIT V/s People General Hospital Ltd wherein identical issue was adjudicated by the Hon'ble Court upholding the view taken by Tribunal in favour of the assessee relying on the judgment of Hon'ble Apex Court in the case of Lovely Exports (P) Ltd *(supra)* and the same reads as follows;

> "15. In Lovely Exports (supra) the Apex Court considering the question held thus:-
>
> *"2. Can the amount of share money be regarded as undisclosed*

income under s.68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law.
Hence, we find no infirmity with the impugned judgment."

16. The aforesaid judgment has been followed by all the Courts and the judgments relied on y the appellants relates to the period prior to the judgment in Lovely Exports. As the Apex Court has specifically held that if the identity of the person providing share application money is established then the burden was not on the assessee to prove the creditworthiness he said person. However, the department can proceed against the said Company in accordance with law. The position of the present case is identical. It is not the case of any of e parties that M/s Alliance Industries Limited, Sharjah is a bogus company or a nonexistent company and the amount which was subscribed by the said Company by way of 5 are subscription was in fact the money of the respondent assessee. In the present case, e assessee had established the identity of investor who had provided the share subscription and it was established that the transaction was genuine though as per contention of the respondent the creditworthiness of the creditor was also established. In the resent case, in the light of the judgment of Lovely Exports (P) Ltd., we have to see only in respect of the establishment of the identity of the investor. The Delhi High Court also in i e Leasing & Finance Ltd. (supra), considering the similar question held that the assessee

Company having received subscriptions to the public/rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 in the absence of any positive material or evidence to indicate that the the share holders were benamidars or fictitious persons or that any part of the share capital represented company's own income from undisclosed sources. The similar view has been by the other High Courts"

17. As the the Apex Court has considered the law in Lovely Exports (supra) and in view of law own by the Apex Court, we find that the substantial questions framed in these appeals arise for our consideration. Accordingly, all these appeals are dismissed with no order as to costs".

1.

16. From the perusal of the above judgment in our understanding, no addition could be made u/s 68 of the Act in the absence of any positive material or evidence indicating that the share holders were benamidars or fictitious persons or that any part of the share capital represented company's own income from undisclosed sources. It is also been observed by the Hon'ble Apex Court in Lovely Exports (P) Ltd (supra) that if the identity of person providing share application money is established then the burden was not on the assessee to prove the creditworthiness of the said person.

17. It is also noteworthy to discuss the provision of section 68 of the Act along with proviso inserted by Finance Act 2012 w.e.f

1.4.2013 relating to the assessee companies. For proper understanding we reproduce below the provision of section 68 of the Act;

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

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

(*a*) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(*b*) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

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

18. The above amendment by way of insertion of first proviso to Section 68 of the Act w.e.f. 1.4.2013 is applicable only in the case of the assessee company and this newly inserted proviso to Section 68 of the Act enlarge the onus on the company, to establish to the satisfaction of the Assessing Officer about the source of sum credited by way of share application money, share capital, share premium etc in its books of accounts and

also to establish the source of said sum in the hands of the person in whose name such credit is made. In short it contemplates that the assessee needs to prove the source of source of the cash credit received in the books of accounts by a company. However, this newly inserted proviso of Section 68 of the Act is prospective in nature effective from 1.4.2013 and in our view is not applicable in the case of the assessee. It means that to adjudicate the issue before us we need to examine as to whether the assessee has been able to prove the source of share application money and not source of source.

19. Now in order to examine whether the assessee has been able to prove the source the level of checking varies from case to case but if assessee is able to prove the identity, confirmation of the transactions, payments received through banking channel then it itself proves that the money has been received from an identified source and the transactions is genuine. creditworthiness can also be examined by Assessing authority by issuing the notices u/s 131/133(6) of the Act to the share applicants and positivity can be drawn if the notices are duly served on the particular person. And to a great extent creditworthiness if proved if the alleged share applicants replies to the notice issued u/s 131/133(6) of the Act. In case the alleged he/she appears in person before the Assessing Officer to give statement accepting the transaction then their remains no

question of lack of genuineness and creditworthiness of the transaction.

20. In view of above parameters let us examine the alleged share applications.

21. As regards A.Y. 1997-98 alleged share application money is of Rs.11,40,000/- received from 15 persons out of which 6 persons namely Shri G.S. Borasi Rs.2,75,000/-, Shri Vilas Rs.2,00,000/-, Shri Moolchand Rs.80,000/-, Shri Dilip Borasi Rs.75,000/-, Shri Ashok Jaiswal Rs.25,000/- and Shri Ramkumar Rs.25,000/- who in total applied for share application money of Rs.6,80,000/-., proper identity details, confirmation of the transaction, affidavits filed and also gave statement before the Assessing Officer. In our view the assessee has been successful to explain the source of alleged share application money of Rs.6,80,000/-.

22. The remaining amount of Rs.4,60,000/- has been received from 9 persons and we find that Mr. Prem Chand Borasi giving Rs.75,000/- has provided his income tax return, computation and balance sheet along with PAN card, Mr. Suresh Ramsadan and Mr. Suresh S/o Shyamlal giving Rs.75,000/- each and Mr. Yunus Patel who gave Rs.25,000/- have duly replied to the notices issued u/s 131/133(6) of the Act providing complete

details of their address, filing the affidavit and confirming the transaction. We are satisfied that the assessee has been successful to prove the identity, genuineness and creditworthiness of these 4 persons and therefore the alleged share application money of Rs.2,50,000/- should not have been added as unexplained cash credit u/s 68 of the Act.

23. Now there remains following 5 persons who have given in total Rs.2,10,000/-.

1. Shri Gopal Das Rs.1,10,000/- by Cheque
2. Shri Ashok Jaiswal Rs. 25,000/- by Cheque
3. Shri Garelal Rs. 25,000/- by Cash
4. Shri Virendra S/o Shri S.P. Dubey Rs. 25,000/- by Cheque
5. Shri Virendra Chokse Rs. 25,000/- by Cheque

24. Out of above 5 persons we find that Mr. Ashok Jaiswal, Mr.Virendra S/o Shri S.P. Dubey giving Rs.25,000/- each has provided proof of identity, transferred the money through account payee cheque and submitted duly notarized affidavit and confirmed the transaction and Mr. Virendra Chokse who has paid Rs.25,000/- by account payee cheque and was duly served with the notice u/s 131/133(6) of the Act. He has also provided affidavit and confirmation of transaction. In our view the source of share application money is well established by the

assessee in the case of 3 persons, no addition was called for u/s 68 of the Act for Rs.75,000/-.

25. Now remains 2 persons Mr. Gopaldas and Mr. Garelal. We find that Mr. Gopaldas has not provided any identity details, no notice has been served on him and similarly in the case of Mr.Garelal share application money has been given in cash and the assessee has been unable to prove the identity of these persons. In our considered view the addition made u/s 68 of the Act needs to be sustained in the case of these two share applicants giving Rs.1,10,000/- and Rs.25,000/-. To summarise, out of the alleged share application money of Rs.11,65,000/- for Assessment Year 1997-98, we direct the Assessing Officer to delete the addition of Rs.10,05,000/- and sustain the remaining amount of Rs.1,35,000/- as addition u/s 68 of the Act. Ground No.2 for Assessment Year 1997-98 is partly allowed.

26. Now we will take up the issue in respect of share application money for Assessment Year 1998-99 relating to 28 persons who gave in total a sum of Rs.65,27,500/-. Applying the same methodology as we have adopted for Assessment Year 1997-98, we find that 19 persons who gave Rs.32,76,000/- appeared in person before the Assessing Officer and stated to have accepted the share application money given by them through banking

channel from their regular source of income. Proof of identity and affidavits were also filed. The details of these 19 persons are placed at Page, 325, 326 and 327 of the paper book dated 6.7.2018. In our view no addition of Rs.32,76,000/- u/s 68 of the Act was called in relation to these 19 share holders.

27. Now remains 9 persons who have collectively given Rs.32,51,600/- out of which Mr. Prem Chand Borasia who is the Director of the company and also ex-parliamentarian gave share application money of Rs.16,00,000/- and Mr. Chandra Prakash Kingrani gave Rs.1,01,250/-. Both these persons apart from giving their identity details have also provided copies of their income tax returns as well as balance sheets to prove the source of share application money. Mr. Chandra Prakash has given reply to the notice u/s 131/133(6) of the Act. In our view Mr. Prem Chand and Mr. Chandra Prakash has successfully proved their identity, genuineness and creditworthiness and assessee in turn has proved source of share application money and therefore no addition was called for u/s 68 of the Act for sum of Rs.17,01,250/- received from these 2 persons.

28. Now remains following seven persons who gave share application money of Rs.15,50,250/-

S.No	Name	Amount	Mode of Payment
1	Shri Manohar	Rs.5,00,000/-	By Pay Order
2	Shri Rajesh	Rs.50,250/-	By Cheque
3	Shri Bhagwan	Rs.2,00,000/-	By Pay Order
4	Shri Brijwala	Rs.2,00,000/-	By Cash
5	Shri Jagdish	Rs.2,00,000/-	By Cheque
6	Shri Tekchand	Rs.2,00,000/-	By Cheque
7	Shri Jaipal Singh	Rs.2,00,000/-	By Cheque

29. From the above detail we find that Mr. Manohar and Mr. Rajesh had given Rs.5,00,000/- and Rs.50,250/- respectively by account payee bank draft/cheque. Apart from providing confirmation letter and notarized affidavit have also replied to the notices u/s 131/133(6) of the Act issued by the Assessing Officer which shows that they were genuine investors who have provided their details of address directly to the Assessing Officer and in our view the assessee has been successful to prove the source of the share application money and in case of any doubt the Assessing Officer was free to initiate action in the case of alleged cash creditors. Therefore no addition was called for u/s 68 of the Act in

the case of these two persons namely Mr. Manohar and Mr. Rajesh for Rs.5,00,000/- and Rs.50,250/- respectively.

30. Now remains 5 share applicants namely S/Shri Bhagwan, Brijwala, Jagdish, Tekchand and Jaipal Singh who have given Rs.2,00,000/- each to the assessee. All these 5 persons have provided the copy of ration card, i.e. the identity details. The payment from all these 5 persons have been received through account payee cheque in the bank account of the assessee. Confirmation of the account, duly signed share certificates and notarized affidavits were placed before the Assessing Officer. As far as identity and genuineness of these 5 persons were concerned there remains no doubts are well established.

31. It is surprising to find that even when the details of address of these five share applicants were available with the Assessing Officer, no enquiry was initiated by way of issuing notices u/s 131/133(6) of the Act directing these persons to appear before the Assessing Officer or to file necessary details. From perusal of record it is also revealed that these five persons seems to be from same

village i.e. Khandwa and they issued cheque from same cheque book bearing No. 238054, 238055, 238056, 238057 and 238058. Generally cheque books are issued separately to each person and the cheque number can be from same cheque book if all these five persons are joint account holders. There is no proof available on records to clarify these facts. We are conscious about the fact that the matter is almost 20 years old but still in order to appreciate the fact correctly there is no harm in directing the Assessing Officer to make necessary verification limited only to these five share applicants namely Shri Bhagwan, Smt. Brijwala, Shri Jagdish, Shri Tekchand and Shri Jaipal Singh and also direct the assessee to furnish necessary supporting evidence to prove that all these five persons are having separate bank accounts or in the alternative are having joint account from which the alleged amount of share application money of Rs.2,00,000/- each, has been transferred in the bank account of the assessee.

32. To summarise the issue for Assessment Year 1998-99 in view of our above discussion we direct the Assessing Officer that out of the total addition u/s 68 of the Act at Rs.65,27,500/- addition of

Rs.,55,27,500/- needs to be deleted and as regards the remaining addition of Rs.10,00,000/- received from five persons as referred above, the matter is restored to the file of the Assessing Officer for carrying out necessary enquiry and verification with the assistance of documents to be filed by the assessee after providing it a proper opportunity of being heard.

33. Ground No.2 for Assessment Year 98-99 is partly allowed for statistical purposes.

34. In the result appeal of the assessee for Assessment Year 1997-98 is partly allowed and that of Assessment Year 1998-99 is partly allowed for statistical purposes.

Order pronounced in open Court on 30.8.2018.

Sd/- sd/-

(KUL BHARAT) **(MANISH BORAD)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

August 30 , 2018
/Dev