

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य
एवं माननीय श्री रवीशसूद, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI RAVISH SOOD, JM

आयकरअपील सं./ I.T.A. No.756/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

आयकरअपील सं./ I.T.A. No.4763/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT-9(2)(1) 665A, 6 th Floor Aaykar Bhawan, M.K.Road Mumbai – 400 020	बनाम/ Vs.	M/s Brima Sagar Maharashtra Distilleries Ltd. 7 th Floor, Vaman Techno Centre Marot Makwana Road Off.Andheri Kurla Road Andheri (E), Mumbai - 400059
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADCB-4956-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri S.C.Tiwari – Ld. AR
Revenue by	:	Shri Sushil Kumar Mishra (Ld. CIT-DR)/ Shri Tharian Oommen (Ld. Sr. DR)

सुनवाई की तारीख/ Date of Hearing	:	09/04/2021
घोषणा की तारीख / Date of Pronouncement	:	28/06/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2011-12 & 2012-13 contest separate orders of learned first appellate authority. However, the facts as well as issues are quite identical in both the years and therefore, the appeals were heard together and are now being

disposed-off by way of this common order for sake of convenience & brevity. First, we take up appeal for AY 2011-12.

2. The appeal for AY 2011-12 contest the order of Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [CIT(A)], Appeal No.CIT(A)-16/DCIT-8(1)/IT-81/2014-15 dated 09/11/2015 on following grounds of appeal:-

(i) The Ld. CIT(A) has erred in holding that the allegations contained in the assessment order are by and large either not relevant or contrary to facts on record and the case laws cited by the AO are clearly distinguishable from facts of the case and do not apply in the assessee's case, ignoring the fact that the said decisions of Hon'ble Supreme Court in the case of Vijay Kumar Talwar V/s CIT (2011 330 ITR 1 SC) and CIT V/s Orissa Corpn. Pvt. Ltd. (1986 159 ITR 78) have not been considered.

(ii) The Ld. CIT(A) has erred in deleting the addition of Rs.8,20,00,000/- u/s 68 of the Act without appreciating the fact that M/s Bottomline Distributors Pvt. Ltd. had filed part details as called u/s 133(6) of the I.T.Act, 1961 to prove the creditworthiness of the transactions.

(iii) The Ld. CIT(A) has erred in deleting the addition of Rs. Rs.8,20,00,000/- u/s 68 of the Act without appreciating the fact that amount shown to have been received from M/s Bottomline Distributors Pvt. Ltd. during the year is Rs.2,55,00,000/- and the resolution does not mention anything about share warrants of the assessee company.

As evident, the revenue is aggrieved by deletion of certain addition u/s 68 as made by Ld. AO in the assessment order.

3. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-book. The judicial pronouncements as cited during the course of hearing have duly been deliberated upon. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. Assessment Proceedings

4.1 The material facts are that the assessee being resident corporate assessee stated to be engaged in manufacturing and sale of liquor products was assessed u/s 143(3) on 18/03/2014 wherein it was saddled

with certain additions u/s 68. The assessee was incorporated on 04/07/2008. During this year, the assessee entered into a business transfer agreement on 16/12/2010 to take over distillery business from another entity. In order to meet urgent fund requirement and to reduce the borrowings, the assessee issued Share Warrants to an entity namely M/s Bottomline Distributors Private Ltd. (BDPL).

4.2 The proceeds of warrants were received in assessee's bank accounts in various tranches during February, 2011 to March, 2011 as detailed in the assessment order. The share warrants would enable the subscriber to buy the shares of assessee company at option price of Rs.300/- per share as against valuation of Rs.258/- per share as valued by a firm of Chartered Accountants M/s Jauhari Gupta & Associates of Kanpur. The option price was stated to be kept at higher amount keeping in view the bright future business prospects of the assessee company.

4.3 To facilitate issue of warrants, the assessee complied with the requirements of The Companies Act and passed special resolution authorizing allotment of 8.50 Lacs warrants to the subscriber. Each warrant would entitle the subscriber to subscribe for one equity share of Rs.10/- each at exercise price of Rs.300/- per share or at a price determined in accordance with the SEBI guidelines. The said option could be exercised within a period of 12 months from the date of allotment of the warrants. The sole warrant holder i.e. M/s BDPL exercised the option and the shares were allotted to the warrant holder in due course of time. The funds so received by the assessee were stated to have been used for repayment of loans to reduce the interest burden. During this year, the assessee has received part warrant application money of Rs.820 Lacs.

4.4 During assessment proceedings, the assessee was directed to furnish the requisite documentary evidences in support of issue of share warrants. Notice u/s 133(6) was also issued to M/s BDPL calling for various information. The notice was duly responded to by M/s BDPL along with certain details / documentary evidences which include the following documents:-

- (i) Copy of Income Tax Return Acknowledgement for AY 2011-12
- (ii) Computation of Income for AY 2011-12
- (iii) Audited financial statements for financial year 2010-11
- (iv) Copy of Bank Statement
- (v) Copy of account of assessee for AY 2011-12
- (vi) Copy of Board Resolution along with offer and allotment letters.

4.5 However, Ld. AO, invoking the provisions of Sec.68, opined that the assessee could not furnish complete information as called from time to time and the onus as casted upon the assessee to prove the identity as well as creditworthiness of the lender and to prove the genuineness of the transactions remained undischarged.

4.6 The documents, which in the opinion of Ld. AO could not be furnished by the assessee, would include copies of correspondence with M/s BDPL prior to issue of warrants, details of introducers of directors of M/s BDPL, details of services taken from investment banker, proof of receipt of share warrant application form, proof of dispatch of notice of AGM along with postal records, proof of dispatch of share warrants and shares. Regarding creditworthiness of M/s BDPL, it was observed by Ld. AO that the said entity reflected loss of Rs.2,014/- during the year and no business income was credited in its Profit & Loss Account. Regarding genuineness of the transactions, it was observed that there was no basis

/ method for valuation of warrant @Rs.300/- each. Further the board resolution furnished by M/s BDPL was general in nature and did not mention anything about subscription to share warrants of the assessee company. Another concern was that the assessee had negative reserves of Rs.28.61 Lacs and therefore, there would be no justification for issue of share warrants at Rs.300/- each. The provisions of newly inserted Section 56(2)(viiia), in the opinion of Ld. AO, were also applicable to the assessee's case.

4.7 Finally, the share warrant application money so received by the assessee was treated as unexplained cash credit u/s 68 and added to assessee's income while framing the assessment.

Appellate proceedings

5.1 The Ld. CIT(A), after considering the assessment order as well as assessee's submissions, noted that M/s BDPL was a duly registered entity having valid Income Tax Permanent Account Number (PAN) and therefore, its existence could not be doubted. The investor had paid up capital and reserves of more than Rs.24.15 Crores which were used to make investment in the assessee company. The transactions were duly reflected in audited financial statements of M/s BDPL. Pertinently, M/s BDPL was duly assessed in scrutiny assessment on 05/09/2011 by the department for the year in which the share capital and premium was raised by that entity. The funds were received through banking channels and the transactions were duly supported by Copy of Board resolution of M/s BDPL. The offer letter and allotment letter with respect to share warrants were filed by M/s BDPL in response to notice u/s 133(6). Evidently, M/s BDPL had furnished all the requisite information as required under law. The transactions were duly supported by the bank

statements as well as financial statements of both the entities. Therefore, the onus casted on assessee in terms of requirements of Sec.68 was duly discharged and therefore, the additions could not be sustained in the eyes of law.

5.2 The relevant findings of Ld. CIT(A) were as under: -

5.1 Although the appellant has raised 6 grounds of appeal but the only effective ground is against the addition of Rs.8,20,00,000/- u/s.68 of the I.T. Act. In the assessment order, the Ld.A.O. observed that the appellant company had shown to have issued fully convertible share warrants. After referring note No.13 under Schedule 17 to Financial Statements, the Ld. A.O. observed that appellant company had received a sum of Rs.8,20,00,000/- being the amount of application for allotment of 8,50,000 warrants convertible within a period of 12 months from the date of allotment of warrants into 8,50,000 equity shares of Rs.10/- each at an exercise price of Rs.300/- per share. During the course of assessment proceedings, the A.O. called the details of warrants including name, address, amount, income tax return, Balance Sheet, Capital A/c. and bank statement in relation to the parties to whom such warrants were claimed to have been issued during the year. As mentioned in para 3 of the assessment order, all the relevant details called by the A.O. were furnished by the appellant during the course of assessment proceedings. A notice u/s.133(6) of the I.T. Act was issued by the A.O. on 28.01.2014 to M/s. Bottomlime Distributors Pvt. Ltd., 23/1; Principal Khudiram Bose Road, Kolkata, West Bengal 700 006, who was the sole subscriber of allotment of warrants into 8,50,000 equity shares, asking various details which are mentioned in para 4 of the assessment order. In para 5 of the order, the Ld. A.O. duly acknowledged the receipt of necessary details.

5.2 From the perusal of para 5 of assessment order, it is evident that in compliance to notice u/s.133(6), the said M/s. Bottomlime Distributors P. Ltd. submitted the following documents:

- i. Copy of acknowledgement ship of return filed for A.Y.2011-12.
- ii. Copy of computation of income for A.Y.2011-12
- iii. Copy of audit report and audited Balance Sheet as on 31.03.2011 and P & L A/c. for the year ended on that date together with complete annexures.
- iv. Copy of relevant extracts of bank statement,
- v. Copy of account of the appellant company for A.Y.2011-12
- vi. Copy of Board's resolution alongwith offer and allotment letter.

From the perusal of the details filed in respect of M/s. Bottomlime Distributors P. Ltd. during the course of assessment and appellate proceedings, it is observed that:

- i. M/s Bottomlime Distributors P. Ltd. is a company registered under the Companies Act 1956 vide certificate of incorporation dated 31.07.2008 bearing CIN U51909WB2008PTC128087 and having PAN AADCB5979K allotted by the Income tax Department,
- ii. M/s. Bottomlime Distributors P. Ltd. has a paid up capital and reserves aggregating to Rs.24,15,48,000/- out of which the investment in application money of Rs.8,20,00,000/- has been made. The aforesaid is reflected in the audited Balance Sheet of the company. Further, M/s. Bottomlime

- Distributors P. Ltd. has been assessed u/s.143(3)/147 vide order dated 05.09.2011 passed by the ITO Wd.7(4), Kolkata which is the year in which the share capital and premium was raised by that company.
- iii. The investment made is through the bank account of M/s. Bottomline Distributors P. Ltd, and has been received in the bank account of the appellant company,
 - iv. The investment made by M/s. Bottomline Distributors P. Ltd. in the share warrants of the appellant company are duly reflected in its audited balance Sheet,
 - v. Copy of Board resolution, offer letter and allotment letter were also filed by M/s. Bottomline Distributors P. Ltd. in pursuance to notice u/s.133(6).

5.3 It was submitted by the appellant that in response to notice u/s.133(6) issued by the AO to M/s. Bottomline Distributors P. Ltd. the aforesaid company made compliance with all relevant issues raised therein. According to the appellant, the issue of part compliance of notice u/s.133(6) by M/s. Bottomline Distributors P. Ltd. raised by the AO was not fair for making an unjustified addition. It was clarified that during the assessment proceedings, the AO raised the issue of part compliance in response to notice u/s. 133(6) of the Act but some of the information required had no relevance to the issue at hand.

5.4 It was brought to my notice that M/s. Bottomline Distributors P. Ltd. in response to notice u/s.133(6) furnished all relevant information. It was also stated that in view of the proximate relationship of the appellant company with M/s. Bottomline Distributors P. Ltd. as evident from the records available from the site of Ministry of Corporate Affairs, majority information sought was of no consequence. After receipt of various details once again the Ld.A.O., vide order sheet entry dated 06-03-2014 required the appellant company to prove the identity, creditworthiness and genuineness of the transaction relating to issuance of share warrants valuing Rs.8,20,00,000/-. According to the Ld.A.O., the appellant company failed to prove the identity and creditworthiness of M/s. Bottomline Distributors P. Ltd. The Ld. A.O. further concluded that genuineness of transactions in the form of share warrants by the appellant company was also not proved. Therefore an addition of Rs.8,20,00,000/- was made by the AO. u/s 68 of the I.T. Act.

5.5 During the course of appellate proceedings, a written submission was filed by the appellant which find place in para 4 of this order. During appellate proceedings, it was contended that all the amount relating to warrant application money account and warrant allotment account were received through banking channels. It was submitted that during the previous year relevant to assessment year under appeal the appellant company received through banking channel sum aggregate to Rs.8,20,00,000/- from M/s. Bottomline Distributors P. Ltd. on account of application / allotment money in consideration for an allotment of 8,50,000 share warrants fully convertible into shares within a period of 12 months from the date of allotment. Copy of warrant application money account and warrant allotment money account in the books of appellant company were also produced for verification along with bank statement wherein the aforesaid sum aggregating to Rs.8,20,00,000/- had been received / credited, the necessary details are enclosed as Annexure 10 of the written submission. All the transactions have been routed through the banking channels and necessary bank statements were produced during appellate proceedings as well as assessment proceedings as acknowledged by the A.O. in the assessment order. In para 5(d) of the assessment order, the Ld. A.O. himself acknowledged that relevant extract of bank statement was also received in response

to notice u/s.133(6) from M/s. Bottomline Distributors P. Ltd. Since credit and debit entries are reflected in the bank statement of both the parties and transactions were carried out through cheques. Therefore, genuineness of transaction cannot be doubted and onus regarding genuineness of transactions stands discharged.

The AO has placed reliance on the decision of Globus Securities & Finance Pvt. Ltd. *supra in* justifying that genuineness of the transaction does not stand proved. However I find force in the submissions of the Ld. AR that the case relied upon by the AO is not applicable to the case of the assessee as the same is distinguishable on facts as inter alia there was no adverse information about the contributor company, no incomplete details of Balance sheet of contributor company were filed, the contributor company is related to the investee company in the appeal at hand. Further still the facts clearly show that valuation of equity was to be done as per the offer letter. It is also pertinent that at no stage during assessment proceedings the AO required the appellant company to file valuation report for justifying premium as is apparent from the order sheet produced before me in appeal.

5.6. The total sum of Rs.8,20,00,000/- was received from M/s. Bottomline Distributors P. Ltd., 23/1 Principal Khudiram Bose Road, Kolkata, West Bengal 700 006, which was incorporated under the Company's Act, 1956 vide certification of Registration No. U511909WB2008PTC128087 dated 31.07.2008. The certificate of incorporation was also enclosed as Annexure 14 of the written submission filed by the appellant. The above mentioned company had been allotted PAN as AADCB5979K by Income tax and is assessed at 7(4), Kolkata. A certified copy of annual return from records of ROC of M/s. Bottomline Distributors P. Ltd. showing share holding pattern was also furnished by the appellant during appellate proceedings which is attached as Annexure 16 of the submission. M/s. Bottomline Distributors P. Ltd. is regularly filing its return of income and its case for A.Y.2009-10 was selected for scrutiny and an order u/s.143(3) / 147 of the I.T. Act was passed by the ITO 7(4), Kolkata on 05.09.2011. In support of its claim, a copy of the order is also submitted by the appellant as Annexure 15 of the written submission. M/s. Bottomline Distributors P. Ltd. is permanently filing its regular return of income before ROC and Income tax department. The major share holder of M/s. Bottomline Distributors P. Ltd. are various corporate entities which are owned/controlled by Mr. Dipak Kotari and his family members. Mr. Dipak Kothari is also a director of M/s. Brima Sagar Maharashtra Distilleries Ltd., the appellant. If there had been any confusion in the mind of Ld.A.O. regarding identity of M/s. Bottomline Distributors Pvt. Ltd., the A.O. may have verified the same from the director of the appellant company. In view of various facts narrated above, the identity of M/s. Bottomline Distributors Pvt. Ltd. a subscriber of fully convertible share warrants cannot be doubted. Therefore, identity of M/s. Bottomline Distributors P. Ltd. stands proved in view of various evidences produced and discussed above.

5.7 The Ld. A.O. observed that the return of income of M/s. Bottomline Distributors P. Ltd. for A.Y.2011-12 reflected the net loss of Rs.2,014/-. According to the A.O. for A.Y.2011-12, appellant company had only interest income of Rs.22,56,561/- against which it had claimed a huge amount of expenses resulting in net loss of Rs.2,014/-. The interest income shown to have been received by the aforesaid company in AY 2010-11 was only Rs.2,32,192/-.With these observations, the Ld. A.O. concluded that appellant company failed to establish the creditworthiness of M/s. Bottomline Distributors P. Ltd. In the assessment order, the Ld. A.O. had himself acknowledged that during assessment proceedings, the A.R. submitted the name and address of the company and in addition to it a notice u/s.133(6) was also issued to M/s.

Bottomline Distributors which was the sole subscriber of fully convertible share warrants. In response to notice u/s.133(6), M/s. Bottomline Distributors P. Ltd. submitted copy of acknowledgements slip of return filed for A.Y.2011-12, copy of computation of income, copy of audit report and audited Balance Sheet as on 31.03.2011, copy of relevant extract of bank statement, copy of account of appellant company and copy of Board's resolution along with offer and allotment letter. The investment by said M/s Bottomline Distributors Pvt. Ltd., in share warrants of appellant company, stands justified by its capital and reserves. It is pertinent to mention here that the case of M/s. Bottomline Distributors P. Ltd. was scrutinized by the I.T.O. Wd. 7(4), Kolkata u/s.143(3) r.w.s.147 and he had accepted the Balance Sheet filed by M/s. Bottomline Distributors P. Ltd. Therefore, without giving any concrete contrary findings, the A.O. has simply disbelieved the Balance Sheet of the convertible share warrant subscriber. From the details filed it is evident that the majority share holding of Bottomline Distributors P. Ltd. is owned / controlled by Shri Deepak Kotari or his relative who also own / control the share holding in the appellant company. If at all there was any doubt in the mind of the Ld. A.O. regarding creditworthiness of M/s. Bottomline Distributors or genuineness of the transaction, he could have required specific details from the appellant company, which he failed to do as is evident from the order sheet filed before me in appellate proceedings. The transactions are duly reflected in the Balance Sheet and accounts of M/s. Bottomline Distributors P. Ltd. The return of income filed by M/s. Bottomline Distributors has been scrutinized by the Department u/s.143(3) / 147 and the results have been accepted. The Ld. A.O. had also not observed any defect in the Balance Sheet or the audited accounts of M/s. Bottomline Distributors P. Ltd. Therefore, without finding any specific deficiency in the Balance Sheet and accounts of subscribers of convertible share warrants, its creditworthiness cannot be doubted. The issue regarding additions u/s.68 on share application money has been considered by various Hon'ble Courts. Some of the relevant findings of Courts are considered as under:

i. *CIT Vs. Gangeshwari Metal P. Ltd. 361 ITR 10 (Delhi)*

The Hon'ble High Court of Delhi has held that the genuineness of the transactions is established as the transactions are routed through banking channels. It was seen that the share application money was received through a/c payee cheques, detail of which had been filed by the assessee by filing the copy of the bank a/c of the share applicants. Thus where the return of income was filed by the creditors of the assessee and was accepted by the AO and payments were through a/c payee cheques the genuineness of the transaction cannot be doubted. The revenue could not prove that the money received by the appellant in the form of share application has come from its own sources. No evidences regarding this have been brought on record by the AO.

ii. *In CIT Vs. Divine Leasing & Finance Ltd. 299 ITR 268 the Hon'ble Delhi High Court held that burden of proof can seldom be discharged to the hilt by the assessee. If the A.O. harbours doubts of the legitimacy of any subscription he is empowered, rather duty bound, to carry out thorough investigations. But if the A.O. fails to unearth any wrong or illegal dealings, he cannot obstinately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company. If relevant details of address and identity of the subscribers are furnished to the department alongwith copies of the shareholders register, share application forms, share transfer register etc. it would constitute acceptable proof or explanation by the assessee.*

iii. In *Hindustan Inks & Resins Ltd. vs. Dy. C.I.T. 60 DTR 0018 (2011)* the Hon'ble Gujarat High Court has held as under:

"From the concurrent findings recorded by the authorities below, it is apparent that none of the parties have recorded any findings to the effect that the identity of the depositors had not been established by the assessee. The case of the respondent is that the assessee has failed to explain the source of such cash' as well as creditworthiness of the deposits. It is not the case of the revenue that the subscribers are bogus. / the case of the revenue is that the source of such cash as well as creditworthiness of the depositors has not been explained. In the circumstances, the department is free to proceed to reopen the individual assessments of the deposits named by the assessee, however, under no circumstances, can the amount of share capital be regarded as the undisclosed income of the assessee."

iv. In *CIT Vs. STL Extrusion (P) Ltd. 333 ITR 269* the Hon'ble Madhya Pradesh High Court held that though it is the duty of the assessee to establish the genuineness of the credits but in the present case the assessee has duly established the identity and source of credits. The Tribunal has also held that once the identity and source of the subscribers of the shares is established no addition can be made u/s.68. The assessee having duly furnished the name, age, address, date of filing the application of shares, number of shares of each subscriber there was no justification for the AO for making the impugned addition because once the existence of the investors / 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 itself. After filing of the affidavits of the said subscriber the appellant at no stage of the proceedings sought any opportunity to rebut the said affidavits.

v. In *CIT Vs. Prayag Hospital & Research IT Appeal No.917 of 2010* the Hon'ble Delhi High Court held that shareholders of the assessee company having appeared before the AO and furnished affidavits alongwith supporting documents confirming their investment in the assessee, identity of the creditors is established and therefore, addition cannot be made in the hands of the assessee.

vi. In *CIT Vs. TDI Marketing (P) Ltd. IT Appeal No.340 of 2009* the Hon'ble Delhi High Court held that assessee company having furnished complete details of shareholders name, addresses, PAN and bankers and they having confirmed the investment and the AO having not given his specific comments on his enquiries pertaining to them except for nine shareholders, addition u/s.68 cannot be sustained.

vii. In *CIT vs. Gangour Investment Ltd. 335 ITR 359 (2011)* the Hon'ble High Court of Delhi held that assessee company having filed the subscription forms of the investors, including TT Ltd., a group company, containing details and information with respect to their addresses as well as PAN, thereby establishing their identity and also supplied a copy of the statement of bank accounts of TT Ltd., it has discharged its onus in respect of the veracity of the transaction and therefore, the addition u/s.68 made by the AO in respect of the impugned investment made by TT Ltd. has been rightly deleted.

5.8 I have also perused the assessment order and the written submissions filed by the appellant and the facts on record. The allegations contained in the assessment order are by and large either not relevant or contrary to facts on record. The case laws cited by the AO are clearly distinguishable from facts of the case of the

appellant company and therefore do not apply and I place reliance on the decision of the Apex Court in the case of Sun Engineering Works Ltd., HH Maharajadhiraj Madhav Rao Jiwaji Rao Scindia Bahadur and Mysore State Road Transport Corporation *supra*. I also find, from a perusal of the order sheet, that the assessment proceedings are squarely covered by the observations of Hon'ble High Court of Delhi in the case of Gangeshwari Metals Pvt. Ltd. *supra*, wherein the Hon'ble High Court has held that-

"As can be seen from the above extracts, two types of cases have been indicated. One in which the AO carries out the exercise which is required in law and the other in which the AO sits back with folded hands till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on presumptions. The present case falls in the latter category....."

It is important to point out that the audited accounts along with Balance Sheet of M/s. Bottomline Distributors Pvt. Ltd. had been accepted by the department u/s.143(3) r.w.s.147 of the I.T. Act, 1961 and no cogent defects have been found out by Ld. A.O. during the course of assessment proceedings. Moreover, the appellant company has provided the PAN, details of income tax returns, confirmation copy of bank accounts and other necessary details in respect of subscriber of share warrants of M/s. Brima Sagar Maharashtra Distilleries. Therefore, keeping in view, various facts as narrated above and various case laws cited and written submissions of the appellant company, the addition made by the A.O. u/s.68 for an amount of Rs.8,20,00,000/- is deleted and appeal of the appellant is allowed.

6. In the result the appeal of the appellant is allowed.

Finally, the additions as made by Ld. AO while framing the assessment were deleted. Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings & Adjudication

6. After going through material facts, it could be noted that the assessee has issued share warrants to M/s BDPL during the year. The share warrants would enable the investor to subscribe to share of assessee entity at exercise price of Rs.300/- per share. The proposed price of the share was duly supported by the valuation report of a Chartered Accountant firm which has not been disputed by Ld. AO. Evidently, the issue of warrants is duly supported by the offer letter and allotment letter issued by the assessee. The share warrants were issued in compliance with the requirements of The Companies Act as well as

SEBI guidelines. Undisputedly, the money has been received through banking channels. To confirm these transactions, Ld. AO issued notice u/s 133(6) to the sole applicant i.e. M/s BDPL. The notice was duly responded to by the applicant entity along with requisite details and documents as desired by Ld. AO, which has already been enumerated by us in preceding para 4.4. The transactions were duly confirmed by M/s BDPL. It is important to note that the existence of M/s BDPL could not be doubted since it was duly registered entity having valid PAN issued by the department. In fact, it was scrutinized u/s 143(3) r.w.s. 147 in earlier years in which it had raised share capital and premium. The return of income was duly accepted by the revenue during scrutiny assessment. The investment were sourced out of share capital and reserves of M/s BDPL and this fact remain uncontroverted before us. The transactions were duly reflected in the financial statements of the investor entity. The transactions have taken place through banking channels. After going through all these facts and evidences, we find that the onus casted upon assessee in terms of requirement of Sec.68 to prove the identity of the investor, their respective creditworthiness and the genuineness of the transactions, was duly discharged by the assessee. The onus, had thus shifted on Ld. AO, to disprove the assessee's documents and to bring on record any material to prove that assessee's own money flew back to it in the shape of share warrant application money. However, noting of that sort is available in the assessment order.

7. The documents, which in the opinion of Ld. AO could not be furnished, include correspondence with M/s BDPL prior to issue of warrants, details of introducers of directors of M/s BDPL, details of

services taken from investment banker, proof of receipt of share warrant application form, proof of dispatch of notice of AGM along with postal records, proof of dispatch of share warrants and shares. However, all these documents, as rightly noted by Ld. CIT(A), were not of much relevance since the transactions were duly confirmed by the investor entity as supported by other vital documentary evidences. So far as the applicability of the provisions of Sec.56(2)(viiia) is concerned, the same do not apply to the assessee since the assessee is not the recipient of any property rather it is only an issuer of share warrants only and therefore, these provisions do not apply to the assessee.

8. We find that it is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 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.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020]** which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as **Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161]**.

9. We find that the ratio of above decisions is applicable to the case of the assessee. The assessee had discharged the onus of proving the fulfillment of primary requirements of Section 68 and the onus was on Ld. AO to disprove the same. In the absence of any such facts on

record, the impugned additions could not be sustained in the eyes of law and therefore, Ld. CIT(A) has rightly deleted the same. Finding no infirmity in the impugned order, we dismiss the appeal.

Assessment Year 2012-13

10. The facts as well as issue is same in this year. An assessment was framed u/s 143(3) 28/03/2015 wherein the balance amount of Share Warrants received by the assessee from M/s BDPL was similarly added to its income u/s 68. However, upon further appeal, Ld. CIT(A) deleted the same with similar findings. Aggrieved, the revenue is in further appeal before us.

11. Facts being pari-materia the same, our adjudication as for AY 2011-12 shall equally apply to this year as well. Therefore, taking the same view, we confirm the impugned order and dismiss the appeal.

Conclusion

12. Both the appeal stands dismissed.

Order pronounced on 28th June, 2021

Sd/-

(Ravish Sood)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28/06/2021
 Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.