

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.3562/Del./2019

Assessment Year 2010-2011

M/s. Ancon Chemplast P. Ltd., Khasra No.66-7, Village-Alipur, Main G.T. Road, Near Retreat, New Delhi – 110 036. PAN AAECA7400M	vs.	The Income Tax Officer, Ward – 2 (4), C.R. Building, New Delhi. PIN – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri R.S. Singhvi, Advocate Shri Satyajeet Goel, Advocate
For Revenue :	Shri Satpal Gulati, CIT-D.R.

Date of Hearing :	24.03.2021
Date of Pronouncement :	30.04.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, New Delhi, Dated 18.03.2019, for the A.Y. 2010-2011, challenging the

reopening of the assessment under section 147/148 of the I.T. Act, 1961, addition of Rs.45 lakhs under section 68 of the I.T. Act, 1961 being share capital received from M/s. Prraneta Industries Ltd., and addition of Rs.90,000/- under section 69C of the I.T. Act, 1961 on account of commission.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that information in this case was received that search and seizure operation was conducted at various premises of Shri Shirish C. Shah who happened to be main persons engaged in providing bogus accommodation entries like long term capital gains, share capital, share premium and loan etc. Shri Shirish C. Shah directly and indirectly controlled more than 200 companies which include some of the public limited companies also. It was seen from the impounded material that assessee company has received Rs.45 lakhs in three transactions Dated 18.06.2009 from M/s. Prraneta

Industries Ltd., through Shri Shirish C. Shah Group. Perusal of the information revealed that M/s. Prraneta Industries Ltd., Now known as Aadhar Venture India Ltd., [Investor Company] is one of the conduit company which is controlled and managed by Shri Shirish C. Shah for the purpose of providing accommodation entries. The statement of Shri Omprakash Khandelwal, Promoter of the Company was recorded where he admitted to provide accommodation entries of the Investor Companies after charging Commission @ 1.8%. The A.O. noticed that in assessment year under appeal the assessee has received Rs.45 lakhs as share capital/share premium from the Investor Companies, therefore, reasons recorded for reopening of the assessment under section 147/148 of the I.T. Act, 1961. The assessee filed letter before A.O. submitting therein that return of income filed originally may be treated as return filed in response to notice under section 148 of the I.T. Act, 1961. The A.O. separately disposed of the objections of the assessee. The A.O. issued statutory notices seeking explanation of assessee with regard to the amount received

of Rs.45 lakhs from Investor Company. The assessee attended the proceedings before A.O. and submitted as under :

- *“That Prraneta Industries Ltd. (now known as Aadhaar India Ltd) is a public Limited Company and presently listed in Bombay Stock Exchange hence identity of shareholder is established.*
- *That during the F.Y. 2009-10 Prraneta Industries Ltd has declared income of Rs. 173.55-lacs hence amount received as share-capital is out of tax paid money.*
- *That shares are issued at fair market value of the company not at huge share premium. Equity shares having face value of Rs.10/- were issued at Rs.50/- which is fair market value as per the audited financial statements of the company.*
- *That Shri Shirish C. Shah neither Director nor shareholder of Praneta Industries Ltd.”*

3.1. The A.O. however did not accept the contention of assessee and found that during the course of search and

survey operation statements of Shri Shirish C. Shah, Shri Kumar Raichand Madan, Shri Chandrank Padmasni Kamani, Shri Rajan Kachaliya were recorded who have explained the *modus operandi* as to how to provide accommodation entries. The A.O. considering the *modus operandi* of these persons did not accept the explanation of assessee to have received genuine share capital. Therefore, explanation of assessee that return of income of Investor Company of Rs.173.55 lakhs and presently listed in Bombay Stock Exchange ["BSE"] is no ground to accept the explanation of assessee. The A.O. accordingly issued show cause notice to the assessee seeking explanation of assessee and in the show cause notice reproduced relevant para of statement of Shri Om Prakash Khandewal, Promoter Director of the Investor Company and sought explanation of assessee. The A.O. ultimately did not accept the explanation of assessee because assessee failed to produce the Director of the Investor Company for examination. Therefore, made addition of Rs.45 lakhs under section 68 of the I.T. Act and also made addition of Rs.90,000/- on account of

Commission. The assessee challenged the reopening of the assessment as well as addition on merits before the Ld. CIT(A), however, the appeal of assessee has been dismissed.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to PB-2 which is reasons recorded for reopening of the assessment and submitted that reasons are borrowed satisfaction and that A.O. did not apply his mind to the information received from Investigation Wing, therefore, reopening of the assessment is invalid and bad in Law. He has referred to objections filed by assessee to the reopening of the assessment Dated 27.06.2017 [PB-4] in which the assessee has requested the A.O. to provide copy of statement of Shri Shirish C. Shah and Shri Om Prakash Khandelwal, copy of the assessment order of Investor Company, copy of the Bank account of Investor Company and whether action have been taken under section 148 in case of other parties also. Learned Counsel for the Assessee also referred to PB-9 which is the Order of the A.O. Dated 17.07.2017 dismissing the objections filed by assessee

against reopening of the assessment in which the A.O. has specifically mentioned that the above documents sought by assessee cannot be supplied to the assessee because the same are confidential in nature. Learned Counsel for the Assessee, therefore, submitted that since all the relevant documents were not supplied to the assessee, therefore, objections of the assessee were not decided properly and right of assessee have been curtailed in filing proper objections before A.O. He has referred to PB-20 in which the assessee filed another objection before A.O. Dated 09.08.2017 against the re-assessment proceedings in which it is clearly clarified that assessee filed copy of ITR of Investor Company along with its audited balance-sheet and Director's Report, Certificate of Incorporation and proof of trading of shares at BSE. He has referred to PB-49 to 85 which are the documents filed before A.O. in respect of the fact that assessee received genuine share capital/premium which are copy of the confirmation, of ITR, copy of Board Resolution, copy of share application along with Share Application Form, copy of Master Data, Certificate of

Incorporation and evidence in respect of listing of shares at BSE of Investor Company along with their ITR and balance-sheet of the Investor. Learned Counsel for the Assessee submitted that letter of Shri Omprakash Khandelwal, Director of the Investor Company retracted from his statement, therefore, there is no case for reopening of the assessment against the assessee.

4.1. He has submitted that ITAT, Indore Bench in the group case of ACIT, Central Circle-18, New Delhi vs., M/s. Bharat Securities (P) Ltd., New Delhi & Others and ACIT, Central Circle-18, New Delhi vs., Chain House International (P.) Ltd., New Delhi decided the group appeals in Departmental appeals in ITA.No.598/Del./2017 etc., vide Order Dated 27.12.2017 in which the Ld. CIT(A) vide Order Dated 07.11.2016 deleted the additions on merits in respect of the same Investor Company M/s. Prraneta Industries Ltd., based on the same information received in search in the cases of Shri Shirish C. Shah etc., and Departmental appeals have been dismissed. Copy of the Order is placed on record. He has submitted that the Ld. CIT(A) accepted the

identity of the same Investor, its creditworthiness and genuineness of the transaction in the matter and the ITAT, Indore Bench dismissed the Departmental appeals. He has submitted that the Order of the Indore Bench of ITAT have been confirmed by the Hon'ble Madhya Pradesh High Court by dismissing the Departmental appeal. In the case of PCIT vs., Chain House International Pvt. Ltd., 98 taxmann.com 47 (MP) in which it was held that *"once genuineness, creditworthiness and identity of the Investors are established, no addition could be made as cash credit on ground that shares were issued at excessive premium."* He has submitted that the Judgment of the Hon'ble Madhya Pradesh High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department in the matter of PCIT vs., Bharat Securities (P.) Ltd., reported in [2020] 113 taxmann.com 32 (SC). Learned Counsel for the Assessee submitted that the ITAT, Delhi C-Bench in the case of INS Finance & Investment P. Ltd., New Delhi vs., ITO, Ward-12(3), New Delhi in ITA.No.9266/Del./2019 for the A.Y. 2010-2011 considered the identical issue of

reopening of the assessment and addition on merit in respect of the same Investor Company M/s. Prraneta Industries Ltd., based on the statement of same persons Shri Shirish C. Shah and Shri Omprakash Khandelwal vide Order Dated 26.10.2020 addition on merit have been deleted. Learned Counsel for the Assessee also relied upon the Order of ITAT, Delhi A-bench, Delhi in the case of ASN Polymers Pvt. Ltd., New Delhi vs., ITO, Ward-1(1), New Delhi in ITA.No.2489/Del./2019 for the A.Y. 2010-2011 in which the Tribunal has quashed the reopening of the assessment vide Order Dated 30.12.2020 on the same facts of taking share capital/premium from M/s. Prraneta Industries Ltd., based on the same statement of Shri Shirish C. Shah and Shri Omprakash Khandelwal. He has, therefore, submitted that the issue of the assessee is covered by these decisions on identical facts. He has submitted that since statements of Shri Shirish C. Shah and Shri Omprakash Khandelwal have not been provided to the assessee and was not subjected to cross-examination on behalf of the assessee, therefore, their statements cannot be read in evidence

against the assessee. The A.O. has not brought any material on record to rebut the documentary evidences filed by assessee, therefore, reopening of the assessment as well as addition on merit is wholly unjustified.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that at the time of initiation of re-assessment proceedings, the A.O. should have *prima facie* some material to form a belief and at that stage the sufficiency or correctness of the material is not required and relied upon Judgments of Hon'ble Supreme Court in the cases of Central Provinces Manganese Ore Co. Ltd., vs., ITO, Nagpur [1991] 191 ITR 662 (SC), Shri Krishna Pvt. Ltd., etc., vs., ITO, Calcutta & Others 221 ITR 538 (SC), Raymond Woolen Mills Ltd., [1999] 236 ITR 34 (SC) and ACIT vs., Rajesh Jhaveri Stock Brokers Pvt. Ltd., [2007] 291 ITR 500 (SC). He has also relied upon the Judgment of Hon'ble Delhi High Court in the case of AGR Investments Ltd., vs., Addl. CIT & Another [2011] 333 ITR 146 (Del.). He has, therefore, submitted that reopening of the assessment is justified in the matter. The Ld. D.R. as

regards merits of the addition submitted that Investigation Wing carried-out search action in the case of Shri Shirish C. Shah and found him to be engaged in providing accommodation entries. The A.O. noted that he is the person controlling Investor Company and that Shri Omprakash Khandelwal, Promoter of the Investor Company also made a statement. Therefore, addition was correctly made against the assessee. The A.O. rejected the explanation of assessee because of the findings given by the Investigation Wing. The Ld. D.R. submitted that the statement of Shri Omprakash Khandelwal was confronted to the assessee by referring to part statement in the show cause notice Dated 30.08.2017 and that assessee did not produce Director of the Investor Company, therefore, addition is rightly made by the authorities below. The Ld. D.R. relied upon Judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd., 13 taxmann.com 48 (SC) in which meager income declared by Investor was considered against the assessee because assessee failed to explain the creditworthiness of the Investor Company. He

has also relied upon Judgments of Hon'ble Delhi High Court in the cases of CIT vs., NR Portfolio Private Limited [2014] 42 taxmann.com 338 (Del.), Nova Promoters & Finlease Pvt. Ltd., ITA.No.342 of 2011 and NDR Promoters Private Limited ITA.No.49 of 2018. The Ld. D.R, therefore, submitted that authority below rightly confirmed the addition.

5.1. The Ld. D.R. also filed copy of the Order of SEBI Dated 04.09.2017 in the matter of M/s. Kavit Industries Limited in which name of the Investor Company is referred.

6. We have considered the rival submissions and perused the material on record. It is not in dispute that assessee filed confirmation of Investor, its Board resolution, Copy of Share Application along with Form, Copy of Master Data of the Investor Company and its Certificate of Incorporation along with evidence in respect of listing of shares at BSE along with ITR and balance-sheet of the Investor Company. The assessee explained before A.O. that the Investor Company is a Public Limited Company and presently listed in BSE. This fact is not doubted by the A.O.

The assessee also submitted before A.O. that the Investor Company has declared income of Rs.173.55 lakhs and hence amount received as share capital would prove the creditworthiness of the Investor. Copy of the acknowledgment of ITR of the Investor Company for the assessment year under appeal is filed at page-64 of the PB which supports the explanation of assessee that the Investor Company has declared income of Rs.1,73,55,274/-. The balance-sheet of the Investor Company also support such fact and PB-71 shows the Investor Company has share capital of Rs.22.57 crores and reserve and surplus of Rs.18.84 crores. Thus, the Investor Company has sufficient funds and income that it had capacity to make investment in assessee-company. The Investor Company is assessed to tax and listed Company and Public Limited Company, therefore, its identity is not in dispute. The assessee has also proved creditworthiness of the Investor Company and that entire transaction has taken place through banking channel, therefore, genuineness of the transaction in the matter is also not in dispute. The assessee also explained

before A.O. that Shri Shirish C. Shah is neither Director nor shareholder of the Investor Company. The A.O. has not brought any evidence on record to dispute the above explanation of assessee. The A.O. doubted the explanation of assessee because the search conducted in the case of Shri Shirish C. Shah and some material found during the course of search in his case. The statement of Shri Shirish C. Shah, Shri Omprakash Khandelwal of Investor Company were recorded during the course of search. The assessee has asked to supply copy of their statements for the purpose of rebutting their statements, but, such statements were not supplied by the A.O. stating that they are confidential in nature. Since these statements were recorded at the back of the assessee and have not been supplied to the assessee for filing an objection or to seek for cross-examination of their statements, therefore, such statements cannot be read in evidence against the assessee. We rely upon the Judgments of Hon'ble Supreme Court in the case of Kishanchand Chellaram 125 ITR 713 (SC) and Andaman Timber Industries 281 CTR 214 SC). This was the sole basis for the

authorities below to doubt the explanation of assessee, however, the material found during the course of search in the case of above persons have not been confronted to the assessee and their statements were also not supplied to the assessee, therefore, same cannot be the basis to reject the explanation of assessee. The Ld. D.R. referred to the notice issued by the A.O. Dated 30.08.2017 to say that statement of Shri Omprakash Khandelwal was confronted to the assessee. This fact is not correct because the A.O. in his notices has only referred to part of the statement in the notice, but, it is a fact that A.O. never supplied the statements of above two persons recorded during the course of search in their cases to the assessee. Therefore, no statement or material is confronted to assessee for the purpose of raising any objection by assessee or to dispute correctness of their statements and that no cross-examination have been allowed which right of the assessee has been curtailed by the A.O. The A.O. cannot refuse to supply their statements and material to the assessee by considering them confidential in nature. The moment A.O.

says that their statements and other material are confidential in nature would mean that A.O. has nothing to confront these material to the assessee for the purpose of assessee's defence. Therefore, such material shall have to be excluded from consideration.

6.1. We may also note that ITAT Delhi C-Bench, Delhi in the case of INS Finance & Investment P. Ltd., New Delhi vs., ITO, Ward-12(3), New Delhi in ITA.No.9266/Del./2019 for the A.Y. 2010-2011 vide Order Dated 26.10.2020 considered identical issue on identical facts on account of share capital/premium received from M/s. Prraneta Industries Ltd., through Shri Shirish C. Shah based on his statement and statement of Shri Omprakash Khandelwal, confirmed the Orders of the authorities below as regards reopening of the assessment, however, the Tribunal has deleted the entire addition on merits. The Order of the Tribunal in paras 16 to 37 is reproduced as under :

“16. Now coming to the issue of addition of Rs.2,50,00,000/- added u/s. 68 being share capital

received during the year from M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.), ld. counsel submitted that M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.) is a listed company on Bombay Stock Exchange and as such the identity of the party is not in dispute. It was further argued that there is no adverse material on record in support of allegation of accommodation entry and the assessing officer has considered the addition merely on the basis of so called statement of Director of Shareholder Company Sh. Om Prakash Khandelwal is unreliable as later on he has retracted from his above statement. It was vehemently submitted that assessing officer, despite repeated requests, did not provide the copy of information/material from investigation or statement of the parties on the basis of which adverse inference was drawn. The assessing officer even failed to provide opportunity of cross examination in case he wanted to rely on any such statement.

17. He further submitted that the entire premise of the Assessing Officer is for disbelieving the entire share application money of Rs.2,50,00,000/- is based on statement of Shri Omprakash Khandelwal. However, now the statement was later on retracted and had also come up for consideration before the Co-ordinate Bench of the Tribunal in the case of **ACIT vs. M/s. Bharat Securities Pvt. Ltd.** and this judgment had come up for consideration in the appeal before the Madhya Pradesh High Court in the case of **PCIT vs. Chain House International Pvt. Ltd. [IT Appeal Nos. 110 to 115 of 2018 dated 7th Aug 2018]** wherein the credential of the share holder company M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.) were found to be genuine by three consecutive authorities right from CIT(A), ITAT and Hon'ble High Court. The main thrust of Ld. AR's argument was that since the very same company has already been scrutinized and examined in great depth by Hon'ble High Court, there remains no doubt over the veracity of

share capital of Rs. 2.50 crores received by the appellant company. Our attention was also drawn to observation in High Court's order regarding retraction of statement by Sh.Om Prakash Khandelwal before CIT(A). It was further submitted that order of Hon'ble High Court was confirmed by Supreme Court as SLP of revenue was dismissed.

18. *The Ld. AR also took us to the audited Balance Sheet and Profit & Loss a/c of the shareholder company placed in PB pg 81-91 to establish the creditworthiness in the hands of investor. Reference was also made to judgments of High Courts and coordinate benches in support of the proposition that once the identity, genuineness and creditworthiness of the investor is proved, the provisions of section 68 does not apply.*

19. *In response to above, the Ld. DR made elaborate submissions and supported the finding recorded by assessing officer and CIT (A). It was argued*

that Investor Company does not possess creditworthiness to make investment of Rs. 2.50 crores in Assessee Company. It was also submitted that shares of the company has been issued at premium which is unjustified and creates doubt over the genuineness of the transaction. Further, the Ld. CIT DR also countered that there is no requirement for affording opportunity of cross examination of person whose statements are being relied upon since same is secondary material and as such there is no contravention of principles of natural justice. Reference was made decision of Supreme Court in the case of NRA Iron & Steel P. Ltd. 412 ITR 161 (SC) and other revenue favoring decisions of High Courts and ITAT. However, the Ld. DR fairly conceded that issue of share capital relating to very same company was considered by ITAT and MP High Court.

20. *We have considered the rival submissions and perused the material available on record. The issue in hand for our consideration is applicability of*

provisions of section 68 to share capital received by the appellant company from M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.). Before discussing the facts of the case, it is relevant to understand the pre-requisites of section 68 and under what circumstances the provisions is triggered. As per the plain language of section 68, the appellant is obligated to establish the identity, creditworthiness of the party and genuineness of the transaction so as to avoid the rigors of the deeming provision. By 'identity' it means that the person/entity must have actual existence which is legally recognized. The word 'creditworthiness' in simple terms means the resources to pay money (investment in the present case) i.e. the person/entity should have necessary funds to pay. Now it is not necessary that those funds must be own funds or out of earnings but same could also be in the nature of borrowings. The sum and substance is that there should be explainable means in the hands of the investor. The last ingredient is 'genuineness' which

apparently means that entire transaction must be real and there should not be any element of collusiveness or sham. Once these pre-requisites of section 68 are satisfied, there can be no case of any addition in the hands of the assessee.

21. *When we examine the facts of the present case on the touchstone of pre-requisite of section 68, we find that M/s. Prraneta Industries Ltd. is a listed company and as such there can hardly be any dispute with regard to identity of the party which is subject to stringent scrutiny by another statutory body SEBI during the listing process. Moreover, the appellant has placed on record the ITR acknowledgment, Certificate of Incorporation issued by MCA, Bank statement and Audited Financial Statements of the party in support of identity which has remained undisputed by both the lower authorities. With regard to creditworthiness, on going through the financial statement of M/s. Prraneta Industries Ltd. we find that the investor company is having sufficient earnings and reserves to justify*

investment of Rs. 2.50 crores. The party is showing healthy profit before tax of Rs. 1,72,12,447/- and has reserves of over Rs. 18 crores in the balance sheet. Let us now come to third and the most important element which is genuineness of transaction. We note that the assessing officer has primarily relied upon the statement of Sh. Omprakash Khandelwal in reaching the conclusion that M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.) is an accommodation entry provider. We also note that assessment order is absolutely silent about any enquiry carried out by the assessing officer with respect to M/s. Prraneta Industries Ltd. and no attempt has been made to independently verify and bring on record material to establish the alleged collusiveness or any connivance between appellant and investor, if any.

22. *The entire edifice of the Assessing Officer is the reliance placed by him on the statement of Shri Om Prakash Khandelwal which though assessee has claimed was not provided to the assessee nor any*

*opportunity of cross-examination was offered and the statement of Shri Shirish Shah for which assessee has objected that same has been recorded without opportunity of cross-examination. In so far as Shri Shirish Shah is concerned, he is neither the Director nor the shareholder in the investor company and it is not even in the case of the Assessing Officer that Shri Shirish Shah or Om Prakash Khandelwal has specifically taken the name the assessee. The main charge of the Department is that Shri Om Prakash Khandelwal through his company, M/s. Prrenata Industries has been providing accommodation entries to various persons. This precise issue and allegations had come up for consideration before the coordinate bench of the Tribunal in the case of **Bharat Securities Pvt. Ltd., Chain House International and Rohtak Chain Co. Pvt. Ltd. in ITA no. 598, 599, 584, 595 and 597/Del/2017 order dated 27.12.2017.** The relevant facts and the observation of the Tribunal in that case for the sake of better appreciation for our case also are*

reproduced hereunder:

“3. During the course of assessment proceedings, the AO noticed that the assessee has received share application money and share premium amounting to Rs. 30 Crores in A. Y. 2012-13 and Rs. 25 Crores during for assessment year 2013-14. The details of share application money received during the year under consideration are as under :

SN	Name	F. Y. 2012-13 Amount in Rs.	F. Y. 2013-14 Amount in Rs.
1	M/s. Prraneta Industries Pvt. Ltd. (Later named as M/s. Aadhaar Venture India Ltd. PAN NO	15,75,00,000	25,00,00,000
2	M/s. Dhanus Technologies Ltd. PAN: AABCD3429I	9,75,00,000	
3	M/s. Emporis Projects Ltd. PAN NO AABCN0273G	3,00,00,000	
4	M/s. L. N. Polyesters Ltd. (Later named as M/s. L N Industries India Ltd.)	75,00,000	
5	M/s. Shri Ganesh Spinners Ltd. (Later named as M/s. Yantra Natural Resources Ltd.) PAN NO AACCS4221Q	75,00,000	
	Total	30,00,00,000	25,00,00,000

6. *The Directors and the four investor companies (except L. N. Industries Ltd) Complied with the requirement with Copy of Balance Sheets, Copy of ITR Ledger Account etc. Investor companies confirmed the investment made by them in the share capital of assessee-company.*

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11. *The Assessing Officer issued show cause notice dated 02.02.2016 wherein it was alleged that assessee company received accommodation entries of Rs. 55 Crores from five listed companies. This allegation was based on the statements of Shri Shirish Chandrakant Shah (SCS), Shri Chandan Kumar Singh (CKS), Shri Kumar Raichand Madan (RKM), Shri Omprakash Anandilal Khandelwal (OAK) and affidavits of Shri Jils Raichand Madan, Smt. Jyoti Munver, and Shri D. U. Munver and on other material found in the search of SCS and Aadhaar Ventures India Ltd. Statement of SCS and his employee CKS, being third parties were recorded during the course of search on SCS.*

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14. *It is also notice that during the proceedings on 12.02.2016, the assessing Officer directed the assessee company to produce the Directors of the investor companies and consequently on 19.02.2016, the assessee company produced Shri Somabhai Sunderbhai Meena (SS Meena), director of major investor company namely Aadhaar Ventures India Ltd. Who contributed Rs. 40.75 Crores out of total investment of Rs. 55 crores, before the Assessing Officer. He was examined and his statement was recorded. He produced the books of accounts of the company. He confirmed the investment made by his company in the share capital of the assessee company. The books of accounts produced by him were examined by assessing Officer. The books of accounts contained such investment made in the share capital of the assessee company. The books of accounts also explained the source of investment.*

17. *The CIT (A) recorded the statements of the persons who appeared before her. For the sake of completeness in*

our findings we find it necessary to briefly note the facts emerged from the said statement as follows.

18. *The alleged SCS appeared during first appellate proceeding and his statement was recorded by the CIT (A) wherein he stated the he was not engaged in providing any accommodation entries and on the contrary he was in the business of providing consultancy services and the data hub services to various companies. He was also engaged in purchase and sale of shares. He also stated that he did not know Bharat Securities (P) Ltd. or its CA. He disowned his earlier statement and stated that the same was recorded under fear. An opportunity to cross examine was granted to the assessee company which was availed by the assessee company.*

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21. *Shri Omprakash Anandilal Khandelwal, the then director of Aadhaar Ventures India Ltd. appeared before CIT (A) and his statement was recorded wherein he stated that his company was not engaged in any business of*

providing any accommodation entries. He also stated that SCS was not controlling the business of his company. He was only a financial consultant. He further submitted that it was not correct that SCS was appointing dummy directors for his company. Regarding investment in Bharat Securities (P) Ltd. he categorically stated that prior to investing the fund in Bharat Securities (P) Ltd. necessary enquiries were made and two directors of the company namely Shri Jils Raichand Madan and Shri. Subramanya Kusnur visited Delhi and discussed the matter of investment with the directors of Bharat Securities (P) Ltd. namely Shri Naresh Kumar. He also stated that the due diligence report was also obtained from a company secretary at their own. Bharat Securities also provide share valuation report. He also stated that Board of Directors after considering the entire scenario decided to invest in equity shares of Bharat Securities (P) Ltd. He also stated that MOU was executed prior to investment. He also stated that there was no question of providing any accommodation entries to Bharat Securities. He further

stated that his earlier statement was recorded under fear and pressure. An opportunity to cross examine was granted to the assessee company which was availed by the assessee company.

26. After recording the statements of the said witnesses, the CIT(A) forward copies of all statements to the AO for his comments. The AO had perused such statements in extensor and sent his comments on each and every question and answer recorded in respect of each and every statement. The AO did not raise any objection on the contents of these statements. He almost accepted all the factual position. He also agreed with the nature of the business of investor companies. The AO almost accepted the contents of the statements. However, he opined that there was mismatch between the two statements, such statements may not be relied upon and also statements should not be accepted at this stage. But finally the AO requested the CIT(A) that the appeal may be decided on merits of the case by ignoring the said statements.

27. *The Ld. CIT(A) after recording the statements, calling the comments and report from the Assessing Officer on the statements and submission of the assessee and also taking on record the submissions of the assessee company, filed during first appellate proceeding, the CIT(A) perused the entire assessment proceedings, examined the material on record and facts of the case had recorded her finding on various issues involved in appeal. Such findings are recorded on pages 274 to 316 of the CIT(A) order.*

28. *The Ld. CIT(A) observed the AO has treated the amount of Rs. 55 crores as taxable u/s. 68 on the basis of statements of certain persons recorded earlier to the date of search on the appellant company. But since these statements were recorded behind the back of the AO and no opportunity of cross examination was provided despite specific and repeated requests, CIT(A) had decided to summon such persons and record their statements and provide an opportunity of cross examination to the appellant company as per law, rule and procedure. The*

question, therefore, arose as to which of the two statements i.e. one recorded earlier and the other recorded by the CIT(A) herself deserves reliance. After considering the entire scenario of the case the CIT(A) found that the earlier statements did not merit acceptance for the reasons such as earlier statements were recorded behind the back of the assessee and also behind the back of the AO. No opportunity of cross examination was allowed despite specific and repeated requests. Even the opportunity of cross examination once sought to be provided was immediately snatched. The earlier statements were recorded much before the search on the appellant company. Bharat Securities was not in the picture and was not an issue during these statement. In such statements non had named Bharat Securities. We also observe that the Ld. CIT(A) held that the statements recorded by her are more authentic in all respect. Direct questions regarding investment in Bharat Securities were put up and replied. Books of accounts were produced and examined. Investment found recorded. Audited Balance

Sheets also demonstrate the investment in share capital of Bharat Securities Pvt. Ltd. Source of the source has also been explained and found to be correct. In these circumstances, CIT(A) found herself in agreement with the statements recorded by herself. It was held that detailed statements were recorded and all the five investor companies have admitted the investment. CIT(A) finally held that investment made by five listed companies in the share capital of the appellant company was genuine and there was no question of providing and taking any accommodation entries by the assessee company.

29. *After considering the statement of Sh. Somabhai Sunderbhai Meena, Director of major investor company namely M/s. Aadhaar Ventures India Ltd. which was recorded by the AO during assessment proceedings, the Ld. CIT(A) arrived to the following findings.*

“The appellant company had produced one director of Aadhaar Ventures namely Sh. Somabhai Sunderbhai Meena before the AO during assessment proceedings. He confirmed that his

company had invested a sum of Rs. 40.75 crores in the share capital of the appellant company in FY 2011-12 and 2012-13. He produced the books of accounts of the company and was thoroughly examined by the AO. This investment was found recorded in the books of accounts as verified by the AO. He explained the source of investments with reference to the books of accounts. Such source was then examined by the AO and the AO also obtained copies of the necessary ledger accounts with reference to the source of investments. He explained that his company was never engaged in providing accommodation entire and on the contrary was carrying on real business where the turnover runs into approx. 171 crores and 133 crores in FY 2011-12 and 2012-13 respectively. He also produced the bank accounts of his company with reference to the share capital invested in Bharat Securities. The AO also required him to send certain documents. Consequently copy

of resolution, shareholding pattern, copy of share certificate, copy of MOU, copy of arbitration award, copy of due diligence report, copy of share valuation report and legal notice were sent by his company vide letter dtd. 18.03.2016. The AO never disagreed with the contents of the statements of Somabhai. His only objection was that Somabhai was not a director of the company at the time of making investment in Bharat Securities. Now two other directors of the same company namely Sh. Jils Raichand Madan and Sh. Omprakash Anandilal Khandelwal appeared before me and their statements were recorded. Both of them were directors of Aadhaar Ventures at the time of making the investment in Bharat Securities. Their statements have already been discussed in the earlier paras and to avoid any repetition I simply want to reiterate that the present statements given by both the directors of Aadhaar Ventures before me are totally confirmatory and corroborative to

the earlier statement of Somabhai Sunderbhai Meena recorded by the AO during the assessment proceedings”.

32. The AO had stated at various places in the assessment order that the share capital has been received from paper companies. CIT(A) examined the issue and held as under:

“I find that the position in the present case is otherwise. All the five companies have produced the books of accounts. There is an audit reports. All the investors have appeared personally. The books of accounts were examined thoroughly and I find that such books of accounts contain purchases and sales transactions, payments and receipts by banking channels, incurring of various expenses such as payments of rent, electricity excise duty, sales tax, bank interest, staff salaries etc. The himself examined the director of major shareholder Aadhaar Ventures namely Somabhai Sunderbhai Meena and also examined the books

of accounts produced by him during the course of assessment. It is very pertinent to note here that even the AO could not find discrepancies with the books of accounts or the documents produced or the fact of investment and source thereof. The AO had never disagreed with the various evidences and documents submitted before him by the director of the investor company. In the presence of enormous evidences it is very difficult to hold that these companies are paper companies.

43. *From the order of the Ld. CIT(A) it is also apparent that on the conclusion that the entry providing companies failed to prove the genuineness of their source of the investment made in Bharat Securities Pvt. Ltd. including the amount of premium after considering the submissions of both the sides and relevant documentary evidence the CIT(A) held as under:*

“All the listed companies have given the required evidences to prove the source of their investments in Bharat Securities Pvt.Ltd. One of the major

investing companies appeared before the AO with the books of accounts and demonstrated the source of the share capital. Similar is the position with regard to other companies whose directors appeared before me and produced the books of accounts except Dhanus showing the source of the investment. Dhanus was under liquidation. Its director had produced the confirmation admitting the investment and also containing the source thereof. The balance sheets of all the companies are audited. The auditors have given a clean report. Looking to the entire scenario of the case I am satisfied with the source of the investment of all the five listed companies and hold that the source is fully explained and hence the conclusion is rejected.

85. We find that in the case of M/s. Aadhaar Ventures India Ltd. (formerly known as Parraneta Industries Ltd.) the said investor company has made investment in share application money of Rs. 15.75 crores

in A.Y. 2012-13. The copy of bank accounts of the subscriber company has also been furnished (PB-839 to 846) which reflected the payments by RTGS towards share capital evidencing sufficient availability of funds on the date of investment. There is no cash deposits before issue of RTGS and none of the entries are found to have been made out of the assessee's own account in this bank statement. Therefore genuineness of transaction is not to be doubted. The share of the assessee company was duly allotted to the investor company, which creates legal right of the investor. Unless proven otherwise with some documentary evidence, it cannot be alleged that all the apparent is not real who alleges to be so. It cannot be alleged merely on the basis of apprehensions and on third party statement, without allowing cross examination and bringing any concrete material on record to show that the money invested is assessee's money.

86. *All the notices issued by the Revenue Authorities, i.e. investigation Wing, Assessing Officer and CIT(A) to this company were served and duly complied by the said*

company. We find that said company is a listed company and duly complying with all the statutory requirement of SEBI and Stock Exchange. The assessee has filed copy of share application and confirmation submitted of the said company (PB- 333-334), copy of ITR acknowledgement (PB-460-461/Volume-2) for A.Y. 2012-13 and 2013-14, copy of balance sheet reflecting the investment made in the share capital the assessee BSPL (PB-345-355), bank statement (PB-336-343& 839-846), copy of ledger account of the assessee in the books of investor company (PB-344) and reply dtd. 14.07.2014 in response to summons dtd. 25.06.2014 issued by ADIT (Inv.)-Delhi furnished by said company (PB 754 to 831). Reply dtd. 06.08.2014 filed by the Sh. Jai Rai Cahnd Madan, in his personal capacity as a director in response to the letter dtd. 30.07.2014 issued by the ADIT (Inv.) Delhi under section 131(1 A) PB 32, Assessment order page No. 129). Reply filed dtd. 06.08.2014 by Smt. Jyoti Dhiresh Munver, director in her personal capacity as a director in response to the letter dtd. 30.07.2014 as issued by the ADIT (Inv.), Delhi, letter

dtd. 19.11.2015 issued by the AO duly served on investor company (page No. 33 & 34 of CIT(A) order and reply dtd. 26.11.2015 filed by investor company (PB-834-883), reply dtd. 12.02.2016 filed by Investor company duly confirming investment made by it in the share of the assessee company along with relevant documents (page No. 144 & 171 of assessment order) in support of the claim that identity and credit worthiness of investor and genuineness of transaction of said investor/share applicant is duly established. It was further submitted that opportunity of cross examination was grained to the assessee for examination in the case of Sh. Shirish Chandrakant Shah and Sh. Sawan Kumar Jajoo for which the assessee reached Mumbai at the time as given and the Venue, but since prior to the date of cross examination opportunity scheduled, (reference page No. 134,135,170 and 171 of assessment order) the same was withdrawn by ADIT (Inv.)-Delhi and therefore, the opportunity did not actually materialise (PB-884-894). Thereafter opportunity for cross examination was demanded by the assessee in

time and again before the AO but the same was never provided by the AO. In support of this claim the learned counsel for the assessee referred page No. 133 (Para-2), page No. 134 (Para-3) page No. 135 (Para-4) Page No. 145 (Para-ii, iv & vi) of the assessment order.

87. *Thus, we find that the AO and Investigation Wing has not given any chance to cross examination all the parties which even though demanded by the assessee company and said opportunity was denied to the assessee even the assessee has reached at Mumbai on given date. The AO is required to allow the opportunity of cross examination, in view of the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries Vs. Commissioner of Central Excise (2015) 13 STD 805 (SC).*

88. *We further observed that the Ld.CIT(A) having convinced with this serious injustice rightly decide to summon the witness on whose statements the AO had placed reliance without giving the opportunity of cross examination to the assessee. All the witness appeared*

before the CIT(A) and they were examined by her and their statements were recorded and opportunity of cross examination was given to the appellate company. From careful perusal of such statement and logical analyses of thereof we are convinced that there statements were found to be strongly supporting the explanation and stand of the assessee company against the made by the AO u/s. 68 of Act. We also find that the Ld. CIT(A) send these statement and other relevant evidence for examination, verification and comments of the AO providing due opportunity to him. However, AO and not made any adverse comment on these statements except contending that the same cannot be considered in favour of the assessee. We are unable to see any valid reason to disbeliever or discard statement recorded by the Ld. CIT(A) and thus we hold that the first appellate authority was right in considering he same in right prospective and hence we are unable to see any valid reason to interfere with the findings of Ld. CIT(A) as noted above.

89. We find that Sh. Somabhai Sunderbhai Meena, the

present director of Aadhaar Ventures India Ltd., the investor company appeared on 19.02.2016 before the AO with books of accounts and his detailed statement was recorded under section 131 of the Act, wherein he has duly confirmed the investment made in the shares capital in the assessee company. The copy of his statement is placed at paper book page No. 230 to 243. We further find that in response to summons under section 131 of the Act, issued by the CIT(A) invoking his power under section 250(4) of the Act, Sh. Jils Raichand Madan, along with books of accounts duly appeared before the CIT(A) and duly confirmed the investment made in the shares of the assessee company, in his statement recorded by the Ld. CIT(A). Refer paper book page No. 244 to 256 and page No. 132 to 142 of order of CIT(A). Similarly, Sh. Omprakash Anandilal Khandelwal, the then director of the company, appeared before the CIT(A) and duly the investment in his statement recorded before the Ld. CIT(A) (refer page No. 151 to 158 of the order of CIT(A) and paper book page No. 257 to 266)

90. Further, in response to summons u/s. 131 of the Act issued by the CIT(A) by invoking power u/s. 250(4) of the Act, Sh. Chandrakant Shah, a third party, duly appeared before the CIT(A) and denied in any invoking of accommodation activities. (Paper book page No. 296 to 302 and page No. 217 to 223 of the order of CIT(A)). Similarly, Sh. Sawan Kumar Jajoo, being third party, who already as per the Revenue worked as broker, has also appeared before the CIT(A) and had explained that he does not know the name of the assessee company and name, chart and other figures in the statement was provided and written by the Authorized Officer himself, refer to question No. 15 to 19 (Page No. 207 to 208 of the order of CIT(A)).

91. Sh. Chandan Kumar Singh, a third party was duly appeared before the CIT(A) and he had denied of any accommodation entries provided, in his statement recorded by the CIT(A), his denial in invoking in any accommodation activities are placed at paper book page No. 303 to 311 and also reflected at page No. 229 to 234

of the order of Ld. CIT(A). Thereafter, the statement of both the directors and third parties recorded by the CIT(A) were provided to the AO for his comments (second para last four line of page No. 130 of CIT(A) order and the AO submitted his comments and comments on the statement of directors and third parties were filed by the CIT(A) (refer paper book page No. 313 to 322, page No. 144-146, (OAK) 161-162 (SCS) 224-213, (CKS) and 224-225 (Jajoo) of the order of CIT(A). However, no adverse comments appears to have been made by the AO on these statements except merely saying that statement cannot be recorded at this stage.

92. *In our considered opinion as per sub section (4) of section 250 of the Act, the Ld. CIT(A) before disposing any appeal may make such further any enquire as he thinks fit, or he may direct the AO to make such enquiry and to report the result of the same thus according to this provisions the CIT(A) is empowered to make any further enquiry and in the present case the Ld. CIT(A) conducted the proceeding with the ambit of the said provisions.*

Therefore, in our opinion, the Ld. CIT(A) has duly discharged her obligation by conducting examination of the key person involved by way recording statement and examination of books of accounts. These evidence brought on record proved and established the identity and credit-worthiness of share applicant and investor and genuineness of transaction of above said five investor companies. Whereas the AO has not brought on record anything contrary and made addition by merely holding that the said subscriber as non-genuine on the basis of inquiry conducted in the case of third party who has not whispered any word against the assessee company. Therefore, no addition on account of share application money can be made particularly when shares are allotted and transaction are through banking channel and concerned party relied to summon issued by investigation wing and also by the AO conforming the investment made in the BSPL.

93. *We further find that the Ld. CIT(A), during the course of first appellate proceeding in exercising powers*

mandated in the section 250(4) of the Act has rightly decided to summons all the ten person out of which except two namely Smt. Jyoti Dhiresb Munver and Sh. Manish Mirg, have attended before her and their statements were recorded by the CIT(A) personally. The appellant has been given opportunity to cross examination and he appellant availed the cross examination . All the statements were send to the AO for his comments. The Ld. AR of the assessee on 17.10.2016 filed reply submissions and explanation on the said remand report of the AO on behalf of the assessee BSPL. The submissions dated 17.10.2016 of the assessee were reproduced by the CIT(A) verbatim at page No. 130 to 263 of her appellate order. Accordingly, identify credit worthiness and genuineness of transaction has been duly proved and established. Therefore, the addition of Rs. 15.75 crore in A.Y. 2012-13 and Rs. 25 crores in A.Y. 2013-14 made in respect of this subscriber and alleged assumed payment of commission of 1.50 for A.Y. 2012-13 and Rs. 1.25 crore for the assessment year 2013-14 as deleted by the CIT(A) are rightly deleted by

the Ld. CIT(A) thus, we uphold the same.

In the present case, the AO has not brought any evidence on record that the amounts of share application money received from Aadhar Ventures India Ltd., Dhanus Technologies Ltd., M/s. Emporis Projects Ltd., L.N. Polyester Ltd. and M/s. Yantra Natural Resources Ltd. are merely accommodation entries. As mentioned earlier, the AO has acted merely on the basis of information received from the Investigation Wing. Therefore, the ratio laid down by Hon'ble Madhya Pradesh High Court in CIT Vs. Peoples General Hospital Ltd. (2013) 356 ITR 65 (MP), (2013) 216 Taxman 320(MP)/(2013) 35 Taxmann.com 444 (Madhya Pradesh) is squarely gives shelter to the assessee, wherein it was held that where the assessee establishes the identity of share applicant, burden of proving creditworthiness was not on assessee.

122. *In the light of above discussion, we held that the AO was not justified in making addition of Rs. 30 crores by treating the share application money received by the assessee as unexplained cash credit u/s. 68 of the Act.*

Therefore, we are in agreement with the findings of Ld. CIT(A) in deleting the same, as there was no case for making such addition either on protective basis or on substantive basis. Since, we have held that the assessee company has genuinely received share application money, therefore, question of payment of any commission does not arise and therefore, we find no infirmity in the order of CIT(A) accordingly, her findings are upheld. Accordingly, all the grounds of appeal of Revenue are dismissed.”

23. *This order of the Tribunal was challenged by the Department before the Madhya Pradesh High Court in the case of **Chain House International (supra)** wherein the Hon’ble High Court had analyzed and dealt with the statement of Shri Omprakash Khandelwal and genuineness of M/s. Prrenata Industries in detail. It has been also pointed out by the ld. counsel that SLP filed by the Revenue against the said order of the Hon’ble High Court stands dismissed. The relevant observation and the finding of Their Lordships are reproduced hereunder:*

16. *Shri Omprakash Anandilal Khandelwal, the then Director of Aadhaar Ventures (I) Ltd appeared before appellate authority (A) and his statement was recorded wherein he stated that his company was not engaged in any business of providing any accommodation entries. He also stated that Shrish Chandrakant Shah was not controlling the business of his company. He was only a financial consultant. He stated that his company was engaged in the business of textiles, finance and investment. He produced the books of account for the Assessment Years 2012-13 and 2013-14 consisting of cash book, ledger, journal, bank book etc. The investment made in the appellant company was found recorded and source of such investment was also explained. He stated that audited balance sheet of the company for both the years reflecting the investment made in shares of BSPL. These books of account were examined by CIT (A). He also stated that prior to making the investment a due diligence enquiry from a company secretary regarding BSPL was also made. He also*

stated that a share valuation report of shares of BSPL was provided to them. He also stated that his company subscribed 105000 shares @ of Rs.1500/- per share in the Assessment Year 2012-13. He further stated that his company subscribed to 80,00,000 shares @ Rs.125/- per share in the Assessment Year 2013-14 for the purpose of acquiring controlling stake in BSPL and thereby acquire control of its subsidiary company Chain House International (P) Ltd. he also stated that he knew BSPL and its Directors. He had visited their residence and also visited business premises of its sister concerns. He stated that Shrish Chandrakant Shah was their financial consultant and he did not know Shri Sawan Kumar Jajoo. His company had made genuine investment in BSPL. He also denied to have received or collected any cash from anybody in exchange of RTGS made to BSPL for subscribing share capital. He further stated that the earlier affidavit was filed under fear and pressure.

20. *After considering the entire factual scenario of the case, the appellate authority found that the earlier statements did not merit acceptance for the reasons such as earlier statements were recorded behind the back of the assessee and also behind the back of the AO. No opportunity of cross examination was allowed despite specific and repeated requests. The earlier statements were recorded much before the search on the appellant company. BSPL was not in the picture and was not an issue during these statements. In such statements none had named BSPL and held that the statement recorded by the CIT (Appeals) are more authentic in all respect and held as under :—*

"I examined this issue in detail and found that there is no evidence to prove, firstly generation of unaccounted cash and transfer of such cash to others for obtaining accommodation entries. In have also found that during the course of search at the appellant company and also on its associate companies and residence of the directors when

every corner of the house was searched, not a single paper, evidence or record was unearthed by the search team which support the allegation of generation of any unaccounted cash and transfer of such cash for the purpose of obtaining accommodation entries. In the absence of any evidence of such cash transfer, the AO was unjustified in holding that the appellant company had routed back its own unaccounted cash. In this connection it would be also relevant to state that during the process of examining these investor companies I have found that there is no transfer of cash from the appellant company to these investor companies or to anybody else for this purpose. I hold that there is no generation of cash outside the books of account and also there is no transfer of any such cash by te appellant company to anyone else and, therefore, I old that there is no accommodation entry and the share capital received is genuine."

21. *The appellate authority (A) held that the assessee company was not connected with the money trail and the assessee company was only concern with the source of share capital which stands proved. The appellate authority also examined the issue of share capital and held as under :—*

"I find that the position in the present case is otherwise. All the five companies have produced the books of account. There is an audit reports. All the investors have appeared personally. The books of account were examined thoroughly and I find that such books of accounts contain purchases and sales transactions, payments and receipts by banking channels, incurring of various expenses such as payments of rent, electricity excise duty, sales tax, bank interest, staff salaries etc. He himself examined the director of major shareholder Aaadhaar Ventures namely Somabhai Sunderbahi Meena and also examined the books of account produced by him during the course of assessment.

It is very pertinent to note here that even the AO could not find discrepancies with the books of accounts or the documents produced or the fact of investment and source thereof. The AO had never disagreed with the various evidences and documents submitted before him by the director of the investor company."

23. *After considering the statement of Shri Somabhai Sunderbhai Meena, Director of major investor company namely M/s. Aadhar Ventures India Ltd. which was recorded by the AO during assessment proceedings, the CIT(A) arrived to the following findings :—*

"The appellant company had purchased one director of Aaadhaar Ventures namely Shri Somabhai Sunderbhai Meena before the AO during assessment proceedings. He confirmed that his company had invested a sum of Rs.40.75 crores in the share capital of the appellant company in Fys. 2011-12 and 2012-13. he produced the books of account of the company and was thoroughly

examined by the AO. This investment was found recorded in the books of account as verified by the AO. He explained the source of investments with reference to the books of account. Such source was then examined by the AO also obtained copies of the necessary ledger accounts with reference to the source of investments. He explained that his company was never engaged in providing accommodation entire and on the contrary was carrying on real business where the turnover runs into approx. 171 crores and 133 crores in Fys. 2011-12 and 2012-13 respectively. He also produced the bank accounts of his company with reference to the share capital invested in Bharat Securities. The AO also required him to send certain documents. Consequently copy of resolution, shareholding pattern, copy of share certificate, copy of MOU, copy of arbitration award, copy of due diligence report, copy of share valuation report and legal notice were sent by his

company vide letter dated 18.3.2016. The AO never disagreed with the contents of objection was that Somabhai was not a director of the company at the time of making investment in Bharat Securities. Now two other directors of the same company namely Shri Jils Raichand Madan and Shri Omprakash Anandilal Khandelwal appeared before me and their statements were recorded. Both of them were directors of Aadhaar Ventures at the time of making the investment in Bharat Securities. Their statements have already been discussed in the earlier para and to avoid any repetition I simply want to reiterate that the present statements given by both the directors of Aadhaar Ventures before me are totally confirmatory and corroborative to the earlier statement of Somanbhai Sunderbhai Meena Recorded by the AO during the assessment proceedings."

27. In respect of the allegation against the five listed companies for providing accommodation entries, the appellate authority has held as under :—

"The basis of such conclusion is the statement of SCS and some others as recorded in the search of others and also on the back of the appellant company. The appellant had argued that such statements are outside the jurisdiction of the assessment u/s 153A since they were recorded not in connection with the search on the appellant company. No cross examination was done. It is pertinent to note here that the appellant was very keen to cross examine the persons. This keenness is proved by the fact that on 18.09.2014 when the opportunity of cross examination of SCS and Jajoo was offered to the appellant, the director Naresh Kumar reached at the designated place at Mumbai on time to cross examine the witnesses. However, the department has withdrawn such opportunity. This opportunity was never provided

to the appellant despite repeated requests during assessment proceedings. I hold that reliance on statements without cross examination is against the settled principle of natural justice. Even otherwise SCS and others have appeared before me and admitted that SCS was not managing and controlling these companies for the purpose of providing accommodation entries. All the companies are engaged in the real business having substantial turnover, paying rent, salaries, electricity bill etc. One of the companies is also paying excise duty and sales tax. Some of the companies have taken secured loans from banks. As I understand the reference to key associates could be the employee of SCS namely Chandan Kumar Singh. In the statement recorded by me he has denied all such allegations. He has admitted that SCS was not involved in any business of providing accommodation entries and nor he has ever seen SEC Controlling these five companies.

Hence I do not agree with the conclusion arrived at by the AO."

51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyester Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of the subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon'ble

Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in paras 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. *Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the*

price of the shares is decided on the mutual understanding of the parties concerned.

53. *Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case.*

54. *There is no dispute about the receipt of funds through banking channel nor there is any dispute about the identity, creditworthiness and genuineness of the investors and, therefore, the same has been established beyond any doubt and there should not have been any question or dispute about premium paid by the investors therefore, unless there is a limitation put by the law on the amount of premium, the transaction should not be questioned merely because the assessing authority thinks that the investor could have managed by paying a lesser amount as Share Premium as a prudent*

businessman. The test of prudence by substituting its own view in place of the businessman's has not been approved by the Supreme Court in the decisions of CIT v. Walchand & Co. (P.) Ltd. [1967] 65 ITR 381 and J.K. Woollen Mfg. v. CIT [1969] 72 ITR 612 (SC).

55. *The question of share premium has been considered by the Delhi High Court in the case of CIT v. Anshika Consultants (P.) Ltd.[2015] 62 taxmann.com 192 wherein it was held thus :—*

"The onus cast upon the assessee under Section 68 of the Act to satisfy the department about the true identity of an investor, its creditworthiness and genuineness of a transaction was explained by the Supreme Court in CIT v. Lovely Exports (P) Ltd., [2008] 216 CTR 195,. Whilst, the AO acted legitimately in enquiring into the matter, the inferences drawn by him were not justified at all in the circumstances of the case. Whether the assessee company charged a higher premium or not, should not have been the subject matter of the

enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of Section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed on 31.12.2007, the investigation report which was specifically called from the concerned department in Kolkata was available but not discussed by the AO. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the AO in the form of balance sheets income tax returns, PAN details etc. While arriving at the conclusion that he did, the AO did not consider it worthwhile

to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the CIT (Appeals) and the ITAT, these conclusions were clearly baseless and false. This Court is constrained to observe that the AO utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents."

56-57. *It is well settled that if the creditworthiness of the investor company and genuineness of the transaction is proved no addition under Section 68 could be made and no substantial question of law arises.*

25. *The aforesaid judgment of Hon'ble High Court clearly clinches the issue in so far as reliance placed on the statement of Shri Omprakash Khandelwal which has been the sole foundation of the Assessing Officer and same stands negated and does not have any evidentiary value because*

the same was retracted subsequently which fact has been analyzed by the Hon'ble Tribunal and also by the Hon'ble High Court. The Hon'ble High Court also noted that source of investment in the hands M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.) is explained and the company was not engaged in the business of providing accommodation entries. In fact, Sh. Omprakash Khandelwal himself, in that case, has categorically affirmed the genuineness of the affairs of M/s. Prraneta Industries Ltd. It is relevant to mention that in the said case, the alleged nexus of Shirish C Shah with Investor Company was also examined and it was found that Shrish C Shah was not even controlling the said concern. After examining the entire gamut of facts in the light of decision of Hon'ble MP High Court, there remains no shred of doubt in our mind that M/s. Prraneta Industries Ltd. is a genuine concern and veracity and authenticity of share capital received by the appellant from the said investor cannot be questioned.

25. *Further, the issue of share premium as raised by Ld. DR also gets dispelled by above the decision of Hon'ble*

High Court wherein it has been held that issuance of share at premium is prerogative of the board and wisdom of the investor. Moreover, in absence of any prohibition with regard to share premium in the Income tax Act, 1961 as relevant for the year under reference i.e. AY 2010-11, no adverse inference is warranted. In any case, the assessing officer having not disputed the value of shares or premium, we fail to see any merit in the contention of Ld DR particularly when the identity, creditworthiness and genuineness of transaction stood established.

26. *The decision of Hon'ble Supreme Court in the case of PCIT v. NRA Iron and Steel P. Ltd. 412 ITR 161 (SC) as relied upon by ld. DR and other revenue favouring decisions are clearly distinguishable on facts and not applicable. In fact, in the case of NRA Iron and Steel (Supra), the assessing officer conducted detailed enquiry and identity of the parties was under serious doubt. However, nothing of that sort has done in this case.*

27. Thus in the light of finding recorded in aforesaid para and respectfully following the decision of Hon'ble MP High Court, we are of concerned view that appellant has discharged the onus u/s 68 to prove the identity, genuineness and creditworthiness of investor company M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.). Accordingly, the assessing officer is directed to delete the addition u/s 68. Ground No. 4 is allowed.

28. The Ground No. 3 and 5 are taken together as they deal with addition of aggregate share capital of Rs.5,12,40,000/- u/s 68 of the Act. It is a case of reassessment proceedings u/s 147 where reopening was made in respect of share capital of Rs.2.50 crores received from M/s. Prraneta Industries Ltd. However, during the course of reassessment proceedings, the assessing officer noted that appellant has also raised share capital from other parties and accordingly enquiry was initiated in respect of share of capital of Rs.5,12,40,000/- received from 18 investor companies. The assessing officer being not satisfied with

genuineness of share capital from the said parties, considered the addition u/s 68 of the Act.

29. *At the threshold, since we have deleted the addition of Rs. 2.50 crores which was the sole basis of notice u/s 148, there remains no valid ground for any addition of Rs.5,12,40,000 in view of the fact that foundational base of reassessment proceedings gets vitiated. The legal position to this effect is well supported by the decision of Hon'ble Delhi High Court in the case of **Ranbaxy Laboratories Ltd. v. CIT[2011] 336 ITR 136 (Del)** and **Bombay High Court** in the case of **Jet Airways [2011] 331 ITR 236 (Bom)**. It was held by Hon'ble Jurisdictional High Court that Explanation 3 to section 147 will not applicable if no addition is made in respect of issue which was subject matter of notice u/s 148.*

30. *In the present case, the reasons were recorded only with respect to issue of share of capital of Rs. 2.50 crores from M/s. Prraneta Industries Ltd. (now known as M/s. Aadhaar Ventures India Ltd.) and same having been deleted by us, the remaining addition of Rs. 5,12,40,000/-*

has no legs to stands and is hereby ordered to be deleted.

31. *However, for sake of completeness and keeping in mind the gravity of issue, we feel appropriate to decide the legality of additions made over and above the reasons recorded in the light of scope of proceedings u/s 147 of the Act. As mentioned earlier, the provisions of section 147 are potent and its application is restricted to deserving cases having satisfied the defined criteria i.e. existence tangible material evidencing escapement of income and application of mind. Further, the act has inbuilt checks and balances to ensure proper exercise of power u/s 147 which included prior approval of superior authority.*

32. *It is the argument of the Ld. AR appearing for the appellant assessee that once the assessing officer records reason and obtains approval for issue of notice u/s 148, the scope of proceedings u/s 147 gets laid down and it is not open to assessing officer to make roving and fishing enquiry and arbitrarily enhance the scope of reassessment proceedings as per whims and fancies. It was further*

contended that Explanation 3 to section 147 does not provide unfettered power to assessing officer to go beyond the reasons and same has to be read in conjunction with principle provision of section 147, 148 and 151. The upshot of argument of Ld. AR is that for making any further enquiry or addition, the following conditions must be satisfied:

i. There must be some tangible material coming to the notice of assessing officer during the course of assessment which shows escapement of income in respect of some other item (other than one referred in the reasons).

ii. The assessing officer must record reasons for including such other item in the scope of ongoing reassessment proceedings u/s 147

iii. Fresh approval must be obtained u/s 151 and notice u/s 148 must also be issued.

33. *In support of above proposition, the ld. AR has relied upon the decision of Hon'ble Delhi High Court in the case of **Ranbaxy Laboratories Ltd. v. CIT[2011] 336 ITR 136 (Del)** and coordinate bench in the case of **Sh. Devki***

Nandan Bindal v. ITO (ITA No. 4271/D/19 dated 18/12/2019). The finding of coordinate bench is reproduced hereunder :

35. It may also be noted here that the A.O. in the reasons recorded for reopening of the assessment has merely recorded that Rs.15 lacs accommodation entry taken by the assessee has escaped assessment. However, at the re-assessment stage, A.O. made further addition of Rs.52.91 crores on account of deposits in the bank account of the assessee. No reasons have been mentioned as to why such addition have been made and what was the purpose in making the addition. The entire deposit in the Bank account of the assessee could never be unexplained. Even the Investigating Agency have not made any allegation against the assessee if that amount was an accommodation entry taken by the assessee? The Ld. D.R. admitted that no notice have been issued by the A.O. while proposing to make this addition of Rs.52.91 crores. The issue is, therefore, covered in favour of the assessee against the Department by Judgment of Hon'ble

Delhi High Court in the case of Ranbaxy Laboratories Limited vs., CIT [2011] 336 ITR 136 (Del.) in which in para 18 it was held as under :

“We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT vs., Jet Airways (I) Limited [2011] 331 ITR 236 (Bom.). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or re-compute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All

these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the

course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.”

36. *Similar view is taken by the ITAT, Mumbai G Bench in the case of Juliet Industries Ltd., Mumbai vs., ITO 6(3)(3), Mumbai (supra). Considering the totality of the facts and circumstances, we are of the view that A.O. has recorded non-existing, incorrect and wrong facts in the reasons recorded for reopening of the assessment. The A.O. did not applied his mind to the report of Investigation Wing. The A.O. merely believed report of Investigation Wing without making further scrutiny at the assessment. The A.O. merely reproduced report of Investigation Wing without making further scrutiny of the same. The A.O. merely reproduced report of Investigation Wing and crux of statement of Shri Kishori Sharan Goel for reopening of the assessment in the matter. Therefore, it was merely a borrowed satisfaction without application of mind. We, therefore, held that initiation of re-assessment*

proceedings in the instant case is illegal, bad in law and is liable to be quashed. In this view of the matter, we set aside the orders of the authorities below and quash the reopening of assessment under section 147/ 148 of the Income Tax Act, 1961. Resultantly, all additions stand deleted. In view of the above, there is no need to adjudicate the issues on merit which are left with academic discussion only.

34. *We have given careful thought to the argument of the Ld. Counsel and find ourselves in agreement with same. The intention of legislature behind enacting provisions of section 147 is not to create a parallel assessment proceeding akin to regular assessment framed u/s 143(3) of the Act. The purpose of section 147 is to catch in the tax net income escaping assessment based on tangible material. The requirement of tangible material and approval u/s 151 is to keep check on arbitrary exercise of power u/s 147 which necessarily means that assessing officer cannot convert reassessment proceedings into regular scrutiny proceedings at his/her sweet will. It goes without saying that Explanation*

cannot defeat the intention and purpose of a section and as such the application of Explanation 3 will have to be in accordance with checks and balances which are applicable at the time of issuance of notice u/s 148.

35. *In the present case, in respect of share capital of Rs.5,12,40,000/- received from 18 parties, the assessing officer initiated fresh enquiry during the course of reassessment proceedings on the basis of books of account of the appellant. There is no dispute that very same material was in existence when assessing officer recorded reasons and it is neither the case of the assessing officer that there was any failure or omission on part of the appellant in disclosing any information nor any case of fresh information coming to the notice of the assessing officer. The original action u/s 148 was on the basis of some information which was has already been affirmed by us. However, in respect of other items, the assessing officer himself made random enquiry which is absolute misuse of power in the context of scope of section 147 as well as settled legal principle.*

36. *It is further noted that there is no iota of material or information with regard to share capital of Rs.5,12,40,000/- received from 18 parties. In fact the assessing officer gathered the information after calling for bank statement from the bank as evident from para 10 of the assessment order. It is classic case of roving enquiry where the assessing officer is exceeding its jurisdiction in total disregard to scheme and intent of section 147 of the act. Such action of the assessing officer not only renders the purpose of approval u/s 151 otiose but also strikes at the root of section 147 of the Act. Accordingly, we are of the view that assessing officer was not justified in expanding the scope of reassessment proceedings u/s 147 without following the due course and as such the addition of Rs.5,12,40,000/- is in the teeth of provisions of section 147 of the Act and liable to deleted. As a result, Ground No. 3 and 5 are allowed.*

37. *In the result, the appeal of the assessee is partly allowed.”*

6.2. In the aforesaid Order, the Tribunal has considered the identical issue of receipt of share capital/premium from M/s. Prraneta Industries Ltd., (Investor Company) and examined the issue in detail. The Tribunal has also considered the Order of the Indore Bench in the case of M/s. Bharat Securities (P) Ltd., in which Departmental Appeal have been dismissed and the Order of the Tribunal has been confirmed by Hon'ble Madhya Pradesh High Court and ultimately the Hon'ble Supreme Court dismissed the SLP of the Revenue. Therefore, the issue being identical could not justify the confirmation of the additions on merits. We also note that ITAT Indore Bench in the case of M/s. Bharat Securities (P) Ltd., etc., has also considered an identical issue in respect of the same Investor Company for providing share capital/premium to various parties based on the statements of Shri Omprakash Khandelwal and Shri Shirish C. Shah and dismissed Departmental appeal confirming the Order of the Ld. CIT(A) in deleting the additions on merits. The Order of the Indore Bench of ITAT has been confirmed by the Hon'ble Madhya

Pradesh High Court and ultimately, the SLP of the Department have been dismissed confirming the Order of the Hon'ble Madhya Pradesh High Court. Since the identical issue have been examined by various Benches of the Tribunal on identical facts and addition on merit have been deleted which is also confirmed by the Hon'ble Madhya Pradesh High Court and by the Hon'ble Supreme Court, therefore, in our view the issue is covered in favour of the assessee by the aforesaid decisions. We may also note that apart from the above findings of the different Benches of the Tribunal, it is an undisputed fact that assessee produced documentary evidences before the A.O. to establish that assessee has received genuine share capital/premium from the Investor Company. The documentary evidences have not been doubted by the authorities below. The Investor Company has declared income of Rs.173.55 Lacs in assessment year under appeal and has sufficient funds to make investment in assessee-company. It is a Public Limited Company and listed with BSE. Therefore, the assessee-company has been able to prove the identity of the

Investor, its creditworthiness and genuineness of the transaction in the matter. Therefore, there were no justification for the authorities below to make or confirm the addition against the assessee under section 68 of the I.T. Act, 1961. The Ld. D.R. relied upon Judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd., (supra) which is also considered by the ITAT, Delhi Bench in the case of INS Finance & Investment P. Ltd., (supra) and this decision is also distinguishable on facts because the Investor Company has declared income of Rs.173.55 Lacs in the return of income for the assessment year under appeal, therefore, Investor Company would not have meager income in assessment year under appeal. The other decisions relied upon by the Ld. D.R. are distinguishable on facts as mentioned above. The Ld. D.R. also referred the Order of the SEBI Dated 04.09.2017 in the case of M/s. Kavit Industries Limited, in which name of the Investor Company mentioned, but, there is no reference to the case of assessee-company for receiving any accommodation entry from the Investor Company. Rather the issue of receipt of share capital/

premium have been examined in detail by the Indore Bench of the Tribunal as well as Hon'ble Delhi Bench of the Tribunal and the addition on merits have been deleted in respect of the same Investor Company and ultimately the decisions of the Indore Bench have been confirmed by the Hon'ble Madhya Pradesh High Court as well as by the Hon'ble Supreme Court. Therefore, the Order of the SEBI in the case of third party would not be relevant for the purpose of decision in the case of assessee.

6.3. The Hon'ble Delhi High Court in the case of Divine Leasing & Finance Ltd., 299 ITR 268 (Del.) held that *"no adverse inference to be drawn if the shareholders failed to respond to the notice issued by the A.O."* It may be noted here that in the case of M/s. Bharat Securities (P) Ltd., the Indore Bench of the Tribunal has considered the fact that the Director of the Investor Company and others were examined in which they have confirmed the transaction with the assessee in that case. Therefore, merely because the same Directors did not appear in the case of assessee would not be a ground to have an adverse inference against the

assessee. Considering the totality of the facts and circumstances of the case in the light of above decisions, we do not find any justification to sustain the addition of Rs.45 lakhs under section 68 of the I.T. Act, 1961 and addition of Rs.90,000/- under section 69C of the I.T. Act, 1961. In view of the above, we set aside the Orders of the authorities below and delete addition of Rs.45,90,000/-.

6.4. Learned Counsel for the Assessee heavily relied upon Order of ITAT, Delhi Bench in the case of INS Finance & Investment P. ltd., (supra). In this case, the Tribunal has confirmed the validity of notice under section 148 of the I.T. Act, 1961 on the identical facts. Therefore, in the light of this decision, the Order of the Tribunal in the case of ASN Polymers Pvt. Ltd., cannot be considered favourable in favour of the assessee. We, therefore, following the Order of the Tribunal in the case of INS Finance & Investment P. ltd., (supra) confirm the reopening of the assessment in the matter. This ground of appeal of Assessee is dismissed.

6.5. In the result, appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 30th April, 2021

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.