IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)

BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A No.6174/Del/2013
(ASSESSMENT YEAR 2009-10)

Asst.CIT Central Circle-13, New Delhi.	Vs.	M/s Sur Buildcon Pvt. Ltd. 315, 3rd Floor E-Block International Trade Tower, Nehru Place New Delhi. PAN-AALCF 7467F
(Appellant)		**(Respondent)**

C.O. No.258/Del/2015
Arising out of ITA No.6174/Del/2013
(ASSESSMENT YEAR 2009-10)

M/s Sur Buildcon Pvt. Ltd. 315, 3rd Floor E-Block International Trade Tower, Nehru Place New Delhi. PAN-AALCF 7467F	Vs.	Dy. CIT Central Circle-13, New Delhi.
(Cross Objector)		**(Respondent)**

I.T.A No.6176/Del/2013
(ASSESSMENT YEAR 2008-09)

Asst.CIT Central Circle-13, New Delhi.	Vs.	M/s BBN Transportation Pvt. Ltd. 315, 3rd Floor, E-Block, International Trade Tower, Nehru Place, New Delhi PAN-AADCB 0182E
(Appellant)		**(Respondent)**

C.O. No.260/Del/2015
Arising out of ITA No.6176/Del/2013
(ASSESSMENT YEAR 2008-09)

M/s BBN Transportation Pvt. Ltd. 315, 3rd Floor, E-Block, International Trade Tower, Nehru Place, New Delhi PAN-AADCB 0182E	Vs.	Dy. CIT Central Circle-13, New Delhi.
(Cross Objector)		**(Respondent)**

I.T.A No.6177/Del/2013
(ASSESSMENT YEAR 2008-09)

Asst.CIT Central Circle-13, New Delhi.	Vs.	M/s Goldstar Cement Pvt. Ltd. 315, 3rd Floor, E-Block International Trade Tower, Nehru Place New Delhi PAN-AACCG 8807E

(Appellant)		**(Respondent)**

C.O. No.02/Del/2021
Arising out of ITA No.6177/Del/2013
(ASSESSMENT YEAR 2008-09)

M/s Goldstar Cement Pvt. Ltd. 315, 3rd Floor, E-Block International Trade Tower, Nehru Place New Delhi PAN-AACCG 8807E	Vs.	Asst.CIT Central Circle-13, New Delhi.
(Cross Objector)		**(Respondent)**

Appellant By	**Ms. Sunita Singh, CIT-DR** **Ms. Shivani Bansal, Sr. DR**
Respondent by	**Sh. S.K. Tulsiyan, Adv.** **Sh. Bhoomija Verma, Adv.** **Sh. Lakshya Bidhiraj, CA** **Ms. Abha Agarwal, CA &** **Ms. Ananya Rath, Adv.**
Date of Hearing	**10.06.2021**
Date of Pronouncement	**15.07.2021**

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

The captioned appeals have been preferred by the Department against separate impugned orders dated 19.09.2013 passed by the Ld. Commissioner of Income Tax (Appeals) - 1, New

Delhi {CIT (A)} in the case of the captioned assessees, wherein the Ld. CIT (A) has deleted the impugned additions made u/s 68 of the Income Tax Act, 1961 (hereinafter called 'the Act') in respect of the share capital and share premium received by the captioned three assesses. Thus, the Departmental Appeals in all three cases are having a common issue. The Assessees have also filed their respective Cross Objections challenging the orders of the Ld. CIT (A) to the extent that the Ld. CIT (A) has upheld the assumption of jurisdiction of reopening the assessments u/s 147/148 of the Act and to the extent the Assessment Orders passed by the Assessing Officer (AO) have been passed in violation of Principles of Natural Justice. The appeals and the cross objections were heard together and are being disposed of through this common order for the sake of convenience.

2.0 The common facts relating to the three assessees are that the A.O. had, in all the three cases, issued Notices u/s 148 of the Act, after recording identical reasons for reopening the assessments.

2.1 The reasons recorded in the case of Sur Buildcon Pvt. Ltd. are being reproduced herein under for the sake of completeness:

"Reasons recorded for re-opening the case of M/s Sur Buildcon Pvt. Ltd. for the A.Y. 2009-10 u/s 147 of the Income Tax Act, 1961:

19.09.2011: A survey operation was conducted on 3 March 2010 by the officers of the Investigation wing of the Income Tax Department on the corporate office address of M/s Sur Buildcon Pvt. Ltd. i.e. 315, E-Block, 3rd Floor, International Trade Tower, Nehru Place, New Delhi. In the survey, it was found that it was a premise run occupied and controlled by the management of Bhushan Group. During the course | of survey operation in this premise, it was found that all the staff members of that premises were the staff members of M/s Bhushan Steel Ltd. In the statement recorded on oath, Sh. B.S. Bisht, Assistant Secretarial Officer, with M/s Bhushan Steei Ltd. categorically stated that his job was to look after the ROC matters of various companies of Bhushan Group and the companies with the registered office address of this premise are just paper companies with no actual business to do. The relevant abstract of the statement of Sh. B.S. Bisht is as under: -

"Q.5 Which are the companies run from this premises & which are the companies got registered office in this premise?"

B. I have already given you a list in answer to Q.No.3. Total 41 companies (except at SI.No.19) are being run from this premise.

Following companies have their registered office at 315, E-Block, International Trade Tower, Delhi

1. *Adamine Constructions (P) Ltd.*
2. *BBN Transportation (P) Ltd.*
3. *BNR Infotech (P) Ltd.*
4. *BNS Steel Trading (P) Ltd.*
5. *Gold star Cement (P) Ltd.*
6. *NRA Iron & Steel (P) Ltd.*
7. *Starlight Consumer Electronics (P) Ltd.*
8. *Sur Buildcon (P) Ltd.*
9. *Tremendous Mining & Minerals (P) Ltd.*
10. *UNA Power (P) Ltd.*
11. *Vistrat Real Estate (P) Ltd.*

Q.6 Are you director in any company.

B. I am not director in any of companies.

Q. 7 What are the nature of business of such companies that run from this premise ?

A. Main companies are M/s Bhushan Steel Ltd. & M/s Bhushan Energy Ltd. They are doing actual work of steel & energy respectively/ rest of the companies are paper company, they are not doing any actual work or business.

Q.8 Who are directors'of such companies ?

A. I don't know name of directors at present. Generally, when we incorporate a company. On the recommendation of Sh. Brij Bhushan Singhal, Chairman of our group, we appoint directors of that company, the persons to whom directorship is offered are generally employees of group companies and are trust worthy of management".

2. The Income Tax Return of the company for the A.Y.200910 was examined and it has been found that company is having the total share capital of Rs.2,31,00,000 and securities premium of Rs.17,10,000/-. There is debit balance of Rs.7,39,005/- in the P&L Account of the company. Company has shown gross total income in its ITR of Rs.970 during the F.Y. 2008-09 (relevant to A.Y.2009-10). After careful examination of the aforesaid facts the following issues arises.

(i) That a company which has been found not existing at the address of its registered/corporate office and as per the statement of Sh. B. S. Bisht which is a paper company, the genuineness with respect to introduction of Rs.2,30,00,000/- approximately in the shape of share capital and Rs.17,10.00.000 in the shape of securities premium is! questionable.

2.1. It gives reasons to believe that this company is just a paper company established for introducing money from unexplained sources.

2.2 Financial Statistics about the company

Share Capital	*Rs. 1,00,000/-*	*Rs.2,31,00,000/-*	*Rs.2,31,00,000/-*
Share Capital	*Rs. 1,00,000/-*	*Rs.2,31,00,000/-*	*Rs.2,31,00,000/-*
Share Application Money	*Nil*	*Nil*	*Nil*
Securities Premium raised	*Nil*	*Rs.17,10,00,000/-*	*Rs.17,10,00,000/-*
Debit Balance in P&L Account	*Rs. 17,764/-*	*Rs.7,39,005/-*	*Rs.7,31,070/*
Dividend Income	*Nil*	*Nil*	*Nil*
Returned Income	*Nil*	*Rs.970/-*	*Rs.10,483;*
Losses Claimed to be carried	*Nil*	*Nil*	*Nil*

2.3 Hence, from the aforesaid facts, I have the reasons to believe that certain income which is chargeable tax has escaped

assessment for the year under consideration which may be in form of unexplained money credited in the books of company from unexplained sources (both capital & revenue).

3. Hence, the case of the assessee for A.Y. 2009-10 is re-opened u/s 147 off the I.T. Act, 1961 are hereby initiated. Issue notice u/s 148 of the Income Tax; Act, 1961."

2.2 In a nutshell, the identical reasons recorded by the A.O. state that during the course of the survey operation conducted by the Investigation Wing at the corporate office of the assessees, it was found that the said premises was run, occupied & controlled by the management of Bhushan Group, where all the staff members present at the premises of the assessees were, in fact, the staff members of M/s. Bhushan Steel Ltd. A statement of one such employee, Shri B.S. Bisht (Assistant Secretarial Officer of M/s. Bhushan Steel Ltd.) was recorded wherein he had accepted that several companies having the registered office address of M/s Bhushan Steel Ltd. were just paper companies with no actual business. The A.O., thus, concluded that since the assessees were not found existing at the

registered/corporate office and as per the statement of Shri Bisht the same were paper companies, it gave reason to believe that the share capital and the share premium introduced into the assessee companies were questionable.

2.3 The assessees filed their objections against the issuance of notice u/s 148 of the Act by citing non-existence of any live link or casual nexus between the information on record and the reason to believe that the income of the assessees had escaped assessment. The objections of the assessees were, however, rejected by the A.O. During the course of re-assessment proceedings, certain documents evidencing the identity, genuineness and creditworthiness of the share capital and share premium received were furnished before the A.O. by the assessees in response to the notice(s) issued u/s 142(1) of the Act. These documents were in the nature of confirmations, bank accounts, and ITR Acknowledgments of the investors concerned.

2.4 The A.O. issued summons u/s 131 of the Act and also directed that spot enquiry reports be obtained in Mumbai and Kolkata (in the case of all three assessees) and additionally in

Guwahati (in the case of M/s Sur Buildcon Pvt. Ltd./Globus Real Infra Pvt. Ltd.). Thereafter, the A.O. observed that the parties in Mumbai either did not respond to the summons served on them or were not found at the given address or the addresses were either incomplete or incorrect or the premises were found to be locked. Insofar as the parties based in Kolkata were concerned, all the parties had responded by post confirming the investments made in the respective assessee companies along with documentary evidences but none of them appeared in person. With respect to the Guwahati based companies, as per the Report, the parties were not found to be existing at the given addresses.

2.5 The A.O., thereafter, identically observed in the cases of all three assessees that, "*The creditworthiness of the investors is not established as all the investors are showing nominal income. Neither the investor company and nor the assessee company has produced any proof to substantiate the creditworthiness of the investors (for example balance sheet of the investor company).The genuineness of the transaction is also in doubt.*"–. The A.O. proceeded to add the share capital and the share premium received as unexplained cash

credits under Sec.68 of the Act in the case of the three assesses as under:

Particulars	**BBN Transportation Pvt. ltd.**	**Goldstar Cement Pvt. Ltd.**	**Sur Buildcon Pvt. Ltd.**
Relevant A.Y	2008-09	2008-09	2009-10
Total Impugned Addition u/s 68	Rs. 9,40,00,000/-	Rs. 9,10,00,000/-	Rs. 18,00,00,000/-

2.6.0 Aggrieved, the assessees preferred appeals before the Ld. CIT (A), assailing the order of the A.O on the jurisdiction as well as on merits. In the said appeals before the Ld. CIT (A), on the issue of jurisdiction, the assessees averred that the pre-requirements for validly invoking the jurisdiction u/s 147/148 of the Act were not fulfilled and satisfied. The assessees also averred that the Assessment Orders were bad in law since they were based on the results of investigation and inquiry which was never confronted to the assessees at any stage of the reassessment proceedings, and, therefore, were void *ab initio.* On merits, the assessees averred that the A.O. had erred in holding the credits received by the assessees to be unexplained in nature without first refuting the evidences

brought on record by the assessees to establish the three ingredients of Section 68.

2.6.1 The Ld. CIT (A), in the impugned orders, reached the conclusion that the reasoning of the A.O. behind making the additions u/s 68 on account of share capital and share premium was incorrect and legally unsustainable. The finding of the Ld. CIT (A) vis-à-vis M/s BBN Transportation Pvt. Ltd is being reproduced here in under {which is identical in the cases of the other two assessees (apart from the variation in figures)}:

> *"3.2 The case of the revenue is that some of the investor companies could not be found at the given address and also that some of the investor companies responded to the summons by post but did not cause appearance before the tax authorities It is also stated that the income of many of the investor companies was too low or meagre to enable them to make such large investments in the share capital of appellant company. It is further submitted that there appears no justification for large component of share premium paid to the appellant along with the share capital. Based on these observations, the revenue has held that the subscription to share capital, including the share premium. Amounting to Rs.9,40,00,000/- as unexplained credits*

of the appellants and held to be unexplained income. The case of the appellant, on the other hand, is that it had discharged its onus to establish the identity of the shareholders/applicants, and the source of the money by filing confirmations from the said parties along with copies of bank statements and ITRs. Therefore, the question of invoking the provisions u/s 68 against the appellant did not arise. The appellant has also relied on several case laws to support its claim.

3.3 I have considered the rival claims. The fact that appellant filed the requisite documents before the AO is undisputed. Thus, the appellant had discharged its primary onus of establishing the identity of the shareholders/applicants and source of the money. The only reason for the revenue to cause further verification was the report relating to survey conducted at the premises of the appellant which forms part of the satisfaction recorded for reopening the assessment proceedings. From the said report it transpires that the business premises of the appellant actually belonged to M/s Bhushan Steel Ltd. and several other companies were having their registered offices in the same premises. This led to the suspicion that these companies were paper companies. During further verification of the identity of the 10 shareholders in Mumbai, three addresses were not found, three shareholders were not found at the given address, two premises were locked and summons could not be served, and out of two parties on

whom the summons was served one responded to the summons but the other did not. In Kolkata, no response was received from the single party.

3.4 There is no law that more than one company cannot have its registered office at one address. There is no law that companies cannot change their registered office. Several companies can have the same registered office. Businesses raise capital and such capital is rotated in economy for increasing production and trade and for making more efficient use of capital. Companies change hands, sometimes in quick succession. This is the normal formation of capital in any open economy and the process of capital formation cannot be taken to be representing only unaccounted funds or impeded. All the companies having registered office at that premises undisputedly belonged to Bhushan Group. The sources of capital introduced in these companies were established during the respective assessment proceedings, including this appellant company. No evidence was found during the search to indicate introduction of unaccounted cash / funds in the form of share capital in these companies. In these circumstances, the conclusion based on the facts relied upon by the revenue that the share capital introduced in the companies belonging to Bhushan Group, including the appellant company, are unexplained, is premature.

3.5 In the above facts and circumstances of the matter, and in view of the case laws relied upon by the Ld. AR, the addition made cannot be legally sustained and is deleted. This ground of appeal is allowed."

2.6.2 On the ground of jurisdiction, the Ld. CIT (A) identically opined the following in the impugned orders across all the three assessees:

"4.2 I have considered the assessment order and the submissions made. It is not the case that the appellant was not supplied with the reasons recorded. It raised objections to the reasons recorded, which were duly replied to by the revenue. To this extent, its claim that the reasons or results of enquiry were not supplied during the assessment is incorrect. However, do not I find from the assessment order that the result of enquiry made at Mumbai and Kolkata was made available to the appellant. To that extent, the right of appellant to know the facts and have the opportunity to rebut the evidence was not granted. However, these findings were made available to the appellant in the assessment order and the appellant had the opportunity during the appeal proceedings to present its point of view. Significantly, the appellant has not adduced any additional evidence or established any new fact. In

this view of the matter, and in view of the relief allowed to the appellant on merits, this ground raised against the validity of the proceedings for not following natural justice does not survive and is dismissed accordingly,"

2.6.3 On the ground of violation of the Principles of Natural Justice, the following had been identically opined by the Ld. CIT (A) across all the three assessees:

"5.2 I have considered the submissions made. The reasons for reopening the proceedings were communicated to the appellant and its objections were duly considered by the revenue. Based on the reasons recorded in the assessment order, the revenue reached the conclusion that the share capital of the appellant was unexplained. Hence, the revenue passed the reassessment order. During appeal the appellant got the opportunity to challenge the reassessment order on facts and in law. The appellant has been allowed relief on merit. The assessment order stands merged in this order. Therefore, it cannot be said that the reassessment proceeding and the order was bad in law. In any case, this ground is only academic in view of the relief allowed to the appellant on merit. This ground is disposed off accordingly."

2.7 Aggrieved by the relief granted by the Ld. CIT (A) on merits, the Revenue is in appeal before us against the impugned orders while the assessees have preferred Cross Objections in all the three appeals.

2.8 The respective grounds taken in the appeals and cross objections are as under:

Grounds of appeal in ITA No.6174/Del/2013:

"1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.18,00,00,000/- made by AO without appreciating the fact that the identity and the creditworthiness of the investors were not established as all the investors were showing a nominal income and neither the investor company and nor the assessee company had produced any proof to substantiate the creditworthiness of the investors (for example balance sheet of the investor company).

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

Grounds of appeal in Cross Objection No.258/Del/2015:

"That the order dated 19.09.2013 passed u/s 250 of the Income-tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi, is against law and facts on the file and bad in law in as much as he was not justified to uphold the action of the Ld. Assessing Officer in resorting to the provisions of Section 148 of the Income-tax Act, 1961."

Grounds of appeal in ITA No.6176/Del/2013:

"1. *The order of Ld. CIT (A) is not correct in law and facts.*

2. On the facts and circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.9,40,00,000/- made by AO without appreciating the fact that the identity and the creditworthiness of the investors were not established as all the investors were showing a nominal income and neither the investor company and nor the assessee company had produced any proof to substantiate the creditworthiness of the investors (for example balance sheet of the investor company).

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

Grounds of appeal in Cross Objection No.260/Del/2015:

"That the order dated 19.09.2013 passed u/s 250 of the Income-tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi, is against law and facts on the file and bad in law in as much as he was not justified to uphold the action of the Ld. Assessing Officer in resorting to the provisions of Section 148 of the Income-tax Act, 1961."

Grounds of appeal in ITA No.6177/Del/2013:

"1. The order of Ld. CIT (A) is not correct in law and facts.

2. On the facts and circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.9,10,00,000/- made by AO without appreciating the fact that the identity and the creditworthiness of the investors were not established as all the investors were showing a nominal income and neither the investor company and nor the assessee company had produced any proof to substantiate the creditworthiness of the investors (for example balance sheet of the investor company).

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

Grounds of appeal in Cross Objection No.02/Del/2021:

"1. *That the order dated 19.09.2013 passed u/s 250 of the Income-tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-I, New Delhi, is bad in law in as much as he was not justified to uphold the action of the Ld. Assessing Officer in resorting to the provisions of Sec.148 of the Income Tax Act, 1961.*

2. That the Ld. CIT(A) vide order dated 19.09.2013 passed u/s 250 of the Income tax Act, 1961 erred in dismissing the appeal of the Assessee challenging the order of the Ld. Assessing Officer to the extent is was passed in violation of Principles of Natural Justice inasmuch as the result of enquiries made by the Department on the basis of which the impugned additions were made in the hands of the Assessee were never confronted to the Assessee at any stage of the assessment proceedings, thus rendering the entire assessment proceedings as non-est, bad-in-law and void ab initio."

3.0 At the outset, the Ld. A.R submitted that there was a delay in filling of Cross Objection in the case of ACIT CC-3 vs. M/s Goldstar Cement Pvt. Ltd. in ITA No. 6177/Del/2013 for AY 2008-09. It was submitted that the said assessee had filed an application for condonation of delay which was also accompanied by an affidavit.

The issue with respect to the condonation of delay was addressed by the Ld. Counsel. He reiterated the facts narrated in the application, which may be summarized as under:

3.1 It was submitted that the Department had initially preferred an Appeal before this Tribunal on 12.11.2013 after the Ld. CIT (A) had deleted the addition made by the A.O. vide Order dated 19.09.2013. It was submitted that the said appeal was numbered as ITA No. 6177/DEL/2013. It was further submitted that the assessee had, thereafter, filed the necessary Cross Objection (No. 261/DEL/2013) to the said Appeal on 09.05.2015 which was delayed by 579 days.

3.2 The Ld. AR further submitted that the said Appeal and the Cross Objection were listed for hearing before the Tribunal on 07.01.2016 wherein the Revenue's Appeal was dismissed for being defective because only one set (out of the four sets) of Form 36, the GOA and the Verification were signed. The Cross Objections of the assessee were, therefore, rendered *in fructuous.* It was further submitted that the Tribunal, however, in the interest of Justice,

granted the Assessee the liberty to file to an application to recall the Order along with an application for the condonation of delay in preferring the said Cross Objection. The Ld. AR further submitted that the Department preferred Miscellaneous Application for the restoration of the Appeal on 21.12.2016 which was heard by this Tribunal on 28.01.2019 wherein no one had appeared for the assessee, since no notice of the date of hearing had been received by the assessee. Vide Order dated 28. 01.2019, Department's Appeal No. 6177/Del/ 2013 was restored.

3.3 It was further submitted by the Ld. AR that as the assessee was unaware of the filling of the Miscellaneous Application (having not received the notice of hearing), the assessee did not prefer fresh cross-objections or an application seeking the restoration of the original cross objections and the matter remained *status quo* till the second half of the year 2020, where during the ongoing COVID-19 pandemic and lockdown, the Assessee changed its counsel who then took over this matter amongst several other cases of the

same Group, and who upon a study of this case file informed the assessee of the situation.

3.4 On the issue of condonation of delay, the Ld. A.R. referred to the decision of the Hon'ble Apex Court in *Collector of Land Acquisition v. Mast. Katiji and Ors., MANU/SC/0460/1987 : 167 ITR 471* wherein the Hon'ble Supreme Court had observed that the expression *sufficient cause'* employed in Section 5 of Limitation Act, 1963 is adequately elastic to enable the Courts to apply the law in a meaningful manner in order to serve the ends of Justice. It was submitted that the Hon'ble Apex Court has iterated that a liberal approach should be adopted in the matters of condonation of delay in cases where there is no deliberate inaction or a lack of *bona fide*. He also referred to the guidelines issued by the Hon'ble Supreme Court and pointed out that from these guidelines it becomes clear that a liberal approach must be adopted for condoning delay, in order to further the cause of substantive Justice, especially since in this case, the delay was not attributable to the fault of the assessee.

3.5 The Ld. CIT – DR opposed the assessee's prayer for condonation of delay.

3.6 After considering the series of events and the submission of the Ld. A.R, we are of the considered opinion that in the interest of Justice and fair play, the delay needs to be condoned. The *bona fide* of the reasons have not been assailed by the other side and, therefore, we condone the delay caused in the filing of the Cross Objections before the Tribunal in case of ACIT CC-3 vs M/s Goldstar Cement Pvt. Ltd. ITA No. 6177/Del/2013 for AY 2008-09.

4.0 Now we take up the application for the admission of an additional ground which is identical in the cases of ACIT, Central Circle-13, New Delhi Vs.BBN Transportation Pvt. Ltd., ITA No. 6176/Del/2013 & CO 260/Del/2013 for A.Y. 2008-09 & ACIT, Central Circle-13, New Delhi Vs. Sur Buildcon Pvt. Ltd. (now known as Globus Real Infra Pvt. Ltd.), ITA No. 6174/Del/2013 & CO 258/Del/2013 for A.Y. 2009-10. The said additional ground reads as under:

"*That the Ld. CIT (A) vide order dt. 19.09.2013 passed u/s 250 of the Income Tax Act, 1961 erred in dismissing the appeal of the Assessee challenging the order of the Ld. DCIT, CC-13, New Delhi to the extent it was passed in violation of principles of natural justice in as much as the results of enquires made by the Department on the basis of which the impugned additions were made in the hands of the Assessee were never confronted to the Assessee at any stage of the assessment proceedings, thus rendering the entire assessment proceedings as non-est, bad-in law and void ab intio.*"

4.1 The Ld. A.R. submitted that the assessees may be permitted to raise the additional ground to the Cross Objection as the same is a Questions of Law. In support, reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Chitturi Subbana vs Kudapa Subbana & Others (1965 Air 1325) and National Thermal Power Co. Ltd. vs. CIT, (1998) 229 ITR 383 (SC)* to hold that that a question of law can be raised at any stage of proceedings.

4.2 Per contra, the Ld. CIT – DR opposed the assessees' prayer for admission of additional ground.

4.3 We have carefully considered the submission of the Ld. A.R. along with the case laws relied upon. The Hon'ble Supreme

Court in the decision of *National Thermal Power Co. Ltd. (supra)* has held as under:

> "*The reframed question, therefore, is answered in the affirmative, i.e. the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits.*"

4.4 The additional ground raised by the assessees is with respect to the violation of the Principles of Natural Justice in which the assessees contend that the enquires made by the Department to make the impugned additions in the hands of the assessees were never confronted to the assessees at any stage of the reassessment proceedings. Since the additional ground raised by the assessees is a question of law, we admit this ground in the case of ACIT, Central Circle-13, New Delhi Vs. BBN Transportation Pvt. Ltd., ITA No. 6176/Del/2013 & CO 260/Del/2013 for A.Y. 2008-09 and ACIT, Central Circle-13, New Delhi Vs. Sur Buildcon Pvt. Ltd. (now Globus

Real Infra Pvt. Ltd.), ITA No. 6174/Del/2013 & CO 258/Del/2013 for A.Y. 2009-10.

5.0 Now coming to the contentions raised by the Ld. CIT D.R. and the Ld. A.R. on the respective grounds raised by them in their Appeal and Cross objections, the submissions of both the parties may be summarized as under:

5.1 The Ld. CIT D.R., on behalf of the Revenue, defended the Assessment Orders by submitting that the A.O. had conducted necessary investigations and enquiries to hold that the genuineness of the transactions have not been proved and neither have the same been explained by the assessees. The Ld CIT D.R. submitted that the Ld. CIT (A) had erred in overturning the findings of the A.O. in a summary manner without establishing how the assessees had effectively rebutted the detailed and adverse findings emanating from the enquiries conducted by the A.O. The Ld. CIT D.R. submitted that the assessees had only submitted routine details which were nothing but a façade to cover the real picture. Per the Ld. CIT D.R., the investors, who have put in substantial money in the assessee companies, cannot simply disappear or become untraceable over

time, and, if, the said investors were genuine, the onus was on the assessees to satisfy all the queries raised by the A.O. and produce the parties.

5.2 The Ld. CIT D.R. submitted that it was visible from the Assessment Orders that an extensive investigation had been conducted by the A.O.in order to verify the genuineness of the transactions, which, from the outcome of such independent investigation and enquiry, has been proved to not exist. Thus, per the Ld CIT D.R., relief could not have been granted to the assessees since the initial onus cannot merely be discharged by submitting routine details. The Ld. CIT DR submitted that the initial burden of proof u/s 68 of the Income Tax Act, 1961 (hereinafter called 'the Act') is heavily cast on an assessee to furnish an explanation with respect to any sum credited in the books to the satisfaction of the A.O. and that has not been discharged in the cases at hand. It was submitted that the A.O. has brought on record sufficient material to lift the assessees' façade upon conducting his own independent investigation and enquiry, to which the assessees have offered no explanation.

5.3 The Ld. CIT D.R. also relied on several decisions of the Hon'ble jurisdictional Delhi High Court to submit that these decisions have adequately distinguished the decision of the Hon'ble Supreme Court in the case of *CIT vs. Lovely Exports (P) Ltd. [216 CTR 195 SC]* and the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Gourdin Herbals India Ltd. [in ITA No. 665/2009]* - as the former set of decisions have clearly held that the initial onus u/s 68 cannot merely be discharged by an assessee by submitting the routine documentation when there is sufficient evidence and material on record to show that the subscriber was a paper company and not a genuine investor.

6.0 In rebuttal, the Ld. A.R. submitted that the A.O. has erroneously invoked jurisdiction u/s 147/148 of the Act since the basic pre-condition for the initiation of reassessment proceedings under the said section viz. 'reason to believe' on the part of the A.O. to establish that any income chargeable to tax has escaped assessment for the year under consideration was not satisfied and as such, the consequent additions made u/s 68 of the Act by way of the Assessment Orders passed u/s 147/14(3) were *void ab initio* because

no live link/causal nexus exists between the information, the assessees and the alleged escaped income, the absence of which, as per the settled law, renders the entire reassessment proceedings to be a nullity. The established case laws of *Calcutta Discount 1961 41 ITR 191(SC)* and *ITO v. Lakmani Mewal Das, 1976 103 ITR 437 (SC)* were cited in support, amongst others.

6.1 Per the Ld. A.R., the 'reasons recorded' in the present cases cannot be the basis on which any such 'reason to believe' could be arrived at which would even *prima facie* show that the share capital or share premium received by the assessees for the AYs under appeal was not genuine. Per the Ld. A.R., the A.O. must have in his possession specific information or material to show that the particular transactions of the assessees were not genuine or fictitious. It was submitted that this specific information was, however, absent in the cases at hand, thereby rendering the entire reassessment/s to be in the nature of fishing and roving enquiries, based solely on 'borrowed satisfaction' drawn from the statement of Shri B.S. Bisht recorded by the Investigation Wing. The Ld. AR

submitted that the same is impermissible in law in light of the several cited decisions of the Hon'ble jurisdictional Delhi High Court.

6.2 On the violation of the Principle(s) of Natural Justice, the Ld. A.R. submitted that while making the impugned additions, the A.O. has primarily relied upon the Reports of Inspectors who had been deputed to conduct field enquiries in order to verify the genuineness of the investor companies. These reports formed the basis of the Assessment Orders. It was submitted that these reports were, however, based on an investigation conducted behind the back of the assesses and were never put to the assessees for rebuttal, as is the assessees' right u/s 142(3) of the Act. Furthermore, going by the 'Reasons Recorded', neither had the statement of Shri B.S. Bisht been provided to the assessees nor was any opportunity to cross examine him been given as is mandated by law by the decision of the Hon'ble Apex Court in *Andaman Timber Industries v. CCE [2015] 62 taxmann.com***.** Per the Ld. A.R., the said violation of Natural Justice, therefore, renders the Assessment Orders *void ab initio*.

6.3 On merits, the Ld. A.R. defended the impugned orders of the Ld. CIT (A) by submitting that the assessees had furnished

detailed documentary evidences being the party names, PAN and ITR acknowledgements, bank statements and confirmations of the investors in order to duly discharge the onus cast upon them u/s 68 since as per the law laid down in *Lovely Exports (supra),* which is the applicable law for the AYs in question, the assessees are not required to prove the source of source of the share subscribers. The Ld. AR drew our attention go the voluminous evidences filed which forms part of Paper Book Part 2A, 2B and 2C filed by each of the assessees.

6.4 Per the Ld. A.R., the Ld. CIT D.R. has not pointed out to any portion of the Assessment Orders wherein the A.O. has disproved these evidences brought on record since all that the A.O. has done is to rely on the Inspectors' Report– which as per law is insufficient in itself to make/sustain an addition u/s 68 of the Act. In support, reliance was placed on the decisions of *Pr. CIT Vs. Rakam Money Matters (P) Ltd. (2018) 94 CCH 333 (Del HC), CIT v M/s Orchid Industries Pvt. Ltd. in ITA No. 1433 of 2014 (Bom HC),* amongst others.

6.5 With respect to the Inspectors' Report cited in the Assessment Orders, the Ld. A.R. submitted that the Ld. CIT (A) was correct in not relying on the same since these Reports are riddled

with inconsistencies. For example, the A.O. in the assessment orders, stated that summons were sent to 41 investor companies (in case of the three assessees) and postal replies were submitted by 39 investor companies. This is erroneous, since the total investors of all the three assessees put together are only 39 and, therefore, the figure of 41 is fictitious. Further, if postal replies had been submitted by 39 investor companies, which is, in fact, the total number of investors in all, then how has the A.O. made an addition u/s 68 by holding that 19 Companies that were based in Mumbai and Guwahati were either not served the summons or they never responded? Thus, per the Ld. A.R. the Reports clearly cannot be relied upon to make any adverse inference against the assessees.

6.6 The Ld. A.R. also submitted that the mere fact that the investor companies did not have their own profit-making apparatus or had reported meagre income did not *ipso facto* mean that the investors had no creditworthiness. As per the decision of *PCIT-1 Vs. Ami Industries Ltd. [2020] 116 taxmann.com 34 (Bom),*the investments may be made from own funds available in share capital/reserves account or out of borrowed funds and not necessarily out of taxable

income only, further the bank statements also evidence the sufficient availability of funds of the creditors.

6.7 Our attention was next drawn to the decisions of the Hon'ble Jurisdictional Delhi High Court in the cases of *CIT-II v. Kamdhenu Steel & Alloys Ltd. (2012) 19 taxmann.com 26 (Del), Dwarkadhish Capital P. Ltd. 330 ITR 298 (Del HC)* and *CIT v. Winstral Petrochemicals P. Ltd. 330 ITR 603 (Del)* that have uniformly held that the mere fact that the Inspector's Report alleges the parties to be non-existent at the given address would not give the Revenue a right to invoke section 68 without additional material in support, which as per the Ld. A.R. does not exist in these cases, since the impugned additions have been made solely on surmises and conjectures, without the Assessing Officer having brought on record any such material to discharge the shifted burden of proof to refute the evidences provided by the assessees.

6.8 Lastly, the Ld. A.R. drew our attention to the decisions rendered by the Hon'ble Supreme Court, the Hon'ble jurisdictional Delhi High Court and even the coordinate Bench of this Tribunal in the case of group companies wherein similar additions u/s 68 on

strikingly similar facts & circumstances were deleted. These cases are:

- *ACIT, CC-13 Vs. Supreme Placement Services (P) Ltd., ITA No. 5259/Del/2013 MANU/ID/0205/2021,*
- *PCIT (Central)-1 Vs. Adamine Construction Pvt. Ltd., MANU/DE/1566/2018*for A.Y. 2008-09 – SLP filed by the Revenue dismissed by the Hon'ble SC in *PCIT (Central)-1Vs. Adamine Construction Pvt. Ltd., MANU/SCOR/42973/2018,*
- *PCIT (Central)-1 vs. Adamine Constructions P. Ltd., [2018] 99 taxmann.com 44 (Delhi)*for A.Y. 2009-10 – SLP filed by the Revenue was dismissed by the Hon'ble SC in *PCIT (Central)-1 vs. Adamine Constructions P. Ltd., [2018] 99 taxmann.com 45 (SC).*

6.9 Hence, per the Ld. A.R., for the aforesaid reasons, no addition u/s 68 was called for in the case of the assessees.

7.0 Having heard both the parties and after duly considering the submissions made by both sides, we are of the opinion that the Cross Objections filed by the assessees should be adjudicated upon first since the same challenge the very jurisdiction of the A.O. to invoke 147/148 as well as his alleged violation of the Principle(s) of Natural Justice. These issues thus strike at the very root of the

matter and must be disposed of at the inception itself, even though the appeals are of the Revenue.

7.1 With respect to the grounds/additional grounds taken in the Cross Objections, we have carefully considered the same along with the orders of the authorities below as well as the material and the relevant provisions of the Income Tax Act. We also have gone through the case laws relied upon by the Ld. A.R. Before deciding on the issue as to whether the invocation of jurisdiction u/s 147/148 was valid or not, it is expedient to discuss the relevant provisions involved. The relevant portion of Sec. 147 of the Act reads as follows:

"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153referred to as the relevant assessment year):

……."

7.2 The crucial element that emanates from the reading of the aforesaid provision is that the Assessing Officer should have 'reason to believe that any income chargeable to tax has escaped assessment. The words 'reason to believe' and 'escapement of income' have been judicially interpreted by various courts to mean that the reason for the formation of belief must have a rational connection with the information received. Rational connection postulates that there must be some direct nexus or live link between the material coming to the notice of the income tax officer and the formation of the belief that there has been escapement of income of the assessee from assessment in the particular year. This proposition of law is well encapsulated by the Hon'ble Supreme Court in the following decisions:

- *Calcutta Discount vs. ITO, 1961 41 ITR 191(SC):*
  "37: The notices issued by the Income Tax Officer in the case before us undoubtedly fulfill conditions (2) and (3). Notices of reassessment were served before the expiry of eight years of the end of the relevant years of assessment. The Income Tax Officer

also recorded his reasons in the reports submitted by him to the Commissioner and the Commissioner was satisfied that they were fit cases for the issue of such notices. The dispute in the appeal relates merely to the fulfillment of the two branches of the first condition and that immediately raises the question about the true import of the expression "has reason to believe" in s. 34(1)(a). *The expression "reason to believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression, therefore, predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information."*

- *ITO v. Lakmani Mewal Das, 1976 103 ITR 437 (SC):*

  "As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time, we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

- *Sheo Nath Singh v. AACIT, 972 SCR (1) 175 (SC):*

  "10:There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that

the conditions are satisfied does not exist or is not material or relevant to the belief required by the Section. The court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court."

- *S. Narayanappa and Ors. vs. Commissioner of Income Tax, Bangalore, AIR 1967 SC 523 :*

  "3.....It is true that two conditions must be satisfied in order to confer jurisdiction on the Income-tax Officer to issue the notice under s. 34 in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year. The first condition is that the Income-tax Officer must have reason to believe that the income, profits or gains chargeable to income-tax had been under-assessed. The second condition is that he must have reason to believe that such "under-assessment" had occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under s. 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income-tax Officer acquires jurisdiction to issue a notice under the section.

  4. The belief must be held in good faith: it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational

connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Income-tax Officer in starting proceedings under s. 34 of the Act is open to challenge in a court of law."

- *Ganga Saran & Sons (P.) Ltd. v. ITO, [1981] 130 ITR 1 (SC):*
  "6. ..... The important words under section 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words, it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the ITO could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all

material facts and the notice issued by him would be liable to be struck down as invalid."

- *CIT vs. Lucas TVS Ltd., (2001) 249 ITR 306 (SC):*

  "If there is no failure on part of assessee to disclose fully and truly material facts, wrong interpretation of accounts by AO leading to relief cannot be a ground for reopening and, thus, cannot confer jurisdiction on AO. The reason for the formation of the belief must have a rational connection with the information received. Rational connection postulates that there must be direct nexus or live link between the material coming to the notice of the Income -tax Officer and the formation of the belief that there has been escapement of income of the assessee from assessment in the particular year because of his failure to disclose fully and truly material facts. It is to be borne in mind that it is not any and every material, howsoever vague and indefinite or distant remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

- *CIT vs. Kelvinator India Ltd., [2010] 320 ITR 561 (SC):*

  ".....Hence after April 1, 1989, the Assessing Officer has the power to reopen an assessment, provided there is "tangible material" to come to the conclusion that there was escapement of

income from assessment. Reason must have a link with the formation of the belief."

7.3 Thus, we agree with the contentions raised by the Ld. A.R. that the 'reason to believe' that income chargeable to tax has escaped for the purposes of reopening assessment u/s 147 r/w 148 of the Act cannot be based on suspicion, surmises, conjectures but must be based on cogent and tangible material that establishes a causal nexus between the information available and inference drawn by the A.O.

7.4.0 A perusal of the 'Reasons Recorded', reproduced elsewhere in this order, in the case at hand makes it evident that the broad grounds which were relied upon by the A.O. for reopening of the assessment proceedings are:

(i) That a survey was conducted on 03.03.2010 at the corporate office of the Assessee-Company by the officers of the Investigation Wing of the Income Tax Department.

(ii) That statement of one Shri B.S. Bisht, Assistant Secretarial Officer with M/s. BSL was recorded wherein he purportedly stated as under:

- that several companies were being run from the said premises

- that the main companies of the group were M/s. Bhushan Steel Ltd. & M/s. Bhushan Energy Ltd. and the remaining companies were allegedly paper companies not doing any actual business.
- that the directors of the companies run from the said premises were generally employees of the group companies.

7.4.1 Based on the same, the A.O. concluded that the share capital and share premium received by the assessees were 'questionable' in nature and he concluded that he had 'reasons to believe that the assessees were just paper companies established for introducing money from unexplained sources.

7.5 The aforementioned 'Reasons Recorded' neither discuss nor bring on record any specific information showing that any particular transactions made between the assessees and the concerned investors were not genuine/fictitious. Thus, it is apparent from the 'Reasons Recorded' itself that there is no specific information/material in the possession of the A.O. to back his claim that the share capital or share premium received by the assessees for the Assessment Years under appeal was not genuine/ bogus. As

encapsulated in the preceding decisions of the Hon'ble Apex Court, for the proceedings u/s 147/148 to be held to be jurisdictionally valid, the A.O. must have in his possession specific information or material to show that the transactions of the assessees were not genuine/fictitious to establish a live link/causal nexus between the material/evidence available on record and the assessee's escaped income. However, in the present case, the 'Reasons Recorded' do not in any manner whatsoever state that the information received from the Investigation Wing or that the recorded statement of Shri B.S. Bisht points towards the share capital and/or share premium received by the assessee companies to be non genuine/bogus.

7.6 However, the A.O in the case of all the three assessees, has sought to draw conclusion based on the statement of Shri B.S. Bisht (recorded by the Investigation Wing) even when no specific allegations were made by him *vis-à-vis* the non genuineness of the share capital or share premium received by the assessee companies from the share applicants. It is also a matter of record that this witness was never confronted to the assessees for the purposes of

cross-examination. Further, as observed by the Ld. CIT (A) in the impugned orders, there is nothing in law to prohibit several companies from having their registered offices at the same addresses or for companies to share common infrastructure to economize costs and such facts should not be interpreted in an adverse manner to erroneously assume jurisdiction u/s 147 of the Act, without first meeting the ingredients set out in the section itself.

7.7 In view of the above, we are of the considered opinion that the A.O. had no specific information and/or material in his possession to even arrive at 'reason to believe' that the share capital or share premium received by the assessees from any of the shareholders for the Assessment Years in question were not genuine and/or bogus and/or represented assessees' own unaccounted funds. The A.O.'s assumption of jurisdiction u/s 147/148 of the Act is therefore held to be illegal, erroneous and impermissible in law, rendering all subsequent proceedings to be *non est*.

7.8 Thus, on identical facts and identical reasoning, all the three Cross Objections challenging the jurisdiction of the A.O. to

initiate the Sec.147/148 proceedings are allowed in favour of the Assessees.

7.9 We shall now proceed to adjudicate the next Cross Objection taken by the assessees, which is in respect to the violation of Principles of Natural Justice since the enquiries made by the Department and the subsequent Inspector Reports which formulated the foundation of the impugned addition(s) were never confronted to either of the assessees at any stage of the reassessment proceedings. On a perusal of the Assessment Orders, it is amply clear that the A.O., primarily, had relied upon the Inspectors Reports that was based on the field enquiries conducted to ascertain the genuineness of the investor companies. As is made evident from the Assessment Orders itself, the Inspectors, vide their respective Reports, have stipulated that upon enquiry, either the concerned parties were not found to be existing at the given address, or the addresses were not found, or the premises was found locked. The results of such field enquiries were not brought to the knowledge of the assessees prior to the passing of the Assessment Orders. This fact, when pointed out by

the Ld. A.R. has not been disputed by the Ld. CIT D.R. also during the course of hearing before us. The enquiries were, thus, conducted by the A.O. behind the back of the assessees. These enquiries were then utilized for the purpose of making the additions without confronting the same to the assessees, which as per Section 142 of the Income Tax Act, is impermissible in law.

7.10 To elaborate, Section142 of the Act provides for the procedure to be followed by the A.O. while making the requisite enquiries before concluding an assessment. Section 142(1) of the Act empowers the A.O. to call for information/material from the assessee. Section142 (2) empowers the A.O. to make such enquiry as may be necessary for the purpose of such assessment. Section 142 (3) mandates that the information/evidence collected pursuant to the enquiry conducted u/s 142(2), which is proposed to be utilized during the assessment, shall first be put to the assessee to provide him/her with an opportunity of being heard before the same is even utilized to make an addition/disallowance u/s 143(3). There is, thus, a specific procedure that must be followed by the A.O. while making

an assessment under the Income Tax Act. Section 142 (3) uses the word *'shall',* thus, rendering the same to be by no means discretionary upon the whims and fancies of the A.O.

7.11 Applying the law to the case at hand, it is evident that the Inspector Reports, that had been relied upon by the A.O., have been reproduced in length for the first time in the Assessment Orders only. The A.O.,by failing to confront the assessees with the evidence he had gathered u/s 142(2) Act, has, therefore, erroneously skipped the mandatory intermediary step prescribed u/s 142(3) of the Act. Thus, when the A.O. has directly gone on to pass the Assessment Orders u/s 147/143(3) of the Act to make the impugned additions u/s 68, the same is in direct violation of the procedure of enquiry prescribed in the Statute that inherently encompasses the Principle(s) of Natural Justice. We derive support to our line of reasoning from the decision of the coordinate Bench of the Hon'ble Kolkata Tribunal in *M/s. SPML Infra Ltd. vs. DCIT, ITA No. 1228/Kol/2018* wherein it has been held as under:

"14. To conclude: We note that none of the statements were recorded by the assessing officer of the assessee company, and no opportunity for cross examination has been provided to the assessee company. The mandate of law to conduct enquiry by the Assessing Officer on due information coming to him to verify authenticity of information was not done as per section 142 of the Act.Therefore, mere receipt of unsubstantiated statement recorded by some other officer in some other proceedings more particularly having no bearing on the transaction with the assessee does not create any material evidence against the assessee. This is because section 142(2) mandates any such material adverse to the facts of assessee collected by AO u/s 142(1) has to be necessarily put to the assessee u/s 142(3) before utilizing the same for assessment so as to constitute as reliable material evidence through the process of assessment u/s 143(3) of the Act."

7.12 We also draw support from the judgment of the Hon'ble Apex Court in *Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818*, where the Hon'ble Supreme Court has clearly held that "*Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and no other.*

No wider right than that provided by the statute can be claimed nor can the right be narrowed."

7.13 We further observe that the statement of Shri B.S. Bisht as stated in the 'Reasons Recorded' has not been utilized by the A.O. as the basis for passing the Assessment Orders. Therefore, we are of the view that the question of whether this statement had been provided to the assessees for cross examination or not, is not required to be gone into. However, it would not be out of place to hold that for the reasons specified above, even the statement of Shri B.S. Bisht recorded behind the back of the assessees could not unilaterally be used by the A.O. without testing the same on the anvil of cross examination as is now the settled law per the judgment in *Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3.*

7.14 Since the results of the enquiries conducted by the A.O. u/s 142(2) of the Act have not been confronted to the assessees, we are inclined to agree with the Ld. A.R. that there has been a violation of the Principle(s) of Natural Justice implied within Section142 (2) of the Act and such statutory non-compliance vitiates the entire assessment proceedings, therefore, rendering it to be null and void.

Thus, the Cross Objection taken on the violation of the Principle(s) of Natural Justice is also allowed in favour of the assessees.

8.0 Considering the totality of the aforesaid factual and legal position, we have already quashed the proceedings under Section148 of the Act in the case of all three assessees for being bereft of jurisdiction. As a consequence, the issues on merits, thus, no longer survive. However, for purely academic reasons, we seek to dispose of the Departmental Appeals.

9.0 Coming to the Grounds of Appeal filed by the Department, in the said Grounds, the Department has on merits, sought to challenge the impugned orders of the Ld. CIT (A), who, as per the Department, has erred in deleting the impugned additions made by the A.O. u/s 68 of the Act. Before us, the Ld. CIT D.R. has submitted that the Ld. CIT (A) has erred in summarily deleting the impugned additions made by the A.O., without appreciating the true facts of the case, which is that the identity, genuineness of the transactions and the creditworthiness of the investors had not been established by the assessees to the satisfaction of the A.O., who had in turn brought sufficient material on record that casts doubt on the genuineness of

the transactions. Thus, as per the Ld. CIT D.R., the assessees, by merely submitting routine documents, have not discharged the initial burden of proof that vested on them u/s 68 of the Act. The Ld. CIT DR has further submitted that when any such doubt on the genuineness of the investor companies exists in the mind of the A.O., then the law laid down in *Lovely Exports (supra)* will not apply since the said decision of the Hon'ble Supreme Court has been distinguished in favour of the Revenue by several decisions of the Hon'ble jurisdictional Delhi High Court such as *CIT vs. Navodya Castles, [2014] 50 taxmann.com 110, CIT vs. Sophia Finance Ltd., 205 ITR 98 (Del.) (F.B.), N.R. Portfoilio Pvt. Ltd., 87 DTR 0162 (Del) and 96 DTR 0281 (Del), MAF Academy Pvt. Ltd., 361 ITR 02858 (Delhi),* etc. – which, therefore, means that in the instant cases, the assessees ought to have also proven the source of source of the investor companies to establish their genuineness.

9.1 The Ld. A.R., on the other hand, has submitted that all the documents establishing the identity, genuineness and creditworthiness of the transactions had been submitted before the A.O. who has failed to refute them in any manner. It was submitted

that is now settled law that pre-01.04.2013, the assessees are required to only prove the identity, genuineness and creditworthiness of the transactions to discharge their initial burden on proof under Section 68. It has also been argued that there is no requirement in law for the assessees to prove the source of source of the investors. In support, the decisions of the Hon'ble Bombay High Court in *Ami Industries (supra),* the Hon'ble Delhi High Court in *CIT vs. Dwarakadhish Investment P. Ltd., [2011] 330 ITR 298,* the decision of the Hon'ble Guwahati High Court in *Nemi Chand Kothari vs. CIT, [2004] 136 Taxman 213 (Gau),* and the decision of the Hon'ble Gujarat High Court in *DCIT vs. Rohini Builders, 256 ITR 360 (Gujarat)* were relied upon. It has been contended that when such evidences have remained un-refuted by the A.O., the question of making an addition u/s 68 of the Act does not arise. Further, per the Ld. A.R., reliance on the Reports of the Inspectors without first putting the same to the assesseea for rebuttal u/s 142(3) of the Act is impermissible in law. Even otherwise, the said Reports are riddled with inconsistencies that question their very legitimacy. Therefore, when no such adverse statement and/or evidence exists on record

that show that the transactions undertaken by the investors companies were bogus, then the additions u/s 68 do not survive for the simple reason that the A.O. has failed to discharge the burden of proof that has been shifted unto the Department.

10.0 We have duly considered the submissions made by both sides, along with the orders of the tax authorities below as well as the material and the relevant provisions of the Income Tax Act. We also have gone through the case laws relied upon by the Ld. CIT D.R and the Ld. A.R. in support of their contentions. It has not been disputed that the assessees have filed their original returns of income wherein all the particulars of the investments made by investor companies of Kolkata, Mumbai, Guwahati and Delhi have been disclosed before the Department. Further the assessees had also produced the copies of the Confirmations, Bank Statements and the Income Tax Returns of all the investor companies before the A.O. during the course of the reassessment proceedings. These documents form part of the Paper Book 1B, 2B and 3B filed in each of the Appeals by the assessees. It is also not in dispute that the A.O., while passing the Assessment Orders, did not raise any doubts with respect to the documentary

evidences submitted before him by the assessees. It is again not in dispute that all the investments (in the form of share capital and share premium) have been duly made via banking channels where the investor companies have shown sufficient balances in their bank accounts to make such an investment in the assessee companies. Further, upon a perusal of the bank statements brought on record by the assessees, it is also evident that no cash was found to have been deposited in the bank accounts of the investor companies. All the investor companies (in the case of all the three Assessees) are registered companies and are assessed to tax also, as is evident from the bank statements and/or the ITR Acknowledgments. Therefore, the identity, genuineness of the transaction and the creditworthiness of the investor companies have been proved by the assessees and they have successfully discharged the initial burden of proof that vested on them u/s 68 of the Act. The A.O. has nowhere, in the Assessment Orders, disputed this information/material submitted by the assessees and has merely sought to rely on the Reports prepared by the Inspectors.

10.1.0 We shall first deal with the contents of these field enquiries/ Reports conducted by the A.O. through Inspectors. A perusal of the Reports quoted in the Assessment Orders brings to light that in the case of M/s BBN Transportation Pvt. Ltd, there existed 10 Mumbai based parties and 1 Kolkata based party. In the case of M/s Goldstar Cement Pvt. Ltd, there existed 4 Mumbai based parties, 5 Kolkata based parties and 1 Delhi based party. In the case of M/s Sur Buildcon Pvt. Ltd., there existed 4 Mumbai based parties, 12 Kolkata based parties and 2 Guwahati based parties. The total number of investors across all three assesseess for the respective Assessment Years is therefore 39, with respect to which, as observed above, the assessees have submitted the requisite evidences establishing the Identity, Genuineness and Creditworthiness of the transactions. Now, the A.O., without questioning the material submitted by the assesseess, has placed primary reliance on these Reports to put forth the argument that the parties are not genuine. The question that requires answer first is whether these Reports can even be relied upon before the contents of the same are gone into. We have earlier held that the since the said Reports had not been

confronted to the assessees u/s 142(3) of the Act, they could not have been utilized by the A.O. behind their back to pass the Assessment Orders under Sec. 147/143(3) of the Act. The reliance on the same by the A.O. is, therefore, rendered nugatory for the purpose of making a 147/143(3) assessment. However, even if we are to assume that these Reports could have been utilized, then:

10.1.1 A perusal of the Kolkata based Reports show a glaring inconsistency emanating there from, i.e., they all identically state that *"in all the above 41 cases where summon was issued nobody appeared on behalf of any of the company, only submission were received through dak in the 39 cases which create a doubt on the identity of the assessee."* How and in what context has this figure even been arrived at has not been reconciled/explained by the Ld. CIT D.R. during the hearing. As rightly pointed out by the Ld. A.R., there are, in fact, a total of 39 parties across all three assessees and 15 Kolkata based parties in total, meaning that the figures specified in the Kolkata based Reports is erroneous and has gone unexplained. Any reliance on the same, is, therefore, questionable. In fact, had the said Kolkata based Reports been confronted to the assessees u/s 142

(3) of the Act, such inconsistencies would have been pointed out and rebutted by the assessees during the course of the assessment proceedings itself. However, since the same had not been done by the A.O., the assessees while in appeal, had to explain that all evidences establishing the 3 ingredients of Section 68 had been furnished, where all the Kolkata based parties had responded *via* post, citing their confirmations with documentary evidences in support – none of which had been refuted by the A.O.

10.1.2 Furthermore, a perusal of the Kolkata based Reports, shows that the same accepts that the bank statements evidencing the receipt of payment via cheque had been produced by the assesses. However, the Reports have also stated that "*the assessee has not enclosed the bank statement showing the source of fund for share application money*" meaning that per the Department, the source of source was also required to be proved. However, as already opined, since the bank statements of all the investor companies evidence a sufficiency of funds to make the respective investments in the assessee companies, the creditworthiness already stands proved in light of the decision of *Ami Industries (supra)*. Further, since the

Assessmment Years involved are all pre-AY 2013-2014, we are inclined to hold in support of the submissions and case laws cited by the Ld. A.R. which is that in order to discharge the initial onus of proof u/s 68 prior to 01.04.2013, the assessees need not be required to prove the source of source of such investors.

10.1.3 In respect of the one investor party from Delhi in the case of M/s Goldstar Cement Pvt. Ltd., the A.O. has not conducted any such enquiry u/s 142 (2) of the Act. Therefore, without conducting further enquires in order to rebut the evidences submitted by the assessees, we hold that the A.O. could not have added back the said investments received from the said Delhi party.

10.1.4 Moving on to the Reports obtained from Mumbai and Guwahati, a reading of the same makes it evident that it is not the case of the A.O. that all the parties were not existing at the specified addresses. The Reports provide a mixed bag of conclusions. There were only in 5 cases of the Mumbai parties and 2 cases of the Guwahati parties where the addresses not found / not existing. In all other cases, either the addresses of the investors were found to be incomplete, or the offices of the investors were locked, or the

summons had been served and responded to, or the summons though served had not been responded to. Based on the above, we opine that the A.O. has erred in utilizing the Mumbai and Guwahati Reports in a blanket fashion to add back the entire share capital and share application money received from all these investors as bogus credits u/s 68 of the Act.

10.1.5 The Inspector Reports of Guwahati and Mumbai could have been utilized by the A.O. against the assessees *vis-à-vis* those investor parties that had been found to be non-existent at the given address contingent to the A.O. having confronted the assessees with the said Inspector Reports. Had the said Reports been confronted to the assessees, the discrepancies could have been reconciled. However, as already held above, these Reports had been recorded and relied upon by the A.O. behind the back of the assessees, an act that is in direct violation of Sec.142 (3) of the Act.

10.2 Moving on to the submissions of the Ld. CIT - D.R. who has stated that the assesses must prove the ingredients of identity, genuineness and creditworthiness of the credit entries to the satisfaction of the A.O. and, where, if any doubt on the genuineness

of the investor companies exits in the mind of the A.O., then even the source of source must be established, we observe that the critical difference here is that these Inspector Reports have remained un-confronted to the assessees. Had the same been confronted u/s 142 (3) of the Act and to which had the assesssess not offered any explanation, the burden of proof would had shifted back unto the assessees after the A.O. would have brought on record that the initial onus could not have been said to be discharged by the assessees. It is in that context, that the various decisions cited by the Ld. CIT - D.R. would have found relevance, requiring their contextualized application to the facts of this present case.

10.3 We further observe that in the list of cases cited by the Ld. CIT - D.R., the cases pertaining toSec.147/143(3) assessments have no applicability to the present facts since in those cases, the Reasons Recorded clearly specify that the information available on record (received from the Investigation Wing) shows that the assessees therein had received bogus accommodation entries from the respective parties. However, as already observed in the present Appeals, no such information/statement has been cited in the

Reasons Recorded that establish any such material even existing with the A.O. that allege the share capital and share premium received by the three assessees to be bogus.

10.4 We also observe that the cases of the Hon'ble jurisdictional High Court, as cited by the Ld. CIT - D.R., have all propounded the general and settled position of law *vis-à-vis* the shifting burden of proof u/s 68 of the Act and based on the specific sets of facts and circumstances in each case therein, the Hon'ble Delhi High Court has held the case to be in favour of a particular party (the Revenue) or has in some cases remanded the matter for the want of further investigation.

10.5 In the captioned appeals before us, on merits, we have already observed that the assessees have discharged the initial burden of proof, wherein the documents submitted by the assessees have remained un-refuted by the A.O. The Ld. CIT - D.R. has submitted that the documents were a façade since the Inspector Reports draw a very different picture and cast a shadow on the genuineness of the investors. Our views on the veracity of these Reports and why the same could have not been utilized by the A.O.

behind the back of the assessees have already been expressed. Thus, in light of the aforesaid findings, the grounds taken by the Department in the aforesaid Appeals are dismissed in favour of the assessees.

11.0 In the final result, all the three Cross Objections filed by the captioned assesses are allowed whereas all the three appeals by the Department are dismissed.

Order pronounced on 15th July, 2021

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 15/07/2021
PK/Ps
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI