

आयकर अपीलिय अधीकरण, न्यायपीठ – “सि” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA**

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.941/Kol/2017
Assessment Year :2012-13

M/s Blue Lotus Designers Pvt. Ltd., 6/1C, Pranath Chowdhury Lane, Kolkata-700 002 [PAN No.AAECB 9302 R]	V/s.	Income Tax Officer, Ward-7(4), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Miraj D. Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Supriyo Pal, JCIT, SR-DR
सुनवाई की तारीख/Date of Hearing	07-11-2019
घोषणा की तारीख/Date of Pronouncement	08-01-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-16 Kolkata's order dated 27.02.2017 passed in case No.755/CIT(A)-16/Kol/2015-16/W-7(4) involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive ground raised in the instant appeal reads that both the lower authorities' have erred in law and on facts in treating its share capital / premium of ₹2,01,50,000/- as unexplained cash credits u/s 68 of the Act. The CIT(A)'s detailed discussion to this effect reads as under:-

“3 The assessee has raised 7 grounds of appeal. The issue is addition Rs.2,01,50,000/- u/s 68 of the income tax Act as unexplained cash credit. The order is passed u/s 143(3) of the Income Tax Act.

4 The AR has filed additional grounds of appeal. Same have been admitted. The crux of the grounds of appeal is that no adverse inference can be drawn on non-production of directors. The AO has relied upon plethora of judgments on page 5 of the assessment order. All these decisions put onus on the assessee to prove the genuineness of the transaction. Same has not been done here. Hence, these grounds are dismissed.

5 The AR has filed various documents along with the paper book. The AR has argued that all the applicants are regular assessee. Copies of Bank Accounts were filed before the AO. The contention of the AO is that during the course of assessment, no compliance was made either by the company of the AR to prove the genuineness of the transaction. Summons u/s. 131 remained uncomplied. Reliance is made upon the judgment of Delhi High Court in the case of CIT vs. Nipun Builders Pvt. Ltd. 30 Taxman 292 (2013). The AO has relied upon the judgment of CIT vs. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 and other various judgments.

6. Hon'ble Calcutta High Court in Ms Rajmandir Estates Pvt. LTd. Vs. PCIT, Kolkata dealt with all the judgments on this issue and came to the conclusion that the transaction was nominal rather than real. The creditworthiness of the shareholders was not proved. Each one of them received from somebody and that somebody received from a third person. Therefore, Hon'ble Calcutta High Court held that all the shareholders are mere name lenders.

7 Hence, relying upon the judgment of Hon'ble Jurisdictional High Court the addition of the AO worth Rs.2,01,50,000/- is **confirmed**, and the appeal of the assessee is **dismissed**."

3. Learned authorized representative vehemently contended during the course of hearing that the assessee had very well discharged its primary onus of proving identity, genuineness and creditworthiness of all twenty-two investors by filing their audited accounts, income-tax return acknowledgements, certificates of incorporation, bank statements and as well as "**source of source**" as is evident from case records running into 359 pages. He further submitted that the assessee had filed all those particulars very well during the course of assessment which have neither been dealt with nor even taken note in either of the lower proceedings. The Revenue's case on the other hand in tune with CIT(A)'s detailed discussion is that the Assessing Officer's u/s 131 summons remained un-complied with as per lower appellate findings under challenge. It is also emphasized that all of the assessee's investor parties are accommodation entry providers which have been rightly treated as bogus in both the lower proceedings.

4. We have given our thoughtful consideration to rival contentions. We notice that the CIT(A)'s primary reason for affirming the Assessing Officer's action making the impugned addition is that sec. 131 summons issued for the purpose of proving the three parameters of identity, genuineness and creditworthiness of the impugned share application / premium sum page 172 to 176 in the paper book speak otherwise. The same contain the assessment notings from 08.08.2013 to 10.07.2015. It transpires therefrom that the Assessing Officer had issued u/s 131 process to the directors on 12.02.2015 for 19.02.2015. The case then was adjourned to 24.02.2015. We notice from page 174 of the paper book to this effect that the assessee itself as well as its investors had very well replied to the Assessing Officer's section 131 summons. The same were duly placed on record the same before him. There is no further notings asking the assessee to file any other detailed evidence from assessing authority's side nor it had asked the taxpayer to produce all of its investor parties in person. It therefore sufficiently emerges from the case records that neither the Assessing Officer's detailed discussion in his assessment order dated 26.03.2015 holding the assessee to have failed to discharging the above three parameters nor the CIT(A)'s findings that u/s 131 summons remained un-complied; are in conformity with the case records. This tribunal's co-ordinate bench's decision in case of *Bidit Financial Management Pvt. Vs. DCIT, Circle-7(1), Kolkata* in **ITA No.579/Kol/2017** decided on 15.03.2019 has discussed the entire legal and factual matrix of share capital whilst deciding the issue in assessee's favour as under:-

"29. In the instant case before us, we also note that the share subscribing companies are duly assessed to income tax. The Ld AR had placed on record the copies of the assessment orders framed in the cases of several of the share subscribing companies, as noted above. It therefore cannot be disputed that the share subscribing companies are not in existence. From the assessment orders, it is noted that the share subscribing companies are duly assessed to income tax and their income tax particulars together with the copies of respective income tax returns with their balance sheets are already on record. We also find that the Ld. CIT(A) had categorically stated that the scrutiny assessments were framed on the share subscribing companies for the Asst Year 2012-13 which shows their existence is genuine and transactions

carried out by them were the subject matter of examination by the income tax department in scrutiny proceedings. This fact has not been controverted by the Revenue before us.

30. We may gainfully refer to the judgment in the case of Pr. CIT Vs Paradise Inland Shipping (P) Ltd (84 taxmann.com 58) wherein the Bombay High Court had deleted similar addition on similar set of facts made on account of unexplained cash credits and the SLP filed by the Revenue against the judgment has been dismissed by the Hon'ble Supreme Court. The relevant extracts of the judgment is as follows:

"5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not. In this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus :

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows :

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-
Date of Registration 09/05/1995

6. On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.

7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.

31. We also find that the Hon'ble Apex Court recently in the case of Principal CIT vsVaishnodevi Refoils & Solvex reported in (2018) 96 taxmann.com 469 (SC) wherein the SLP of the Revenue has been dismissed by the Hon'ble Apex Court. The brief facts of that case were that the addition u/s 68 of the Act was made by the Assessing Officer in respect of capital contributed by the partner of the firm. The Hon'ble Gujarat High Court noted that when the concerned partner had confirmed before the Assessing Officer about his fact of making capital contribution in the firm and that the said investment is also reflected in his individual books of accounts, then no addition could be made u/s 68 of the Act. The decision of Hon'ble Gujarat High Court is reported in (2018) 89 taxmann.com 80 (Guj HC). The SLP of the revenue against this judgment was dismissed by the Hon'ble Supreme Court.

32. We may gainfully refer to the following decisions of the Hon'ble High Court in the cases as under :

(a) In the case of Pr. CIT Vs Chain House International (P) Ltd [2018] (98 taxmann.com 47) the AO had added the share application by way of unexplained cash credits was that the assessee was unable to give any justifiable reason for issuing shares at a premium. The Hon'ble Madhya Pradesh High Court did not agree with this reasoning given by the AO for making addition u/s 68, holding as under:

"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. [Para 52]

Once the genuineness, creditworthiness and identity of investors 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. [Para 53]

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. [Para 54]"

(b) In the case of CIT v. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 the Revenue contended that the fact that the shares were issued at high premium raised suspicion on the

genuineness of the transactions. While dismissing this plea raised by the Revenue, the Hon'ble Bombay High Court held as under:

(e) We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P.) Ltd.(supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

(f) In the above circumstances and particularly in view of the concurrent finding of fact arrived at by the CIT(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law. Thus not entertained.

(c) In CIT Vs. Anshika Consultants Pvt Ltd (62 taxmann.com 192), the AO had added the share application monies treating it to be their unaccounted monies routed through accommodation entries since the shares were issued at a high premium. The Hon'ble Delhi High Court did not agree with this contention put forth by the Revenue, by observing as under:

"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, the investigation report which was specifically called from the concerned department was available but not discussed by the Assessing Officer. 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 Assessing Officer in the form of balance sheets income-tax returns, PAN details etc. While arriving at the conclusion that he did, the Assessing Officer 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 Commissioner (Appeals) and the Tribunal, these conclusions were clearly baseless and false. This Court is constrained to observe that the Assessing Officer utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents."

33. We also find that the reliance placed by the Ld DR on the decision of Hon'ble Calcutta High Court in the case of Rajmandir Estates supra was distinguishable on facts as the said decision was rendered in the context of validity of revisionary jurisdiction u/s 263 of the Act by the Learned Administrative Commissioner. This fact has already been addressed by this tribunal in the case of VSP Steel P Ltd supra. No decision whatsoever was rendered by the Hon'ble Jurisdictional High Court in the case of Raj mandir Estates P. Ltd on merits of the addition and hence does not come to the rescue of the revenue in the facts of the instant case.

33. Instead, we find that the decision of the Hon'ble Delhi High Court in the case of CIT Vs Gangeswari Metal (P) Ltd (ITA No. 597 of 2012) dated 21.01.2012 is of much relevance in the facts of the assessee's case. In this case the assessee had received share application money of Rs.55.50 lacs during the year in question. The assessee filed the complete names, addresses of the share applicants, confirmatory letters from them, copies of bank statements of both the company as well as the share applicants and copies of share application forms. In spite of the aforesaid documentary evidences the AO held the explanation to be unacceptable and treated the share application as unexplained cash credit thereby making addition under Section 68 of the Income-tax Act, 1961. On appeal the CIT(Appeals) deleted the aforesaid addition holding that the identity of the share applicants stood established beyond doubt, all the payments were through account payee cheques and the share applicants were regular income-tax assesseees. The CIT(Appeals) further held that the Revenue did not bring any evidence on record to suggest that the share application had been received by the assessee from its own undisclosed sources nor any material was brought on record to show that the applicants were bogus. The Revenue was neither able to controvert the documentary evidences filed by the appellant nor prove that the share application wereingenuine or the applicants were non-creditworthy. The findings of the CIT(Appeals) were upheld by the Income-tax Appellate Tribunal. On appeal to the High Court, the Revenue placed strong reliance on the decision of another coordinate Bench of the same Court in the" case of CIT Vs Novo Promoters & Finance (P) Ltd (342 ITR 169). The High Court however held that the aforesaid judgment was distinguishable from the facts of the present case. The Court observed that in that judgment the Assessing Officer had brought on record enough corroborative evidence to show that the assessee had routed unaccounted monies into its books through medium of share subscription. The share applicants had confessed that they were "**accommodation entry**

providers". The Assessing Officer in the latter case was able to prove with enough material that the share subscription was a pre-meditated plan to route unaccounted monies. In the present case however the Department was unable to bring any material whatsoever shows that share application was in the nature of accommodation entries. The Court observed that the appellant had filed sufficient documentary evidences to establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. The AO however chose to sit back with folded hands till the assessee exhausted all the evidence in his possession and then merely reject the same without conducting any inquiry or verification whatsoever. The Court thus held that the decision of CIT Vs Novo Promoters &Finlease (P) Ltd (342 ITR 169) was not applicable to the facts of the case. Instead it was held that the issue in hands was on the lines of the decision of the Supreme Court in the case of CIT Vs Lovely Exports Pvt Ltd (319 ITR 5). Accordingly, the addition made under Section 68 on account of share application was deleted. The relevant extracts of the judgment is as follows:-

"As can be seen from the above extract, two types of cases have been indicated. One in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect:-

"Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs.1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs.55,50,000/- and not Rs.1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs.55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance sheet etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs.55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income/ penalty proceedings under Section 271(1)(c) are being initiated separately.

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly

distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act 1961. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law"

34. Further, in the decision of the Hon'ble Delhi High Court in the case of CIT v. Kamdhenu Steel & Alloys Ltd. [\[2012\] 19 taxmann.com 26/206 Taxman 254/\[2014\] 361 ITR 220](#) is also relevant, wherein it was held as under :

"Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; A.O. failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable."

35. The SLP filed against the above decision has been dismissed by the Hon'ble Supreme Court.

36. In the case of Finlease Pvt Ltd. 342 ITR 169 (supra) in ITA 232/2012 judgement dt. 22.11.2012 at para 6 to 8/ it was held as follows.

"6. This Court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income Tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the ROC in relation to the share application affidavits of the directors, form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. MahesGarg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr.Mahesh Garg that the income sought to be added fell within the description of S.68 of the Income Tax Act 1961. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence

in support of the share application monies, it is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators, such a link was shown to be present in the case of Nova Promoters & Finlease (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under Section the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material."

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

(a) In the case of DCIT Vs Global Mercantiles Pvt. Ltd in **ITA No. 1669/Kol/2009** dated 13-01-2016, this Tribunal held as follows:

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

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

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

Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT vs M/s Lovelv Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court

decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

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

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

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

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

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

(b) In the case of DCIT Vs. R.B Horticulture & Animal Projects Co. Ltd in **ITA No. 632/Kol/2011** dated 13-01-2016, this Tribunal held as follows:

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

4.4. We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. We find that the additional ground raised by the assessee separately before us vide its covering letter dated 9.12.2011 is admitted as it appears to be a genuine and bona fide error of omission on the part of the Revenue from not raising this ground in the original grounds of appeal filed along with the memorandum of appeal. Moreover, it does not require any fresh examination of facts. Hence the same is admitted herein for the sake of adjudication.

*4.4. 1. We find from the details available on record that the share application monies from 20 individuals in the sum of Rs.57,00,000/- has been received by the assessee during the financial year 2004-05 relevant to Asst Year 2005-06 and only the shares were allotted to them during the asst year under appeal. Admittedly no monies were received during the asst year under appeal and hence there is no scope for invoking the provisions of section 68 of the Act. Hence we hold that the order passed by the Learned CIT(A) in this regard does not require any interference. Accordingly the ground no. 3 raised by the Revenue is **dismissed**.*

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

receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

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

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

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

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

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

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

6.3. We find that the argument of the Learned DR to set aside this issue to the file of the Learned AO for verification of share subscribers would not serve any purpose as the ratio decided in the above cases is that in any case, no addition could be made in the hands of the recipient assessee. In view of the aforesaid findings and respectfully following the decision of the apex court (supra),

Jurisdictional High Court (supra) and Delhi High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the grounds raised by the Revenue are dismissed.”

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

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

- a) Copy of share applications from the share applicants (copies enclosed)*
- b) Copy of Form 2 filed with Registrar of Companies, West Bengal (copy enclosed)*
- c) Copy of Form 18 about the Registered Office of the applicants for*

change of address subsequent to the date of allotment, i.e. 31.03.2009
(copies enclosed)

d) Members register

e) Share application & Allotment Register

f) Copy of board resolution.

g) Replies from Share applicants to the notice u/s. 133(6) issued to them by the AO seeking information and documents about the sources and to examine their identity, genuineness of the transaction and their creditworthiness. (copy enclosed).

h) Copy of audited accounts.

i) Copy of bank statements.

j) Copy of Income tax acknowledgment of return filed for AY 2009- k)
Copy of PAN Card.

l) Details of sources of funds.

m) Copy of covering letter for delivery of shares.

n) Copy of master data as per ministry of Company Affairs records. o)
Copy of Annual return.

p) Copy of Memorandum and articles of Association.

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

(d) In the case of ITO vs Cygnus Developers (I) P Ltd in **ITA No. 282/Kol/2012** dated 2.3.2016, this Tribunal held as follows:

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

“6) I have considered the submission of the appellant and perused the assessment order. I have also gone through the details and documents filed by the appellant company in the course of assessment: proceedings vide letter dt. 3-10-2007. On careful consideration of the facts and in law I am of the opinion that the AO was not justified in making, the addition aggregating to Rs.54,00,000/- u/s.68 of the Act being the amount of share application money by holding that the appellant company has failed to prove the identity, and creditworthiness of The creditors as well as the genuineness of transactions. It is observed that all the three share applicant companies i.e. M/s. Shree Shyam Trexim Pvt. Ltd., M/s Navalco Commodities Pvt. Ltd. and M/s. Jewellock Trexim Pvt. Ltd. had filed their confirmations wherein each of them confirmed that they had applied for shares of the appellant -company. All the three companies provided- the

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

7. Aggrieved by the order of CIT(A) the Revenue is in appeal before the Tribunal.
8. We have heard the submissions of the learned DR, who relied on the order of AO. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs Raj Kumar Agarwal vide ITA No. 179/2008, dated 17. 11.2009 wherein the Hon 'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vsDevinder Singh Shant in IT A No.20BIKo112009 vide order dated 17.04.2009.

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

limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

38. To conclude, section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we delete the addition made by the assessing officer to the tune of Rs.1,95,00,000/-."

5. Learned departmental representative at this stage quoted hon'ble apex court's decision in *PCIT vs. NRA Iron & Steel Pvt. Ltd.* in **Civil Appeal No. 2463 of 2019** dated 05.03.2019 restoring such unexplained cash credits addition in the nature of the share capital / premium invoking accommodation entry providers. We note that their lordships had come across an instance of the concerned assessee having failed to satisfy the above stated three parameters (supra) whereas the facts in the instant case sufficiently reveal that this taxpayer had duly discharged its onus and also responded to section 131 summons. We therefore reject the Revenue's arguments supporting lower authorities' action and delete the impugned un-explained cash credits addition of ₹2,01,50,000/-. The assessee succeeds in its sole substantive grievance.

6. This assessee's appeal is allowed.

Order pronounced in the open court 08/01/2012

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 08/01/2020

कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Blue Lotus Designers Pvt. Ltd., 6/1C, Pranath Chowdhury Lane
Kolkata-700 002
2. प्रत्यर्थी/Respondent-ITO Ward-7(4) Aayakar Bhawan, P-7, Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।