

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW
BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

ITA No.243/LKW/2015
Assessment Year 2010-11

Dy. Commissioner of Income Tax, Range-I, Lucknow	Vs	M/s Ansh Intermediate Services Pvt. Ltd. 4E, 1 st Floor, Pragati Kendra, Kapoorthala, Aliganj, Lucknow- 226024 PAN AAGCA 7062 H
(Appellant)		(Respondent)

Appellant by	Dr. A.K. Singh CIT, DR
Respondent by	Shri K.R. Rastogi
Date of hearing	20/08/2015
Date of pronouncement	22/09/2015

ORDER

PER SUNIL KUMAR YADAV, JM.

This appeal is preferred by the Revenue against the order of Ld. CIT(A)-I, Lucknow deleting the addition of Rs.1,60,00,000/- on account of share application money without appreciating the fact that the assessee failed to prove the identity of investors, their creditworthiness/investments and genuineness of the transaction of capital introduction u/s 68 of the Income Tax Act, 1961.

2. The facts in brief born out from the record are that during the year under consideration, the assessee company has issued new shares of Rs.23,50,000/- and also disclosed share premium of Rs.2,11,50,000/-. Thus, new funds invested in the assessee company are Rs.2,35,00,000/- and the assessee was asked to furnish the list of all shareholders along with names and address, PAN and amount of capital introduced. Accordingly, details were filed and from perusal of ledger share application money submitted by the assessee, it was noted by the AO that the assessee company has shown Rs.75,00,000/- as opening balance as on 01.04.2009, whereas rest of amount i.e. Rs.1,60,00,000/- has been received

by the assessee company during the year under consideration from the following share holder companies:

Sl.No.	Name of shareholding companies	No of shares allotted during F.Y.2009-10	Share Capital invested	Share Premium invested.
1.	M/s Artline Vinimay (P) Ltd. 1, Mahendra Nath Roy Bye Lane, Howrah. West Bengal 711101	15,000	Rs.1,00,000/-	Rs.13,50,000/-
2.	M/s Biraja Dealers [P] Ltd, 1,'Mahendra Nath Roy Bye. Lane, Howrah, .West Bengal-711101	10,000	Rs.1,50,000/-	Rs.9,00,000/-
3.	M/s Deesha Tie-up (P) Ltd.. 1, Raj Ballav Saha Lane, Howrali, West Bengal- • 711101	15,000	Rs.1,50,000/-	Rs.13,50,000/-
4.	M/s Kathleen Vyapaar [P] Ltd., 1, Raj Ballav Saha Lane, Howrah, West Bengal-711101	15,000	Rs.1,50,000/-	Rs.13,50,000/-
5.	M/s.Kokila Exports (P) Ltd., 9/12, Lal Bazar Street, Block-E, 2 nd Floor, Kolkata, West Bengal-70000	15,000	Rs.1,50,000/-	Rs.13,50,000/-
6.	M/s Midnight Agencies (P) Ltd., 1, Raj Ballav Saha Lane, Howrah, West Bengal-711101	10,000	Rs.1,00,000/-	Rs.9,00,000/-
7.	M/s Motorex Finance (P) Ltd., 9/12, Ul. Bazar Street, Block-E, 2 nd Floor, Kolkata, 'West Bengal-700001	20,000	Rs.2,00,000/-	Rs.18,00,000/-
8.	M/s Ranisati Stockist (P) - Ltd., 1A, Grant lane, Kolkata-700012 Kolkata, West Bengal-Wb-700012	10,000	Rs.1,00,000/-	Rs.9,00,000/-
9.	M/s Topline Finvest (P) Ltd.. 107C, Todi Chamber, 2, Laibazar Street, Kolkata, West Bengal-Wb-70000	35,000	Rs.3,50,000/-	Rs.31,50,000/-
10.	M/s Vibgyor Vimmay (P) Ltd., 9/12, Lal Bazar Slieei.	15,000	Rs.1,50,000/-	Rs.13,50,000/-

	Room No. -3 Black-E, 4 th Floor, Kolkata, West Bengal-Wb-700001			
			Rs.16,00,000/-	Rs.1,44,00,000/-

3. From the details, it was also observed by the AO that the registered office and place of business of the assessee company is in Lucknow, but shares of the company have been subscribed by all the alleged fifteen companies of Kolkata only. The AO also observed from the details that out of 15 companies who have allegedly invested funds in the assessee company, four companies i.e. M/s Ojasvi Motor Finance (P) Ltd. (ii) M/s RMB Finance Company Ltd. (iii) M/s Rishikesh Hire Purchase & Leasing Co (P) Ltd. & (iv) M/s Kamdhenu Fincap Ltd. have same address of P-41, Princep Street 6th Floor, Kolkata, West Bengal. Similarly, three companies i.e. (i) M/s Deesha Tie-up (P) Ltd. (ii) M/s Kathleen Vyapaar (P) Ltd. (iii) M/s Midnight Agencies (P) Ltd. have same address of Raj Ballav Saha Lane, Howrah, West Bengal and further three other companies i.e. (i) M/s Kokila Exports (P) Ltd. (ii) M/s Motorex Finance (P) Ltd have also same address of 9/12, Lal Bazar Street, Block-E, 2nd Floor, Kolkata West Bengal. Besides above, two companies i.e. (i) M/s Artline Vinimay (P) Ltd. (ii) M/s Biraja Dealers (P) Ltd. have same address of 1, Mahendra Nath Roy Bye Lane, Howrah West Bengal. Thus, out of total 15 companies, 12 companies are operating from four addresses as noted above. From these facts, an inference was drawn that the assessee company has routed its own money through the shell companies/shareholders and he accordingly asked the assessee to furnish the copy of ITR, PAN, copy of ledger and bank accounts of shareholding companies to prove the identity, creditworthiness and genuineness of transactions, as the onus squarely lies on the assessee company to substantiate that these companies have actually invested the funds as tabulated above.

4. The assessee has consequently filed the copy of ITR, PAN and copy of bank accounts of the shareholders. However, for independent verification about alleged shareholders the AO issued letter u/s 133(6) of the Act to all these companies requiring them to furnish complete details of share purchase mode of

payment, copy of bank account and PAN/assessment particulars. In respect of three companies i.e. (i) M/s Topline Finvest (P) Ltd. (ii) M/s MA Hire Purchase (P) Ltd. Kolkata (iii) M/s RMB Finance Company Ltd., Kolkata, the letters were returned by postal department marked as "address not known" or "addresses moved". In rest of the cases, neither replies have been received nor were letters returned back by postal authorities. The AO therefore, confronted these facts to the assessee and asked him to prove the identity, creditworthiness and genuineness of transaction. After confrontation of this fact to the AR of the assessee, replies from Kolkata started coming from the same places from where letters were returned unserved by postal department. The AO further examined the details furnished before him and noted that the alleged share holders companies have not done any business activities. Most of the transfer entries of high value are colourful device to channelize monies through banking channels. The amounts as it comes in the bank account are routed the next day from the bank accounts through RTGS/cheques so as to give impression of legal character to the transaction. The modus operandi of share holders companies to act as a conduit for the persons to channelize the illegal money into a legal capital. Keeping in view of these facts, the AO issued a commission u/s 131(1)(d) of the Act to Addl. DIT (Inv.) Kolkata for making inquiries about the alleged shareholding companies based in Kolkata. The report, stating therein that notices issued u/s 131 of the Act to all these parties were not responded and thereafter ITI was deputed to carry out the spot verification and the ITI has reported that none of the companies were found to be operating from the given addresses as these companies appear to be bogus and mere briefcase companies in consequent thereto was filed. The report of the DIT(Inv) is extracted as under for the sake of ready reference:

"Notice u/s 131 of the I.T. Act 1961 was issued to all the 15 parties on 14.03.2015 as mentioned in the commission and send by post for compliance on 20.03.2015. There was no compliance from any parties on the appointed date. Notice from one party returned back unserved on 22.03.2013. it is is of the Directorate were deputed to carry out on the spot verification.....ITIs personally visited the given addresses

of all the 15 parties and submitted their report. None of the companies were found to be operating from or existing on the given addresses. Hence these companies appear to be bogus and mere briefcase companies.

Enquiry revealed that the shareholding companies of M/s Ansh Intermediate (P) Ltd. Lucknow appears to be mere paper companies which are part of an artifice to facilitate the introduction of funds in to the companies under investigation i.e. M/s Ansh Intermediate (P) Ltd."

5. The assessee company again confronted on this issue vide letter dated 28.03.2013 and in response thereto the assessee has filed the reply which was taken into account by Ld. Assessing Officer but was not convinced with it. The Assessing Officer has held that the assessee has not discharged the onus which let upon it therefore, the shareholders are not genuine and he accordingly made the addition of Rs.1,60,00,000/- as unexplained credit u/s 68 of the Act. The relevant observation of the Assessing Officer is extracted as under:-

"8. Thus from above facts and circumstances, it is evident that the'onus was not discharged by the assessee in as much as the identity of the creditors remained un-established. Moreover, almost all the above transactions have been made on the same day or following day establish conclusively that the transaction suffers from irrationality and are colourful. The above alleged shareholder companies had not done any business activities during the year but investments in shares have been made- in lakhs. Therefore, the creditworthiness of the alleged shareholder companies could not be proved by the assessee company during the course of assessment proceedings.

From report of DIT(Inv.), Kolkata, it is also apparent that these companies are non-existent companies and the assessee company has routed its money through such companies by making accommodation entries at Kolkata and then subscribed its own shares so as to give it a look of genuine transaction. The identity of these companies, their creditworthiness and genuineness of the transaction could not be proved by the assessee company, the assessee. The assessee company at-later stage of assessment proceedings, filed copies of share application forms, PAN details, copies of bank accounts, return etc., to substantiate the identity and genuineness of these alleged companies. On examination of the details filed by the assessee, It is seen that the names of these companies, have been utilized .by the assessee company in routing its own money through banking channels. Infact, the copies of returns and bank statements of these companies do show

that the alleged shareholders are companies on paper and merely filing of income-tax return and transaction through bank accounts .do not establish, the identity, capacity, genuineness and creditworthiness of the transaction and money received by the assessee company through valid source. The enquiries made through notices u/s 133(6) and-131(1) (d) do show that these companies do not exist physically but on paper only. No documentary evidences is on record which could suggest that these alleged companies have themselves reached to the assessee company for investment in shares. It is the assessee company which was used the names of these companies to route the money through banking channels so as to evade the tax authorities and make the capital through undisclosed sources.

Further, the documents furnished by the assessee during the course of assessment proceedings, did not prove the identity and creditworthiness of the subscribers or the genuineness of the transactions as discussed above, it is noticed that-the share subscription amounts were received through cheque/RTGS which were issued immediately after credits in the accounts of the subscriber-companies. It clearly leads to the conclusion that such companies were used as conduit for floating of unaccounted funds; Their existence, was mere on paper and filing of return did not establish that a genuine company engaged, in the business as claime was in existence.

From the facts available on record an\| examination of the same, it prima facie transpires that the company itself contacted these alleged investors to utilize their names in the garb of prospective share holders. No proof of making any correspondence or inquiry with the company by these investors before investing in shares of the company has been produced on record.

The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are (i) Identity of investors; (ii) their creditworthiness/investments and (iii) genuineness of the transaction. In view of the above facts as discussed above, it is very clear that the assessee company has failed to establish the identity, genuineness and creditworthiness of the alleged shareholder companies and they are in fact non- existent paper companies. These shareholders have not been proved by the assessee company to company lo be genuine. Therefore, the entire credits appearing in the accounts of the assessee during the year under consideration in the shape of alleged investment from above ten shareholding companies at Rs.1,60,00,000/-are treated as unexplained credit u/s 68 of the I.T. Act and accordingly added towards the income of the assessee. Penalty proceedings under u/s 271(l)(c) is being initiated on this issue."

6. The assessee has preferred an appeal before the CIT(A) with a plea that proper opportunity was not afforded to the assessee. He has furnished the written submission before the CIT(A). The CIT(A) recorded the same in para no.3 of its order. Before the CIT(A), it was contended that the summon issued u/s 131 of the Act while executing the commission by the DDIT (Inv.) were received subsequent to the date fixed for the compliance. In support of these facts, the copy of postal envelope were produced before the CIT(A) vide letter dated 11.09.2014. The CIT(A) called the remand report from the AO directing him to conduct proper enquiry on the basis of written submission filed by the assessee and furnished the remand report with his comments after affording proper opportunities to the appellant. During the remand report, the Assessing Officer has again issued commission u/s 131(1)(d) of the Act to the Addl. DIT(Inv.) for making further enquiries in the matter. The ADIT (Inv.) accordingly submitted his report vide letter dated 21.11.2014 to the AO which was enclosed with the remand report dated 09.12.2014 submitted by the AO. In the report the ADIT(Inv.) has noted that the shareholders have submitted copy of share application and allotment advice, copy of bank statement highlighted the relevant transaction, copy of audited balance sheet, profit and loss account, copy of ITR acknowledgment for AY 2010-11 and source of fund and details of transaction during the transaction period. The AO in the remand report observed that the ADIT (Inv.) has not deputed the Income tax Inspector for spot inspection. Therefore, the report of the inspector on spot inspection during the course of execution of first commission should be accepted. The CIT(A) has taken into account all these facts and was of the view that since the complete details were filed with regard to the identity and creditworthiness of shareholders and also genuineness of transaction no disallowance u/s 68 of the Act is called for. The relevant observation of the CIT(A) is also extracted herein under for sake of ready reference:-

4. I have considered the matter and perused all the documents and reports received from the AO and the ADIT (Inv.). I find that the appellant has submitted the following evidences in respect of the shareholder company M/s.

Artline Vinimay P. Ltd. before the AO to prove the identity and creditworthiness of the shareholders and genuineness of the transactions:

- a. Details of registered office, Company Identification No., date of incorporation, authorized and paid up capital*
- b. Confirmation cum application form for equity shares of M/s. Ansh Intermediate Services Pvt. Ltd.*
- c. Minutes of Board Meeting dated 23.11.1998*
- d. ITR Acknowledgement for AY 2008-09*
- e. Company Master Data as downloaded dated 29.03.2013 from site of MCA Portal (Ministry of Corporate Affairs)*
- f. List of Directors as downloaded dated 29.03.2013 from site of MCA Portal*
- g. Reply u/ s 133(6) ot.i.T. Act, IVbl before 11 U-I^*
- h. Bank statement of Current Account No.191010200006606 with Axis Bank, Mansha Bari, P 249, Lake Town, Block B, Kolkata- 700089 reflecting withdrawal*
- i.- Directors Report to share holders for the year ending 31.03.2010*
- j. Auditors Report, dated. 25.08.2010 by V.M.D. & Associates, Chartered Accountants, Kolkata.*
- k. Balance Sheet and Profit and Loss Account and Annexures/Schedules for the year ending 31.03.2010*
- .l. Memorandum and Articles of Association .*
- m. Certificate of Registration with Reserve Bank of India No. B.05.05854 dated 14.10.2003*
- n. Reply to notice u/s 131 from DDFT (Inv.), Kolkata including explanation for the source of investment dated 25,03.2013*

Similar details have been filed in respect of other 14 shareholder companies.

4.1 It is also noted that the shareholding companies have submitted the following documents before the ADIT (Inv.), Kolkata as evidence of having invested in share capital of the appellant company:

- a. Copy of the share application and allotment advice as evidence of transaction;*
- b. Copy of bank statement highlighting the relevant portion of transaction;*

- c. Copy of audited balance sheet, profit and loss account and annexure thereto;
- d.. Income tax return acknowledgement for the relevant assessment year;
- e. Copy of resolution of the Board meeting of the company to invest in shares;
- f. Source of funds of investment made by such company;
- g. Details of the directors & including the name, address and PAN;

It is also noted that the source of investment submitted by the companies to the ADIT(Inv.), Kolkata can be summarized as under:

S.No	Name of shareholding Company	No. of shares allotted during FY 2009-10	Share capital (in Rs.)	Source of investment
1.	M/s Artline Vinimay (P.) Ltd.	15000	15,00,000	The source of fund was out of share sale money received from picadally Trade & Holdings Pvt. Ltd. of Rs.20,00,000/- vide cheque no.271695 dated 29.05.2009
2	M/s Biraja Dealers [P] Ltd,	10000	10,00,000	The source of fund was out of share sale money received from Goodhope Vincom Pvt. Ltd. of Rs.10,00,000/- vide cheque no.936426 dated 31.12.2009
3	M/s Deesha Tie-up (P) Ltd..	15000	15,00,000	The source of fund was out of share sale money received from Square Trades & Holdings Pvt. Ltd. of Rs.15,00,000/- vide cheque no.272688 dated 04.06.2009
4	M/s Kathleen Vyapaar [P] Ltd., 1, Raj Ballav Saha Lane, Howrah, West Bengal-711101	15000	15,00,000	The source of fund was out of share sale money received from Vidhata Housing Ltd. of Rs.30,00,000/- vide cheque no.281868 dated 29.05.2009
5	M/s.Kokila Exports (P) Ltd.,	15000	15,00,000	The source of fund was out of share sale money received from Square Trades & Holdings Pvt. Ltd. of Rs.15,00,000/- vide cheque no.272689 dated 04.06.2009
6	M/s Midnight Agencies (P) Ltd.,,	10000	10,00,000	The source of fund was out of share sale money received from

				<i>Vidhata Housing Ltd. of Rs.15,00,000/- vide cheque no.281869 dated 29.05.2009</i>																
7	M/s Motorex Finance (P) Ltd.,	20000	20,00,000	<i>The source of fund was out of share sale money received from Prime Commodeal Pvt. Ltd. of Rs.6,00,000/- vide cheque no.139459 dated 21.05.2009, share sale money received from Spandan Vanijya Pvt. Ltd. of Rs.3,00,000/- vide cheque no.255938 dated 21.05.2009, share sale money received from Vibgyor Vinimay Pvt. Ltd. of Rs.1,00,000/- vide cheque no.258660 dated 21.05.2009 and loan refund from Crown Infrastructures Pvt. Ltd. of Rs.10,00,000/- vide cheque no.281303 dated 29.05.2009.</i>																
8	M/s Ranisati Stockist (P) -Ltd.,	10000	10,00,000	<i>The source of fund was out of share sale money received from Pearl Dealer Pvt. Ltd. of Rs.20,00,000/- vide cheque no.172063 dated 21.01.2010, Ranisati Stockist Pvt. Ltd. has amalgamated with M/s Motorex Finance pvt. Ltd. as per the order passed by the Hon'ble Calcutta High Court</i>																
9	M/s Topline Finvest (P) Ltd..	35000	35,00,000																	
<p><i>The amount of such share investment was as under:</i></p> <table border="1"> <thead> <tr> <th><i>Cheque no./dated</i></th> <th><i>Nature of receipts</i></th> <th><i>Party</i></th> <th><i>Amount</i></th> </tr> </thead> <tbody> <tr> <td><i>281860/25.05.2009</i></td> <td><i>Share Sale</i></td> <td><i>Vidhata Housing Pvt. Ltd.</i></td> <td><i>15,00,000/-</i></td> </tr> <tr> <td><i>256370/25.05.2009</i></td> <td><i>Share Sale</i></td> <td><i>Riddhi Siddhi Deacom Pvt. Ltd.</i></td> <td><i>5,00,000/-</i></td> </tr> <tr> <td><i>271697/02.06.2009</i></td> <td><i>Share Sale</i></td> <td><i>Picadally Traders & Holdings Pvt. Ltd.</i></td> <td><i>21,00,000/-</i></td> </tr> </tbody> </table>					<i>Cheque no./dated</i>	<i>Nature of receipts</i>	<i>Party</i>	<i>Amount</i>	<i>281860/25.05.2009</i>	<i>Share Sale</i>	<i>Vidhata Housing Pvt. Ltd.</i>	<i>15,00,000/-</i>	<i>256370/25.05.2009</i>	<i>Share Sale</i>	<i>Riddhi Siddhi Deacom Pvt. Ltd.</i>	<i>5,00,000/-</i>	<i>271697/02.06.2009</i>	<i>Share Sale</i>	<i>Picadally Traders & Holdings Pvt. Ltd.</i>	<i>21,00,000/-</i>
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4.2 . It is noted that the appellant company has fully discharged its onus to prove the receipt of share capital with premium from the investor companies. Out of the ten share holding companies relevant for the assessment year nine companies have duly confirmed their identities, their capacity along with source and genuineness of transactions in compliance with the summons issued by the ADIT (Inv.) Kolkata. These nine companies have furnished all the documents and information in respect of investment made in the appellant company. Regarding the shareholding company M/s. Vibgyor Vinimay (P.) Ltd. having the registered office at Mumbai also the appellant has filed all the documents as listed supra. The AO has neither made any enquiry nor offered any adverse comment in respect of investment made by M/s. Vibgyor Vinimay (P.) Ltd. having its new registered office at 13, 1st Floor, Mani Bhawan, Jitendra Road, Mumbai. The investor companies are duly registered with the Registrar of Companies, are holding PANs, are regular Income-tax assesseees & are filing their returns of income. The entire share capital has been received through normal banking channels. The appellant company has filed a number of evidences before the AO as listed supra. The AO also called for information u/s 133(6) from the respective share holders by sending them notices which were duly responded by them confirming their investment of such share capital. The documents as mentioned above prove that the investor companies are existing companies with established identity, have capacity and creditworthiness to make the investment and the investment made by them are genuine

4.3 In the assessment order, the AO has stated that the shareholding companies are non-existent paper or briefcase companies the identities of which could not be established by the appellant company. The observations of the AO are not justified in view of the following facts:

- a. The share applicants are duly incorporated companies under the provisions of the Companies Act, 1956.
- b. They are regular income tax assesseees and are holding PANs issued by the Income Tax Department They are filing their income tax returns & are being assessed
- c. They are holding valid bank accounts.
- d. The notices issued to these companies by the AO u/s 133(6) have been duly complied with.
- e. The summons issued u/s 131 by the ADIT(Inv.), Kolkata have duly been served on the share applicant companies at their registered offices and complied with.

In view of above the AO is not justified in observing that the identity of the company is not established. The shareholding companies filed their balance

sheets, bank statements and also explained the source of fund invested as share capital by providing details of deposit/ credit entries in the bank account just before the amount was transferred to the appellant company which proves their credit worthiness. Also the transactions have been made through normal banking channels. and statements of the bank accounts of the share applicants have been duly filed before the AO. The conclusion of the AO that the amount credited in the bank account was routed as share investment the next day through RTGS/ cheques to give it a legal character is not justified as the inference drawn by the AO is not based on any material evidence. The appellant company has fully discharged the onus in respect of genuineness of the transaction. Under the circumstances it is held that the appellant has discharged the onus of establishing the identity and capacity, of the ten/their credit worthiness and genuineness of share capital with premium invested by them in the appellant company. Reliance is placed on the -following judgments:

a. *CIT v. Jaydeep Securities and Finance Ltd. [2013] 350 ITR 220(A11.)*

Unexplained income- share application money - assessee producing returns filed by relevant applicant shareholders and also producing confirmation of shareholders - burden of proving source of share application money discharged - additions to be deleted.

b. *CIT v. Misra Preservers (P.) Ltd. [2013] 350 ITR 222 (All.)*

Unexplained income-share application money - assessee producing relevant evidence and establishing that all share applicants not fictitious persons - addition rightly deleted.

c. *CIT v. Kamna Medical Centre (P.) Ltd. [2013] 35 taxmann.com 470 (All.)*

Section 68 of the Income-tax Act, 1961 - Cash credit [Share application money] - Assessment year 2005-06 - During year assessee-company received from shareholders certain amount on account of-share application money - Assessing Officer added said amount to income of assessee on ground that it had failed to prove genuineness of transactions and creditworthiness of shareholders - Commissioner (Appeals) relying upon decision of Supreme Court rendered in case of CIT v. Steller Investment Ltd. 12001] 115 Taxman 99 deleted impugned addition made by Assessing Officer - He held that in case of capital contributed by a shareholder, identity of shareholder was only required to be proved - Tribunal upheld order of Commissioner (Appeals) ~ Whether instant case was squarely covered by decision of Supreme Court in case of Steller Investment Ltd. (supra) - Held, yes [Para 3]

d. *CIT v, Som tobacco India Ltd. [2014] 42 taxmann.com 310 (All.)*

Section 68 of the Income-tax Act, 1961 - Cash credits [Share application money] -Assessment year 2005-06 - In course of assessment, Assessing Officer made addition to assessee's income in respect of share application money received from various persons -Tribunal finding that names, addresses and PAN of depositors were provided to Assessing Officer, which were sufficient to prove their identity and creditworthiness, set aside impugned addition -Whether, on facts, impugned order passed by Tribunal did not require any interference - Held, yes [Para 9]

e. *CIT v. Vacmet Packaging India Private Limited [2014] 367 ITR 217 (All.)*

The Assessing Officer, in the course of an order of assessment under section 153A of the Income Tax Act, 1961, made an addition under section 68 an amount of Rs.8.50 crores which was received by the assessee as share application money from a company. The Commissioner (Appeal) deleted the addition which was primarily based on a black diary impounded during the course of an income-tax survey. This was confirmed by the Tribunal. The Tribunal observed that the assessee had filed documentary evidence in order to prove the genuineness of the share application money consisting of; (i) share application forms; (ii) copies of bank accounts of the share applicants; (iii) copies of the income tax returns of the share allottees; (iv) balance sheets and; (v) copies of share allotment certificates and of the board's resolution of the share applicants. The identity of the applicants was held to be established by the production of copies of their PAN cards and certificates of registration with the Registrar of Companies. Their financial capacity was held to be proved by the filing of copies of the bank accounts from where the share application money was transferred through banking channels to the assessee. Finally, it was held that the genuineness of the transaction had been established by filing the documents and in view of the confirmation by both the companies of respective transactions. The black diary contained entries between February and March, 2005, which were relevant to the assessment year 2005-06 and not for the assessment year 2007-03 which was under consideration. On Appeal to the High Court;

Held, dismissing the appeal that the assessee had discharged the onus of establishing the identity, creditworthiness and genuineness of the transactions which had formed the basis of the addition that was made under section 68. Ultimately, whether the documentary materials which had been produced by the assessee were sufficient to displace, the onus is a matter to be decided upon the facts of each case. Both the Commissioner (Appeal) and the Tribunal having held that the assessee had fully discharged the onus, no substantial question of law arose.

f. *Hon'ble ITAT Agra Bench in the case of M/s. Jai Hospitals & Research Centre (P.) Ltd., Agra (ITA No. 160/A/2004) has held "Thus it becomes evidently clear that if the company establishes the identity of share applicants and that*

they have invested in shares, no such money can be added in company's hand u/s 68 as its undisclosed income. In the given case the assessee company has established the identity and the investment by them in shares. In view of the above settled legal position, there is merit in the submission of the Ld. A.R. that since all the share holders have been identified on record by the assessee company, no addition on account of unexplained share capital can be made in the hands of the assessee company"

g. CIT v. Miq Steels (P.) Ltd. [2013] 36 taxmann.com 422 (All.)

h. CIT v. Al Anam Agro Foods (P.) Ltd. [2013] 38 taxmann.com 375 (All.)

i. GIT (Central) v. L.D.K. Shares and Securities P. Ltd. and Ors, 71 DTK 371 (All.)

In view of the above discussions it is held that addition of Rs.1,60,00,000/- made by the AO under section 68 of the Act is not justified and the same is deleted. Ground nos. 2, 3 and 4 are decided in favour of the appellant, Ground nos. 1, 5, 8 and 9 are general in nature. Ground no. 6 relates to charging of interest u/s 234A, 234B, 234C and 234D of the Act. Charging of interest is mandatory but the AO is directed to allow consequential relief. Ground no. 7 relates to initiation of penalty proceedings u/s 271(l)(c) of the Act. The same, being premature is dismissed.

6. In the result, the appeal is partly allowed as discussed above.

7. Aggrieved the Revenue has placed reliance upon the order of the AO whereas the Ld. Counsel for the assessee has contended that the assessee has placed all relevant evidence to prove the genuineness of transaction, identity and creditworthiness of the shareholders. Under these circumstances, the investment in shares should not be doubted. He has also placed reliance in support of his contention of the Judgment of the Hon'ble Apex Court in the case of CIT Vs. Jaydeep Securities and Finance Ltd. reported in 350 ITR 220 (All.), CIT Vs. Misra Preservers (P.) Ltd. reported in 350 ITR 222 (All.).

8. Having carefully examined the orders of the lower authorities and in the light of rival submission, we find that during the course of assessment proceeding, complete details were not available with the Assessing Officer and that is why he has treated share application money as bogus and made the addition of the same. But before the CIT(A) in response to remand report when fresh commission was issued to ADIT(Inv.) Kolkata who in turn issued notice u/s 131 to all shareholders companies and in response thereto replies were filed by

all the companies. The copy of the reply and information furnished by these companies are also filed before us and the same is available at pages 1 to 622 of the compilation of the assessee. All these shareholders companies have filed the copy of confirmation, copy of bank statements, copy of audited balance sheet and profit and loss account for the ended year on 31.03.2010 along with reply to the notice u/s 136 of the Act. All these details were available before the CIT(A) while adjudicating the issue and with all these evidence the genuineness of transaction identity and creditworthiness of creditor have been proved. Therefore, we are of the view that since the assessee has discharged its primary onus of proving the genuineness of transaction, identity and creditworthiness of shareholders, the addition u/s 68 of the Act is not called for. The addition cannot be sustained only for the simple reason that these shareholder companies have not responded in first round of commission. The ADIT(Inv.) has initially reported that the parties are not available at given address but in second round of commission the parties have come forward and submitted their requisite reply in order to justify the financial credibilities. In the light of all these facts, we are of the view that the CIT(A) has rightly adjudicated the issue in favour of the assessee. We, therefore, find no infirmity in the order of the CIT(A) and we confirm the same.

9. In the result, appeal of the Revenue is dismissed.

(Order was pronounced in the open court on the date mentioned on the caption page)

Sd/-
(A.K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Dated: 22/09/2015
Aks

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
- 5.D.R., I.T.A.T., Lucknow

Asstt. Registrar