

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "E" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3611/Del./2014
Assessment Year 2009-2010

The ACIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	NRA Iron & Steel Pvt. Ltd., 310, 3 rd Floor, E-Block, International Trade Tower, Nehru Place, New Delhi. PAN AACCN7222Q
(Appellant)		(Respondent)

C.O.No.263/Del./2015
Arising out of
ITA.No.3611/Del./2015 - Assessment Year 2009-2010

NRA Iron & Steel Pvt. Ltd., 310, 3 rd Floor, E-Block, International Trade Tower, Nehru Place, New Delhi. PAN AACCN7222Q	vs.	The ACIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.
(Cross-Objector)		(Respondent)

For Revenue :	Ms. Renu Amitabh, CIT-DR
For Assessee :	Shri Ashwani Kumar, Advocate And Shri Aditya Kumar, C.A.

Date of Hearing :	28.09.2017
Date of Pronouncement :	16.10.2017

ORDER

PER BHAVNESH SAINI, J.M.

The Departmental appeal as well as cross-objection by the assessee are directed against the order of the Ld. CIT(A)-1, New Delhi, dated 11th April, 2014 for the A.Y. 2009-2010.

1.1. The Revenue in the departmental appeal challenged the order of the Ld. CIT(A) in deleting the addition of Rs.17.60 crores on account of unexplained share capital/share premium. The assessee in the cross-objection challenged the reopening of the assessment under section 148 of the I.T. Act, 1961.

2. Briefly the facts of the case are that A.O. issued notice under section 148 of the I.T. Act after recording the reasons for reopening. The assessee submitted before A.O. that return already filed may be treated as return having been filed in response to notice under section 148 of the I.T. Act. The A.O. issued detailed questionnaire on the above issue of share capital and the assessee filed necessary details and clarifications before A.O. time to time. The assessee filed objections to the reopening of the assessment under section 148 of the I.T. Act, which was rejected on 13th August, 2012.

The assessee submitted before A.O. that it has raised money aggregating to Rs.17.60 crores through share capital/share premium during the assessment year under appeal from various parties which are Mumbai based companies, Kolkata based companies and Gauhati based companies. The details of which are noted at pages 2 and 3 of the assessment order. It was submitted that assessee has already filed copies of the confirmations, income tax return acknowledgments and bank accounts in respect of these companies, duly establishing the identity, genuineness and source of transaction regarding share capital and share premium. The entire share capital/application money has been received by the assessee-company through normal banking channels by account payee cheques/demand drafts. Furthermore, the said confirmations also clearly reveal the source of funds, particulars of bank accounts through which payment have been received and income tax particulars which go to establish their identity and creditworthiness. It was therefore, submitted that there were no cause exists to make a recourse to the provisions of Section 68 of the I.T. Act, 1961. In the instant case, there is no material on record to prove or even remotely

suggest that the share application money received actually emanate from the assessee-company. The share application money was received from independent legally incorporated Companies through banking channels. The initial onus upon assessee has thus been discharged. The assessee relied upon the decision of the Delhi High Court in the case of CIT vs. Steller Investment Ltd., (1991) 192 ITR 287 (Del.) in which it was held that any increased capital is not assessable in the hands of the assessee which has been confirmed by the Hon'ble Supreme Court in the case of CIT vs. Steller Investment Ltd., (2001) 251 ITR 263 (SC). The assessee also relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., 216 CTR 195 in which it was held that *“if the share application money is received by the assessee-company from alleged bogus share holders whose names are given to the A.O, then the Department is free to proceed to reopen their individual assessments in accordance with law”*. The assessee relied upon several decisions in support of the contention. The A.O. however, did not accept the contention of the assessee on the basis of the enquiries conducted by him. It was found that existence of investment

companies and genuineness of the transactions has not been proved. The A.O. noted that as regards Mumbai based Companies, some notices were served and some could not be served and no reply have been received from them. In respect of Kolkata based Companies, they have filed their reply through Dak counter confirming the transaction with the assessee, but copy of the bank account has not been enclosed. In respect of Guwahati based company, it was noted that this company do not exist at the address. Therefore, it was held that assessee failed to prove the genuineness of the transaction and accordingly, addition of Rs.17.60 crores was made in the hands of the assessee.

3. The assessee challenged the reopening of the assessment as well as addition on merits before Ld. CIT(A). The detailed contention of the assessee as regards reopening of the assessment has been noted in the impugned order. However, the Ld. CIT(A), confirmed the reopening of the assessment and dismissed this ground of appeal of assessee, particularly, when he has allowed the relief to the assessee on merit. Therefore, no detailed reasoning have

been given because it was found that the issue is left with academic discussion only.

4. The assessee as regards the addition, on merit, reiterated the same submissions before Ld. CIT(A) and it was submitted that A.O. made the addition arbitrarily and unjustifiably. The assessee produced all the relevant documents before A.O. which have not been doubted. The assessee filed confirmations of all the share applicants, copy of their income tax returns, bank accounts and copy of annual accounts. Therefore, no adverse inference has been drawn against the assessee. The Ld. CIT(A) on going through the documents and material on record, deleted the entire addition of Rs.17.60 crores and allowed the appeal of assessee. His findings in paras 3.3 to 3.5 of the impugned order are reproduced as under :

“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 share holders / applicant ire 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 shareholders in Mumbai, some summons were served but parties did not respond. In Guwahati, both parties were not found at the given address. In Kolkata, all 11 parties responded by post but no one appeared.

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 in the case of 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. Therefore, 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 at best 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.”*

5. The Ld. D.R. relied upon the orders of the A.O. and submitted that some parties did not file reply before A.O. and many parties filed reply at the Dak counter. No reasons have been given for the higher premium paid. Copy of the bank statements were not filed before A.O. The income declared by assessee and the share applicant companies were very small. Therefore, addition was correctly made by the A.O. The Ld. D.R. relied upon the following decisions.

- i. CIT vs. Precision Finance (P) Ltd., (1994) 208 ITR 465 (Cal.)
- ii. CIT vs. United Commercial & Industries Co. (P) Ltd., (1991) 187 ITR 596 (Cal.)
- iii. CIT vs. Nipun Builders & Developers (P) Ltd., (2013) 350 ITR 407 (Del.)
- iv. CIT vs. Nova Promoters & Finlease (P) Ltd., (2012) 342 ITR 169 (Del.).
- v. Mukesh Shah vs. ITO (2012) 246 CTR 82 (Jharkhand)
- vi. CIT vs. N.R. Portfolio (P) Ltd., (2013) 263 CTR 456 (Del.)
- vii. CIT vs. Empire Buildtech (P) Ltd., (2014) 366 ITR 110 (Del.)
- viii. CIT vs. Focus Exports (P) Ltd., (2014) 51 taxmann.com 46 (Del.).

6. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and

relied upon the order of the ITAT, Delhi Bench in the case of ACIT vs. M/s. Adamine Construction Pvt. Ltd., New Delhi ITA.No.6175/Del./2013 and C.O.No.259/Del./2015 dated 18th August, 2017, in which, on identical issue, the Departmental appeal and cross-objection of the assessee have been dismissed. He has submitted that most of the parties are similar in this case as have been considered in the case of the assessee on identical facts. It is the case of sister concern of the assessee. He has submitted that all the documents were filed before A.O. which proved the identity of the share applicants, their creditworthiness and genuineness of the transaction. All companies are registered with Registrar of Companies and filed their bank statements. No cash have been deposited in the bank accounts of the share applicants. They were having sufficient funds with them to make investment in the assessee-company. He has submitted that the issue is covered in favour of the assessee by the order of the ITAT, Delhi Bench, in the case of M/s. Adamine Construction Pvt. Ltd., (supra).

7. We have considered the rival contentions and perused the material available on record. It is not in dispute that assessee

company filed copies of the confirmations, income tax return acknowledgments and bank accounts of the share applicant companies before A.O. All the investors are registered with Registrar of Companies and have filed their PAN also. The assessee filed list of share applicants in the paper book supported by all the above documents and evidences. In all their confirmations, they have certified in making investment in assessee-company through banking channel and their PAN as well. The copies of the bank statements also show that share applicants were having sufficient bank balance to make investment in assessee-company. The assessee received the share capital/premium through banking channel from the following companies situated at Mumbai, Kolkata and Guwahati as under :

S	Name of the shareholder	Amount
(A) Mumbai Based Companies		
1.	Clifton Securities Pvt. Ltd.,	95,00,000
2.	Lexus Infotech Ltd.,	95,00,000
3.	Nicco Securities Pvt. Ltd.,	95,00,000
4.	Real Gold Trading Company Pvt. Ltd.,	90,00,000
5.	Hema Trading Company Pvt. Ltd.,	95,00,000
6.	Eternity Multi-trade Pvt. Ltd.,	90,00,000

(B) Kolkata Based Companies		
1.	Neha Cassettes Pvt. Ltd.,	90,00,000
2.	Warner Multimedia Ltd.,	95,00,000
3.	Gopikar Supply Pvt. Ltd.,	90,00,000
4.	Ganga Builders Ltd.,	90,00,000
5.	Gromore Fund Management Co. Ltd.,	95,00,000
6.	Bayanwala Brothers Pvt. Ltd.,	95,00,000
7.	Super Finance Ltd.,	90,00,000
8.	Shivalaxmi Export Ltd.,	95,00,000
9.	Natraj Vinimay Pvt. Ltd.,	95,00,000
10.	Neelkanth Commodities Pvt. Ltd.,	95,00,000
11.	Prominent Vyapaar Pvt. Ltd.,	95,00,000
(C) Guwahati based companies		
1.	Ispat Sheets Ltd.,	90,00,000
2.	Novelty Traders Ltd.,	90,00,000
	Total Amount	17,60,00,000

8. The Learned Counsel for the Assessee relied upon the order of the ITAT, Delhi Bench in the case of ACIT, Central Circle-13, New Delhi vs. M/s. Adamine Construction Pvt. Ltd., (supra), in which the departmental appeal, on the identical question have been dismissed. The findings of the Tribunal in paras 10 to 18 of the Tribunal are reproduced as under :

“I.T.Appeal No. 6175/Del/2013 :

10. The Revenue has questioned first appellate order on the following grounds :-

“ 1. The order of Ld. CIT (Appeals) is not correct in law and facts;

2. On the facts and circumstances of the case the ld. CIT (Appeals) has erred in deleting the addition of Rs.4,65,00,000/- being unexplained share capital including share premium and Rs.50,00,000/- being unexplained share application money made by Assessing Officer 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.”

11. It is relating to deletion of addition of Rs.4,65,00,000/- on account of unexplained share capital and share premium and a sum of Rs.50,00,000/- on account of unexplained share application money received by the Appellant Company from various companies made by the Assessing Officer on the ground that :-

(i) the creditworthiness of the investor companies was not established as all the investors were showing a nominal income;

(ii) neither the investors companies nor the Appellant Company had produced any proof to substantiate the credit worthiness of the Investors; and

(iii) the genuineness of the transactions was also in doubt.

12. The relevant facts are that the appellant company had filed its original return of income declaring a total income of Rs.715/- on 25.09.2008 vide receipt No.39312931250908. The return was processed under section 143(1) of the Income Tax Act, 1961 at the returned income. Subsequently, a search, seizure and survey operation under section 132 and 133A respectively of the Income Tax Act, 1961 was carried out in the Bhushan Group of cases on 3.03.2010. The appellant company was also covered in the said

survey operation and its jurisdiction was subsequently transferred to the Office of the ACIT, Central Circle – 13, New Delhi.

13. *The case of the appellant company for the assessment year 2008-09 was reopened under section 147 of the Income Tax Act, 1961 and notice under section 148 was issued on 19.09.2011. In response to the said notice the appellant company filed a reply dated 26.09.2011 stating that original return of income filed earlier by it on 25.09.2008 vide receipt No. 39312931250908 may be treated as return filed in response thereto.*

14. *The assessment was completed vide order dated 28.03.2013 at an income of Rs.5,15,00,715/- wherein the ld. Assessing Officer has proceeded to add back a sum of Rs.5,15,00,000/- on account of alleged unexplained share capital received by the appellant company from various companies situated at Mumbai and Kolkata. The ld. CIT (Appeals) has, however, deleted the addition being convinced with the submissions of the assessee.*

15. *In support of the ground, the ld. Sr. DR has basically placed reliance on the assessment order with this contention that assessee has thoroughly failed to establish creditworthiness of the investor companies as well as genuineness of the transaction. Some of the parties were not found on the given address and some of them did not respond to the notices issued by the Assessing Officer to them nor the assessee has been able to produce them for verification before the Assessing Officer. In absence of compliance of these requirements the Assessing Officer was very much justified in making the addition of Rs.5,15,00,000/- under section 68 of the Act on account of unexplained share capital and share premium received by the assessee company from various companies. Ignoring these material aspects the ld. CIT (Appeals) has erred in deleting the addition.*

16. *The ld. AR, on the other hand, placed reliance on the first appellate order and reiterated following submissions made before the ld. CIT (Appeals) :-*

(1) *By way of a brief introduction, it is submitted that the Appellant Company had raised money amounting to Rs.5,15,00,000/- through share capital/application money during the financial year*

2007-08 from various parties situated at Mumbai and Kolkata. The details of the parties from whom Share Capital and Share Premium had been received are as under :-

S No.	Name of the Investor Company	Address	Amount(Share Capital/Application money/ Premium) (in Rs.)
1.	Vanguard Jewels Ltd	G-3, Silver Anket Yari Road, Versova, Mumbai -400061	95,00,000/-
2.	Ganga Builders Ltd	Stephen House, Room No. 102, 6 th Floor, 4BBD Bagh (East), Kolkata - 700001	95,00,000/-
3.	Shivlaxmi Exports Ltd	102, Stephen House, 4BBD BAG(E) Kolkata -700001	90,00,000/-
4.	Lexus Infotech Ltd	CS-1, Silver Anket, Yari Road, Versova, Andheri (W), Mumbai 400061	90,00,000/-
5.	Hema Trading Co Pvt Ltd	303-B Minal Park, C.S Road, Dahisar (East) Mumbai 400068	95,00,000/-
6.	Realgold Trading Pvt Ltd	BIG Tree Bldg Chamber No. 6, 1 st Floor, Marine Street, Mumbai 400002	50,00,000/-
		Total	5,15,00,000/-

(2) The Assessing Officer in the course of assessment proceedings had desired the Appellant Company to furnish the details of the amount received and evidence in support of identity and creditworthiness of the parties and also the genuineness of the transaction of all the parties from whom the share capital and share premium had been received. In response, the Appellant Company vide letter dated 13.08.2012 filed with the Assessing Officer copies of bank accounts, confirmation and Income Tax Return acknowledgements from all the parties to establish the identity, genuineness and sources of transaction regarding share capital and share premium. The entire amount had been received by the Appellant Company through normal banking channels by account payee

cheques / demand drafts. Furthermore, the said confirmations also clearly reveal the source of funds, particulars of the bank account through which payment has been received and the Income-Tax particulars which go on to establish the identity and creditworthiness of the respective share applicants authoritatively and conclusively.

(2) On the basis of the documents/details submitted, the Learned Assessing Officer, has summarized as follows :-

S.No.	Name of the Share Holder	Returned Income	Assessment Year
1	Vanguard Jewels Ltd	Rs. 3,42,600/-	2008-09
2.	Ganga Builders Ltd	(Rs. 2,910/-)	2008-09
3.	Shivlaxmi Exports Ltd	Nil	2008-09
4.	Lexus Infotech Ltd	15,64,590/-	2008-09
5.	Hema Trading Co Pvt Ltd	17,16,207/-	2008-09

(4) In order to further verify the genuineness of all the parties commissions u/s 131 were sent by the Learned Assessing Officer to the respective Investigation agencies in Mumbai and Kolkata. In response to which reports were received from the office of Addl. CIT, Range-10(2), Mumbai and Assistant Director of Income Tax (Inv) Unit-III(3), Kolkata. The Addl Commissioner of Income Tax, Range 10(2), Mumbai and Assistant Director of Income Tax (Inv), Unit-III(3), Kolkata also deputed Inspectors of Income Tax to serve the summons and conduct field enquiries. The results of the said enquiries are as follows:-

Report from Mumbai

S No.	Name of the Shareholder	Report as received in response to commission from Mumbai
1.	Vanguard Jewels Ltd	Party has responded to the summons and the details are annexed. Details annexed as Exhibit-C
2.	Lexus Infotech Ltd	Party has responded to the summons and the details are annexed. Details annexed as Exhibit-D.
3.	Hema Trading Co Pvt Ltd	The address is residential address of D V Jain, as per report of Inspector dated 30.11.2011, no such person has ever resided in such premises. Report of Shri Ajay Kumar Inspector is enclosed as annexure. (Annexure -20)
4.	Realgold Trading Company Pvt Ltd	The address is office address of N Chandulal & Co.CA. As per report of Inspector dated 30.11.2011 no such person has ever resided in such premises. Report of Shri Ajay Kumar Inspector is enclosed as Annexure (Annexure - 20)

Report from Kolkata

S No.	Name of the Shareholder	Report as received in response to commission from Kolkata
1.	Ganga Builders Ltd	Assessee made a submission through dak and submitted that the company has applied for share of M/s Adamine Construction Pvt Ltd in F.Y 2007-08. The assessee has not specified for how many shares and at what premium. The assessee has enclosed bank statement showing payment was made by cheque no. 875638 dated 07.02.2008 for Rs. 55,00,000/- and cheque no. 875656 dated 07.02.2008 for Rs. 40,00,000/- drawn on Deutsche Bank. The assessee has not enclosed the bank statement showing the source of fund for share application money. The company has shown Nil income for A.Y. 2008-09

2.	Shivlaxmi Exports Ltd	Assessee made a submission through dak and submitted that the company has applied for 90000 equity share of Rs. 10/- of M/s Adamine Construction Pvt Ltd each at a premium of Rs. 90/- and allotted the same. The assessee has not given the reason for paying such a high premium. The assessee has enclosed bank statement showing payment was made by cheque no. 611654 dated 08.02.2008 for Rs. 50,00,000/- and cheque no. 611515 dated 08.02.2008 for Rs 40,00,000/- drawn on Deutsche Bank. The assessee has not enclosed the bank statement showing the source of fund for share application money. The company has shown Nil income for A.Y. 2008-09.
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(5) On the basis of the said exercise, the Learned Assessing Officer has observed and concluded as follows:-

- The identity and the creditworthiness of the investors are not established as all the investors are showing a nominal income. Neither the investor company and nor the assessee company has produced any proof to substantiate the credit worthiness of the investors (for example balance sheet of the investor company);
- The genuineness of the transactions is also in doubt as the investors have not enclosed the bank statement showing the source of fund for share application money.

(6) The Learned Assessing Officer has accordingly held that the creditworthiness of the investors and the genuineness of the transactions is in doubt and has accordingly treated share capital/application money and share premium amounting to

Rs.5,15,00,000/- as unexplained and added this same to the taxable income of the Appellant Company u/s 68 of the Income Tax Act, 1961.

(7) The Assessing Officer in the course of assessment proceedings had desired the Appellant Company to furnish the details of the amount received and evidence in support of identity and creditworthiness of the applicants and also the genuineness of the transaction of all the parties situated at Mumbai and Kolkata from whom the share capital and share premium had been received. In response, the Appellant Company filed copies of confirmations, Income Tax Return acknowledgements and bank accounts from all the parties establishing the identity, genuineness and sources of transaction regarding share capital and share premium with the Assessing Officer. The entire share application money had been received by the Appellant Company through normal banking channels by account payee cheques/demand drafts. Furthermore, the said confirmations also clearly reveal the source of funds, particulars of the bank account through which payment has been received and the Income-Tax particulars which go on to establish the identity and creditworthiness of the various parties authoritatively and conclusively.

(8) As a result of the above documents being filed before the Learned Assessing Officer in respect of all the parties in respect of which no cause exists as to recourse to the provisions of Section 68 of the Income-tax Act, 1961 in as much as the onus cast on the Appellant Company vis-à-vis the genuineness of the transaction and credit worthiness of the parties has been effectively and completely discharged. The action of the Learned Assessing Officer is not only

against the spirit but also letter of the provisions relating to establishing the identity of cash creditors as embodied in the Income-tax Act, 1961. Independent investigations from parties over which an Appellant Company does not have any control cannot be used to form any conclusion, adverse or otherwise in respect of the Appellant Company. As such the said addition is neither warranted nor justified or sustainable on the facts of the case.

(9) The above factual statements and arguments can be further buttressed and reinforced by an analysis of the relevant legal provisions and legal pronouncements on the issue. Before proceeding further with the matter it would be worthwhile to reproduce the provisions of S.68 of the Income tax Act, 1961 which reads as follows:-

“S 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(10) The above Section enjoins upon an Appellant Company, the duty to adequately, satisfactorily and substantively explain the source of any cash credit in his books of accounts and no further. To put it differently an Appellant Company's burden of proof would stand discharged if he is able to prove the nature and source of the cash credit received and thus his onus of proof cannot extend to failure to prove the source of the proof with a view to arrive at the ultimate source of funds. As long as the nature, source and identity of the investor is established, no further onus of proof can be enjoined on it.

In the instant case no case can be made out to doubt the genuineness, existence or identity of the investors and as such no cause exists for the invocation of S. 68.

(11) An analysis of the provisions of Section 68 of the Income-tax Act, 1961 would make it clear that in order to discharge the onus, the Assessee must prove the following:-

- (i) identity of the creditor;*
- (ii) capacity of the creditor to advance money; and*
- (iii) genuineness of the transaction.*

(12) The question of the manner in which the onus u/s 68 has to be discharged is to be looked at with different perspectives and varying parameters in each different circumstance and no standards/guidelines can be lead out in this regard.

(13) In the instant case there is no material on record to prove or even remotely suggest that the share application money received actually emanated for the Appellant Company. In fact it may be reiterated that the share application money was received from independent legally incorporated companies through normal and regular banking channels which fact stands duly corroborated and confirmed by the confirmations bank statements and Income Tax Returns of the share applicants duly placed on record. In fact, no evidence, direct or indirect, conclusive, or even circumstantial, exists to doubt in any manner the identity and credit worthiness of the parties and genuineness of the transactions entered into.

(14) *The Appellant Company has discharged its onus by satisfactorily dealing with all the issues in respect of which onus has been cast on it u/s 68 of the Income-tax Act, 1961 as would be clear from the following discussion:-*

(i) With respect to the identity of the creditors the names, addresses and PANs of the Assessee has been duly furnished and provided to the Ld Assessing Officer during the course of the assessment proceedings and no error or short coming has either been determined or pointed out therein since all the share applicants are duly identified with duly allotted PANs which are subsisting in the record of the Income Tax Department. Moreover all the share applicants are companies duly incorporated after following the procedure laid out in the Companies Act, 1956. Thus, no doubt exists or even arises with respect to the identity of the creditors.

(ii) With respect to the capacity/credit worthiness of the share applicants to advance money and the genuineness of the transactions it needs to be understood, reiterated and re-emphasized that the entire transaction was consummated through account payee cheques through regular banking channels which fact has not been disputed or denied in any manner. As such given the entire factual situation of the case no doubt arises and remains as to the capacity and credit worthiness of the parties and genuineness of the transactions.

(15) *In this connection Your Honour's attention is also invited to the decision of the Hon'ble Delhi High Court in the case of Commissioner of Income-Tax vs. Steller Investments Limited [(1991)*

192 ITR 287 (Delhi)] wherein it has been clearly held that any increased capital is not assessable in the hands of the company. The relevant observations of the Learned Judges are as follows:-

“It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself.”

(16) Subsequent to the above an appeal filed by the Department against the judgement/ observations of the Supreme Court was also dismissed and the Hon’ble Supreme Court did not find any reason to interfere with the order of the High Court in the case of CIT vs Steller Investment Ltd [(2001) 251 ITR 263 (SC)]. As such the observations of the Hon’ble Delhi High Court have obtained the approval of their Lordship of the Supreme Court and accordingly attained judicial finality and stamp of approval.

(17) In addition, Your Honor’s kind attention is also invited to the following judgement of the Delhi High Court in the case of Commissioner of Income Tax v Lovely Exports Pvt Ltd [(2008) 299 ITR 268 (Delhi)] has held as follows :-

“ In the case of a company the following are the propositions of law under section 68. The assessee has to prima facie prove (1) the identity of the creditor/ subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor / subscriber; (4) if relevant details of the address or PAN identity of the creditor / subscriber are furnished to the Department along with copies of the shareholders’ register, share application forms, share transfer register, etc, it would constitute acceptable proof or acceptable explanation by the assessee; (5) the Department would not be justified in drawing an adverse inference only because the creditor/ subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor / subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without more, against the assessee; and (7) the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/ subscriber the genuineness of the transaction and the veracity of the repudiation. In the case of a public issue, the company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and make available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. A delicate balance must be maintained while walking the tightrope of sections 68 and 69 of the Income -Tax Act. The burden of proof can seldom be discharged to

the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription, he is empowered, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company”.

(18) *Further Your Honor’s kind attention is also invited to the decision of their Lordship of the Hon’ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd [(2008) 216 CTR 195 (SC)] wherein the special leave petition filed by the Department against the order of the Delhi High Court has been dismissed with the following remarks :-*

“We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the Assessee Company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgement”.

(19) *The above decision of the Hon’ble Supreme Court follows the earlier decision of the Hon’ble Supreme Court in the case of Steller Investment Ltd, cited supra and further reinforces the arguments put forward for and on behalf of the Appellant Company.*

(20) *In particular, with regard to the issue of establishing the creditworthiness of the parties, Your Honour’s attention is invited to the following recent judgements wherein it has been conclusively held,*

relying on the decisions in the case of M/s Lovely Exports Pvt Ltd cited above, that as long as the identity of the share applicant was proved, the burden of proving the creditworthiness was not on the Assessee:-

- Commissioner of Income-tax, Udaipur v. Bhaval Synthetics [(2013) 35 Taxmann.com 83 (Rajasthan)];
- Shree Barkha Synthetics Ltd v. Assistant Commissioner of Income-tax [(2006) 155 Taxman 289 (Raj)];
- Commissioner of Income-tax, Bhopal (M.P) v. Peoples General Hospital Ltd [(2013) 35 taxmann.com 444(Madhya Pradesh)];
- Commissioner of Income-tax, Meerut v. Kamna Medical Centre (P) Ltd [(2013) 35 taxmann.com 470(Allahabad)];
- Commissioner of Income-tax, Faridabad v. GP International Ltd [(2010) 186 Taxman 229 (Pun &Har)];
- CIT v Dwarkadhish Investment Pvt Ltd and Dwarkadhish Capital Pvt Ltd [(2011) 330 ITR 298 (Delhi)];
- CIT v. Winstral Petrochemicals Pvt Ltd [(2011) 330 ITR 603 (Delhi)];
- Commissioner of Income Tax v. Gangour Investment Ltd [(2011) 335 ITR 359 (Delhi)];
- MOD Creations Pvt Ltd vs. Income Tax Officer [(2012) 354 ITR 282 (Delhi)].

(21) *It should be specifically noted in the instant case there was no denial at any stage of the investigation or the assessment proceedings by any of the subscribers to the share capital of their having invested money by way of share application money in the Appellant Company. Moreover there is no shred of evidence, direct,*

indirect or even peripheral of the share application money having emanated from the coffers of the Appellant Company. In fact, the investor companies, in their replies filed before the Department (in response to summons u/s 131 of the Act), have duly confirmed, the factum of their having made the investment and have further buttressed the same with the following documents :-

- (a) Confirmations;*
- (b) Acknowledgement for filing of Income Tax Returns;*
- (c) Bank statements reflecting the transactions with the Appellant Company;*
- (d) Copies of Annual Accounts.*

(22) In view of the above, no doubt remains as to the identity of the investors, their credit worthiness and the genuineness of the transactions and correspondingly no adverse inference is called for.

(23) In fact, in the instant case, reliance is placed on the decision of the Delhi High Court in the case of CIT vs Kamdhenu Steel & Alloys Limited and Others [(2012)206 Taxman 254(Delhi)] wherein the following has been held :-

“38. Even in that instant case, it is projected by the Revenue that the Directorate of Income Tax (Investigation) had purportedly found such a racket of floating bogus companies with sole purpose of landing entries. But, it is unfortunate that all this exercise is going in vain as few more steps which should have been taken by the Revenue

in order to find out causal connection between the cash deposited in the bank accounts of the applicant banks and the assessee were not taken. It is necessary to link the assessee with the source when that link is missing, it is difficult to fasten the assessee with such a liability.

39. We may repeat what is often said, that a delicate balance has to be maintained while walking on the tight rope of sections 68 and 69 of the Act. On the one hand, no doubt, such kind of dubious practices are rampant, on the other hand, merely because there is an acknowledgement of such practices would not mean that in any of such cases coming before the Court, the Court has to presume that the assessee in questions as indulged in that practice. To make the assessee responsible, there has to be proper evidence. It is equally important that an innocent person cannot be fastened with liability without cogent evidence. One has to see the matter from the point of view of such companies (like the assessee herein) who invite the share application money from different sources or even public at large. It would be asking for a moon if such companies are asked to find out from each and every share applicant/subscribers to first satisfy the assessee companies about the source of their funds before investing. It is for this reason the balance is struck by catena of judgements in laying down that the Department is not remediless and is free to proceed to reopen the individual assessment of such alleged bogus shareholders in accordance with the law. That was precisely the observation of the Supreme Court in *Lovely Export* (supra) which holds the fields and is binding.

40. In conclusion, we are of the opinion that once adequate evidence/material is given, as stated by us above, 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 of the nature indicated above before it could nail the assessee and fasten the assessee with such a liability under Sections 68 and 69 of the Act.

(24) It would also be pertinent, topical and relevant to mention here that the Special Leave Petition filed before the Hon'ble Supreme Court by the Revenue against the above decision of the Hon'ble Delhi High Court has been subsequently dismissed by Their Lordship of the Supreme Courts and as such the decision of the Delhi High Court in the case of CIT vs Kamdhenu Steel & Alloys Limited and Others (supra) has attained conclusive judicial finality.

(25) To conclude it may be said that on the basis of the facts discussed supra and the ratio of the above judgements makes it clear that if the share applicants are identified and it is established that they have deposited money in the Company, no recourse can be made to the provisions of S 68. The Appellant Company had provided all the requisite particulars to establish the identity of the share applicants in the confirmations, ITRs and bank statements already filed before the Assessing Officer. The various arguments advanced by the Learned Assessing Officer are frivolous and irrelevant and the

onus enjoined upon the Appellant Company by the provisions of section 68 stands not only adequately but also completely satisfied.

(26) Accordingly since it is clear that if the shareholders / share applicants are identified and it is established that they have invested money in the purchase of shares, no recourse can be made to the provisions of S 68. In the instant case the Appellant Company had provided all the requisite particulars to establish the identity of the share applicants in the confirmations already filed before the Assessing Officer.

The ld. AR also placed reliance on the following decisions :-

- (i) CIT Vs. Gangeshwari Metal Pvt. Ltd. ITA. No. 597/2012 [judgement dated 21.01.2013 (Delhi High Court);*
- (ii) Pr. CIT Vs. N. C. Cables Ltd. (2017) 391 ITR 11 (Del.);*
- (iii) Pr. CIT Vs. Softline Creations P. Ltd. (2016) 387 ITR 636 (Del.);*
- (iv) CIT Vs. Real Time Marketing P. Ltd. (2008) 306 ITR 35 (Del.);*
- (v) CIT Vs. Value Capital Services P. Ltd. (2008) 307 ITR 334 (Del.);*
- (vi) CIT Vs. Orbital Communication (P) Ltd. (2010) 327 ITR 560 (Del.);*
- (vii) CIT Vs. Winstral Petrochemicals P. Ltd. (2011) 330 ITR 603 (Del.);*

(viii) CIT Vs. Kamdhenu Steel and Alloys Ltd. (2014) 361 ITR 220 (Del.).

17. *Having gone through the above cited decisions, we find that the ratio laid down therein is that the primary onus lies upon the assessee to establish identity and creditworthiness of the creditors/ investors as well as genuineness of the transaction and after discharging of the same, onus shifts upon the Revenue to prove the documents filed by the assessee while discharging its primary onus, as false to attract addition under section 68 of the Act. In its recent decision dated 11.01.2017 in the case of Pr. CIT Vs. N.C. Cables Ltd. (supra) the Hon'ble jurisdictional High Court of Delhi has been pleased to hold that no addition can be made under section 68 of the I.T. Act where assessee in the case of share application money had furnished documents to evidence genuineness of transactions and identity and creditworthiness of parties, but there was failure on the part of the Assessing Officer to conduct adequate and proper enquiry into materials while invoking section 68 of the Act. Again in the case of Pr. CIT Vs. Softline Creations P. Ltd. (supra), the assessee in support of receipt of share application money had furnished PANs, bank details of share applicants and affidavits of Directors of those share applicant companies. The Hon'ble High Court of Delhi has been pleased to hold*

that share application money cannot be considered as unexplained cash credits in the hands of the assessee. In the case of CIT Vs. Value Capital Services P. Ltd. (supra) the Hon'ble jurisdictional High Court of Delhi while dismissing the appeal of the Revenue has been pleased to hold 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, 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. In the case of CIT Vs. Orbital Communication P. Ltd. (supra) the Hon'ble jurisdictional High Court of Delhi in the case of the claimed share application money has been pleased to hold that where substantial evidence has been produced by the assessee to prove creditworthiness of the creditors and genuineness of share applications, failure to produce creditor is not material. In the case of CIT Vs. Winstral Petro Chemical P. Ltd. (supra) in the case of cash credits/share application money, the Hon'ble jurisdictional High Court of Delhi on the issue of burden of proof, has been pleased to hold that initial burden is on assessee to prove identity of creditors, the burden then shifts to Revenue to prove that credits were not genuine. In that case while dismissing the appeal of the Revenue, the Hon'ble High Court was pleased to hold that it had

not been disputed that the share application money was received by the assessee company by way of account payee cheques through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN Cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications, had changed their addresses or had stop functioning, held the Hon'ble High Court.

18. *When we examine the facts of the present case in view of the above cited ratio laid down by the Hon'ble jurisdictional High Court of Delhi, we find that facts are almost similar. In the present case there were 6 investor companies claimed to have invested Rs.5,15,00,000/- in total in the assessee company. In support of their identity and creditworthiness as well as genuineness of the transactions, as discussed above, the assessee had filed before the Assessing Officer, their (investor companies) confirmations, Income Tax return acknowledgements, bank accounts with this submission that entire amount had been received by the assessee company through normal*

banking channels by account payee cheques/ demand drafts. The confirmations filed revealed the source of funds, particulars of the bank account through which payments were received and the Income Tax particulars establishing the identity and creditworthiness of the respective share applicants. We thus find that the assessee had discharged its primary onus to establish identity and creditworthiness of the investor companies as well as genuineness of the transactions, as per the ratio laid down in the above cited decisions of the Hon'ble High Court. The Assessing Officer, on the other hand, had doubted the genuineness of the claimed receipt on the basis that some of the investor companies could not be found at the given address and that some of the investor companies responded to the summons by post, but had not caused appearance before him. The Assessing Officer also held that income of many of the investor companies was too low or meager to enable them to make such large investments in the share capital of the assessee company. The Assessing Officer also observed that there appeared no justification for large components of share premium paid to the assessee along with the share capital. The Assessing Officer also remained suspicious about the claimed investor companies on the basis of reasons recorded for initiation of reopening of assessment proceedings based on the report relating to survey

conducted at the premises of the assessee that the business premises of the assessee actually belong to Bhushan Steel Ltd. and several other companies were having their Registered offices in the same premises. The submission of the assessee in this regard remained that there is no law that more than one company cannot have its Registered office at one address and that there is no law that companies cannot change their Registered offices. It was submitted that business raise capital and such capital is rotated in economy for increasing production and trade and for making more efficient use of capital. Companies change and, 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. It was submitted that all the companies having Registered office at the premises undisputedly belonged to Bhushan Group. The sources of capital introduced in these companies were established during the respective assessment proceedings. It was further contended that no evidence was found during search to indicate introduction of cash in the form of share capital. It is also pertinent to mention over here that out of total 6 investor companies, notices could not be served in case of 2 companies as they were not available on the given addresses and in case of 1

company notice could not be served as the premises was found locked on various days. The remaining 4 companies had responded and had filed their submissions. However, there is no dispute that in case of all the 6 investor companies, the assessee had filed primary documents and had accordingly discharged its initial onus to establish identity and creditworthiness of the investor companies and genuineness of the transaction as there is no dispute that all the transactions have been done through banking channels i.e. through account payee cheques and demand drafts. We thus find that the Assessing Officer has failed to discharge its onus to prove that the documents filed by the assessee, as discussed above, were false or fabricated as the Assessing Officer has not made any efforts to verify those documents especially when there is no dispute that all the investor companies were filing their returns of income and were being assessed by the Department. The Assessing Officer on the contrary remained suspicious on the claimed receipt from the investor companies on some other factors like some of them were not found on their given addresses, some of them had furnished their submissions through posts and some of them were not having sufficient income etc. as discussed above. Under these circumstances, we are of the view that the ld. CIT (Appeals) was justified in deleting the addition of

Rs.5,15,00,000./- made under section 68 of the Act on account of unexplained share capital and share premium. Since the first appellate order is based upon the ratio laid down in the above cited decisions of the Hon'ble jurisdictional High Court of Delhi, we do not find reason to interfere therewith. The same is upheld. The ground is accordingly rejected."

9. It may be noted here that in this case five parties from Mumbai and Kolkata are same as have been considered in the present Departmental appeal. Even if Mumbai based companies have not responded to the letter issued by the A.O, however, three of them have already been found existing and genuine Companies and two of the Companies from Kolkata based are also found existing and genuine in the case of ACIT, Central Circle-13, New Delhi vs. M/s. Adamine Construction Pvt. Ltd., (supra). All Kolkata parties confirmed genuineness of transactions in their reply before A.O. Therefore, the issue is covered in favour of the assessee by the above said judgments. The Hon'ble Rajasthan High Court in the case of CIT vs. ARL Infratech Ltd., 394 ITR 383 considered the identical issue of share application money in which the assessee filed PAN and other details of the investor companies. No direct relation was also found

between assessee and the investor companies. Therefore, additions deleted, were found fully justified.

10. The Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 held as under :

(i) "If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

11. The Hon'ble Delhi High Court in the case of CIT vs. Kamdhenu Steel & Alloys Ltd., & Ors. 361 ITR 220 (Del.) 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; AO failed to carry his

suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

12. The Hon’ble Delhi High Court in the case of CIT vs. Vrindavan Farms P. Ltd. Etc. in ITA.No.71/2015 dated 12.08.2015 *in which the sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.*

13. The Hon’ble Delhi High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., in ITA.No.169 of 2017 dated 14.03.2017 *in which the CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon’ble Apex Court in the case of Lovely Exports Pvt.Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon’ble High Court in view of the above findings noted that the assessee*

had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

14. The Hon'ble Supreme Court in the case of M/s. Earthmetal Electrical Pvt. Ltd., vs. CIT dated 30th July, 2010 in SLP. No.21073/99 in which Hon'ble Apex Court held *"we have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside."* In this case, the Hon'ble Bombay High Court and the ITAT, Mumbai Bench, which was the subject matter in SLP before Hon'ble Supreme Court observed that assessee failed to produce any evidence regarding confirmation of the amount supposed to have been received as share capital from third party. The case of the assessee is therefore, on better footing as against the decision of the Hon'ble Supreme Court in the case of Earthmetal Electrical Pvt. Ltd., vs. CIT (supra). The decision of the Hon'ble Delhi High Court in the case of

Pr. CIT vs. Laxman Industrial Resources Pvt. Ltd., (supra), clearly apply to the facts of the case of the assessee that the assessee received genuine share application money from the investor Companies. The assessee on the basis of the documentary evidences have been able to establish that the share holders are genuine parties and they are not bogus and fictitious. The Hon'ble Delhi High Court in the case of CIT vs. Divine Leasing & Fin. Ltd., 299 ITR 268 held that *"no adverse inference should be drawn if shareholders failed to respond to the notice by AO."*

15. The Hon'ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65 held that *"dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount*

subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted.

16. The Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment P. Ltd., (ITA.No.911 of 2010) and Dwarkadhish Capital P. Ltd., (2011) 330 ITR 298 (Del.) held *"In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any*

person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified."

17. The Hon'ble Delhi High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603 (Del.) held that *"dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee."*

18. The Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services P. Ltd., (2008) 307 ITR 334 (Del.) in which it was held that *"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.”

19. It may be noted here that investor companies have confirmed making investments in assessee-company who were having sufficient net worth to make investment in assessee-company. Assessee filed I.T. returns, PAN, Bank Statements of investor Company to prove they are existing assessees of Department and are genuine parties. No efforts are made by A.O. for production of investors at assessment stage. Therefore, the assessee has been able to prove identity of the share applicants, their creditworthiness and genuineness of the transactions in the matter. The Ld. CIT(A), on examination of the material on record, further found that the only reason for the Revenue to go for further verification was the report relating to survey conducted at the premises of the assessee-company which forms part of satisfaction recorded for reopening of the assessment proceedings. From the said report, Ld. CIT(A) found that the business premises of the assessee actually belong to M/s. Bhushan Steel Ltd., and several other Companies having their Registered Offices at the same address. This created a suspicion in

the mind of the Revenue. The Ld. CIT(A) therefore, rightly noted that there is no law that more than one Company cannot have its Registered Office at one address. The Companies could have change their address later on. It is also an admitted fact that source of the capital investment companies were established during their respective assessment proceedings including in the case of the present assessee-company as per the findings of the Ld. CIT(A). Ld. CIT(A) also found that no evidence was found during the course of survey to indicate introduction of unaccounted cash/funds in the form of share capital in these companies. These findings of fact recorded by the Ld. CIT(A) have not been rebutted through any evidence or material on record. No evidence has been brought on record that money so invested in assessee-company came from coffers of assessee-company. All objections of A.O. have been considered by Ld. CIT(A) and various case law referred to above support the findings of Ld. CIT(A) that addition has been correctly deleted.

20. The Ld. D.R. relied upon the decision of various Hon'ble High Courts and Delhi High Court referred to above. In these cases,

the gist of the findings are that the assessee failed either to prove the identity or capacity of the subscriber companies or that the amount was received as accommodation entries. However, the assessee-company, in the present case, has been able to prove the identity of the investors, creditworthiness and genuineness of the transaction in the matter. Therefore, Ld. CIT(A) on proper appreciation of evidence and material on record, correctly deleted the addition of Rs.17.60 crores. The Departmental appeal fails and is accordingly, dismissed.

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

22. The assessee in the cross-objection has challenged the reopening of the assessment. Learned Counsel for the Assessee however, fairly conceded that in the case of M/s. Adamine Construction Pvt. Ltd., (supra), the Tribunal has confirmed the reopening of the assessment on same set of facts. He has submitted that since the issue is covered on merit in favour of the assessee-company by the aforecited decision of the Tribunal, therefore, the issue of reopening of the assessment is covered against the assessee-company by the same judgment. We may also note here that Ld.

CIT(A) on deleting the addition on merit noted that since relief is already allowed to the assessee-company on merit, therefore, this ground is left for academic discussion only. In view of the above, we do not find any reason to interfere with the reopening of the assessment in the matter. We, accordingly, confirm the reopening of the assessment and dismiss the cross objection of the assessee.

23. In the result, cross objection of the assessee is dismissed.

24. To sum-up, appeal of the Revenue as well as cross objection of the assessee are dismissed.

Order pronounced in the open Court.

Sd/-

(L.P. SAHU)

ACCOUNTANT MEMBER

Delhi, Dated 16th October, 2017

VBP/-

Copy to

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

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.