

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.679/Del/2015
Assessment Year : 2010-11**

Zion Promoters & Developers (P) Ltd., HR 77/1, Pul Pahlad Pur, Badarpur, New Delhi.	Vs.	Addl. CIT, Range- II, Faridabad.
PAN : AAACZ2271K		
(Appellant)		(Respondent)

Assessee by : Shri V. K. Tulsian, CA
Department by : Shri Amit Jain, Sr.DR
Date of hearing : 06-12-2017
Date of pronouncement : 28-02-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 14.11.2014 of the CIT(A)- 2, Faridabad relating to assessment year 2010-11.

2. The only ground raised by the assessee reads as under :-

"1. Whether the Ld. CIT(A) was justified by upholding the Additions made u/s 68 on account of share capital from 13 shareholders out of 15 amounting to Rs.2,77,00,000/- as unexplained, while Admittedly on record not only details available but remand report are also there, without appreciating the submission, evidence in the right prospective and without any adverse material."

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of construction. It filed its return of income on 26.09.2010 declaring total income of Rs.18,96,750/-. During the course of assessment

proceedings, the Assessing Officer observed that the assessee, during the impugned assessment year, has received share capital of Rs.3,10,00,000/- and share premium of Rs.2,79,00,000/- on account of issue of Rs.31,00,000 shares from the following 15 investors :-

<i>S.No.</i>	<i>Name & address of shareholder</i>
1.	<i>Amarsaria Impex Limited now k/a Shine Gold Builders Ltd., E-10B, Jawahar Park, Laxmi Nagar, Delhi-110092.</i>
2.	<i>Logitura Solutions Pvt. Ltd. 127, Hari Nagar, Ashram, New Delhi-14.</i>
3.	<i>Chahat Estate Agents Pvt. Ltd., A-20/102, Sector-7, Rohini, Delhi.</i>
4.	<i>Fabrika Industries (India) Ltd., 127, Hari Nagar Ashram, New Delhi-14.</i>
5.	<i>Shivalik Myco Foods & Industries Ltd., 2822, Gali No.-18, Circular Road, Kailash Nagar, Delhi-31.</i>
6.	<i>Nakoda Ji Buildwell Ltd., H-23, Vikas Marg, Laxmi Nagar, Delhi-110092.</i>
7.	<i>S.S. Finvest (India) Pvt. Ltd., F-15, G.K. Bhagat Shopping Complex, Flat No.-4, 1st Floor, Mansarover Garden, New Delhi-15.</i>
8.	<i>Chinu Press & Parkashan Pvt. Ltd., E-10B, Jawahar Park Laxmi Nagar, Delhi- 110092.</i>
9.	<i>Express DSA Services Pvt. Ltd., 402-404, 4th Floor, 73-74, Sheetla House, Nehru Place, New Delhi-110017.</i>
10.	<i>S.K. Fashions, 58, Shimant Vihar, Sector-14, Kaushambi, Ghaziabad.</i>
11.	<i>First Hi Fin Ltd., 325, Vishal Tower, District Centre, Janakpuri, New Delhi-58.</i>
12.	<i>Pride Real Tech Pvt. Ltd., 1/411, Gali Rajan Kalan, Mori Gate, Delhi-110006.</i>
13.	<i>Singh Chander Marketing Pvt. Ltd., S-561/222, Bhagwathi Complex, Shakurpur, New Delhi-110092.</i>
14.	<i>Truth Trade Impex Pvt. Ltd., 1/411, Gali Rajan Kalan, Mori Gate, Delhi-110006.</i>
15.	<i>Vardhman Sales Pvt. Ltd., A-64, Temple Colony, Samaypur, Delhi-110042.</i>

Note: S. K. Fashion is not a company but a proprietorship concern.

4. Vide letter dated 14.03.2013 the assessee submitted the confirmation of the investor companies/concerns along with PAN Numbers. However, in the said submissions, the assessee had not submitted the complete details of those companies such as Income-tax returns, Ledger accounts, Bank statements, etc. in respect of all these companies/concerns. To verify the genuineness of these

15 investor companies/concerns, the Assessing Officer issued notice u/s 133(6) on 19.03.2013. On 22.03.2013, the Assessing Officer gave copies of the letter u/s 133(6) to the Authorized Representative of the assessee and he was asked to establish the identity of the investors and genuineness of the transactions. He also directed the AR to ensure the personal attendance of the principal officers of these 15 investor companies/concerns by 28.03.2013.

5. The Assessing Officer observed that out of 15 letters, 7 letters issued to the companies/concerns at Sl.No.3, 4, 5, 7, 11, 13 and 15 were received back un-served.

6. He further observed that replies in two concerns namely M/s Express DSA Services Pvt. Ltd. and M/s S.K. Fashions were received enclosing copy of return and ledger account but no bank statement. Information provided in the case of M/s Truth Tradex (P) Ltd. and M/s Pride Realtech (P) Ltd. were in the form of bank statement and ledger account. However, no income-tax return was provided. The Assessing Officer noted that in the rest of the cases confirmations were provided by the assessee in the shape of ledger account or on letter head. No income tax return or bank statement was provided. He conducted local enquiries of these companies/concerns. However, it was reported that none of these companies were found to be at the address given. He came to the conclusion that these confirmations were not complete as desired vide letter u/s 133(6) which could prove the identity, genuineness and

creditworthiness of the investors. On 28.03.2013, the AR of the assessee attended and expressed his inability to produce and personally present the attendance of these Principal Officers/Directors. The Assessing Officer, therefore, doubted the identity and creditworthiness of the investor companies who have invested in shares of the assessee company and the genuineness of the transactions in terms of the provisions of section 68 of the I.T. Act. Relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs. N.R. Portfolio P. Ltd. vide ITA No.134/2012 order dated 21.12.2012, the Assessing Officer, invoking the provisions of section 68 of the I.T. Act, 1961 made addition of Rs.3,10,00,000/- to the total income of the assessee.

7. Before the Id. CIT(A), the assessee filed all the details giving the name and address of the company, copy of the income-tax return, auditor's report, the balance sheet, bank statement, share application form, Board resolution and copy of PAN Card etc. in case of all the 15 companies/concerns as additional evidences. Ld. CIT(A) called for a remand report from the Assessing Officer after admitting the additional evidences. After considering the remand report of the Assessing Officer and the rejoinder of the assessee to such remand report, the Id. CIT(A) deleted an amount of Rs.33,00,000/- in the case of Express DSA Services Pvt. Ltd. amounting to Rs.28,00,000/- and in the case of S.K. Fashions amounting to Rs.5,00,000/-. He, however, sustained the addition in the case of

remaining companies. While doing so, he analyzed investment made by each and every company which is reproduced as under :-

“(a) *Amarsaria Impex Limited now k/a Shine Gold Builders Ltd., E-10B, Jawahar Park, Laxmi Nagar, Delhi-110092 :-*

The appellant filed copy of ITR, Auditors’ Report and Balance Sheet, Bank Statement, Share Application Form, Board Resolution and Copy of Pan Card. However, in addition to these neutral documentary evidences, the appellant could not produce the Principal Officer of the Co., despite repeated opportunities both during assessment and remand proceedings. As regards whereabouts of the company, as per the remand report dated 04.08.2014, the Inspector attached with the Assessing Officer could not locate the share subscriber at both the addresses given, namely- 3603, First Floor, Chamber 12, Darya Ganj, Delhi-92 and E-108, Jawahar Park, Laxmi Nagar, Delhi-92. In the light of recent Delhi High Court judgements in the case of CIT vs. Globus Securities Ltd. (supra) and CIT vs. N.R. Portfolio (P) Ltd. (supra), the identity of Amarsaria Impex Ltd. could not be established. Since the basic test for allowability of the amount contributed by Amarsaria Impex Ltd. by way of share capital could not be satisfied, I hold that the addition of Rs.25 lacs made by the Assessing Officer is here sustained.

(b) *Logitura Solutions Pvt. Ltd. 127, Hari Nagar Ashram, New Delhi – 14 :-*

The assessee produced a copy of ITR, Bank Statement, Balance Sheet, share application form, Board resolution, Memorandum of Association and PAN Card. The appellant could produce the Principal Officer of Logitura Solutions (P) Ltd., whose statement was recorded by the AO. The appellant could thus establish the identity of the subscriber Co. ,by producing the Director of the Co. in addition to the documents submitted during remand proceedings. As regards its creditworthiness, the Director of the Co., Shri Raj Kumar, could not explain the source of investment, when his statement was recorded by the AO. Furthermore, return of income for the relevant year was filed by the Co. declaring income of Rs.1344/- only. Bank Account revealed the fact that on the day, amount was contributed by way of share capital, smaller amounts were received from Chahat Estates, Fabrica (India) Ltd, Pride Realtech (Pvt.) Ltd who are also contributors to the share

capital. A further analysis of Balance Sheet of this Co. revealed that out of reserves of Rs.25,07,140/-, the Co. had share premium of Rs. 25 lacs. Thus the contribution of share capital of the appellant Co. was having a huge share premium account. All these facts clearly establish the fact that the creditworthiness of Logitura Solutions (P) Ltd. could not be proved and hence the addition of Rs. 25 lacs made by the AO on this account is hereby sustained.

- (c) *Chahat Estate Agents Pvt. Ltd. A-20-102, Sector-7, Rohini, Delhi :-*

The appellant filed copy of ITR, bank statement, Auditors' Report and Balance Sheet, Share Application Form, Bank Resolution, Memorandum of Association and PAN Card. Though the confirmation was filed, by the appellant, remand report reveals the fact that the Inspector attached with the AO could not locate the Ashram, New Delhi. Furthermore, the appellant could not produce the Director/Principal Officer of the, said Co. despite repeated opportunities. Hence, these facts make it abundantly clear that the identity of Chahat Estate Agents (P) Ltd. could not be established by the appellant, by merely filing neutral documentary evidence. Addition of Rs. 25 lacs made by the AO on account of capital contribution of this Co. is thus sustained.

- (d) *Fabrika Industries (India) Ltd. 127, Hari Nagar Ashram, New Delhi-14 :-*

The appellant submitted copy of ITS, Bank Statement, Balance Sheet, Share Application Form, Board Resolution, Memorandum of Association and PAN Card. Besides, confirmation was also filed by the appellant. The appellant could produce Shri Kuldeep Thakur, one of the Directors of the Co., who confirmed having contributed 30 lacs to the, share capital of appellant company. However, could not explain the source of such investment. Furthermore, the return of income filed by him showed a total income of Rs.1,03,855/- only. How can a Co. with an annual income of just Rs. 1 lac contribute 30 lacs to the share capital of an un-related Co., that too at a huge premium? Another noticeable factor was that as against subscribed share capital of Rs.74.50, lacs, the share premium received by Fabrika was 5.53 crores, i.e. more than 7 times the amount of share capital received. All these facts clearly established beyond doubt that the creditworthiness of Fabrika Industries (India) Ltd. for advancing Rs.35 lacs could not be established and hence the addition of Rs.35 lacs made by the AO on this account is thus upheld.

- (e) *Shivalik Myco Foods & Industries Ltd. 2822, Gali No.-18, Circular Road, Kailash Nagar, Delhi-31 :-*

The appellant submitted copy of ITR, Bank Statement, Auditors' Report, Balance, Sheet, Board Resolution and PAN Card. However, on account of appellant's inability to produce Director/Principal Officer of the said Co. and Inspector's Report that the Co. could not be located at the address given i.e. Gali No. 18, Circular Road, Kailash Nagar, Delhi, I hold that the identity of the Co. is not established. Hence, the addition of Rs.25 lacs made by the AO on account of capital contribution by the said Co. is hereby upheld.

- (f) *Nakoda Ji Buildwell Ltd. H-23, Vikas Marg, Laxmi Nagar, Delhi-110092.*

The appellant submitted copy of ITR, Bank Statement, Balance Sheet, Share Application Form, Board Resolution and PAN Card. However, on account of of appellant's inability to produce the Director/Principal Officer of the said Co. before the AO and Inspector's Report as per which the Co. was not locatable at the address mentioned by the appellant i.e., H-23, Vikas Marg, Laxmi Nagar, Delhi, I hold that solely on the basis of neutral documentary evidence, the identity of the share subscriber could not be established. This results in sustaining the addition of Rs.25 lacs made by the AO on account of his alleged capital contribution.

- (g) *S.S. Finvest (India) Pvt. Ltd., F-15, G.K. Bhagat Shopping Complex, Flat No.-4, 1st Floor, Mansarover Garden, New Delh15 :-*

The appellant submitted copy of ITR, Bank Statement, Balance Sheet, Share Application Form, Board Resolution, Memorandum of Association and PAN Card, Shri Naved Ahmed, one of the Directors appeared before the AO and his statement was recorded. As per his statement, S.S. Finvest (India) Pvt. Ltd. had invested an amount of Rs.25 lacs in the appellant company. However, he could not explain the source of such investment, which leads us to an examination of its creditworthiness. As per the return, for Assessment Year 2010-11, S.S. Finvest (India) Pvt. Ltd. had declared a total income of Rs.12,000/- only on gross receipts of Rs.7,90,835/-. It is unimaginable as to how a company with gross receipts of less than 8 lacs would make a capital contribution of Rs.25 lacs to the appellant Co .. Another feature which is prevalent in appellant's Balance Sheet as well as other Balance Sheets of

capital contributors, including the Balance Sheet of S.S. Finvest (India) Pvt. Ltd., was the huge amount of share premium received which was appearing in Reserves and Surplus. Whereas subscribed share capital was only Rs. 5 lacs, share premium received was 6 times the share capital, i.e., Rs.30 lacs. All these facts prove beyond doubt that the creditworthiness of S.S. Finvest (India) Pvt. Ltd. could not be established. Furthermore, serious questions can be raised regarding the genuineness of transaction on the basis of aforesaid facts. The net result is that the addition of Rs.25 lacs made on account of capital contribution of S.S. Finvest (India) Pvt. Ltd. is hereby sustained for failure to pass the 'creditworthiness of subscriber's test.

- (h) *Chinu Press & Parkashan Pvt. Ltd. E-10B, Jawahar Park, Laxmi Nagar, Delhi-110092 :-*

The Co. contributed 25 lacs to the share capital of the appellant. The appellant produced a copy of ITR, Bank Statement, Balance Sheet, Share Application Form, Board Resolution and PAN Card during remand proceedings. In order to establish the identity and locate the; Co., the Inspector attached with the AO was deputed. However, as per his report, the Co. could not be located either at the old address i.e. E-10, Jawahar Park, Laxmi Nagar, Delhi-92 or at the new one given by the appellant i.e. 36.03, First Floor, Chamber No.12, Darya Ganj, Delhi-92. Furthermore, the Director/Principal Officer of the Co. could not be produced despite repeated opportunities. In view of these facts, I hold that the identity of Chinu Press and Ponkashan (P) Ltd. could not be established resulting in upholding of addition of Rs.25 lacs made by the AO.

- (i) *First Hi Fin Ltd., 325, Vishal Tower, District Centre, Janakpuri, New Delhi-58 :-*

The company contributed 28 lacs to the, share capital of the appellant. The appellant submitted copy of Auditors' Report, Balance Sheet, Share Application Money, Board Resolution, Memorandum of Association and PAN Card during appellate/remand proceedings. The Inspector could not locate the Co. either at the old address i.e. 325, Vishal Tower, District Centre, Janakpuri, New Delhi-58 or at the new address i.e. 3rd Floor, Old Rajinder Nagar Market, Delhi-60. In addition, the appellant could not produce the Director/Principal Officer of the Co. Thus, these facts make it evident that the identity of First Hi fin Ltd. could not be established. Thus, on the basis of aforesaid

facts, the addition of Rs.28 lacs made on this account is hereby upheld.

- (j) *Pride Real Tech Pvt. Ltd., 1/411, Gali Rajan Kalan, Mori Gate, Delhi-06 :-*

This Company contributed an amount of Rs. 13 lacs to the share capital of the appellant. During appellate proceedings, the learned counsel gave a number of documents relating to Pride Realtech (P) Ltd. These include Bank Statement, Auditors' Report, Balance Sheet, Share Application For, Memorandum of Association, Board Resolution and PAN Card. The appellant could produce Shri Jasbir Singh Grover, one of the Directors of the Co. When asked about the investment made in the appellant Co, Shri Grover submitted that it had made investment of only Rs.3-4 lacs which is much less than what has been claimed by the appellant company. Furthermore, Bank Account revealed that the day the amount was given by the Co., similar amount of deposits were received. Since the return of income was not submitted, it is presumed that no return of income was filed by it. As is the case with the appellant company and other capital contributor companies, the Company received a huge amount by way of share premium. As against subscribed share capital of Rs. 2 lacs, the share premium figuring under the head 'Reserves & Surplus' is as high as 90 lacs. These facts establish that the creditworthiness could not be established by the appellant. Furthermore, the genuineness of transaction is highly doubtful, in view of the huge premium received by the appellant company from companies which, in turn, also, received huge amounts by way of share premium. The question which may arise in any rational mind is - why a person will pay such a hefty premium for investing in such companies which are non-descript and do not have any great reputation and business to command such a fat premium.

Hence, I hold that the AO rightly made addition of Rs. 13 lacs on account of share contribution by Pride Realtech (P) Ltd.

- (k) *Singh Chander Marketting Pvt. Ltd. S-561/222, Bhagwathi Complex, Shakurpur, New Delhi-110092 :-*

This Company is said to have contributed Rs. 10 lacs to the share capital of the appellant company. During the course of appellate proceedings, the appellant gave a copy of Bank, Statement, Share Application Form, Board Resolution, Memorandum of Association, and PAN Card. Since the Inspector could not locate the Company

at the address given by the appellant and the appellant could not produce the Principal Officer/Director of the Co., I hold that the test of establishment of identity of share subscribers could not be established resulting in sustaining of addition of Rs.10 lacs.

- (l) *Truth Tradex Pvt. Ltd., 1/411, Gali Rajan Kalan, Mori Gate, Delhi-110006 :-*

The Company is said to have contributed an amount of Rs. 7 lacs to the appellant company by way of share capital. The appellant submitted copy of ITR, Bank Statement, Balance Sheet, Auditors Report, Share Application Form, Board Resolution, Memorandum of Association and PAN Card during the course of remand proceedings. The appellant could also produce Shri Kuldeep Thakur, one of the Directors of the Co. who confirmed having made investment but could not substantiate the source of such investment. Since the appellant satisfied the 'identity' test, it was examined whether the creditworthiness of share subscribed could be established. For that purpose, the return of income was perused as per which the appellant had declared an income of Rs.8000 only during the year under consideration. No details of inventories/stock were provided by the Co. Another feature running through all the balance sheets examined, i.e. the huge share premium received by various companies was also evident here. All these facts lead to the conclusion that creditworthiness of share subscriber and genuineness of transaction could not be established. Hence, the addition was rightly made by the AO.

- (m) *Vardhaman Sales Pvt. Ltd., A-64, Temple Colony, Samaypur, Delhi-110042 :-*

As per the appellant, the company contributed Rs. 25 lacs to the share capital of the appellant. In this case, even the confirmation could not be received from the company as letter sent to the company came back un-delivered. Apart from this, the appellant could not produce any evidence to substantiate the identity and creditworthiness of the said company. Hence, on account of failure of tests laid down in Section 68, the addition of Rs. 25 lacs made on account of capital contribution by Vardhman Sales (P) Ltd. is hereby confirmed.”

8. Rejecting the various submissions made by the assessee and relying on various decisions, the Id. CIT(A) sustained the addition of Rs.2.77 crores in respect of the above 13 companies.

9. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

10. Ld. counsel for the assessee strongly objected to the order of the Id. CIT(A). He submitted that in the following five cases, the directors of the investor companies appeared before the Assessing Officer during the remand proceedings and in their statements recorded have confirmed to have invested the amount in the share of the assessee company :-

<i>Sl. No.</i>	<i>Name of the person</i>	<i>Company</i>
1.	<i>Jasbir Singh Grover</i>	<i>Pride Real Tech (P) Ltd.</i>
2.	<i>Kuldeep Thakur</i>	<i>Truth Tradex (P) Ltd.</i>
3.	<i>Kuldeep Thakur</i>	<i>Fabrika Industries</i>
4.	<i>Naved Ahmad</i>	<i>S.S. Finvest India (P) Ltd.</i>
5.	<i>Raj Kumar</i>	<i>Logitura Solutions (P) Ltd.</i>

11. Referring to the following table, he drew the attention of the Bench to the capital of the investor companies, the details of which are as under :-

<i>Name of investor</i>	<i>Capital of investor company</i>	<i>Total investment</i>
<i>Chahat Estate Agents Pvt. Ltd.</i>	<i>1.18 crores</i>	<i>90.75 lakhs inclusive of present investment</i>
<i>Truth Trade Impex Pvt. Ltd.</i>	<i>1.75 crores</i>	<i>1.37 crores inclusive of present investment</i>
<i>Logitura Solutions Pvt. Ltd.</i>	<i>1.05 crores</i>	<i>84.20 Lakhs inclusive of present investment</i>
<i>Febrica Industries (India) Ltd.</i>	<i>6.41 crores</i>	<i>5.65 crores inclusive of present investment</i>
<i>Shivalik Myco Foods & Industries Ltd.</i>	<i>5 crores</i>	<i>4.26 crores inclusive of present investment</i>

<i>Nakoda Ji Buildwell Ltd.</i>	<i>24.6 crores</i>	<i>16.37 crores inclusive of present investment</i>
<i>S.S. Finvestment (India) Pvt. Ltd.</i>	<i>1.10 crores</i>	<i>1.02 crores inclusive of present investment</i>
<i>Chinu Press & Parkashan Pvt. Ltd.</i>	<i>9.91 crores</i>	<i>8.24 crore inclusive of present investment</i>
<i>First Hi Fin Ltd.</i>	<i>12.25 crores</i>	<i>12.07 crores inclusive of present investment</i>
<i>Pride Real Tech Pvt. Ltd.</i>	<i>1.22 crores</i>	<i>99.3 Laksh inclusive of present investment</i>

12. So far as the other companies/concerns are concerned, he drew the attention of the Bench to their respective balance sheets and submitted that they have adequate capital and free reserves to invest in the shares of the assessee company.

13. He submitted that the assessee has produced all the relevant documents/details during the remand proceedings to establish the identity and creditworthiness of the investor companies and genuineness of the transactions. Therefore, addition could not have been made u/s 68 by the Assessing Officer and sustained by the Id. CIT(A). He submitted that in certain cases where the directors have appeared before the Assessing Officer during the remand proceedings, the Id. CIT(A) sustained the addition on the ground that the return of income filed by the investor companies show very meager income and therefore the company does not have any capacity to invest and in certain cases the directors could not substantiate the source of investment. He submitted that when the Balance Sheets of the respective companies show huge capital and free reserve and the directors have appeared before the Assessing Officer in the

remand proceedings and confirmed to have invested in the shares of the assessee company the Id. CIT(A) without appreciating the facts properly could not have sustained the addition. Referring to various decisions, he submitted that meager income/low income cannot be a ground to doubt the creditworthiness of a company/concern if it has otherwise adequate capital.

14. So far as the remaining companies are concerned, he submitted that full details were filed establishing the identity and creditworthiness of the investor companies and genuineness of the transactions. Merely because the directors of those companies did not appear before the Assessing Officer the same cannot be a ground for making addition. For the above proposition, Id. counsel for the assessee relied on the decision of the Hon'ble Delhi High Court in the case of Victor Electrodes reported in 329 ITR 271 wherein it has been held that non-production of the parties could not be a ground for making addition when all the evidences were filed and no adverse material was brought on record. He also relied on various decisions.

15. Referring to the decision of the Hon'ble Delhi High Court in the case of Kamdhenu Steels reported in 206 Taxman 254, he submitted that the Hon'ble High Court in the said decision has held that merely non-service/appearance before the Assessing Officer does not mean that the money belonged to the company particularly when the entire details were filed and no adverse material was brought on record. The Hon'ble High Court in the above decision has

followed the decision of the Hon'ble Delhi High Court in the case of Oasis Hospitality reported in 333 ITR 119, Lovely Exports (SC), Signature Hotels, Sarthak Securities reported in 329 ITR 110 and Stiff Stock Brokers reported in 325 ITR 285.

16. Referring to the decision of the Delhi Bench of the Tribunal in the case of ACIT vs. Ajnara India Ltd. reported in 19 taxmann.com 95 in ITA No.3612/2010, he submitted that the Tribunal in the said decision has held that where assessee company has produced PAN or ITRs of all share applicants and share application money was paid by account payee cheque, no addition could be made in the hands of the assessee.

17. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Creative World Telefilms Ltd., he submitted that the Hon'ble High Court in the said decision has held that the Assessing Officer should have found out details of shareholder through PAN Cards, Bank Account, etc. so as to reach them because all relevant details and particulars were given by assessee to Assessing Officer. Referring to the above decision, he submitted that in that case, assessee has received share application money from shareholders. The assessee had provided the details of the name and address of the shareholders, their PAN, GIR numbers, cheque number, name of the bank. The Assessing Officer did nothing except issue summons which were returned with the remark 'not traceable'. The Assessing Officer ought to have found out their details

through PAN cards, Bank Account details or from the banker so as to reach the shareholder since all the relevant material details and particulars were given by the assessee to the Assessing Officer. The appeal filed by the Revenue was accordingly dismissed.

18. Referring to the decision of the Hon'ble Delhi High Court in the case of Dwarkadheesh Investment reported in 330 ITR 298, he submitted that the Hon'ble High Court in the said decision has held that if the company establishes the identity of the subscriber, then burden shifts to the Department unless and until any evidence to show that funding was done by the company.

18.1 Referring to the decision of the Hon'ble Bombay High Court in the case of Pr.CIT vs. Paradise in land shipping Pvt. Ltd. vide order dated 30.11.2017, he submitted that the Hon'ble High Court in the said decision, following the decision of the Hon'ble Supreme Court in the case Orissa Corporation reported in 159 ITR 78, held that share capital cannot be treated as bogus. Referring to the decision of the Hon'ble Delhi High Court in the case of N.C. Cables reported in 391 ITR 11, he submitted that the Hon'ble High Court in the said decision has upheld the decision of the Delhi Bench of the Tribunal wherein the Tribunal has held if entire details were filed no addition can be made u/s 68 of the I.T. Act. He accordingly submitted that when the assessee had filed all the necessary details, addition could not have been made. He submitted that at the assessment stage various details were filed before the Assessing Officer on the

basis of which notices u/s 133(6) were issued. Out of 15 companies, 6 were returned unserved. The assessee filed the remaining details along with certain additional evidences before the Id. CIT(A) who admitted such additional evidences and called for a remand report from the Assessing Officer. During the remand proceedings, the assessee produced the directors of some of these companies whose statements were recorded. They have categorically stated that they have made investment in the assessee company. The remaining directors could not appear because of their health or personal problem. He submitted that despite request to the Assessing Officer to issue summons u/s 131, no such summons were issued. However, the assessee filed their affidavits which are enclosed in the Paper Book. He submitted that the lower authorities have not brought on record any adverse material contrary to the evidences filed at any stage. Ld. CIT(A) misinterpreted the financial statements of the investor companies and sustained the addition on account of investment made by the companies which is not proper. He accordingly submitted that the addition sustained by the Id. CIT(A) should be fully deleted.

19. Referring to the decision of the Delhi High Court in the case of Rock Fort Metal & Minerals Ltd. reported in (2011) 198 Taxman 497, he submitted that the Hon'ble High Court in the said decision has held that where the appellant company submitted list of all the shareholders giving full name, addresses, details of payment made by cheque (cheque No., and name of bank also),

confirmations from all the shareholders giving complete particulars in the form of address, cheque numbers and the name of bank , PAN and place of assessment, copies of bank statements showing deposit of all these receipts, the assessee had discharged its primary onus as per law of proving the identity of all the shareholders. It was for the AO to put forth some adverse material in case he was not satisfied with the claim of the assessee. The AO should have brought such material on top of the table with an opportunity of rebuttal and/ or cross examination to the opposite party. The Court relied on the ruling in Lovely Exports case (SC).

20. Referring to the decision of Jaipur Bench of the Tribunal in the case of Bharti Syntex Ltd. vs. DCIT reported in (2011) 137 ITJ 82, he submitted that the Jaipur Bench of the Tribunal in the said decision has held that where amounts were received by cheque, the corporate share applicants are assessed to tax, confirmations with copies of share certificates, bank statement, memorandum of articles, copy of share application money, audited balance sheet and P & L a/c are filed, the assessee has discharged its onus .Even if no cross - examination was allowed to the assessee, adverse inference can not be drawn.

21. Referring to the decision of the Hon'ble Delhi High Court in the case of Pr.CIT vs. N.C. Cables reported in 391 ITR 11, he submitted that when the assessee furnishes documents to evidence genuineness of transaction and

identify and creditworthiness of the parties, no addition can be made u/s 68 on account of failure by Assessing Officer to conduct adequate and proper enquiry into materials while invoking the provisions of section 68 of the I.T. Act. He submitted that in the instant case it is neither a case of enquiry nor a case of search but is a regular assessment and the assessee has furnished adequate details evidencing the identity and creditworthiness of the investor companies and the genuineness of the transactions.

22. So far as reliance on the decisions of Nova Promoter (supra) and N.R. Portfolio (supra) are concerned, he submitted that these decisions are not applicable to the facts of the present case and are completely distinguishable as present appeal is not based upon any search, survey or any third party statement or adverse material.

23. Ld. DR on the other hand heavily relied on the order of the ld. CIT(A). He submitted that the assessee in the instant case has miserably failed the ingredients of section 68 i.e. identity and creditworthiness of the investor companies and genuineness of the transactions. He submitted that when the assessee company could not produce the directors of the companies, ld. CIT(A) was fully justified in sustaining the addition by doubting their identity, creditworthiness and genuineness. So far as companies/concerns whose directors were present before the Assessing Officer and their statements were recorded are concerned, he submitted that those directors could not explain the

source of such investments. Further, the companies are having meager income as per the income-tax returns filed. Therefore, Id. CIT(A) was fully justified in sustaining the addition of Rs.2,77,00,000/- out of Rs.3,10,00,000/- made by the Assessing Officer. He also relied on the decision of Nipur Builders reported in 358 ITR 40, Nova Promoter reported in 342 ITR 169 and N.R. Portfolio reported in 204 ITR 45.

24. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and Id. CIT(A) and Paper Book filed on behalf of the assessee. We have also considered the various decisions relied on by both the sides. We find the assessee in the instant case has received share capital of Rs.31,00,000/- share premium of Rs.2,79,00,000/- from 15 companies/concerns, the details of which are already given in the preceding paragraphs. Since the assessee failed to prove before the Assessing Officer regarding the identity and creditworthiness of the share applicants and the genuineness of the transactions, the Assessing Officer, invoking the provisions of section 68 made addition of Rs.3,10,00,000/- to the total income of the assessee. We find the assessee before the Id. CIT(A) filed certain additional evidences, which were admitted by the Id. CIT(A). The Id. CIT(A) called for a remand report from the Assessing Officer. After obtaining the remand report from the Assessing Officer, Id. CIT(A) deleted the share capital and share premium received from Express DSA Services Pvt. Ltd. at Rs.28,00,000/- and

S.K. Fashions at Rs.5,00,000/- and sustained addition of Rs.2,79,00,000/- in the case of remaining 13 companies for which the assessee is in appeal before the Tribunal.

25. So far as the amount deleted by the Id. CIT(A) amounting to Rs.33,00,000/- in respect of the two companies are concerned, the Revenue is not in appeal before the Tribunal. Therefore, we are not concerned with the same.

26. Now, in respect of the 13 companies amounting to Rs.2,79,00,000/- is concerned, in our opinion, the same can be categorized into two parts i.e. where the directors have appeared before the Assessing Officer and whose statements were recorded and the companies where the directors/ Principal Officer did not appear but affidavits filed.

27. We find the director of the following five companies appeared before the Assessing Officer and their statements were recorded.

28. So far as Pride Real Tech Pvt. Ltd. is concerned, we find the assessee had admittedly filed all the evidences and the statement of the directors Shri Jasbir Singh Grover was recorded. From the various details furnished by the assessee, we find the company has paid up capital of Rs.2,00,000/- and share application money pending for allotment at Rs.30,35,000/-. Further, the reserves and surplus and share premium amounting to Rs.90,00,000/- has been shown. Therefore, total source of fund was Rs.1,22,35,000/- out of which company

invested Rs.13 lakhs in the shares of the assessee company. We, therefore, hold that the assessee has discharged his onus regarding the identity, creditworthiness and genuineness of the transactions. The amount invested by Pride Real Tech Pvt. Ltd. amounting to Rs.13,00,000/- is therefore accepted.

29. So far as investment of Rs.7,00,000/- by Truth Tradex is concerned, we find the assessee had filed all the details before the Assessing Officer and the statement of the director of the assessee company was recorded. We find the Id. CIT(A) sustained the addition on the ground that the director could not substantiate the source of such investment and the assessee has shown meager income. A perusal of the Balance Sheet of the assessee shows that the investor company has paid up share capital of Rs.2,00,000/- and share application money pending allotment of Rs.75,50,000/-. Similarly, assessee has shown an amount of Rs.90,00,000/- under the head reserves or surplus. Thus, the total share capital and share premium through reserves amounting to Rs.1,67,50,000/-. Therefore, when the assessee had sufficient share capital and share premium through reserves in its Balance Sheet, merely because the company has shown meager income, the same cannot be a ground to disbelieve the capacity to invest an amount of Rs.7,00,000/- in the assessee company. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to allow the investment of Rs.7,00,000/- by Truth Tradex (P) Ltd..

30. So far as Fabrika Industries is concerned, we find the assessee had filed the relevant documents and the director of the said company appeared before the Assessing Officer and confirmed to have made the investment. However, the Id. CIT(A) rejected the claim of the assessee on the ground that such director could not explain the source of investment. A perusal of the Balance Sheet of the above company, copy of which is placed at page 117 and 119 of the Paper Book shows that the share capital, share premium and reserves and surplus show an amount of Rs.1.42 crores which was standing at Rs.1.14 crores at the beginning of the year. Therefore, the investor company has sufficient funds to investment in the assessee company. Since the director of assessee company appeared before the Assessing Officer and the relevant details were furnished before the Revenue Department and the company has adequate share capital and free reserves, therefore, the Id. CIT(A), in our opinion, is not justified in rejecting the amount invested by the above company totaling to Rs.30,00,000/-. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to accept the investment of Rs.30,00,000/- by Fabrika Industries as genuine.

31. So far as amount invested by S.S. Finvest India (P) Ltd. is concerned, we find the director of the assessee company appeared before the Assessing Officer during remand proceedings and confirmed the investment of Rs.25,00,000/-. The Balance Sheet of the assessee company, copy of which is placed at page

168 of the Paper Book, shows that the share capital at Rs.40,00,000/- and share premium under the head reserves and surplus at Rs.30,00,000/- at the beginning of the year which have gone up to 1,10,00,000/- as at the close of the year ending on 31.03.2010. Therefore, merely because the assessee had shown meager income of Rs12,000/- during the year on a gross receipt about 8,00,000/-, the same cannot be a ground to disbelieve the creditworthiness of the above company when the company had sufficient capital and free reserves. The relevant details were filed before the Assessing Officer during the assessment/remand proceedings and the director of the assessee company has appeared before the Assessing Officer. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to accept the investment of Rs.25,00,000/- in the shares of the assessee company.

32. Now coming to the next company i.e. Logitura Solutions (P) Ltd. which has invested Rs.25,00,000/- in the assessee company, we find the relevant documents were filed before the Assessing Officer and director of the assessee company appeared during the remand proceedings. A perusal of the Balance Sheet of the company, copy of which is placed at page 99 of the Paper Book, shows that the share capital and reserves stood at Rs.55,26,240/- at the beginning of the year which has gone up to Rs.1,05,57,140/- at the end of the year. Therefore, merely because the company has declared meager income, the same, in our opinion, cannot be a ground to disbelieve the investment of

Rs.25,00,000/- towards shares in the assessee company. Thus, in view of the above discussion, the investment in the share of the assessee company by the above five companies whose directors appeared before the Assessing Officer and whose statements were recorded and full details were filed substantiating the identity and creditworthiness of the investor companies and the genuineness of the transactions, cannot be doubted merely because companies have meager income or that the directors could not categorically answer the question of the Assessing Officer. The same in our opinion under the facts and circumstances of the case cannot be a ground to disbelieve the investment. Thus, the addition sustained by the Id. CIT(A) in the case of the above five companies amounting to Rs.1,00,00,000/- is deleted.

33. Now coming to the remaining companies are concerned, we find the Id. CIT(A) sustained the addition basically on the ground that although full details were filed however, the Principal Officers of the above companies could not be produced before the Assessing Officer for recording their statements and the companies are showing meager income. As mentioned earlier, income in case of a concern cannot be the basis to disbelieve the creditworthiness if it has otherwise sufficient capital and free reserves. From various details furnished by the assessee, we find although the assessee did not produce the directors of the above companies, however, their affidavits have been filed as mentioned earlier during the remand proceedings. The assessee had filed the copy of allotment of

shares in Form-2, resolution of board of directors, certificate of incorporation, memorandum of association and PAN Card, ITR, bank statement etc to justify their identity and creditworthiness. The copy of filing of Form No.2 showing return of allotment on 25.06.2009 and 31.03.2010 with the Ministry of Company Affairs was also filed before the Assessing Officer. The assessee has filed affidavits in the case of following companies which have not been proved to be false or untrue :-

1. *Chinu Press and Prakashan Pvt. Ltd.*
2. *Amarsaria Impex Ltd.*
3. *Shivalik Myco Food and Industries Ltd.*
4. *Nakoda Ji Buildwell Ltd.*
5. *Singh Chander Marketing Pvt. Ltd.*
6. *Vardman Sales Pvt. Ltd.*
7. *First Hi Fin Ltd.*

34. From the submissions made by the assessee, we find the Assessing Officer did not issue summons u/s 131 despite clearly being asked by the company at the very initial stage and only notices u/s 133(6) were issued to the investing companies which were complied by some of these companies. It is the submission of the ld. counsel for the assessee that mere non-production of the director could not be a ground for making addition when all the evidences were filed and if there is no allegation/adverse material brought on record contrary to evidences filed. Since in the instant case admittedly the Assessing Officer has not conducted the preliminarily enquiry such as verification of the PAN Number from the data bank of the Department and not verified from the

website of the Ministry of Corporate Affairs which he should have done in this case at the initial stage and since the Id. CIT(A) has wrongly interpreted the financials of the investor companies, therefore, considering the totality of the facts of the case and in the interest of justice, we restore the issue to the file of the Assessing Officer with a direction to verify the various documents filed before him and decide the issue in the light of our above observation. While doing so, he should keep in mind the decision of the Hon'ble Delhi High Court in the case of Victor Electrode (supra).

35. In the result, the appeal filed by the assessee is allowed for statistical purposes in the terms indicated above.

Order pronounced in the open Court on this 28th day of February, 2018.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 28-02-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi