

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 232/Kol/2021
Assessment Year : 2009-10

ITO, Ward-12(1), Kolkata	Vs.	M/s Sitka Mercantile (PAN: AAMCS 2258 P)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	17.10.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	10.11.2022
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)5, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 14.09.2020 for the AY 2009-10.

2. Condonation petition not filed.

3. The only issue raised in the various grounds of appeal is against the deletion of addition of Rs. 11,07,50,000/- as made by the AO on account of unexplained share capital and share premium.

4. Facts in brief are that the assessee filed return of income on 18.07.2009 u/s 139(1) of the Act declaring total income of Rs. 8,734/-. The return filed by the assessee was processed u/s 143(1) of the Act. Thereafter the case of the assessee was reopened by issuing notice u/s 148 of the Act dated 06.06.2011 stating that the income of the assessee has escaped assessment. Thereafter during the course of reassessment proceedings, the AO called for various details/evidences substantiating/corroborating share application money received from share applicants thereby establishing identity and creditworthiness of the investors and genuineness of the transactions. During the course of reassessment proceedings, the AO even made an independent enquiry from some share holders by issuing notices u/s 133(6) of the Act which were duly served and responded by the said shareholders by filing the requisite documents and evidences comprising of copies of bank statements, audited financial statements, ITRs etc. and the AO after examining the details filed by the assessee as well as by the share applicants framed the assessment u/s 147/143(3) dated 30.09.2011 assessing the income at Rs. 31,207/-.

5. Thereafter the PCIT upon perusal of the assessment records exercised the revisionary jurisdiction and issued show cause notice dated 05.02.2014 u/s 263 of the Act as to why the order passed u/s 147/143(3) should not be treated as erroneous and prejudicial to the interest of the revenue on the ground that the AO has failed to conduct the requisite enquiry for proving identity and creditworthiness of the share holders and genuineness of the transactions. Finally the PCIT revised the assessment order dated 10.03.2014 by directing the AO to frame the assessee after conducting the necessary enquiry. The said order was not challenged before the Tribunal.

6. In the set aside assessment proceedings, the AO issued notice u/s 142(1) of the Act dated 22.05.2014 calling upon the assessee to furnish details/evidences in respect of share subscription money received during the year. The assessee complied with the said notice by furnishing the details in respect of 15 share applicants comprising the details of shares allotted along with names and addresses of the allottees, copies of

ITRs, confirmations from the investors, payments having been received by cheques and bank accounts of investors. The AO in order to independently verify these transactions has issued notices u/s 133(6) of the Act to all the 15 share applicants out of whom only 8 shareholders responded to the said notices and the remaining 7 was returned unserved. Thereafter the assessee again furnished the correct addresses of the share applicants and notices u/s 133(6) of the Act were duly served and were duly responded by the shareholders. The share applicants proved the source of investment and even source of source was proved with documentary evidences. The AO also issued summons to the directors of the assessee company and in compliance with the said summon Shri Arvind Agarwal, the director of the assessee company personally appeared and deposed on oath and also furnished the necessary documents which were required to be furnished in terms of summons issued u/s 131 of the Act. Despite that the AO was not convinced and satisfied with the explanation of the assessee and made the addition on the ground that the share premium charged by the applicant was bogus and the director of the assessee company has failed to produce the shareholders and justify the reasons for issuing shares at a high premium and thus made the addition of Rs. 11,07,50,000/- to the income of the assessee as unexplained cash credit u/s 68 of the Act.

7. Aggrieved assessee challenged the assessment order before the Ld. CIT(A) who after appreciating the facts on record and taking into account the submissions of the assessee directed the AO to delete the addition by discussing each and every share applicant at length in the appellate order. For the sake of ready reference the operative part is reproduced as under:

5. Observations, Findings and Decision

5.1. I have carefully considered the submissions made by the Ld. AR of the appellant and the findings recorded by the Ld. AO in the impugned order. I have also perused the documents furnished in the paper book on which the Ld. AR of the appellant relied in his submissions as also the decisions cited by him in support of the grounds taken in the appeal. From the facts on record it is noted that the original return of income filed by the appellant for AY 2008-09 was originally processed u/s 143(1) of the Act. The assessment of the appellant was thereafter reopened u/s 148 of the Act. In the reassessment proceedings the AO had verified the share

application monies received by the appellant on test check basis. Being satisfied with the material available on record, the AO framed the assessment u/s 147/143(3) on 30.09.2011 at total income of Rs.31,270/-. In this reassessment order, no adverse inference was drawn against the share subscription monies received by the appellant during the relevant year. The Ld. Commissioner of Income-tax-2, Kolkata passed an order u/s 263 dated 10.03.2014 wherein the reassessment order dated 30.09.2011 passed by the AO was held to be erroneous and prejudicial to the interests of the Revenue for not making proper & sufficient enquiries into the share capital raised by the appellant during the relevant year. The Ld. CIT accordingly set aside the assessment to be framed de-novo with the following directions:

“(i) Examine the genuineness and sources of share capital, not on a test check basis, but in respect of each and every shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period should be examined in the course of verification to find out the money trail of the share capital.

(ii) Further, the AO should examine the directors as well as examine the circumstances which necessitated the change in directorship if applicable. He should examine them on oath to verify their credentials as director and reach a logical conclusion regarding the controlling interest.

(iii) the AO is directed to examine the source of realization from the liquidation of assets shown in the balance sheet after the change of Directors, if any.”)

5.2 From the assessment order, I find that the Ld. AO had conducted enquiries in accordance with the directions issued by the Ld. CIT. The AO had made independent enquiries from each and every shareholder under Section 133(6) of the Act. The bank statements of the appellant were also called for and the corresponding bank statements of share subscribers were also verified. It is noted that the Ld. AO had also undertaken verification of money trail and therefore requisitioned the source of source of funds from the shareholders, which was also furnished by them. The Director of the appellant was also examined on oath u/s 131 of the Act and his credentials were verified. Further, since none of the assets of the appellant were liquidated during the relevant year, the last direction issued by the Ld. CIT was rendered inapplicable in the given facts of the present case.

5.3 I find that the AO has not disputed the fact that each of the share subscribers had submitted the documentary evidences in support of the share subscription amounts received by them, in the course of independent enquiries conducted u/s 133(6) of the Act. It is also not the AO's case that the assessee had failed to furnish any documents in support of the subscription amounts received from the fifteen corporate entities. In order to verify the genuineness of the assessee's share transactions; summons u/s 131 of the Act were issued to the Director of the appellant. According to AO, although the Director of the appellant attended the summons and he was deposed under oath but he failed to produce the Directors of the share subscribing entities. The AO therefore held that the high premium charged by the assessee from the shareholders remained unexplained, for which he assessed the entire share capital of Rs.11,07,50,000/- raised by the appellant during the FY 2008-09 by way of its unexplained cash credit u/s 68 of the Act.

5.4 On the above facts therefore the question is whether the addition u/s 68 made in the impugned order was validly made. It is noted that the issue with regard to addition u/s 68 in respect of share subscription amounts received has engaged attention of judicial authorities for quite some time. The jurisdictional High Court as also various Other High Courts have taken a consistent view that where a company has received subscription to its share capital

then the primary onus is on the assessee to prove the identity and creditworthiness of the share subscribers and also prove the genuineness of the transactions. The Courts have further held that once the assessee proves the identity of the subscriber and the assessee also proves that there was genuine issuance of shares as per the provisions of the Companies Act, 1956 then the assessee is not required to prove anything more.

5.5 *In the appellant's case it is noted that all fifteen share subscribers in respect of whom addition u/s 68 was made were corporate assesses. The assessee had furnished the complete corporate information regarding these fifteen share subscribers. Based on the information gathered from the appellant, the AO made independent enquiries u/s 133(6) from each and every shareholder. On perusal of the contents of the notice issued u/s 133(6) to these fifteen shareholders, it is noted that the AO had called for the following information / details to verify their identity, creditworthiness and the genuineness of the transactions.*

1. Nature & purpose of transaction and copy of the ledger accounts of the above mentioned assessee as it appears in the books of accounts for the period from 01.04.2009 to 31.03.2010 i.e. FY 2008-09 relevant to AY 2009-10. was served and duly complied by the shareholder company, copy of which is provided at Pages 116-147 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 119 to 130 of the Paperbook, evidencing investment made in appellant company. Bank statement were also provided (enclosed at Page 118 of Paperbook), evidencing that funds were transferred to the appellant company on 29.01.2009, 30.01.2009 & 02.02.2009, through proper banking channels. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Star Vincom Pvt. Ltd., and provided the Financial Statements, Bank Statement and IT Acknowledgement of the said source-payer company. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(c) In the case of Eastern Dealcom Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AABCE9869R. It has invested sum of Rs. 97,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 16.31 crores) which is at Page No. 158 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 148-180 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 163 to 164 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 152 of Paperbook), evidencing that funds were transferred to the appellant company on 23.01.2008, through proper banking channels. Copy of the share application form along with allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds,, viz., share application money received from Swift Tracom (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement of the source-payers was also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(d) In the case of Ekta Tracom Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AABCE9870A. It has invested sum of Rs. 96,50,000/- in the

appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 14.21 crores) which is at Page No. 193 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 181-216 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 188 to 199 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 187 of Paperbook), evidencing that funds were transferred to the appellant company on 11.09.2008 & 22.09.2008, through proper banking channels. Copy of the share application form along with allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds,

2. *No. of shares applied for and allotted during the year along with payment of share premium with documents.*
3. *Source(s) of funds of payment of share application money along with the copy of Bank Statements reflecting such transactions and such transactions and also relevant documents.*
4. *Copy of the Income Tax Return acknowledgement along with the Audited Balance Sheet showing shares held in your company or the period from 01.04.2009 to 31.03.2010 i.e. FY 2008-09 relevant to AY 2009-10.*
5. *Your PAN/ IT File Number/ Proof of Identity, with document of credit worthiness/genuineness*
6. *Loan confirmation, if any, with documents, TDS certificate etc.*

5.6 It is noted that each of the share subscribers totaling fifteen, had furnished the information and documents as requisitioned by the Ld. AO. Copies of the relevant replies furnished by the shareholders have been placed by the appellant at Pages 63 to 705 of the paper book. I have examined the relevant facts furnished by each share subscribers which throws light as to their identity^ creditworthiness and genuineness of the transactions. Each of the share subscribers has thus been separately discussed below:

(a) In the case of Allied Vintrade Pvt Ltd., it is noted that the share applicant is assessed under the PAN AAHCA2813M. It has invested a sum of Rs. 85,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.04 crores) which is at Page No. 72 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 63-115 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 67 to 80 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 66 of Paperbook), evidencing that funds were transferred to the appellant company on 20.10.2008, through proper banking channels. Copy of the share application form along with allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Star Vincom (P)

Ltd. and the advance received from Vipul Hospitality Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement for each of the source-payers were also provided. The AO' has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(b) In the case of Ancient Commotrade Pvt Ltd., it is noted that the share applicant is assessed under the PAN AAHCAi138P.It has invested a sum of Rs. 84,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs.5.80 crores) which is at Page No. 126 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company,viz., share application money received from Star Vincom (P) Ltd. along with its the Financial Statements, Bank Statement and IT Acknowledgement, in support thereof. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(e) In the case of Key Dealers Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AABCK0799C. It has invested sum of Rs. 90,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 50.11 crores) which is at Page No. 226 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 217-254 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 221 to 238 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 220 of Paperbook), evidencing that funds were transferred to the appellant company on 13.02.2009, through proper banking channels. Copy of the share application form along with allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., sale of investments to Jazz Commotrade (P) Ltd. along with its the Financial Statements, Bank Statement and IT Acknowledgement, in support thereof. The AG has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(f) In the case of Naman Merchants Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AACCN7838E. It has invested sum of Rs. 45,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 11.75 crores) which is at Page No. 267 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 255-289 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 261 to 273 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 260 of Paperbook), evidencing that funds were transferred to the appellant company on 18.09.2008 & 19.09.2008, through proper banking channels. Copy of the share application form was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Wonder Vintrade (P) Ltd. In

support thereof, the Financial Statements, Bank Statement and IT Acknowledgement of the source-payers was also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(g) In the case of Nortel Commodial Pvt. Ltd., it is noted that the share applicant bearing PAN AACCN7839F, has invested a sum of Rs. 89,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.62 crores) which is at Page No. 302 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 290-342 of the Paperbook. In the said reply, the shareholder company, furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 297-310 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 295-296 of Paperbook), evidencing that funds were transferred to the appellant company on 27.09.2008, 29.09.2008 & 03.02.2009, through proper banking channels. Copy of the share application form was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application monies received from Link Commodial (P) Ltd. and Prime Tradelink (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement for each of the source-payers were also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(h) In the case of Prime Tradelink Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AAACP7498N. It has invested sum of Rs. 31,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 15.54 crores) which is at Page No. 352 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 343-377 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 347 to 360 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 346 of Paperbook), evidencing that funds were transferred to the appellant company on 11.02.2009, through proper banking channels. Copy of the share application form was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Simplex Commotrade (P) Ltd. along with its the Financial Statements, Bank Statement and IT Acknowledgement, in support thereof. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(i) Quest Vincom Pvt. Ltd., is assessed under the PAN AAACQ1790Q. It has invested sum of Rs.50,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 12.73 crores) which is at Page No. 387 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 378-413 of the Paperbook. In the said reply, the shareholder company furnished copies of IT

Acknowledgement and audited financials, enclosed at Pages 382 to 395 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, corresponding bank statements were submitted (enclosed at Page 381 of Paperbook), evidencing that funds were transferred to the appellant company on 14.11.2008, through proper banking channels. Copy of the share application form was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Link Commodial (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement of the source-payer was also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(j) In the case of Rosemary Commercial Pvt Ltd., it is noted that the share applicant is assessed under the PAN AAECR1849K. It has invested a sum of Rs. 40,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs. 8.99 crores) which is at Page No. 425 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 414-462 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 420 to 431 of the Paperbook, evidencing the investments made in appellant company. Bank statement were also provided (enclosed at Page 419 of Paperbook), evidencing that funds were transferred to the appellant company on 19.01.2009, 20.01.2009 & 02.02.2009, through proper banking channels. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Prime Tradelink Pvt. Ltd., and Wonder Vintrade Pvt. Ltd. along with the Financial Statements, Bank Statement and IT Acknowledgement of the said source-payer companies. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(k) In the case of Simplex Commotrade Pvt. Ltd., it is noted that the share applicant is assessed under PAN AAMCS3520J. It has invested a sum of Rs. 91,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.43 crores) which is at Page No. 474 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 463-515 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 469-482 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 467-468 of Paperbook), evidencing that funds were transferred to the appellant company on 16.10.2008 & 30.03.2009, through proper banking channels. Copy of the share application form and allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application monies received from Wise Commodial (P) Ltd. and Lifeline Projects (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement for each of the source-payers were also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(l) In the case of Star Vincom Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AAMCS3520J. It has invested sum of Rs. 85,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.07 crores) which is at Page No. 525 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 516-552 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 520-533 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 519 of Paperbook), evidencing that funds were transferred to the appellant company on 23.02.2009, through proper banking channels. Copy of the share application form along with allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Key Dealers (P) Ltd. along with its the Financial Statements, Bank Statement and IT Acknowledgement, in support thereof. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(m) In the case of Techno Commodeal Pvt. Ltd., it is noted that the share applicant is assessed under PAN AAICS8900L. It has invested a sum of Rs. 81,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.58 crores) which is at Page No.564 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 553-621 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 559-570 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and corresponding bank statement were submitted (enclosed at Page 558 of Paperbook), evidencing that funds were transferred to the appellant company on 18.09.2008 & 19.02.2009, through proper banking channels. Copy of the share application form and allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., (i) share application monies received from Wonder Vintrade (P) Ltd., Priya Goods (P) Ltd. and Linden Trademark (P) Ltd. and (ii) loans and advances from Jai Dadi Ki Transport Corporation. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement for each of the source-payers were also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(n) In the case of Trinity Commotrade Pvt. Ltd., it is noted that the share applicant is assessed under PAN AACCT9520F. It has invested a sum of Rs. 1,10,00,000/- in the shares of the appellant company during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 11.77 crores) which is at Page No.635 of the Paperbook. The notice issued u/s 133(6) by the AO on the shareholder company, was served and duly complied by the shareholder company, copy of which is provided at Pages 622-672 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 630-641 of the Paperbook, evidencing investment made in appellant company. Further, copies of relevant and

corresponding bank statement were submitted (enclosed at Page 629 of Paperbook), evidencing that funds were transferred to the appellant company on various dates, through proper banking channels. Copy of the share application form and allotment advice was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application monies received from Quest Vincom (P) Ltd. and Link Commodeal (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement for each of the source-payers were also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the Act.

(0) In the case of Wise Commodeal Pvt. Ltd., it is noted that the share applicant is assessed under the PAN AAACW7923R. It has invested sum of Rs.33,00,000/- in the appellant company's shares during the relevant FY 2008-09. The investments made are supported by the shareholder company's net worth (Rs 10.39 crores) which is at Page No. 683 of the Paperbook. The AO issued notice u/s 133(6) on the shareholder company, which was served and duly complied by the shareholder company, copy of which is provided at Pages 673-705 of the Paperbook. In the said reply, the shareholder company furnished copies of IT Acknowledgement and audited financials, enclosed at Pages 678-689 of the Paperbook, along with investment schedule evidencing investment made in appellant company. Further, corresponding bank statements were submitted (enclosed at Page 677 of Paperbook), evidencing that funds were transferred to the appellant company on 03.02.2009, through proper banking channels. Copy of the share application form was also submitted. The shareholder company has also furnished explanation regarding the source of these funds, viz., share application money received from Allied Vintrade (P) Ltd. In support thereof, the Financial Statements, Bank Statement and IT Acknowledgement of the source-payer was also provided. The AO has not pointed out any defect in the documents furnished by the shareholder company in response to notice u/s 133(6) of the-Act.

5.7 To sum up the above, it is observed that all the notices u/s 133(6) were served at the respective addresses of each of the fifteen shareholders by registered post. The share subscribers had furnished copies of the PAN and Income-tax Acknowledgments which showed that each of them was regular income-tax assessee who were assessed in their own rights with reference to their audited financial results. These facts established the identity of the share applicants. It is further noted that each of the-share subscriber had furnished copies of the audited accounts for the FY 2008-09. Examination of these accounts revealed that each share subscribing company was having substantial own funds in the form of capital 81 reserves which were several times more than the share subscription amount paid to the appellant. I find that only a fraction of the net owned funds of the respective subscribing companies was invested in assessee's equity shares. The investments made by each of the share subscribers were paid by way of account payee cheques and/or RTGS and there was no prior cash deposit in their bank accounts, in view of the aforesaid facts it can be safely inferred that the assessee had discharged its onus of substantiating the creditworthiness of the shareholders. It is further noted that the investments made by the shareholders were reflected in their respective Investment Schedule forming part of the financial statements. The shareholders had also furnished copies of their share application forms and allotment advices. They had also explained the nature of their respective source of funds. In support thereof, the shareholders had also furnished the relevant documentation in form of bank statements, IT Acknowledgments and financial statements in relation to their source-payers. The Director of the appellant also attended the summons issued u/s '131 and was examined under oath. All

these facts considered cumulatively substantiate the genuineness of the transactions involving subscription of share capital.

5.8 *From the perusal of the assessment order, I find that save &c except making an assertion that the Director of the appellant failed to produce the Director of the shareholders, the AO did not bring on record any substantive material to disprove the documentary evidences which the appellant as well as the share subscribers had placed on AO's record in support of the share subscription transactions. It is noted that in compliance with the Ld. CIT's directions, the AO had personally examined the Director of the appellant and verified his credentials. The AO did not draw any adverse inference against the appellant upon examination of their Director under oath. It is further observed that the AO had not issued summons upon any of the shareholders. I thus find merit in the contention of the Ld. AR that, without issuing summon u/s 131 to any of the shareholders, the AO was wrong to allege that the appellant had evaded attendance of share applicants.*

5.9 *The material available on record shows that the AO had chosen to make independent enquiries from the shareholders u/s 133(6) rather than Section 131 of the Act. The facts and documents furnished by the shareholders supported the AR's contention that the identity of all the fifteen share subscribing companies stood established. Referring to the copies of the bank statements, the AR established that payment of subscription amounts were recorded in the bank statements of the respective companies. The entries in the bank statement proved that the share subscription amount was transacted through banking channel. Besides the entries in the bank statements also substantiated that before payment of share subscription amounts, no cash was deposited in the bank accounts of the subscribing companies. The AR further pointed out that appellant had furnished explanations before the AO with regard to immediate sources from which share subscription amounts were paid. On these facts therefore I find that in terms of Section 106 of the Evidence Act, the creditworthiness of the share subscribers and the genuineness of the transactions could not have been doubted by the AO merely on the ground that share subscribers were not produced by the appellant's Director for AO's verification.*

5.10 *I also find merit in the alternate contention of the Ld. AR that even if the Director of the appellant did not produce the Directors of the share subscribing companies before the AO yet the material documents independently requisitioned by the AO u/s 133(6) were indeed furnished by the share applicants before him. On these facts therefore I find that the appellant had brought on AO's record sufficient documentary evidences which prima facie proved the three ingredients of Section 68, that is to say, the appellant had proved identity & creditworthiness of the sharesubscribers and genuineness of the transactions. Gainful reference may also be made to following observations made the Hon'ble Bombay High Court in the case of CIT Vs Orchid Industries Limited Pvt Ltd (397 ITR136).*

"6. The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep

Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

It is noted that the SLP preferred by the Revenue against the above decision has since been dismissed by the Hon'ble Supreme Court.

5.11 *I find that in the appellant's case, the AO did precious little to bring on record any affirmative evidence which proved that issue of shares was not genuine. On the contrary; the materials on record showed that the assessee had furnished documents requisitioned which established that each company had subscribed to the equity shares of the assessee. The A/R brought to my attention judgments of the Delhi High Court wherein the issue concerning the applicability of Section 68 in the context of receipt of share application monies was judicially considered. The relevant decisions are in the cases of CIT Vs Gangeshwari Metal (P) Ltd in ITA No. 597 of 2012 dated 21.01.2012 and CIT Vs Kamdhenu Steel 81 Alloys Limited (361 ITR 220), CIT Vs Vrindavan Farms (P) Ltd [ITA No. 71 of 2015]. In these decisions the earlier judgment in the case of Nova Promoters & Finlease Pvt Ltd (342 ITR 169) was considered and the Hon'ble Delhi High Court refused to follow the ratio laid down in the earlier judgment. On the contrary the Hon'ble Delhi High Court took note of the fact that in the later cases each share applicant was regularly assessed to tax, having independent PAN. The shareholders had accepted their transactions with the assessee company. The High Court further found that in each case the share subscription amounts were paid by account payee cheques. Copies of the bank statement were also furnished. The High Court further found that by producing these documents, the assessee had discharged its onus of proving identity and creditworthiness, of the shareholders as also the genuineness of the transactions. On the contrary however, the AO had not conducted any inquiry nor proved any falsity in the documents furnished. The High Court therefore held the addition u/s 68 to be unsustainable.*

5.12 *Apart from these judgments of the Delhi High Court, the A/R also placed before me the following decisions of other High Courts where the unanimous View was that no addition u/s 68 in respect of share application money is permissible once the assessee shows that there was genuine issuance of the equity shares.*

-CIT Vs Vacmet Packaging (India) Pvt Ltd (367 ITR 217) (Allah HC)

- CIT Vs Pranav Foundation. Ltd (22:8 Taxman 58) (Mad HC)

-CIT Vs Supertech Diamond Tools Pvt Ltd (229 Taxman 62) (Raj HC)

-CIT Vs Victory Spinning Mills Ltd (50 taxmanh.com 416) (Mad HC)

5.13 *I further find that the Hon'ble Jurisdictional High Court in the case of CIT vs Roseberry Mercantile (P) Ltd in ITAT No. 241 of 2010 dated 10.1.2011 had held as under:-*

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

It appears from the record that in the assessment proceedings it was noticed that the assessee company during the year under consideration had brought Rs. 4,00,000/-

and Rs.20,00,000/- towards share capital and share premium respectively amounting to Rs.24,00, 000/- from four shareholders being private limited companies. The Assessing Officer on his part called for the details from the assessee and also from the share applicants and analyzed the facts and ultimately observed certain abnormal features, which were mentioned in the assessment order. The Assessing Officer, therefore, concluded that nature and source of such money was questionable and evidence produced was unsatisfactory. Consequently, the Assessing Officer invoked the provisions under Section 68/69 of the Income Tax Act and made addition of Rs.24,00,000/-.

On appeal the Learned CIT (A) by following the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd., reported in (2008) 216 CTR 195 allowed the appeal by holding -that share capital premium of Rs. 24,00,000/ received from the investors was not liable to be treated under Section 68 as unexplained credits and it should not be taxed in the hands of the appellant company.

As indicated earlier, the Tribunal below dismissed the appeal filed by the Revenue.

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed."

5.14 As far as the judgment of the Hon'ble Apex Court in the case of Principal CIT vs. NRA Iron 81 Steel (P) Ltd (412 ITR 161) is concerned, wherein the decision on addition made towards cash credit was rendered in favour of the revenue, it is noted that the said decision is factually distinguishable. Upon going through the facts involved in that judgment, it is noted that, in the decided case the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent, which is certainly not the case before the undersigned. In the decided case, certain investor companies failed to produce their bank statements proving the source for making investments in assessee-company. In the facts of the present case however not only have the shareholders furnished their bank statements and investment schedules to establish the source of funds but they have also furnished their respective sources of funds in response to notices issued by the AO u/s 133(6) of the Act. This factual distinction was noted and approved in the following judgments wherein the judicial forums deleted the addition of share application monies made by the AO u/s 68 of the Act.

(i) Pr. CIT Vs Ami Industries India Ltd (271 Taxman 75) [Bom HC]

"18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that non-responding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and credit-worthiness of the creditors were available, without any infirmity in such evidence and the explanation

required under section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:—

- (a) PAN number of the companies;
- (b) Copies of Income-tax return filed by these three companies for assessment year 2010-11;
- (c) Confirmation Letter in respect of share application money paid by them; and
- (d) Copy of Bank Statement through which cheques were issued.

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In *NRA Iron & Steel (P.) Ltd. (supra)*, the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

23. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.'

(ii) *Baba Bhootnath Trade & Commerce Ltd (ITA No. 1914/KOI/2017) dated 01.04.2019 [ITAT Kolkata]*

"6.17. Finally the Id DR placed reliance on the recent decision of the Hon'ble Apex Court in the case of *Principal CIT vs. NRA Iron & Steel (P) Ltd* reported in 103 taxmann.com 48 (SC) wherein the decision on addition made towards cash credit was rendered in favour of the revenue. We have gone through the said judgement and we find in that case, the Id AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before us. Certain investor companies did not produce their bank statements proving the source for making investments in assessee company, which is not the case before us. Source

of funds were never established by the investor companies in the case before the Hon'ble Apex Court, whereas in the instant case, the entire details of source of source were duly furnished by all the respective share subscribing companies before the Id AO in response to summons u/s 131 of the Act by complying with the personal appearance of directors. Hence the decision relied upon by the Id DR is factually distinguishable and does not advance the case of the revenue.

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

6.19. *To sum up, section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its income of the previous year in which the same was received. In the facts of the present case, both the nature & source of the share capital received with premium were fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed before the Ld AO."*

5.15 *The AO while making the addition u/s 68 was also influenced by the fact that the assessee had charged high premium from the share subscribing companies. In my view for deciding the issue of application of Section 68 to the receipt of share subscription amounts, all that the assessee was required to prove was the identity & creditworthiness and genuineness of the transactions. Adequacy or inadequacy of share premium charged was not relevant consideration in deciding the application of Section 68 of the Act. In fact I find that the Hon'ble Delhi High Court in its judgment in the case of CIT Vs Anshika Consultants Pvt Ltd (62 taxmann.com 192) considered whether in invoking Section 68 the AO was justified in considering the high premium charged as the relevant factor. In the said decision the High Court held as follows:*

*"Whether the assessee-company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed, the investigation report which was specifically called from the concerned department was available but not discussed by the Assessing Officer. Had he cared to do so, the identity of the investors, the * ' genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the Assessing Officer in the form of balance sheets income-tax returns, PAN details etc. While arriving at the conclusion that he did, the Assessing Officer did not consider it*

worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the Commissioner (Appeals) and the Tribunal, these conclusions were clearly baseless and false."

5.16 *Identical view is noted to have been expressed by the Hon'ble Madhya Pradesh High Court in the case of GT vs. Chain House International (P) Ltd.(98 taxmann.com 47). The relevant findings of the Hon'ble High Court are as follows:*

"52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case."

5.17 *Applying the judicial principles laid down in the above decisions to the appellant's case, I find that the AO had made addition u/s 68 with proper application of mind and incorrect application of the relevant provisions of the Act. In the above judicial decisions, it has been held that before an addition u/s 68 is made, it is necessary for the AO to bring on record irrefutable material or evidence which would prove that there was no valid issuance of the shares and for that reason the assessee had failed to prove identity & creditworthiness of the shareholders and also failed to substantiate genuineness. If these touchstones are applied to the appellant's case then I find that the copies of PAN, income tax acknowledgements and service of notices at their addresses established the identity of all the share subscribers. In the balance sheets of the respective share subscribers the investments in assessee's share were recorded and each subscriber in its balance sheet had disclosed sufficiently large investible funds. The entries in balance sheet also established that apart from investment in shares of appellant, each share subscribing companies had made several other investments. The assessee had also filed copies of the bank statements of the respective share subscribing companies which established that the share subscription amounts were received through banking channel. The sources of making payment were also furnished and the entries in bank statements indicated that there was no deposit of cash prior to clearance of the cheques in assessee's favour.*

5.18. *All these facts and documents considered cumulatively establish that the assessee had discharged the onus of proving creditworthiness of the share subscribers and the genuineness of the transactions. I therefore hold that the AO was not justified in making addition of Rs. 11,07,50,000/- u/s 68 of the Act. The addition is accordingly deleted. Ground nos. 1 to 3 therefore stands allowed."*

8. The Ld. D.R. while relying heavily on the order of AO submitted before the Bench that the assessee had issued shares at a very high premium without any justification therefore and has failed to produce the directors of the investor companies

and therefore the verification required to be done could not be carried out. The Id DR while admitting that the evidences were produced before the authorities below comprising which proved identity of the parties and also the creditworthiness but the genuineness of the transactions remained unsubstantiated. Therefore, the order of Ld. CIT(A) is wrong and deserved to be reversed.

9. The Ld. A.R. on the other hand relied heavily on the appellate order passed by the Id CIT(A) and various case laws referred in the appellate order and took us through each and every details in respect of assessee as well as share investors as filed from page 58 to 705 of PB submitted that the assessee has duly proved identity and creditworthiness of the investors and genuineness of the transactions by filing necessary evidences qua the investors which comprised of share application forms and allotment of shares, bank statements, IT acknowledgments, audited financial statements, explanation qua the source of funds and also filing the details such as copies of bank statements, PAN cards, financial statements of other parties who advanced money to the investors proving the source of source also . The Ld. A.R. submitted that the AO has independently verified these transactions by issuing notices u/s 133(6) of the Act to all the 15 investors who had responded to the said notices and furnished the necessary details /evidences called for by the AO. The Ld. A.R. submitted that all these evidences are available on record and adequately substantiate the investment in share capital and share premium of the assessee. The Ld. A.R. also submitted that even the summons were issued to the director of the assessee company and in compliance to the said summon, Shri Arvind Agarwal director of the assessee company personally appeared before the AO and deposed on oath and furnished all the necessary documents as required by the AO. The Ld. A.R. submitted that the assessee has proved the identity, creditworthiness of the investors and genuineness of the transactions and AO has simply made addition on the ground that the share premium was bogus and very high without any justification and the director of the assessee company failed to produce the directors of the share applicants and thus made the addition without any basis. The Ld. A.R. submitted the issue of equity

shares at a high premium is a management decision taken by the Board of Directors of the assessee company and since these transactions were done in AY 2009-10, therefore the mandate of section as brought by Finance Act, 2012 w.e.f 01.04.2013 by inserting Clause (viib) to Section 56(2) of the Act and therefore the same is applicable for AY 2013-14. The Ld. A.R. therefore submitted that all these were aspects examined in depth and the Ld. CIT(A) after appreciating all the facts and evidences on record qua share applicants and also after considering the various decisions, passed a very reasoned and detailed order and thus allowed the appeal of the assessee. The Ld. A.R finally submitted that the order of Ld. CIT(A) may kindly be upheld by dismissing the appeal of revenue.

10. We have heard the rival submissions and perused the material on record including the appellate order and various documents filed in the paper book from page nos. 58 to 705 comprising share application forms and allotment of shares, bank statements, IT acknowledgments, audited financial statements, explanation qua the source of funds. We observe from the records before us and also from the appellate order that the assessee has furnished all the details/evidences qua the share applicants furnishing the names and addresses, PAN cards, share application forms, share allotment advices, confirmations, audited financial statements and also proof of source of source by furnishing necessary documents of the third parties. We note that even the notices issued u/s 133(6) of the Act were duly complied with by the share applicant and they furnished all the evidences as called for by the AO which proved identity and creditworthiness of the investors and genuineness of the transactions as the source of source was also proved. Even the summons issued to the director of the assessee company was complied with by the personal appearance of Shri Arvind Agarwal before the AO. We also note that all these details were also filed during the reassessment proceedings which were completed by the order dated 30.09.2011 passed u/s 147/143(3) wherein the AO made the addition on the ground that the premium is very high and the assessee has failed to produce directors of the investor companies. In our opinion, the basis of making addition completely devoid of merit

and substance. Not only the assessee has proved the identity and creditworthiness of the investors and genuineness of the transactions by furnishing all the evidences which unequivocally proved all these three ingredients of Section 68 of the Act. Besides the issue of shares at a high premium is a management decision taken by the Board and there is no bar in the instant assessment year to issue shares at a high premium. We are also aware of the fact that the Clause (viib) to Section 56(2) of the Act was brought by Finance Act, 2012. In other words, the provisions qua premium received over and above the fair value is to be assessed and is applicable for AY 2013-14 and is not applicable in the instant year under consideration. We have also perused various decisions relied by the Ld. CIT(A) while allowing the appeal of the assessee which have been extracted hereinabove. The Ld. CIT(A) has discussed the individual details of each investor and recorded a finding that how the three ingredients of section 68 of the Act were satisfied on the strength of evidences filed by the assessee as well as by the investors. Considering these facts, we are of the view that the assessee has proved identity and creditworthiness of the shareholders and also the genuineness of the transactions. Therefore, we do not find any infirmity in the order of Ld. CIT(A) who has passed a very reasoned order by following various decisions as discussed therein and therefore we uphold the same by dismissing the appeal of the revenue.

11. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 10th November, 2022

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 10th November, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-12(1), Kolkata
2. Respondent – M/s Sitka Mercantile, 1st Floor, Unit-10, Gagananchal, 37, Abani Dutta Road, Salkia, Howrah-711106.
3. Ld. CIT(A)-5, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata