आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 267 & 268/RPR/2014
CO Nos. 30 & 31/RPR/2015
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

The Deputy Commissioner of Income Tax,
Central Circle, Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Devi Iron & Power Pvt. Ltd.
Mahamaya Tower, 3rd & 4th Floor,
In front of Anupam Nagar, Near
Varun Honda, G.E. Road, Raipur (C.G.)
PAN : AAECA3704G

……प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.101/RPR/2017
निर्धारण वर्ष / Assessment Year : 2013-14

The Assistant Commissioner of Income Tax (Central)-2,
Raipur (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Devi Iron & Power Pvt. Ltd.
B-08-09, Sector-C, Industrial Area,
Urla, Sarora, Raipur (C.G.)
PAN : AABCD9753D

……प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Shri Debashish Lahiri, CIT-DR

सुनवाई की तारीख / Date of Hearing : 03.01.2023
घोषणा की तारीख / Date of Pronouncement : 30.03.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The captioned appeals filed by the department are directed against the consolidated order passed by the CIT(Appeals), Raipur dated 18.07.2014 which in turn arises from the orders passed by the A.O u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 27.03.2014 for A.Ys. 2011-12 & 2012-13 AND u/s.143(3) of the Act dated 30.03.2016 for A.Y.2013-14. Also the assessee is before us as cross-objector for A.Ys. 2011-12 and 2012-13. As the issues involved in the captioned appeals are inextricably interlinked; or in fact interwoven, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. We shall first take up the appeal filed by the revenue in ITA No.267/RPR/2014 for the assessment year 2011-12 wherein the impugned order has been assailed on the following grounds of appeal before us:

> "1. "On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.4,07,00,000/- made on account of share application/capital received as unexplained cash credits u/s. 68 of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the facts that the creditworthiness and the genuineness of the transactions has not been established by the appellant. There are evidence to the contrary produced by the department which establishes that the investors did not have the income earning apparatus and hence did not have creditworthiness.

3. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the investigation of facts and evidences on record to establish suppression of production by the assessee.

4. On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.6,57,83,016/- made on account of suppression of production based on the lower yield declared by the assessee and hence corresponding unrecorded sale thereof.

5. The CIT (A) has erred in passing the appellate order wherein he has acted in a perverse manner while passing the order which has been made in haste without giving reasonable opportunity to the AO to give his submissions on issues."

3. Succinctly stated, the assessee company which is engaged in the business of manufacturing of sponge Iron had filed its return of income for the assessment year 2011-12 on 26.09.2011, declaring an income of Rs. Nil. Search and seizure proceedings u/s.132 of the Act were conducted at the business premises of various concerns and the residences of the individuals belonging to "Mahamaya Group". The assessee company being a group entity was also covered under the aforesaid search proceedings. Notice u/s.153A of the Act dated 04.05.2012 was issued to the assessee company calling upon it to file its return of income for the aforesaid year under consideration i.e. A.Y. 2011-12. In compliance the assesee company filed its

return of income u/s.153A on 08.08.2012 declaring its income as originally returned at Rs. Nil.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had during the year under consideration received share application money and share premium from a Kolkata based investor company as well as an in-house company, as under:

A.Y.	Name	Amount
2011-12	Antariksh Commerce Pvt. Ltd.	32,00,000/-
2011-12	Escort Finvest Private Limited	37,50,00,000/-

The A.O considering the aforesaid facts called upon the assessee to establish the identity, creditworthiness and genuineness of the transaction of receipt of share application money from the aforementioned parties. In reply, the assessee furnished details as were called for by the A.O. The A.O was, however, not inclined to accept the claim of the assessee that it had raised genuine amount of share application money of Rs.32 lacs and Rs.3.75 crore from M/s. Antariksh Commerce Pvt. Ltd. and M/s. Escort Finvest Pvt. Ltd., respectively. It was observed by the A.O that in the course of search and seizure proceedings the search officials had looked for documents in the form of statutory records of the assessee company, viz. minutes of meeting register, shareholders register, counter foils of issued

share-certificates etc. which were mandatorily required to be maintained at the registered office of the assessee company but neither of those were found. Also, it was observed by him that the persons who were present at the registered office premises of the assesssee company in their statements that were recorded on oath could not provide satisfactory explanation as regards non-availability of the aforesaid documents/registers. Apart from that, it was observed by the A.O that the duly filled in share application forms which were supposed to be received from the share applicants a/w share application money were also not available at the registered office of the assessee company as well as its other premises. The A.O in order to verify the identity, creditworthiness and genuineness of the assessee's claim of having received share application money of Rs.32 lacs and Rs.3.75 crore from M/s. Antariksh Commerce Pvt. Ltd. and M/s. Escort Finvest Pvt. Ltd. respectively, issued notices u/s. 133(6) dated 11.12.2013 to the aforesaid investor companies. Notice u/s.133(6) of the Act that was issued to M/s. Antariksh Commerce Pvt. Ltd. was though returned unserved on 03.01.2014 with an endorsement of the postal authority, viz. "door closed", but thereafter a reply dated 19.03.2014 was received by the A.O from the investor company. As regards the other investor company, viz. M/s. Escort Finvest Pvt. Ltd. the notice u/s.133(6) was duly received and a reply dated 19.03.2014 was received by the A.O from the said investor company. The A.O called upon the assessee to substantiate the identity and creditworthiness of the shareholders as well as the genuineness of the

transaction of receipt of share application money from the aforesaid share applicant companies.

5. The A.O after referring to the balance sheets of the aforesaid share applicants companies concluded, that they did not have the creditworthiness to make investments of substantial amounts with the assessee company. It was further observed by him that the receipt of funds in the garb of share application money by the assessee company from all the shareholders in question was a managed affair in connivance with the said Kolkata based shareholder companies. In order to fortify his aforesaid conviction the A.O had drawn support from the fact that during the course of the search proceeding duly filled in share application forms and counter foils of share certificates which in case of a genuine transaction would invariably have been issued to the shareholders were neither found at the registered office of the assessee company nor from the premises of its group entities. The A.O on the basis of his aforesaid observations called upon the assessee to show cause as to why the amounts received from, viz. (i) M/s. Antariksh Commerce Pvt. Ltd. : Rs. 32 lacs; and (ii) M/s. Escort Finvest Pvt. Ltd : Rs.3.75 crore may not be held as an unexplained cash credit u/s. 68 of the Act. In reply, it was submitted by the assessee that as it had placed on record complete details of the aforesaid share applicants a/w. supporting documentary evidences, viz. name and address, copy of PAN card, certificate of incorporation,

memorandum of association, article of association, audited financial statements, copies of income-tax returns, bank statements (out of which share application money was paid), share application forms and details of payment receipts, therefore, the primary onus that was cast upon it was duly discharged. However, the A.O was not inclined to accept the aforesaid explanation of the assessee. It was observed by the A.O that the aforesaid share applicants did not have its own profit-making apparatus were not involved in any business activities, and, were merely involved in rotating of the money which was channelized through their bank accounts. The A.O, thus, was of the view that the bank accounts of the share applicant companies did neither reveal their creditworthiness nor proved the genuineness of the transactions under consideration. Also the A.O was of the view that the investor companies during the year under consideration were not in receipt of any dividend or interest income. Thus, the A.O by relying on a plethora of judicial pronouncements concluded that the assessee company had failed to establish the identity, creditworthiness and genuineness of the transaction of receipt of share application money from the aforesaid investor companies. It was further observed by him that merely for the reason that payments were received through banking channels would not conclusively prove the genuineness of the transaction and creditworthiness of the share applicants. Also, the A.O was of the view that certificate of incorporation of the companies a/w. the fact that payments were received by the assessee from them through banking channels would not

lead to discharge of the primary onus that was cast upon the assessee company. Accordingly, the A.O on the basis of his generalized observations, inter alia, held the amount of Rs. 4.07 crore that was received by the assessee company from the aforesaid investor companies as unexplained cash credits u/s.68 of the Act. It was further observed by the A.O that a close examination of the affairs of the share applicant companies revealed that those were nothing but investment companies which thereafter had been acquired by assessee's group.

6. Also, the A.O in the course of the assessment proceedings, observed that incriminating material/evidences that had surfaced in the course of search and seizure proceedings revealed unaccounted production by the assessee company and a consequential suppression of its yield. It was further observed by the A.O that the installed capacity and actual production of sponge iron from Iron Ore of the assessee company over the block period was as under:

F.Y	Sponge Iron	
	Installed capacity (in MT)	Actual Production (in MT)
2004-05	30000	3334.00
2005-06	30000	10205.94
2006-07	30000	7161.09
2007-08	30000	11.905.71
2008-09	30000	19211.22

2009-10	90000	35719.11
2010-11	**90000**	**42983.60**

(emphasis supplied by us)

It was observed by the A.O that now when the assessee company had not even been able to achieve 50% capacity utilization of its installed capacity of 30000 MT, then, it was beyond comprehension as to why it would go for further expansion and increase its capacity to 90000 MT and still not achieve production of even 25% of the enhanced installed capacity. The A.O, thereafter, referred to the quantitative production details of the assessee company, as under:

F.Y.	Turnover (In lacs)	Turnover (in MT)	Total Production (in MT)	Total Iron Ore consumed (in MT)	Total power consumed (in Kwh)	Iron Ore per unit of production	Yield%	Power consumed per unit of production (kwh/MT)
2005-06	993.55	9407.955	10205.945	16361.777	1130760	1.603	62.38	110.79
2006-07	1395.91	8111.000	7161.090	12552.437	1464586	1.753	57.05	204.52
2007-08	2233.18	12161.650	11905.710	24618.000	1733240	2.068	48.36	145.58
2008-09	2855.16	19275.940	19211.220	34092.025	2252064	1.775	56.35	117.23
2009-10	5055.75	34627.070	35719.110	59520.02	3026780	1.666	60.01	84.74
2010-11	**7610.07**	**41312.930**	**42983.600**	**77831.978**	**4779000**	**1.811**	**55.23**	**111.18**
Total	20143.62		127186.68	224976.24	1486430			

(emphasis supplied by us)

The A.O holding a conviction that the quantitative production of sponge iron would be proportionate to the consumption of Iron Ore, thus, inter alia, for the year under consideration worked out the month wise details, as under:

Month	Sponge Iron Production (in MT)	Iron Ore	
		Consumption (in MT)	Yield %
April, 10	4,456.500	7,351.520	0.61
May, 10	4,335.220	7,996.860	0.54
June, 10	4,205.820	6,981.240	0.60
July, 10	816.930	1,415.430	0.58
August, 10	1,950.080	3,396.178	0.57
September,10	1,417.000	2,633.140	0.54
October, 10	2,928.260	5,760.500	0.51
November, 10	3,340.850	6,580.730	0.51
December, 10	4,829.520	9,159.770	0.53
January, 11	3,869.350	7,392.010	0.52
February, 11	5,297.000	9,117.640	0.58
March, 11	5,537.070	10,046.960	0.55
	42,983.600	77,831.978	0.55

The A.O observing that no uniform co-relation between the iron ore consumption and sponge iron production could be gathered on the basis of the details as were compiled for the period FY 2006-07 to FY 2010-11, therefore, resorted to year

wise/month wise details of consumption of coal and production of sponge iron which, inter alia, for the year under consideration was as under:

F.Y. 2010-11 :

Month	Production (in MT)	Coal	
		Consumption (in MT)	Consumption of coal per unit of production
April, 10	4,456.500	8,798.210	0.51
May, 10	4,335.220	7,008.670	0.62
June, 10	4,205.820	6,526.400	0.64
July, 10	816.930	1,415.330	0.58
August, 10	1,950.080	3,241.600	0.60
September, 10	1,417.000	2,638.480	0.54
October, 10	2,928.260	6,052.760	0.48
November, 10	3,340.850	6,791.250	0.49
December, 10	4,829.520	8,890.110	0.54
January, 11	3,869.350	7,926.010	0.49
February, 11	5,297.000	8,511.510	0.62
March, 11	5,537.070	9,217.670	0.60
	42,983.600	77,018.000	0.56

Once again, it was observed by the A.O that there was no specific co-relation between the coal consumption and sponge iron production. On the basis of his aforesaid deliberations the A.O concluded that there was a vast variation in

consumption of iron ore per unit of production and consumption of coal per unit of production. On the basis of aforesaid facts, the A.O culled out the highest and lowest consumption of iron ore and coal per unit of production of sponge iron for the block period, as under:

FY	Iron Ore				Coal			
	Highest yield		Lowest yield		Highest coal consumption per unit of production		Lowest coal consumption per unit of production	
	Month	Yield	Month	Yield	Month	Consumption	Month	Consumption
2006-07	June	0.57	May	0.56	Sep	0.72	Nov	0.70
2007-08	Dec	0.52	Mar	0.39	Jan	0.64	Feb	0.61
2008-09	Apr	0.64	Jan	0.41	Jul	0.64	Nov	0.47
2009-10	Mar	0.62	Aug	0.56	Feb	0.74	Sep	0.53
2010-11	Apr	0.61	May	0.54	Jun	0.64	Oct	0.48

It was, thus, observed by the A.O by way of a common reference to all the years before him that consumption of Iron Ore per unit of production was as high as 64% in April, 2008 and as low as 41% in January, 2009. Similarly the consumption of coal was very high in February 2010 i.e. 0.74 and as low as 0.47 in the month of November, 2009. It was observed by the A.O that yield shown in different years under consideration also varied over the years, as under:

Financial Year	Yield of Sponge Iron (in %)

2005-06	62.38
2006-07	57.05
2007-08	48.36
2008-09	56.35
2009-10	60.01
2010-11	55.23

The A.O was of the view that the aforesaid variances suggested that the books of account of the assessee company did not reveal the true and correct picture of its business affairs. Also, the A.O in order to support his conviction that the assessee had suppressed its yield relied on the fact that in the course of search proceedings excess stock of Rs.6,28,24,704/- was found. Considering the aforesaid facts the A.O held the books of account of the assessee as unreliable, and was of the view that the yield of sponge iron could safely be taken as per average yield of 60% that was prevalent in the iron order industry. Accordingly, the A.O by adopting the yield at 60% in the hands of the assessee worked out suppressed yield for the period i.e. FY 2006-07 to F.Y 2011-12, as under:

FY	Total production (MT)	Total Iron Ore consumed (in MT)	Yield (%)	Production with yield of 60% (in MT)	Difference in production in MT	Average rate of sponge iron (in Rs.)	Difference in production (in Rs.)
2006-07	7161.09	12552.44	57.05	7531.46	370.37	19493	7219622.41
2007-08	11905.71	24618	48.36	14770.8	2865.09	18757.228	53741146.38
2008-09	19211.22	34092.03	56.35	20155.22	1244	14861.93917	18488252.33
2010-11	**42983.6**	**77831.98**	**55.23**	**46699.19**	**3715.59**	**17704.59503**	**65783016.24**
2011-12	39275.76	65050.02	60.37	39330.01	(245.75)	21504.00	Nil
				Total	8195.04		14,52,32,037

(emphasis supplied by us)

7. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) found favour with the contentions advanced by the assessee and observed that there was no basis for the A.O to have adopted the yield of sponge iron at 60%. On the basis of the details as regards the yield declared by the other similarly placed assessee's as were made available by the A.O, it was observed by the CIT(Appeals) that there was no uniformity in the yield declared by different assessee's. Also, it was observed by him that the yield of the assessee company was more than the average yield in the iron ore industry. Accordingly, the CIT(Appeals) on the basis of his exhaustive deliberations vacated the adverse inferences and the consequential addition of Rs.6,57,83,016/- made by the A.O towards low/suppressed yield of sponge Iron.

8. As regards the addition that was made by the A.O with respect to the share application money of Rs.4.07 crore that was received by the assessee company from, viz. (i) M/s. Antariksh Commerce Pvt. Ltd. : Rs. 32 lac; and (ii) M/s. Escort Finvest Pvt. Ltd. : Rs.3.75 crore, it was observed by the CIT(Appeals) that though it was alleged by the A.O that during the course of search proceeding the statutory records of the assessee company, viz. minutes of meeting register, shareholders register, counter foils of issued share certificates etc. were not found at the registered office of the assessee company, but a perusal of the statements recorded u/s.132(4) of the Act nowhere revealed that any official of the search

team had in the course of the said proceedings visited the registered office of the assessee company. Also, it was observed by the CIT(Appeals) that the statements of the other persons belonging to the group companies also did not reveal that the assessee company had not maintained any statutory records/registers. It was further observed by the CIT(Appeals) that the A.O had merely on the basis of an unsubstantiated allegation stated that the statutory records of the assessee company in the course of the search proceedings were not found at the registered office premises. The CIT(Appeals) was of the view that it was not the case of the department that the search team had visited the registered office premises of the assessee company and had specifically queried about the statutory records, which the latter, had failed to produce or had expressed its inability to produce or had admitted of not having maintained the same. On the contrary, it was observed by the CIT(Appeals) that Ms. Jaswinder Kaur Mission in her statement recorded u/s.132(4) on 21.06.2011 had specifically shown the members register, share certificates and counter foils of the assessee company to the search officials. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations vacated the adverse inferences that were drawn by the A.O that the assessee had failed to maintain the statutory records at its registered office.

9. Adverting to the amount of Rs.3.75 crore that was claimed by the assessee company to have been received from M/s. Escort Finest Pvt. Ltd., it was observed

by the CIT(Appeals) that the said investor company was assessed u/s.143(3) of the Act by the ITO, Ward-1 (4), Kolkata, wherein the latter after making necessary verifications, had observed, that the said company had share capital and share premium reserves of Rs.5,64,50,200/- and Rs. 44,37,90,000/- on 31.03.2006. It was further observed by the CIT(Appeals) that the ITO, Ward-1(4), Kolkata while framing the assessment in the case of M/s. Escort Finest Pvt. Ltd. had issued notice u/s.133(6) of the Act to its shareholders and, had only after necessary verifications to his satisfaction accepted the genuineness of its share capital and reserves. Considering the audited financial statements of the aforesaid investor company viz. M/s. Escort Finest Pvt. Ltd. and the fact that the said company was assessed u/s.143(3) of the Act for both A.Y.2006-07 & A.Y.2007-08, wherein its share capital and reserves, i.e., net worth was accepted after necessary verifications, the CIT(Appeals) was of the view that now when the assessee had not only explained the source of receipts of share application money but had also explained the source of source by placing on record the assessment orders of the said share subscriber company, thus, no adverse inferences could have been drawn as regards the identity or creditworthiness of the said investor company. Also, the CIT(Appeals) was of the view that as the assessee company was in receipt of investment from the aforesaid investor company vide account payee cheques, therefore, the genuineness of the transaction was therein proved.

10. Apropos the investment of Rs.32 lac made by the other share subscriber company viz. M/s. Antariksh Commerce Pvt. Ltd., it was observed by the CIT(Appeals) that the said company too was earlier assessed u/s.143(3) r.w.s. 147 of the Act. It was further observed by the CIT(Appeals) that the said investor company had as on 31.03.2005 share capital and reserves of Rs.23.62 crores. Considering the audited financial statements of the aforesaid investor company viz. M/s. Antariksh Commerce Pvt. Ltd., and the fact that its substantial amount of share capital and reserves of Rs.23.62 crore (supra) were after necessary verifications accepted by the A.O while framing of assessment in its case, the CIT(Appeals) was of the view that no adverse inferences as regards the identity and creditworthiness of the said share subscriber company could have been drawn. It was further observed by the CIT(Appeals) that the assessee company as regards the investment made by the aforesaid investor company viz. M/s. Antariksh Commerce Pvt. Ltd. had not only established the source of receipt of the share application money but had in fact, also explained the source of source by placing on record the assessment order of the said share subscriber company. Also, the CIT(Appeals) was of the view that as the aforesaid share subscriber company had made investment with the assessee company vide account payee cheques, thus, the same evidenced the genuineness of the said transaction.

11. Alternatively it was observed by the CIT(Appeals) that as both the aforesaid investor companies viz. (i) M/s. Escorts Finvest Pvt. Ltd.; and (ii) M/s. Antariksh Commerce Pvt. Ltd. were in existence even prior to the period covered under the search proceedings, therefore, on the said count also no addition by drawing of any adverse inferences as regards the authenticity of the said respective transactions could have been drawn in the hands of the assessee company during the year under consideration.

12. The CIT(Appeals) on the basis of his aforesaid deliberations vacated the addition of Rs.4.07 crore (supra) that was made by the A.O by treating the share application money received by the assessee company from the aforesaid investor companies as unexplained cash credits u/s.68 of the Act.

13. Apart from that, it was observed by the CIT(Appeals), that now when the A.O had accepted the preference share capital investment made by the aforesaid investor companies viz. (i) M/s. Escorts Finvest Pvt. Ltd. ; and (ii) M/s. Antakrish Commerce Pvt. Ltd. with the assessee's group entity i.e. M/s. Mahamaya Steel Industries Ltd., therefore, there was no justification for him to have drawn adverse inferences as regards the identity, creditworthiness and genuineness of the investments made by them with the assessee company.

14. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

15. We have heard the Ld. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

16. Apropos the aforesaid addition of Rs.6,57,83,016/- (supra) made by the A.O towards suppressed yield of sponge iron by adopting the average yield of sponge iron of 60% as a yardstick, we find that as the said issue is perpetuating in the case of the assessee company over the years i.e. A.Y.2006-07 to A.Y.2009-10, therefore, the same as on date is squarely covered by the order that was passed by the Tribunal while disposing off the appeal's of the assessee company for the said years in ITA No.262 to 265/RPR/2014 dated 21.10.2021. The Tribunal while vacating the impugned addition towards alleged low/suppressed yield of sponge iron that was made in the aforementioned respective years on the basis of an innocuous standard of 60% set up by the A.O, had observed as under:

> "20.4 On facts, the broad counters of the multiple contentions of the assessee are that even if it is momentarily assumed that the yield shown by the assessee is less than industrial average, in the absence of any corroborative material, the adverse inference remains unsubstantiated. Even if, it is assumed that production facilities and resources even not utilized optimally or efficiently, this by itself will not entitle the AO to allege unaccounted production by presuming higher yield by some mathematical calculation. With reference to the tabular statement at page nos. 59 to 70 of the paper book in conjunction with first appellate order it was submitted that despite repeated requests, the AO completely failed to point out any suppression of production based on any cogent and incriminating material in his possession against the assessee. The low yield in comparison to the benchmark

adopted by the AO could not be the basis to reject the books of accounts under s.145(3) of the Act without bringing any material on record pointing out towards falsehood in the accounts. The search team could not come across any unaccounted sales as recorded in para 9.38 of the first appellate authority. The inventory appearing in the elaborate excise records and excise returns were also found to be matching with the financial records.

21. We note that after taking note of the facts and circumstances of the case objectively, the CIT(A) rightly concluded that the action of the AO in rejecting the books of accounts merely owing to the reason that yield achieved by the assessee is less than standard yield percentage i.e. 60% which has not been achieved even by other assessee engaged in similar line of business. While concluding in favour of the assessee the CIT(A) also observed that the AO has not brought on record the manner in which he worked out the standard yield of 60% of sponge iron. The basis for determining standard yield @ 60% of input was not given despite repeated request by the assessee either.

21.1 We observe that the CIT(A) has capsulated the findings of the AO and reproduced the tabulated statement wherein year-wise yield of finished goods (sponge iron) shown by the assessee were compared with the an innocuous standard of 60% set by the AO. The AO consequently calculated the difference in the actual production vis-à-vis standard production [yield of 60% considered as standard production] and computed the value of difference in actual production versus standard production as unaccounted production/ sales in respective assessment years. We similarly observe that the CIT(A) has also recorded the detailed submissions of the assessee filed in its defense whereby reasons for justification of the actual yield generated by the assessee were given. The CIT(A) also recorded the comparative analysis of the yield of the assessee versus various other companies who are engaged in production of sponge iron and operating in the same field in the state of Chhattisgarh. By this exercise, the assessee has attempted to show that actual production shown by the assessee is either higher than its peers or quite comparable and bracketed in the same range. The standard yield presumed by the AO was thus sought to be demolished on facts.

21.2 Having examined the findings of the AO and the submissions of the assessee in rebuttal, the CIT(A) has made wide ranging observations noted hereunder:

(i) The AO has failed to establish the nexus between the mathematical calculations of highest and lowest consumption of power, iron ore (raw material) etc. with yield of 60% adopted by the AO.

(ii) The basis for arriving at the standard yield of 60% has not been disclosed despite repeated requests on behalf of the assessee. The CIT(A) himself attempted to work out the average yield in the industry based on data available from the department but failed to arrive at this so called standard figure of 60%.

(iii) Comparison of yield declared by the other assessee engaged in the similar line of business was carried out as tabulated in para 9.4 of the appellate order. On the basis of such comparison, arithmetical mean of yield stands at 53.97% in respect of other parties vis-à-vis 59.40% shown by the assessee. It was also found by the CIT(A) that yield declared by the different parties in the same year is not uniform and every party has declared a different yield. Likewise, there is a wide variation in the yield of one year with another year in other cases as well. Not even a single comparable instance was found declaring yield of 60% adopted by the AO. The yield achieved by the assessee is generally more than average industry yield.

(iv) Financial results of the assessee as well as other parties engaged in similar line of business was also compared as discussed in para 9.5 to para 9.8 of the order. On analysis of factual data tabulated in the first appellate order, it was observed that the gross profit & net profit declared by the assessee is stronger than its peers despite marginally lower yield at some instances. It was thus noted by the CIT(A) that the percentage of yield cannot be said to be sole decisive factor while assessing reliability of books of accounts and merely low yield cannot lead to an indefeasible presumption with books of accounts of the assessee are unreliable and true profit earned by the assessee cannot be deduced therefrom. In para 9.9 of its order, the CIT(A) has made reference to the excise records maintained by the assessee and the returns filed with the Central Excise Authority on monthly basis and daily basis. On analysis of such records, it was found to be tallying with the financial records.

(v) The CIT(A) also took cognizance of the fact that capacity utilization in an industry depends on number of working days and in the case of assessee where the kiln used for manufacturing of sponge iron need to be shut down periodically, the production operation consequently halts and effect the yield. The CIT(A), thereafter, observed that no infirmity in the details furnished by the assessee has been found by the AO in this regard.

(vi) The assessee has brought on record the certificate from registered valuer according to which the average yield of sponge iron unit using iron ore and coal as raw material may vary from 40% to 60% and coal consumption may vary from 1.62 to 2.1mt depending upon fixed carbon in coal. The quantitative CIT(A) observed that the quantity details of consumption of sponge iron and coal were found to be within reasonable range as certified by registered valuer. The CIT(A) also noted that it is impractical to presume uniform quality of coal and iron ore.

(vii) The AO has proceeded to estimate higher yield on the basis of mathematical and mechanical calculations. The AO has laid too much emphasis on statistics which cannot be said to have been gathered as a result of search only. The statistics relied upon by the AO are those which are quite routinely called for even during the regular assessment proceedings under s.143(3) of the Act. The AO has

not stated what according to him should have been the average consumption of coal iron ore etc.

(viii) The statement of Shri Rishikesh Dixit recorded on 21.06.2011 was taken note of from which it was gathered that the aforesaid Director stated in clear terms that the quantity recorded in the loose slips tallies with the quantity recorded in the regular books of accounts and excise records. These loose slips are destroyed after it becomes redundant with the passage of time. The CIT(A) further observed that neither in the show cause notice nor in the assessment order, there is any whisper of any such loose papers which bears the figure of production and which the appellant failed to reconcile with the entries in the regular books of accounts and excise records/returns.

(ix) The alleged low yield in comparison to benchmark of 60% adopted by the AO is the basis whereof is still in dark and not known, cannot in itself provide a ground to reject the books of accounts without showing any defect in books by tangible evidence.

(x) The AO has merely proceeded on the basis of suspicion and conjunctures. It is trite that suspicion howsoever strong cannot take place of proof.

(xi) The CIT(A) in para 9.22 onwards analyzed the decision rendered by the co-ordinate bench in similar factual matrix to find that addition on account of low yield as made by the AO is not sustainable in law in the absence of tangible material.

21.3 In conclusion, the CIT(A) observed that assessee has furnished explanation on all the documents seized during the course of search and the explanation of the assessee were test checked with reference to seized material, books of accounts, bills/invoices and other evidences and found to be satisfactory. It was further noted that the AO has not pointed out any infirmity in the explanation of the Assessee.

21.4 The CIT(A), in our mind, has analysed the factual matrix threadbare and passed a very speaking order. Without repeating all the observations of the CIT(A), we find ourselves in complete agreement with the conclusion drawn by the CIT(A). The CIT(A) has objectively analyzed the factual situation and found complete absence of any adverse material against the assessee which can support the allegation of the AO towards unaccounted production presumed on the basis of alleged low yield declared by the assessee. On facts, the CIT(A) has found that the yield declared by the assessee is neither low nor the book results could be impeached by some tangible material to indulge in rejection of books of accounts. We are unable to discern any error whatsoever in the process of reasoning adopted by the CIT(A) while reversing the totally untenable action of the A.O. We, thus, decline to interfere with the order of the CIT(A) on this score."

17. We have given a thoughtful consideration, and finding ourselves in agreement with the aforesaid view taken by the Tribunal in the assessee's own case for the aforementioned preceding years, thus, respectfully follow the same. We, thus, in terms of our aforesaid observations finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the addition of Rs.6,57,83,016/- (supra) made by the A.O towards alleged suppression of yield of sponge iron, uphold the same. The **Grounds of appeal Nos. 3 & 4** are dismissed in terms of our aforesaid observations.

18. Apropos the claim of the department that the CIT(Appeals) had disposed off the appeal in haste without giving a reasonable opportunity to the A.O to place on record his submissions, we are unable to persuade ourselves to subscribe to the same. As is discernible from the appellate order, it transpires that a copy of the written submission of the assessee was forwarded to the A.O by the CIT(Appeals). Although the A.O had initially requested for one months time to make necessary compliance, but had thereafter, despite lapse of the time so allowed failed to effect necessary compliance. Apart from that, the A.O vide his letter dated 23.05.2014 had sought exemption from personal appearance in the course of the proceedings before the first appellate authority. Although the A.O was vide letter 30.06.2014 intimated about the refixation of appeal on 07.07.2014, but we find that he had failed to put up an appearance on the said date. Considering the fact that the

assessee had not come forth with any fresh facts or evidence i.e. over and above what was brought out in the assessment order, therefore, it was under the aforesaid set of circumstances that the CIT(Appeals) had proceeded with and disposed off the appeal.

19. On the basis of the aforesaid facts, we are unable to persuade ourselves to subscribe to the claim of the department that the CIT(Appeals) had disposed off the appeal without affording a reasonable opportunity to the A.O to place on record his submissions. Facts discernible from the record clearly reveals that it was the A.O who despite being intimated about the fixation of appeal on various occasions had chosen to seek exemption from personal appearance in the said proceedings. Nothing has either been brought on record or to our notice which would reveal that the CIT(Appeals) had hushed through the matter and disposed off the appeal without affording a reasonable opportunity to the A.O to put up his case. We, thus, finding no merit in the aforesaid hollow claim of the department reject the same. The **Ground of appeal No.5** is dismissed in terms of our aforesaid observations.

20. We shall now deal with the claim of the revenue that the CIT(Appeals) had erred in law and facts of the case in vacating the addition of Rs.4.07 crore (supra) that was made by the A.O by treating the share application money received by the assessee company as unexplained cash credits u/s.68 of the Act. As observed by

us hereinabove, the assessee company had received share application money of Rs.4.07 crore (supra), as under:

Sr. No.	Particulars	Amount
1.	Antariksh Commerce Pvt. Ltd.,	Rs.32,00,000/-
2.	Escort Finvest Pvt. Ltd.	Rs.3,75,00,000/-
Total		Rs.4,07,00,000/-

21. We shall now deal with the grievance of the revenue that the CIT(Appeals) had erred in vacating the addition of Rs.4.07 crore (supra) that was made by the A.O by recharacterizing the share application money received by the assessee company as unexplained cash credits u/s.68 of the Act, as under:

(A). <u>Antariksh Commerce Pvt. Ltd.</u> : Rs.32 lac:

22. On a perusal of the records, it transpires that in the course of the assessment proceedings the copy of the income tax return, bank statement, share application form, confirmation supported with affidavit, audited financial statements etc. of the aforesaid share subscriber company were placed on the record of the A.O in order to substantiate the authenticity of the transaction of receipt of share application money by the assessee company. However, we find that the A.O without placing on record any material which would dislodge the

authenticity of the aforesaid documents and thus, disprove the veracity of the aforesaid claim of the assessee, had only on the basis of his general observations drawn adverse inferences as regards the claim of the assessee of having received genuine share application money from the aforementioned investor company. As is discernible from the records, though the notice u/s.133(6) of the Act that was issued by the A.O to the aforesaid share subscriber company, viz. Antariksh Commerce Pvt. Ltd. was initially returned unserved on 03.01.2014 by the postal authorities with the remark "door closed", but thereafter, the reply of the said investor company was filed with the A.O a/w. the requisite details as were called for by him, Page 118-120 of APB. On a perusal of the aforesaid reply, it transpires that the investor company viz. Antariksh Commerce Pvt. Ltd. had duly confirmed the transaction of having made investment with the assessee company, as under:

Financial Year : 2010-11

Name of the Bank	Branch and Complete address	Cheque No.	Cheque Date	Amount (Rs.)	No. of Shares
Indusind Bank	Kolkata	313314	29.03.2011	32,00,000	32,000

Also, the aforesaid investor company had duly shared with the A.O its income tax credentials viz. PAN details, copies of the income tax return for A.Y.2006-07, 2007-08, 2011-12 and 2012-13. The investor company, had also filed a/w. its reply its

audited financial statements for the year under consideration as well as those for the preceding year. In order to dispel any doubt as regards the source of the investment made with the assessee company, the copy of the bank account of the investor company i.e. CA No.0015-R25089-050 with Indusind Bank, Kolkata was filed with the A.O, Page 112-113 of APB. On a perusal of the said bank account, it transpires that the investment of Rs.32 lacs made by the aforesaid investor company was sourced out of certain amounts received in the said bank account through RTGS. Nothing has been brought on record by the A.O which would prove that the amount of share application money received by the assessee company from the aforesaid investor was either by way of round tripping of its funds; or was a part of a chain of hawala/accommodation entry transaction. Apart from that we find that the aforesaid investor company had vide its reply dated 19.03.2014 enclosed copies of the share application forms in respect of its aforesaid investments. The investor company had further stated in its reply that it had tangible net worth to make the investment in question with the assessee company, and in order fortify its said claim had furnished details as under:

Sr. No.	Tangible Net worth as on	Amount (in Rs.)
1.	31.03.2006	23,61,62,825/-
2.	31.03.2007	24,31,11,013/-
3.	31.03.2011	24,51,40,563/-

4.	31.03.2012	24,51,09,501/-

Also, we find that it was stated by the aforesaid investor company in its reply addressed to the A.O, that in case if required it was ready to appear before him and depose the aforesaid facts by way of a statement recorded on oath.

23. On a perusal of the aforesaid facts, it transpires that though the assessee company had duly the discharged the primary onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd., but the A.O without bringing on record any material which would have disproved the authenticity of the said document had summarily rejected the same on the basis of unsubstantiated generalized observations, which we find, are common for one and all of the investors. On appeal, we find that the CIT(Appeals) after taking cognizance of the fact that the assessee company had duly established the identity and creditworthiness of the investor company a/w genuineness of the transaction of receipt of share application money had vacated the adverse inferences that were drawn by the A.O, observing as under:

> "5.4 The appellant has submitted that Antariksh Commerce Private Limited is a group company, the appellant has placed on record, a copy of assessment order in the case of Antariksh Commerce Private Limited for the assessment year 2005-06 and 2008-09.
>
> 5.5 It is seen that Antariksh Commerce Private Limited was assessed u/s 143(3) r.w.s 147 and even as on 31.3.2005, the said company had share

> capital and reserves of Rs.23.62 crores. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings and the said company had sufficient means to invest even prior to the period covered under present search proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Antariksh Commerce Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings."

As observed by the CIT(Appeals), assessment in the case of the aforesaid investor company, viz. Antariksh Commerce Pvt. Ltd. was framed vide order passed by the ITO, Ward-4(3), Kolkata u/ss. 143(3) /147 dated 30.01.2019 for A.Y.2005-06, Page 121 of APB, wherein its share capital and reserves of Rs.23.62 crore was accepted by the A.O. On the basis of the aforesaid facts, we may herein observe that the assessee had on the basis of supporting documentary evidence that were filed in the course of the assessment proceedings discharged the primary onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the transaction of receipt of share application money of Rs.32 lac from the aforesaid investor company which, as noticed by us hereinabove had not been dislodged by the A.O. Apart from that, we concur with the CIT(Appeals) that now when the investment made by the aforesaid investor company viz. Antariksh

Commerce Pvt. Ltd. with M/s. Mahamaya Steel Industries Limited, a group entity of the assessee company, had been accepted by the A.O, therein, there could have been no justification for him to have drawn adverse inferences as regards the identity and creditworthiness of the said investor company in so far the investment made by the latter with the assessee company was concerned. Also, we may herein observe, that though as per the pre-amended Section 68 of the Act, i.e., prior to insertion of the "1st Proviso" vide the Finance Act, 2012 w.e.f. 01.04.2013, the assessee company for the year under consideration i.e. A.Y.2011-12 remained under no statutory obligation to put forth an explanation as regards the source of source of the share application money received by it during the said year, but as can be gathered from a perusal of the bank account of the investor company which reveals that the amounts therein invested were sourced out of the amounts received by it vide transfer/RTGS, the authenticity of which had not been doubted by the A.O, no adverse inferences even on the said count can be drawn in the hands of the assessee company. Apart from that, we are of the considered view that as the investor company on the basis of its confirmations a/w "affidavit" had admitted the investment made with the assessee company, therefore, as per the judgment of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports Pvt. Ltd**. (**2008) 216 CTR (SC) 195**, the department in case of any doubt as regards the source of share application money was supposed to have proceeded against the said investor company and could not have drawn any adverse

inferences in the case of the assessee company. Our aforesaid conviction is further supported by the judgments of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 (Chhattisgarh)** and **CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh).** On the basis of our aforesaid deliberations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd, then the A.O could not have on the basis of surmises and conjectures rejected the said claim and drawn adverse inferences in the hands of the assessee company. Our aforesaid view is found to be fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann. Com 172 (Del.).** We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the recharacterization of the share application money of Rs.32 lac received by the assessee company from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd., uphold his order to the said extent.

(B). <u>Escort Finvest Pvt. Ltd</u>. : Rs.3.75 crore :

24. On a perusal of the records, it transpires that in the course of the assessment proceedings the copy of income tax returns, bank statements, copy of

share application form, confirmation supported with affidavit, audited financial statements etc. of the aforesaid share applicant, viz. Escort Finvest Pvt. Ltd. were filed with the A.O to support the authenticity of the transaction of receipt of share application money from the said investor company. However, the A.O is found to have summarily rejected the aforesaid claim of the assessee, i.e., without there being any whisper in his order as to why the aforesaid substantial documentary evidences that were placed on his record in support of the authenticity of the aforesaid transaction were not to be accepted. In fact, we would not mince any words for observing that the A.O had on the basis of his generalized observations, which we find are one and all for all the investors, had in a most casual manner dispensed with the obligation that was cast upon him as regards disproving the authenticity of the aforesaid claim of the assessee which it had established on the basis of supporting documentary evidence.

25. As is discernible from record, the aforesaid investor company viz. Escort Finvest Pvt. Ltd. had pursuant to notice u/s.133(6) of the Act, vide its reply filed with the A.O 19.03.2014, Page 61-63 of APB, therein, shared with him its income tax credentials, PAN number a/w copies of its income tax returns for the A.Ys. 2006-07, 2010-11 and 2011-12. The investor company had further confirmed its investment made with the assessee company, as under:

Financial Year : 2010-11

Name of the Bank	Branch and Complete address	Cheque Nos.	Cheque Date	Amount (Rs.)	No. of Shares
Indusind Bank	Kolkata Branch	313316 and 313317	29.03.2011	3,75,00,000.00	3,75,000

In order to dispel any doubt as regards the source out of which the investment was made, the investor company viz. Escort Finvest Pvt. Ltd. had also filed a copy of its bank account out of which the investment was sourced from i.e. CA No.0515-621723-060, Page 43-49 of APB. On a perusal of the aforesaid bank statement, it transpires that the aforesaid investments of Rs.3.75 crore (supra) that was made by the investor company was sourced out of certain amounts that were received in the said bank account of the said investor company through RTGS. Nothing has been brought on record by the A.O which would either falsify the veracity of the aforesaid claim of the assessee company ; or prove that the amount of share application money received by the assessee company from the said investor company, viz. Escort Finvest Pvt. Ltd. was by way of round tripping of the funds of the assessee company or was a part of a chain of hawala/accommodation transactions. Apart from that, the aforesaid investor company vide its reply dated 19.03.2014 had also filed with the A.O copies of its audited financial statements for the year under consideration as well as those for the preceding year i.e. A.Y.2005-

06 and the immediately succeeding year i.e. A.Y.2012-13. Further the copies of the share application forms were also placed on record by the aforesaid investor company i.e. Escort Finvest Pvt. Ltd. a/w. its aforesaid reply dated 19.03.2014. Also, it was the claim of the investor company that it had sufficient tangible net worth to invest in the shares of the assessee company, and to the said effect had stated as under:

Sr. No.	Tangible Net worth as on	Amount (in Rs.)
1.	31.03.2006	50,00,45,425/-
2.	31.03.2007	51,78,13,210/-
3.	31.03.2011	51,77,32,341/-

Apart from that, it was claimed by the aforesaid investor company, viz. Escort Finvest Pvt. Ltd. that its return of income for the A.Ys. 2006-07 and 2007-08 were subjected to scrutiny assessments and were duly accepted vide the respective orders passed by the A.O i.e. ITO, Ward-1(4), Kolkata vide its order passed in its case u/s.143(3) of the Act, dated 04.12.2008 and 04.11.2009, respectively. Copies of the aforesaid orders passed u/s.143(3), dated 04.12.2008 and 04.11.2009 were enclosed by the investor company a/w its reply dated 19.03.2014, Page 65-66 of APB. On a perusal of the assessment order of the aforesaid investor company for A.Y.2006-07, Page 64 of APB, it transpires that the A.O, i.e. ITO, Ward-1(4),

Kolkata while framing the assessment had verified the increased share capital of Rs.5.64 crore (approx.) and the share premium of Rs.44.38 crore (approx.) that was received by the investor company during the said year and had found the same in order. The Investor company had also vide its reply dated 19.03.2014 filed with the A.O its notarized "affidavit", wherein it had duly confirmed its aforesaid investment. Further, we find that the investor company viz. Escort Finvest Pvt. Ltd. has categorically stated before the A.O that it may be intimated about further information/document, if any, was required as regards its investment made with the assessee company. Also, it was stated by the investor company in its reply filed with the A.O that if required it was ready and willing to appear before him to depose the aforesaid facts by way of a statement recorded on oath or examination by him.

26. As observed by us hereinabove, though the assessee had discharged the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine share application money of Rs.3.75 crore (supra) from the aforementioned investor company viz. Escort Finvest Pvt. Ltd., i.e., by placing on record substantial documentary evidences in support thereof, but the A.O had without drawing support from any material/document summarily rejected the claim of the assessee on the basis of his generalized observations.

27. On appeal, the CIT(Appeals) after due cognizance of the substantial material that was placed on record by the assessee company in order to fortify the identity and creditworthiness of the share subscriber company viz. Escort Finvest Pvt. Ltd., and the genuineness of the transaction of receipt of share application money from the aforesaid investor had found favour with the contentions advanced by the assessee and vacated the addition of Rs.3.75 crore (supra) that was made by the A.O u/s.68 of the Act, observing as under:

> "5.2 The discharge or otherwise of the onus u/s.68 has been independently evaluated that examined. The appellant has submitted that Escorts Finvest Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Escort Finvest Private Limited for the assessment year 2006-07 and 2007-08.
>
> 5.3 It is seen that Escorts Finvest Private Limited was assessed u/s.143(3) and the ITO, Ward-1(4), Kolkata recorded a specific finding that the said company had share capital and share premium reserve of Rs.5,64,50,200/- and Rs.44,37,90,000/- as on 31.3.2006 and that the ITO, Ward-1(4), Kolkata had conducted enquiries with the various shareholders of Escorts Finvest Private Limited by issuing notices u/s 133(6) and verifying their responses. I find that ITO, Ward-1(4), Kolkata was satisfied with the genuineness of addition to share capital and reserves of Escorts Finvest Private Limited inasmuch as no adverse inference was drawn by ITO, Ward-1(4), Kolkata with regard to said addition to share capital and reserves of Escorts Finvest Private Limited. Apart from the audited, financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or creditworthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant, has also explained the

> source of source by placing on record assessment order in the case of its subscriber company namely Escorts Finvest Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings."

On a perusal of our aforesaid observations, we are of the considered view that as the assessee company had on the basis of clinching documentary evidence discharged the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine amount of share application money of Rs.3.75 crore (supra) from the aforesaid investor company viz. Escort Finvest Pvt. Ltd. (supra), which, as noticed by us hereinabove, had not been dislodged by the A.O by placing on record any material proving to the contrary, therefore, we find no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the recharacterization of the assessee's duly substantiated claim of receipt of share application money of Rs.3.75 crore (supra) from the aforesaid investor company viz. Escort Finvest Pvt. Ltd. (supra) as an unexplained cash credit u/s.68 of the Act.

28. Apart from that, we find substance in the observation of the CIT(Appeals) that now when the investment made by the aforesaid investor company, viz. Escort Finvest Pvt. Ltd. (supra) towards preference share capital of Mahamaya

Steel Industries Ltd., a group entity of the assessee company, had been accepted by the department, then, there could have been no justification for drawing of adverse inferences as regards its identity and creditworthiness with respect to the investment which it had made with the assessee company. Also, we find that the investment made by the aforesaid investor company viz. Escort Finvest Pvt. Ltd. with certain group entity of the assessee company had been accepted by the Tribunal, viz. (i) DCIT Vs. M/s. Abhishek Steel Industries Ltd., ITA Nos. 250 to 255/RPR/2014, dated 25.10.2021/ Page 627-698 of APB (relevant part at Page 677-682-Para 24); (ii) DY.CIT (Central), Raipur Vs. Shree Shyam Sponge & Power Pvt. Ltd., ITA No.243 to 249/RPR/2014 dated 21.10.2021/Page 33-93 of APB (relevant part at Page 75-78-Para 19-20) ; and (iii) Dy. DCIT (Central), Raipur Vs. Mahalaxmi Technocast Limited, ITA No.256 to 259/RPR/2014, dated 25.10.2021/Page 94-122 of APB/ (relevant part at Page 117-121-Para 17.3-20).

29. Also, we find that the Tribunal vide its order passed in the assessee's own case for A.Ys. 2006-07 to 2009-10, i.e., DCIT Vs. Devi Iron & Power Limited, ITA Nos.262 to 265/RPR/2014, dated 21.10.2021 had, inter alia, approved the view taken by the CIT(Appeals) that no addition of the share application money received by the assessee company from the aforesaid investor, viz. Escort Finvest Pvt. Ltd. (supra) was called for u/s.68 of the Act, Page 357-359-Para 19.3 to 20.4 of APB.

30. We, thus, in terms of our aforesaid observations are of the considered view that now when the assessee company had duly discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the investor company viz. Escort Finvest Pvt. Ltd. (supra), and also the genuineness of the transaction of receipt of share application money from the latter, therefore, there could have been no justification for the A.O to have drawn adverse inferences as regards the authenticity of the transaction and characterization of the receipt as an unexplained cash credit u/s.68 of the Act. Apart from that, we are of the considered view that as the investor company on the basis of its confirmations a/w "affidavit" had admitted the investment made with the assessee company, therefore, as per the judgment of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports Pvt. Ltd**. (**2008) 216 CTR (SC)195**, the department in case of any doubt as regards the source of share application money was supposed to have proceeded against the said investor company and could not have drawn any adverse inferences in the case of the assessee company. Our aforesaid conviction is further supported by the judgments of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 (Chhattisgarh)** and **CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh).** On the basis of our aforesaid deliberations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon it as regards

proving the authenticity of the transaction of receipt of share application money from the aforesaid investor company viz. Escort Finvest Pvt. Ltd., then the A.O could not have on the basis of surmises and conjectures rejected the said claim and drawn adverse inferences in the hands of the assessee company. Our aforesaid view is found to be fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann. Com 172 (Del.).** We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the recharacterization of the share application money of Rs.3.75 crore received by the assessee company from the aforesaid investor company viz. Escort Finvest Pvt. Ltd., uphold his order to the said extent. Accordingly, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the addition of Rs.3.75 crore (supra) made by the A.O u/s.68 of the Act, we uphold the same to the said extent. The **Grounds of appeal Nos. 1 & 2** are dismissed in terms of our aforesaid observations.

31. In the result, appeal filed by the revenue in ITA No.267/RPR/2014 for A.Y.2011-12 is dismissed in terms of our aforesaid observations.

CO No.30/RPR/2015
(Arising out of ITA No.267/RPR/2014)
A.Y.2011-12

32. The assessee is before us as a cross-objector on the following grounds:

> "1. On the facts and in the circumstances of the case, the Learned A.O is not justified in preferring an appeal against the deletion of addition on account of addition to share capital/application when the matter is well covered by the decision of the jurisdictional High Court and jurisdictional Tribunal, particularly, when the addition was without any material/incriminating document.
>
> 2. On the facts and in the circumstances of the case, the Learned A.O is not justified in preferring an appeal against the deletion of addition on account of alleged suppression of production when the matter is well covered by the decision of the jurisdictional High Court and jurisdictional Tribunal, particularly, when the addition was without any material/incriminating document.
>
> 3. The respondent craves leave to add, urge, alter or withdraw any ground/ground(s) at the time or before the date of hearing."

33. It is the claim of the Ld. AR that as no incriminating material/document pertaining to the assessee was found during the course of the search proceedings conducted on 21.06.2011 u/s.132 of the Act, therefore, no addition could have been made by the A.O.

34. The Ld. AR in order to drive home his aforesaid claim had pressed into service the "2nd proviso" to Section 153A of the Act. Also reliance was placed by the Ld. AR on certain judicial pronouncements to support his aforesaid claim.

35. On a specific query by the bench that now when the time limit for issuance of notice u/s.143(2) of the Act for the year under consideration i.e. A.Y.2011-12 was available with the A.O at the time when the search proceedings u/s.132 were conducted i.e. on 21.06.2011, then, it being a case of an abated assessment for

the year in question how the "2nd proviso" to Section 153A of the Act could be pressed into service, the Ld. AR failed to come forth with any reply.

36. We have given a thoughtful consideration and are unable to accept the aforesaid claim of the assessee, i.e., in absence of any incriminating material/document having been found in the course of search proceedings, no addition could have been made by the A.O. As it is a case of an abated assessment for the year under consideration i.e. A.Y.2011-12, as the time limit for issuance of notice u/s.143(2) of the Act was available, therefore, the A.O was well within his right to have made the addition despite absence of any incriminating material/document pertaining to the assessee having been found in the course of the search proceedings.

37. We, thus, in terms of our aforesaid observations, finding no merit in the cross-objection filed by the assessee company dismiss the same.

38. In the result, cross-objection filed by the assessee in CO No.30/RPR/2015 for A.Y.2011-12 is dismissed in terms of our aforesaid observations.

39. In the combined result, appeal filed by the revenue and cross-objection filed by the assessee for A.Y.2011-12 are dismissed in terms of our aforesaid observations.

ITA No.268/RPR/2014
A.Y.2012-13

40. We shall now take up the appeal filed by the revenue for A.Y.2012-13 in ITA No.268/RPR/2014, wherein the impugned order has been assailed before us on the following grounds of appeal:

> "1. "On the facts and in the circumstances of the case the CIT(A) erred in deleting the additions of Rs.3,64,40,000/- made on account of share application/capital received as unexplained cash credits u/s. 68 of the Income Tax Act, 1961.
>
> 2. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the facts that the creditworthiness and the genuineness of the transactions has not been established by the appellant. There are evidence to the contrary produced by the department which establishes that the investors did not have the income earning apparatus and hence did not have creditworthiness.
>
> 3. On the facts and in the circumstances of the case the CIT(A) erred in deleting the addition of Rs.17651940/- made on account of excess stock of finished goods/raw material found during search.
> 4. On the facts and in the circumstances of the case the CIT(A) erred in overlooking the investigation of facts and evidences on record to establish the excess stock found based on stock inventory prepared by the department.
>
> 5. The CIT(A) has erred in passing the appellate order wherein he has stated in a perverse manner while passing the order which has been made in haste without giving reasonable opportunity to the A.O to give his submission on the issue."

41. Succinctly stated, the assessee company had e-filed its return of income for A.Y.2012-13 on 30.09.2012, declaring an income of Rs.82,44,171/- (which included a disclosure of additional income of Rs.4,39,25,355/- towards excess stock found on the basis of physical verification during the course of search & seizure proceedings conducted u/s.132 of the Act on 21.06.2011). Thereafter, the case of

the assessee company was selected for scrutiny assessment and notice u/s.143(2), dated 19.09.2013 was issued to it.

42. Search and seizure proceedings u/s. 132 of the Act were conducted on 21.06.2011 at the business premises of various concerns and the residence of the individuals belonging to "Mahamaya Group". The assessee company being a group entity was also covered under the aforesaid search proceedings.

43. During the course of the assessment proceedings, it was observed by the A.O that the assessee company had during the year under consideration received share application money and share premium aggregating to Rs.3,64,40,000/- from certain Kolkata based companies, as under:

A.Y.	Name	Amount
2012-13	Antariksh Commerce Pvt. Ltd.	Rs.5,00,000/-
2012-13	Escort Finvest Pvt. Ltd.	Rs.3,34,40,000/-
2012-13	Calidora Traders Pvt. Ltd.	Rs.25,00,000/-
	Total	Rs.3,64,40,000/-

As the assessee failed to substantiate the authenticity of its claim of having received genuine share application money from the aforesaid investors companies, therefore, the A.O held the entire amount of Rs.3,64,40,000/- as unexplained cash credit u/s.68 of the Act. Also, the A.O while framing of the assessment observed that the assessee company during the course of search & seizure proceedings

conducted on 21.06.2011, was as per the valuation of stock of raw material and finished goods carried out by a Government approved valuer found to be in possession of excess stock of Rs.6,15,77,295/-. As the assessee company in its return of income had itself admitted unexplained investment in stock of Rs.4,39,25,355/- (out of Rs.6,15,77,295/-), therefore, the A.O made an addition of the balance amount of Rs.1,76,51,940/- [Rs.6,15,77,295/- (-) Rs.4,39,25,355/-] to its returned income. Accordingly, the A.O after making the aforesaid additions, therein, vide his order passed u/s.143(3), dated 27.03.2014 assessed the income of the assessee company at Rs.6,23,36,110/-.

44. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) after deliberating at length on the contentions advanced by the assessee as regards the authenticity of its claim of having received genuine amount of share application money aggregating to Rs.3,64,40,000/-(supra) from the aforementioned three share subscriber companies, held a conviction that on the basis of the documentary evidence available on the record of the A.O, it could safely be gathered that though the assessee company had duly discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the investor companies as well as the genuineness of transactions of receipt of share application money from them, however, the same had not been displaced or dislodged by the revenue. On the

basis of his aforesaid observations the CIT(Appeals) vacated the addition of Rs.3,64,40,000/- (supra) that was made by the A.O u/s.68 of the Act.

45. Also, as regards the addition of Rs.1,76,57,940/- (supra) that was made by the A.O towards excess stock of raw material and finished goods that were found lying with the assessee company during the course of search and seizure proceedings conducted u/s.132 of the Act on 21.06.2011, the CIT(Appeals) found favour with the multi-facet claim of the assessee that not only the valuation report of the Government approved valuer suffered from certain serious infirmities, but even otherwise the said valuer who was a valuer for immovable properties was not qualified for carrying out valuation of stock of raw material and finished goods of the assessee company. Accordingly, the CIT(Appeals) on the basis of his exhaustive deliberations vacated the addition of Rs.1,76,51,940/- (supra) that was made by the A.O towards excess stock. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations vacated the additions made by the A.O and allowed the assessee's appeal.

46. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

47. We shall now deal with the claim of the revenue that the CIT(Appeals) had erred in law and facts of the case in vacating the addition of Rs.3,64,40,000/- (supra) that was made by the A.O by treating the share application money

received by the assessee company as unexplained cash credits u/s.68 of the Act. As observed by us hereinabove, the assessee company had received share application money of Rs.3,64,40,000/- (supra), as under:

Sr. No.	Particulars	Amount
1.	Antariksh Commerce Pvt. Ltd.,	Rs. 5,00,000/-
2.	Escort Finvest Pvt. Ltd.	Rs. 3,34,40,000/-
3.	Calidora Traders Pvt. Ltd.	Rs. 25,00,000/-
Total		Rs.3,64,40,000/-

48. We shall now deal with the grievance of the revenue that the CIT(Appeals) had erred in law and the facts of the case in vacating the addition of Rs.3,64,40,000/- (supra), that was made by the A.O by recharacterizing the receipt of share application money by the assessee company from the aforesaid three companies as unexplained cash credits u/s.68 of the Act.

(A). <u>Antariksh Commerce Pvt. Ltd.</u> : Rs.5 lac:

49. On a perusal of the records, it transpires that in the course of the assessment proceedings the copy of the income tax return, bank statement, share application form, confirmation supported with affidavit, audited financial statements etc. of the aforesaid share subscriber company placed on the record of the A.O in order to substantiate the authenticity of the transaction of receipt of

share application money by the assessee company. However, we find that the A.O without placing on record any material which would negate the authenticity of the aforesaid documents, and thus, disprove the veracity of the aforesaid claim of the assessee, had only on the basis of his general observations drawn adverse inferences as regards its claim of having received genuine share application money from the aforementioned investor company. As is discernible from the records, though the notice u/s.133(6) of the Act that was issued by the A.O to the aforesaid share subscriber company, viz. Antariksh Commerce Pvt. Ltd. was initially returned unserved on 03.01.2014 by the postal authorities with the remark "door closed", but, thereafter, the reply of the said investor company was filed with the A.O a/w. the requisite details as were called for by him, Page 118-120 of APB. On a perusal of the aforesaid reply, it transpires that the investor company viz. Antariksh Commerce Pvt. Ltd. had duly confirmed the transaction of having made investment with the assessee company, as under:

Financial Year : 2011-12

Name of the Bank	Branch and Complete address	Cheque No.	Cheque Date	Amount (Rs.)	No. of Shares
Indusind Bank	Kolkata	042738	19.08.2011	5,00,000	5000

Also, the aforesaid investor company had duly shared with the A.O its income tax credentials viz. PAN details, copies of the income tax return for A.Ys. 2006-07, 2007-08, 2011-12 and 2012-13. The investor company had also filed a/w. its reply its audited financial statements for the year under consideration as well as those for the preceding year. In order to dispel any doubt as regards the source of the investment made with the assessee company the copy of the bank account of the investor company i.e. CA No.0015-R25089-050 with Indusind Bank, Kolkata was filed with the A.O, Page 112-113 of APB. On a perusal of the said bank account, it transpires that the investment of Rs.5 lac made by the aforesaid investor company was sourced out of certain amounts received in the said bank account through RTGS/transfer. Nothing has been brought on record by the A.O which would prove that the amount of share application money received by the assessee company from the aforesaid investor was by way of round tripping of its funds; or was a part of a chain of hawala/accommodation entry transactions. Apart from that we find that the aforesaid investor company had vide its reply dated 19.03.2014 enclosed copies of the shares application forms in respect of its aforesaid investments. The investor company had further stated in its reply that it had tangible net worth to make the investment in question with the assessee company, and in order fortify the said claim had furnished details as under:

Sr. No.	Tangible Net worth as on	Amount (in Rs.)
1.	31.03.2006	23,61,62,825/-
2.	31.03.2007	24,31,11,013/-
3.	31.03.2011	24,51,40,563/-
4.	31.03.2012	24,51,09,501/-

Also, we find that it was stated by the aforesaid investor company that in case if required it was ready to appear before him and depose the aforesaid facts by way of a statement recorded on oath.

50. On a perusal of the aforesaid facts, it transpires that though the assessee company had duly the discharged the primary onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money/share capital from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd., but the A.O without bringing on record any material which would have disproved the authenticity of the said documents had summarily rejected the same on the basis of unsubstantiated generalized observations, which are common for one and all of the investors. On appeal, we find that the CIT(Appeals) after taking cognizance of the fact that the assessee company had duly established the identity and creditworthiness of the investor company a/w genuineness of the transaction

of receipt of share application money had vacated the adverse inferences that were drawn by the A.O, observing as under:

> "5.4 The appellant has submitted that Antariksh Commerce Private Limited is a group company, the appellant has placed on record, a copy of assessment order in the case of Antariksh Commerce Private Limited for the assessment year 2005-06 and 2008-09.
>
> 5.5 It is seen that Antariksh Commerce Private Limited was assessed u/s 143(3) r.w.s 147 and even as on 31.3.2005, the said company had share capital and reserves of Rs.23.62 crores. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings and the said company had sufficient means to invest even prior to the period covered under present search proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Antariksh Commerce Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings."

As observed by the CIT(Appeals), the assessment in the case of the aforesaid investor company was framed by the ITO, Ward-4(3), Kolkata vide his order u/ss. 143(3) /147 dated 30.01.2019 for A.Y.2005-06, Page 121 of APB, wherein its share capital and reserves of Rs.23.62 crore was accepted by the A.O. On the basis of the aforesaid facts, we may herein observe that the assessee had on the basis of supporting documentary evidence that were filed in the course of the assessment

proceedings discharged the primary onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the transaction of receipt of share application money of Rs.5 lac from the aforesaid investor company, which, as noticed by us hereinabove had not been dislodged by the A.O. Apart from that, we concur with the CIT(Appeals) that now when the investment made by the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd. with M/s. Mahamaya Steel Industries Limited, a group entity of the assessee company, had been accepted by the A.O, therein, there could have been no justification for him to have drawn adverse inferences as regards the identity and creditworthiness of the said investor company in so far the investment made by the latter with the assessee company was concerned. Also, we may herein observe that though as per the pre-amended Section 68 of the Act, i.e., prior to insertion of the "1st Proviso" vide the Finance Act, 2012 w.e.f. 01.04.2013, the assessee company for the year under consideration i.e. A.Y.2012-13 remained under no statutory obligation to put forth an explanation as regards the source of source of the share application money received by it during the said year, but as can be gathered from a perusal of the bank account of the investor company which reveals that the amounts therein invested were sourced out of the amounts received by it vide transfer/RTGS, the authenticity of which had not been doubted by the A.O, no adverse inferences even on the said count can be drawn in the hands of the assessee company. Also, we are of the considered view that as the investor

company on the basis of its confirmations a/w "affidavit" had admitted the investment made with the assessee company, therefore, as per the judgment of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports Pvt. Ltd**. (**2008) 216 CTR (SC) 195**, the department in case of any doubt as regards the source of share application money by the assessee company, was supposed to have proceeded against the said investor company and could not have drawn any adverse inferences in the case of the assessee company. Our aforesaid conviction is further supported by the judgments of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 (Chhattisgarh)** and **CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh).** On the basis of our aforesaid deliberations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd, then the A.O could not have on the basis of his surmises and conjectures rejected the said duly substantiated claim and drawn adverse inferences in the hands of the assessee company. Our aforesaid view is found to be fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann. Com 172 (Del.).** We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the recharacterization of the share application money of Rs.5 lac received

by the assessee company from the aforesaid investor company viz. Antariksh Commerce Pvt. Ltd., uphold his order to the said extent.

(B). Escort Finvest Pvt. Ltd. : Rs.3,34,40,000/-

51. On a perusal of the records, it transpires that in the course of the assessment proceedings the copy of income tax returns, bank statements, copy of share application form, confirmation supported with affidavit, audited financial statements etc. of the aforesaid share applicant, viz. Escort Finvest Pvt. Ltd. were filed with the A.O to support the authenticity of the transaction of receipt of share application money from the said investor company. However, the A.O is found to have summarily rejected the aforesaid claim of the assessee, i.e., without there being any whisper in his order as to why the aforesaid substantial documentary evidences that were placed on his record were not to be accepted. In fact, we would not mince any words for observing that the A.O had on the basis of his generalized observations, which we find are one and all for all the investors, had in a most casual manner dispensed with the obligation that was cast upon him as regards disproving the authenticity of the aforesaid claim of the assessee which it had established on the basis of supporting documentary evidence.

52. As is discernible from record, the aforesaid investor company viz. Escort Finvest Pvt. Ltd. had pursuant to notice u/s.133(6) of the Act, had vide its reply filed with the A.O 19.03.2014, Page 61-63 of APB, therein, shared with him its

income tax credentials viz. PAN number a/w copies of its income tax returns for the A.Ys. 2006-07, 2010-11 and 2011-12, Page 61 of APB. Also, the copy of the return of income of the aforesaid investor company viz. Escort Finvest Pvt. Ltd. for the year under consideration i.e A.Y,.2012-13 was filed by the assessee with the A.O in the course of the assessment proceedings, Page 17 of APB. The investor company had further confirmed its investment made with the assessee company, as under:

Financial Year : 2011-12

Name of the Bank	Branch and Complete address	Cheque No.	Cheque Date	Amount (Rs.)	No. of Shares
IDBI Bank, Raipur	Raipur Branch	313327,313328, 313329,313330, 313331,313332 and 313333	22.07.2011, 25.07.2011, 26.07.2011, 28.07.2011, 10.08.2011 and 01.09.2011	3,34,40,000	3,34,400

In order to dispel any doubt as regards the source out of which the investment was made, the investor company viz. Escort Finvest Pvt. Ltd. had also filed a copy of its bank account out of which the investment was sourced from i.e. CA No.0515-621723-060, Page 43-49 of APB. On a perusal of the aforesaid bank statement, it transpires that the aforesaid investments of Rs.3,34,40,000/- made by the investor

company was sourced out of certain amounts that were received in the said bank account through RTGS. Nothing has been brought on record by the A.O which would either falsify the veracity of the aforesaid claim of the assessee company ; or prove that the amount of share application money received by the assessee company from the said investor company, viz. Escort Finvest Pvt. Ltd. was by way of round tripping of the funds of the assessee company or was a part of a chain of hawala/ accommodation transactions. Apart from that, the aforesaid investor company had vide its reply dated 19.03.2014 filed with the A.O a copy of its audited financial statements for the year under consideration as well as those for the preceding year i.e. A.Y.2005-06 and that for the immediately succeeding year i.e. A.Y.2012-13. Further the copies of the share application forms were also placed on record by the aforesaid investor company i.e. Escort Finvest Pvt. Ltd. a/w. its said reply dated 19.03.2014. Also, it was the claim of the said investor company that it had sufficient tangible net worth to invest in the shares of the assessee company, and to the said effect had stated as under:

Sr. No.	Tangible Net worth as on	Amount (in Rs.)
1.	31.03.2006	50,00,45,425/-
2.	31.03.2007	51,78,13,210/-
3.	31.03.2011	51,77,32,341/-

Apart from that, it was claimed by the aforesaid investor company, viz. Escort Finvest Pvt. Ltd. that its return of income for the A.Ys. 2006-07 and 2007-08 were subjected to scrutiny assessments and the same were duly accepted vide the respective orders passed in its case by the A.O i.e. ITO, Ward-1(4), Kolkata u/s.143(3) of the Act, dated 04.12.2008 and 04.11.2009, respectively. Copies of the aforesaid ordesr passed u/s.143(3), dated 04.12.2008 and 04.11.2009 were enclosed by the investor company a/w its reply dated 19.03.2014, Page 65-66 of APB. On a perusal of the assessment order of the aforesaid investor company for A.Y.2006-07, Page 64 of APB, it transpires that the A.O, i.e. ITO, Ward-1(4), Kolkata while framing the assessment had verified the increased share capital of Rs.5.64 crore (approx.) and the share premium of Rs.44.38 crore (approx.) that was received by the said investor company during the said year and had found the same in order. The Investor company had vide its reply dated 19.03.2014 filed with the A.O its notarized "affidavit", wherein it had duly confirmed its aforesaid investment. Further, we find that the investor company viz. Escort Finvest Pvt. Ltd. has categorically stated before the A.O that it may be intimated about further information/document, if any, was required as regards its investment made with the assessee company. Also, it was stated by the investor company that if required it was ready and willing to appear before him to depose the aforesaid facts by way of a statement recorded on oath or examination by him.

53. As observed by us hereinabove, though the assessee had discharged the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine share application money of Rs.3,34,40,000/- (supra) from the aforementioned investor company viz. Escort Finvest Pvt. Ltd., i.e., by placing on record substantial documentary evidences in support thereof, but the A.O had without drawing support from any material/document summarily rejected the claim of the assessee on the basis of his generalized observations.

54. On appeal, the CIT(Appeals) after taking due cognizance of the substantial material that was placed on record by the assessee company in order fortify the identity and creditworthiness of the share subscriber company viz. Escort Finvest Pvt. Ltd., and the genuineness of the transaction of receipt of share application money from the aforesaid investor, therein, found favour with the contentions advanced by the assessee and vacated the addition of Rs.3,34,40,000/- (supra) that was made by the A.O u/s.68 of the Act, observing as under:

> "5.2 The discharge or otherwise of the onus u/s.68 has been independently evaluated that examined. The appellant has submitted that Escorts Finvest Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Escort Finvest Private Limited for the assessment year 2006-07 and 2007-08.
>
> 5.3 It is seen that Escorts Finvest Private Limited was assessed u/s.143(3) and the ITO, Ward-1(4), Kolkata recorded a specific finding that the said company had share capital and share premium reserve of Rs.5,64,50,200/- and Rs.44,37,90,000/- as on 31.3.2006 and that the ITO, Ward-1(4), Kolkata had conducted enquiries with

> the various shareholders of Escorts Finvest Private Limited by issuing notices -u/s 133(6) and verifying their responses. I find that ITO, Ward-1(4), Kolkata was satisfied with the genuineness of addition to share capital and reserves of Escorts Finvest Private Limited inasmuch as no adverse inference was drawn by ITO, Ward-1(4), Kolkata with regard to said addition to share capital and reserves of Escorts Finvest Private Limited. Apart from the audited, financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or creditworthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant, has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Escorts Finvest Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings."

On a perusal of our aforesaid observations, we are of the considered view that as the assessee company had on the basis of clinching documentary evidence discharged the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine amount of share application money of Rs.3,34,40,000/- (supra) from the aforesaid investor company viz. Escort Finvest Pvt. Ltd. (supra), which, as noticed by us hereinabove, had not been dislodged by the A.O by placing on record any material proving to the contrary, therefore, we find no infirmity in the view taken by the CIT(Appeals) who had

rightly vacated the recharacterization of the assessee's claim of receipt of share application money of Rs.3,34,40,000/-(supra) from the aforesaid investor company viz. Escort Finvest Pvt. Ltd. (supra) as an unexplained cash credit u/s.68 of the Act.

55. Apart from that, we find substance in the observation of the CIT(Appeals) that now when the investment made by the aforesaid investor company, viz. Escort Finvest Pvt. Ltd. (supra) towards preference share capital of Mahamaya Steel Industries Ltd., a group entity of the assessee company, had been accepted by the department, then, there could have been no justification for drawing of adverse inferences as regards its identity and creditworthiness with respect to the investment which it had made with the assessee company. Also, we find that the investment made by the aforesaid investor company viz. Escort Finvest Pvt. Ltd. with certain group concerns of the assessee company had also been accepted by the Tribunal, viz. (i) DCIT Vs. M/s. Abhishek Steel Industries Ltd., ITA Nos. 250 to 255/RPR/2014, dated 25.10.2021/ Page 627-698 of APB (relevant part at Page 677-682-Para 24); (ii) DY.CIT (Central), Raipur Vs. Shree Shyam Sponge & Power Pvt. Ltd., ITA No.243 to 249/RPR/2014 dated 21.10.2021/Page 33-93 of APB (relevant part at Page 75-78-Para 19-20) ; and (iii) Dy. DCIT (Central), Raipur Vs. Mahalaxmi Technocast Limited, ITA No.256 to 259/RPR/2014, dated 25.10.2021/Page 94-122 of APB/ (relevant part at Page 117-121-Para 17.3-20).

56. Also, we find that the Tribunal vide its order passed in the assessee's own case for A.Ys. 2006-07 to 2009-10, i.e., DCIT Vs. Devi Iron & Power Limited, ITA Nos.262 to 265/RPR/2014, dated 21.10.2021 had, inter alia, approved the view taken by the CIT(Appeals) that no addition of the share application money received by the assessee company from the aforesaid investor, viz. Escort Finvest Pvt. Ltd. (supra) was called for u/s.68 of the Act, Page 357-359 Para 19.3 to 20.4 of APB.

57. We, thus, in terms of our aforesaid observations are of the considered view that now when the assessee company had duly discharged the onus that was cast upon it as regards proving the identity and creditworthiness of the investor company, viz. Escort Finvest Pvt. Ltd. (supra), and also the genuineness of the transaction of the receipt of share application money from the latter, therefore, there could have been no justification for the A.O to have drawn adverse inferences as regards the authenticity of the transaction and characterization of the receipt as an unexplained cash credit u/s.68 of the Act. Apart from that, we are of the considered view that as the investor company on the basis of its confirmations a/w "affidavit" had admitted the investment made with the assessee company, therefore, as per the judgment of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports Pvt. Ltd**. (**2008) 216 CTR (SC)195**, the department in case of any doubt as regards the source of share application money was supposed to have

proceeded against the said investor company and could not have drawn any adverse inferences in the case of the assessee company. Our aforesaid conviction is further supported by the judgments of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 (Chhattisgarh)** and **CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh).** On the basis of our aforesaid deliberations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money from the aforesaid investor company viz. Escourt Finvest Pvt. Ltd, then the A.O could not have on the basis of surmises and conjectures rejected the said claim and drawn adverse inferences in the hands of the assessee company. Our aforesaid view is found to be fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann. Com 172 (Del.).** We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the recharacterization of the share application money of Rs.3,34,40,000/- received by the assessee company from the aforesaid investor company viz. Escort Finvest Pvt. Ltd., uphold his order to the said extent. Accordingly, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the addition of Rs.3,34,40,000/- (supra) made by the A.O u/s.68 of the Act, we uphold the same to the said extent.

(C). <u>Calidora Traders Pvt. Ltd. : Rs.25, 00,000/-</u>

58. On a perusal of the records, it transpires that the assessee company had during the year under consideration received an amount of Rs.25 lac from the aforesaid investor company viz. Calidora Traders Pvt. Ltd. Notice u/s.133(6) of the Act was issued by the A.O to the said share subscriber company, which is stated to have been initially returned back by the postal authorities with an endorsement "left". However, the reply of the said investor company viz. Calidora Traders Pvt. Ltd. (supra) was received by the A.O 19.03.2014 a/w requisite details as were therein sought for by him.

59. As is discernible from the reply filed by the aforesaid investor company in response to notice issued u/s.133(6) of the Act, we find that the latter had shared its income tax credentials, i.e. PAN number a/w. copies of income tax returns for the year under consideration and that of A.Y.2010-11. The investor company in its reply had duly confirmed the investment of Rs.25 lac that was made with the assessee company during the year under consideration, as under:

Name of the bank	Branch and complete address	Cheque No.	Cheque date	Amount (Rs.)	No. of shares
Axis Bank	Kolkata	RTGS	23.07.2011	25,00,000	25,000

Also, the investor company in order to dispel all doubts as regards the source out of which the aforesaid investment of Rs.25 lacs (supra) towards share application money was made with the assessee company, had therein enclosed the copy of its bank account viz. CA No.870010200000499 with Axis Bank, Kolkata Page 790 of APB. On a perusal of the aforesaid bank account, we find that investment in question was made by the investor company vide RTGS dated 23.07.2011 out of its aforesaid bank account. The investor company viz. Calidora Traders Pvt. Ltd. had also filed with the A.O a copy of its financial statements for the year under consideration and that for the F.Y.2009-10. Also the copies of the share application forms in respect of the aforesaid investment of Rs.25 lacs (supra) were made available on record of the A.O. It was further stated by the investor company that it had substantial tangible net worth to invest in the shares of the assessee company. In order to buttress its aforesaid claim the investor company had furnished the following details:

SR. No.	Tangible Net Worth as on	Amount (IN Rs.)
1.	31.03.2010	10,93,63,781/-
2.	31.03.2012	10,93,12,852/-

Apart from that, it was claimed by the investor company that the assessment in its case for A.Y.2006-07 was framed by the ITO, Ward-1(1), Kolkata vide his order passed u/s.143(3) dated 18.11.2008, Page 271-272 of APB. Further, the investor

company had duly confirmed its investment made with the assessee company during the year under consideration i.e A.Y 2012-13 and had supported the same with a duly notarized affidavit, Page 177-178 of APB. Also, the investor company had expressed its willingness to appear before the A.O in order to depose the aforesaid facts on the basis of a statement recorded under oath or examination by him. Apart from that, it was submitted by the aforesaid share applicant company that in case any further information/document was required in respect of investment made with the assessee company, then, it may be informed about the same.

60. On a perusal of the records, we find that though the assessee had discharged the primary onus that was cast upon it as regards proving the authenticity of its claim of having received genuine share application money of Rs.25 lac (supra) from the aforementioned investor company viz. Calidora Traders Pvt. Ltd., i.e., by placing on record substantial documentary evidences in support thereof, but the A.O had without drawing support from any material/document summarily rejected the claim of the assessee on the basis of his generalized observations.

61. On appeal, the CIT(Appeals) after due cognizance of the substantial material that was placed on record by the assessee company in order fortify the identity and creditworthiness of the share subscriber company viz. Calidora Traders

Pvt. Ltd., and the genuineness of the transaction of receipt of share application money from the aforesaid investor, had found favour with the contentions advanced by the assessee and vacated the addition of Rs.25 lac (supra) that was made by the A.O u/s.68 of the Act, observing as under:

> "5.6. The appellant has submitted that Calidora Traders Private Limited is a group company, the appellant has placed on record, copy of assessment order in the case of Calidora Traders Private Limited for the assessment year 2006-07.
>
> 5.7 It is seen Calidora Traders Private Limited was assessed u/s.143(3) and the ITO, Ward-1(1), Kolkata recorded a specific finding that the said company had share capital and share premium reserve of Rs.45,00,000/- and Rs. 10,51,20,000/- as on 31.3.2006 and that the ITO, Ward-1(1), Kolkata had conducted enquiries with the various shareholders of Callidora Traders Private Limited by issuing notices u/s 133(6) and verifying their responses. I find that ITO, Ward-1(1), Kolkata was satisfied with the genuineness of addition to share capital and reserves of Callidora Traders Private Limited inasmuch as no adverse inference was drawn by ITO, Ward-1(1), Kolkata with regard to said addition to share capital and reserves of Callidora Traders Private Limited. Apart from the audited financial statements in support of credit worthiness of the said company, I am convinced that no adverse view can be taken regarding identity or credit worthiness of the said company when the said company has been duly assessed and the share capital and reserves i.e. the net worth of the said company was duly accepted in scrutiny assessment proceedings, in the factual matrix of this case, I am convinced that the appellant has not only explained the source of receipt of share application / capital money, the appellant has also explained the source of source by placing on record assessment order in the case of its subscriber company namely Callidora Traders Private Limited. Furthermore, I find that the said investor company was in existence even prior to the period covered under the present search assessment proceedings, therefore, even assuming without accepting the contention of the A.O., no undisclosed income can be added in the present search assessment proceedings as the same are beyond the period covered under the present search assessment proceedings."

62. As observed by us hereinabove, the CIT(Appeals) after considering the material/document that were filed by the investor company in compliance to notice u/s.133(6) of the Act, was of the view that the assessee company had duly discharged the onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of the transaction of receipt of share application of Rs.25 lac (supra) from the aforesaid investor company viz. Calidora Traders Pvt. Ltd. (supra).

63. At this stage, we may herein observe that the recharacterizing of the share application money of Rs.9.40 crore that was received by the assessee company from the aforesaid investor viz. Calidora Traders Pvt. Ltd. (supra) in A.Y.2010-11 was vacated by the Tribunal vide its order passed in ITA No.266/RPR/2014 dated 17.10.2022/Page 1-32 of APB (relevant part at Page 21-28- Para 12-17). It was observed by the Tribunal as under:

> "12. We have given a thoughtful consideration to the contentions advanced by the Ld. Authorized Representatives of both the parties in context of the aforesaid issue in hand, i.e., sustainability of the view taken by the CIT(Appeals) as regards the authenticity of the share application money of Rs.9.40 crore that was received by the assessee from M/s. Calidora Traders Pvt. Ltd.
>
> 13. As observed by us hereinabove, it is a matter of fact borne from record that the assessee company had claimed to have received an amount of Rs.9.40 crore as share application money from the aforesaid investor company, viz. M/s. Calidora Traders Pvt. Ltd. On being queried about the nature and source of the said credit appearing in its books of account, the assessee in order to substantiate the authenticity of its claim of having received the aforementioned amount as share application money from the aforementioned investor company, viz. M/s Calidora Traders Pvt. Ltd. had ,inter alia, filed with the A.O documentary evidences substantiating the identity and creditworthiness of the share applicant company, as well as the genuineness of the transaction under consideration, viz. name and

address of the share applicant, PAN details, certificate of incorporation, memorandum of association, article of association, audited financial statement, income-tax return, bank statement (out of which share application money was paid), share application form and details of receipt of amount through banking channels. As observed by the CIT(Appeals) and, rightly so, the assessee company had discharged the onus that was cast upon it as regards proving the identity, creditworthiness of the share applicant, and also the genuineness of the transaction in question. However, we find that the A.O without rebutting the aforesaid documentary evidence that was filed by the assessee by placing on record any material proving to the contrary, had in all his wisdom on the basis of generalized observations, and without refuting the assessee's claim on any concrete basis, had most arbitrarily drawn adverse inferences and held the aforesaid amount of Rs.9.40 crore as an unexplained cash credit u/s.68 of the Act.

14. On a perusal of the assessment order it transpires that the A.O on the basis of a consolidated order for AY 2006-07 to AY 2012-13 had made generalized unsubstantiated observations as regards the financial statements of the various share holders of the assessee company, and without dealing with the facts involved in the respective cases had drawn adverse inferences by alleging that the inflow of the share application money in the hands of the assessee company was to be viewed in the perspective of money laundering through share capital route in which unaccounted money was being routed back to its books of account without payment of due tax. On the aforesaid basis, it was observed by the A.O that the inflow of the funds in the garb of share application money was in fact a managed affair in connivance with the Kolkata based shareholder companies. In order to buttress his aforesaid generalized adverse inferences the A.O had observed that the unavailability of the statutory records of the assessee company in the course of the search proceedings at its registered office or any other premises in the occupation of its group entities supported the fact that the assessee company had not raised any genuine share application money from the investor company. On a perusal of the aforesaid observation of the A.O, it transpires that he instead of placing on record any clinching material which would have otherwise dislodged and disproved the assessee's claim of having raised genuine share application money from the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd., had instead chosen to be guided by general observations for drawing of adverse inferences and summarily rejecting the same. We are afraid that the approach adopted by the A.O can by no means be accepted. In fact, we would have no hesitation to observe that the A.O except for harping on his generalized adverse inferences and heavily relying on certain excerpts of modus operandi that was in general adopted by accommodation entry providers to facilitate their nefarious activities of laundering the unaccounted money of certain companies, had however not uttered a single word as to on what basis the audited financial statements and the other documentary evidences which were filed by the assessee to substantiate the authenticity of the aforesaid claim of the assessee were being discarded by him. As observed by the

CIT(Appeals) and, rightly so, the assessee company had not only placed on record documentary evidence substantiating the nature and source of the amount of Rs.9.40 crore that was received as share application money from the aforementioned share applicant company, but had even demonstrated before the A.O that the source of the investment made by the said share applicant company, viz. M/s. Calidora Traders Pvt. Ltd. had been accepted by the ITO, Ward-1(1), Kolkata while framing the assessment in the latter's case u/s. 143(3) of the Act. As observed by the CIT(Appeals), and, rightly so, now when the aforesaid investor company, viz. M/s. Calidora Traders Pvt. Ltd. had filed before the A.O the assessment order that was passed in its case, wherein its share capital and share premium reserves of Rs.45 lacs and 10.51 crore (approx.) as on 31.03.2006 were accepted by the A.O after carrying out necessary enquiries, therefore, the same proved to hilt the source of source of the investment under consideration. In our considered view, there is substance in the claim of the assessee that now when the genuineness of the addition which was made to the share capital and reserves of the aforesaid share applicant, viz. M/s. Calidora Traders Pvt. Ltd. after necessary vetting had been accepted by the ITO, Ward-1(1), Kolkata, therefore, no adverse inferences as regards the investment made by the latter in the assessee company out of the said source which had duly been accepted by the department could have been drawn. Also, we concur with the view taken by the CIT(Appeals) that now when the assessee had duly discharged the onus that was cast upon it as regards proving the nature and source of the credit appearing in its books of account, i.e. share application money of Rs. 9.40 crore that was received from the investor company by placing on record supporting documentary evidences, viz. name and address, PAN details, certificate of incorporation, memorandum of association, article of association, audited financial statement, income-tax return, bank statement (out of which share application money was paid), share application form and details of receipt of amount through banking channels, therefore, the A.O could not have drawn adverse inferences as regards the authenticity of the said transaction without dislodging the aforesaid claim of the assessee on the basis of any such material which would have irrefutably proved to the contrary.

15. As regards the observation of the A.O that during the course of search proceeding the statutory records of the assessee company, viz. minutes of meeting register, shareholders register, counter foils of issued share certificates etc. were not found at the registered office of the assessee company, we find that the CIT(Appeal) had vacated the same on the ground that a perusal of the statements recorded u/s.132(4) of the Act, nowhere revealed that any official of the search team in the course of the said proceedings had visited the registered office of the assessee company. It was further observed by the CIT(Appeals) that the statement of the other persons belonging to the group companies also did not reveal that the assessee company had not maintained any statutory records/registers. It was also noticed by the CIT(Appeals) that the A.O had merely on the basis of an unsubstantiated allegation claimed that the aforesaid statutory

records of the assessee company were not found in the course of the search proceedings at the registered office premises of the assessee company. Accordingly, the CIT(Appeals) was of the view that it was not the case of the department that the search team had visited the registered office premises of the assessee company and had specifically queried about the statutory records which latter had failed to produce or had expressed its inability to produce, or had admitted of not having maintained the same. On the contrary it was observed by the CIT(Appeals) that Ms. Jaswinder Kaur Mission, employee of the assessee company had in her statement recorded u/s.132(4) on 21.06.2011 specifically shown the members register, share certificates and counter foils of the assessee company to the search officials. Accordingly, the CIT(Appeals) on the basis of his aforesaid observation had vacated the adverse inferences that were drawn by the A.O on the ground that the assessee had failed to maintain the statutory records at its registered office.

16. Nothing is discernible from the records before us which would reveal that the aforesaid observations of the CIT(Appeals) are either perverse or contrary to the facts available on record. Also, the ld. D.R during the course of hearing of the appeal had failed to rebut the aforesaid observation of the CIT(Appeals). Considering the aforesaid facts we have no hesitation in concurring with the view taken by the CIT(Appeals) that the adverse inferences and the consequential addition made in the hands of the assessee cannot be sustained on the basis of the aforesaid unsubstantiated allegation of the A.O. In fact the claim of the assessee that Ms. Jaswinder Kaur Mission (supra) had in her statement recorded u/s.132(4) on 21.06.2011 specifically shown the members register, share certificates and counter foils of the assessee company to the search officials fortifies the aforesaid claim of the ld. A.R that the requisite documents/registers were duly maintained by the assessee at its registered office. We, thus, in terms of our aforesaid observations uphold the view taken by the CIT(Appeals) who had rightly vacated the adverse inferences drawn by the A.O as regards the alleged non-maintenance of members register, share certificates and counter foils of share certificates allotted by the assessee company.

17. Accordingly, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(Appeals) who in our considered view had rightly vacated the unsubstantiated adverse inferences that were drawn in the thin air by the A.O as regards the genuineness and authenticity of the assessee's claim of receipt of share application money of Rs.9.40 crore, therefore, uphold his order to the said extent. Thus, the **Grounds of appeal No.1 & 2** raised by the revenue are dismissed in terms of our aforesaid observations."

On the basis of our aforesaid observations, we are of the considered view that as observed by the CIT(Appeals), and, rightly so, now when the assessee company had duly discharged the primary onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money of Rs.25 lac (supra) from the aforesaid investor company viz. Calidora Traders Pvt. Ltd., therefore, the A.O without dislodging the correctness of the aforesaid claim of the assessee could not have summarily dubbed the same as an unexplained cash credit u/s.68 of the Act. Apart from that, we are of the considered view that as the investor company on the basis of its confirmations a/w "affidavit" had admitted the investment made with the assessee company, therefore, as per the judgment of the **Hon'ble Apex Court** in the case of **CIT Vs. Lovely Exports Pvt. Ltd**. (**2008) 216 CTR (SC)195**, the department in case of any doubt as regards the source of share application money was supposed to have proceeded against the said investor company and could not have drawn any adverse inferences in the case of the assessee company. Our aforesaid conviction is further supported by the judgments of the **Hon'ble Jurisdictional High Court** in the case of **ACIT Vs. Venkateshwar Ispat (P) Ltd. (2009) 319 ITR 393 (Chhattisgarh)** and **CIT Vs. Abdul Aziz (2012) 251 CTR 58 (Chhattisgarh).** On the basis of our aforesaid deliberations, we are of the considered view that now when the assessee had duly discharged the onus that was cast upon it as regards proving the authenticity of the transaction of receipt of share application money from the

aforesaid investor company viz. Calidora Traders Pvt. Ltd, then the A.O could not have on the basis of surmises and conjectures rejected the said claim and drawn adverse inferences in the hands of the assessee company. Our aforesaid view is found to be fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Pr. CIT Vs. Himachal Fibers Ltd. (2018) 98 taxmann. Com 172 (Del.).** We, thus, in terms of our aforesaid observations, finding no infirmity in the order of the CIT(Appeals) who had rightly vacated the recharacterization of the share application money of Rs.25 lac received by the assessee company from the aforesaid investor company viz. Calidora Traders Pvt. Ltd., uphold his order to the said extent. We, thus, finding no infirmity in the order of the CIT(Appeals) who had correctly vacated the recharacterization of share application money of Rs.25 lacs (supra) received by the assessee company from the aforementioned investor company as an unexplained cash credit u/s.68 of the Act, uphold his order to the said extent. The **Grounds of appeal Nos. 1 & 2** are dismissed in terms of our aforesaid observations.

64. We shall now deal with the grievance of the revenue that the CIT(Appeals) had erred in law and facts of the case in vacating the addition of Rs.1,76,51,940/- that was made by the A.O on account of excess stock of finished goods/raw material that were found during the course of search & seizure proceedings conducted u/s.132 of the Act on 21.06.2011.

65. Succinctly stated, the A.O in the course of the assessment proceedings observed that during the course of search and seizure proceedings conducted on the assessee company on 21.06.2011, the stock of raw material and finished goods that were lying with the assessee were verified and physically measured with the help of a Government Approved Valuer ("DVO", for short), as under:

Stock Item	Stock found during physical verification by Departmental Registered Valuer (in MT)	Stock as per Books (in MT)	Difference (in MT)	Difference (in Rs.)
Coal	21659.01	6271.05	15387.96	3,84,69,900/-
Dolomite	321.23	362.77	-41.54	(56,079/-)
Iron ore/fines	18442.82	18919.352	-476.532	(11,91,330/-)
Sponge Iron	1628.45	501.26	1127.19	2,31,07,395/-
			Total of excess stock	6,15,77,295/-

On being queried about the aforesaid variance in stock, the assessee company had pointed out certain discrepancies in the valuation of stock that was done by the DVO, as under:

> "(1) We attach herewith copy of Statutory Excise Register and documents maintained in the factory premises during financial year 2011-12.
>
> (2) We attach herewith details of position of stock as on 21st of June 2011.

(3) It is respectfully submitted that we have carefully perused the stock valuation done by the DVO in terms of quantity of principal raw material and finished goods lying in our factory premises, vis-a-vis the quantity of stock appearing in our books of accounts and excise records. It is respectfully submitted that the stock valuation done by the DVO contains certain discrepancies, few of which are illustrated below:-

(a) The stock valuation / quantification has not been done by the DVO on the basis of physical weighment.

(b) The stock valuation has been done by the DVO by applying the mathematical formula for which the DVO has considered certain variables.

(c) The DVO has made the valuation by taking certain assumptions including, but not limited to, assumptions regarding "density". it is respectfully submitted that the density of coal depends upon the quality and grade of coal. For instance, the density of coal ranges from 0.833 Metric Tonne per cubic meter to 1.506 MT/Cu.MT. The indicative list of density is reproduced hereinunder:

Sl. No.	Particulars	Density
1.	Coal, Anthracite, solid	1.506
2.	Coal, Anthracite, Broken	1.105
3.	Coal Bituminous, Solid	1.346
4.	Coal, Bituminous, Broken	0.833

Typical Bulk Density of coal:

- Anthracite coal :50-58 (Ib/ft3), 800-929 (kg/m3)
- Bituminous coal : 42-57 (Ib/ft3), 673-913 (kg/m3)
- Lignite coal : 40-54 (Ib/ft3), 641-865 (kg/m3)

It is respectfully submitted that the DVO has taken the maximum density while making the valuation. It is further submitted that the DVO has taken the density of Anthracite coal of solid state whereas, we are using Bituminous coal of broken state.
(d) The DVO has not given any justification behind assumptions taken by the DVO.

(e) It is respectfully submitted that the DVO has not given any reason for taking the density at 1.50 MT per Cu. Meter nor did the DVO mention the grade, quality and state of coal found in our premises."

As is discernible from the record, the assessee had come up with three fold objections to the valuation done by the DVO, viz. (i) that the stock valuation/quantification was not carried out by the DVO on the basis of actual physical weighment; (ii) that the stock valuation was done by the DVO on the basis of a mathematical formula by considering certain variables; and (iii) that the DVO while valuing the coal had considered "Anthracite Coal" of solid state which has a maximum density of 1.506 MT/Cu.Meter, while for the assessee was using "Bituminous Coal" of broken state which had the lowest density of 0.833 MT/Cu. Meter.

66. Considering the aforesaid deficiencies in valuation done by the DVO the assessee filed its objections as regards each item of inventory, as under:

> "(4) With reference to above, it is respectfully submitted that we are not satisfied with the valuation done by the DVO. Our specific comments in respect of each item of inventory are as under:-

Stock item	Stock as per DVO	Corrected	Stock as per books	Difference	Remarks
Coal	21659.010	12230.320	6271.050	5959.270	Note 1
Dolomite	321.230	321.230	362.770	(41.540)	Note 2
Iron ore/fines	18442.820	18442.820	18919.352	(476.532)	Note 3
Sponge Iron	1628.450	545.750	501.260	1127.190	Note 4

Note : 1	As stated above, the DVO has made the valuation by taking the Density of Coal at 1.50 MT/Cu.M. Your honor would appreciate the fact that the correct density of coal used by us is 0.83 MT/Cu.M. It is respectfully submitted that we use

	broken coal for manufacturing of Sponge Iron and as per the generally accepted norms also, the density of such coal is 0.83 MT/Cu.M. Applying the said density, the quantity of coal works out to 12230.320 MT. In this way, 5959.270 MT was found excessive on physical verification in comparison to the stock appearing in the books of accounts. Your honour would appreciate the fact that the difference in the quantity of stock is merely, owing to the difference in assumptions and mathematical formula applied by the DVO. The quantity reported by the DVO is not based on physical weighment which is prone to change with the change in underlying assumptions and variables.
Note : 2	The stock as per books of accounts is more than that found during physical verification. Further, the variation is not material and hence, self explanatory.
Note : 3	The stock as per books of accounts is more than that found during physical 3 verification. Further, the variation in terms of percentage is merely 2.51%. It is respectfully submitted that such a trifle variation is unavoidable, particularly keeping in view the size of operation. Even otherwise, the management of the company carries out physical verification of inventory and at that time, such variations are adjusted in the books of accounts. In view of above, the difference is self explanatory and requires no further justification.
Note : 4	It is respectfully submitted that the quantification of Sponge Iron done by the DVO is practically not possible due to following reasons:- (1) We have five bunkers and maximum carrying capacity of each bunker is 100 MT. Even assuming that on the day of search operation, all the bunkers were fully loaded, the maximum quantity works out to 500 MT. (2) It is respectfully submitted that the stock of Sponge Iron cannot be kept in open area or godown due to its peculiar nature. It is respectfully submitted that if Sponge Iron is kept in open area outside the bunkers, Sponge Iron will gain moisture from air and it will get reoxidised. Due to this process of reoxidisation, Sponge Iron will get converted into Iron ore again. That's why, Sponge Iron is not kept in open area/godown.

	(3) It is respectfully submitted that in the details of stock taking submitted by the DVO, the manager of our company had categorically mentioned that the DVO has included low-mock (waste material) in the valuation of Sponge Iron. In this way, the valuation report of the DVO suffers from an apparent mistake as a result of which the quantity of Sponge Iron has been valued at an excessive figure. Due to said mistake, the quantity of Sponge Iron has been over valued by 886.220 MT. (4) It is further submitted that the DVO has quantified 137.500 MT in the Bunker namely 112 and 160 MT in the old PSB Bunker namely F1, whereas, the maximum capacity of each of the said Bunkers is 100 MT. Even if it is presumed that at the time of search the said two bunkers were fully loaded with 100 MT Sponge Iron, the total stock works out to 200 MT, whereas, the DVO has quantified the same at 297.50 MT It run be seen that there is apparent over valuation of stock lying in the Bunkers by 97.50 MT. Similarly, the DVO has quantified 224 MT of Sponge Iron as lying in new PSB Bunker namely F1, whereas, the maximum capacity of the said Bunker is 125 MT Again there is over valuation to the extent of 99 MT. In this way, the DVO has made the valuation of Sponge iron at an excessive figure and stock is over valued by 1082.700 MT. Upon rectification of said mistakes, quantity of Sponge Iron works out to 545.750 MT. As against 501.260 MT appearing in the books of account and excise records. It can be seen that there is marginal difference of 44.940 MT which is less than 10% of total stock and hence the difference is negligible and self-explanatory taking into consideration the size of operation of the company. (5) We have weigh feeder in place for measurement of inputs going into the manufacturing process. (6) We measure the quantity of production based on logical mathematical formulae detailed below: Dispatch/sale during the day xxxxx Add : closing quantity lying in bunkers xxxxx Less : Opening quantity lying in bunkers (xxxx) Quantity produced xxxxx

	(7) Your honour would appreciate the fact that the DVO has not pointed out any discrepancy / shortcomings in the procedure adopted by us for measurement of inputs going to the manufacturing process and finished goods production. In view of above reasons, it is respectfully submitted that the valuation done by the DVO is erroneous and no adverse action can be taken against the company on the basis of such error prone valuation report.

67. During the course of the assessment proceedings, the A.O acceded to the request of the assessee and facilitated a cross-examination of the DVO, viz. Shri Manish Pilliwar, and his statement was recorded u/s.131 of the Act on various dates, i.e., on 26.12.2013, 29.01.2014 and 13.02.2014, Page 723-741 of APB.

68. As observed by the A.O in the assessment order, the DVO had estimated the stock of sponge iron based on eye measurement and had applied the density of 1.50 MT/Cu.Meter in the case of the assessee. It was further observed by the A.O that the DVO in the course of his cross examination was unable to provide the basis of applying the density of 1.50 MT/Cu.Meter. The A.O was of the view that though the DVO was unable to provide the basis for adopting the density of 1.50 MT/Cu.Meter but the assessee too was on no better footing as it was also unable to conclusively establish the correct density. Accordingly, the A.O though admitted the inventory taken by the valuer suffered from certain deficiencies, but was also of the view that the assessee too had failed to properly quantify the stock on the

date of search. Considering the fact that it was not possible to revisit the quantification of stock, the A.O, thus, on an estimation basis concluded that the stock taken by the DVO in the course of search proceedings was to be considered as the most reasonable estimate of stock. Accordingly, the A.O on the basis of the stock taking that was carried out by the DVO worked out the excess stock at an amount of Rs.6,15,77,295/-. As the assessee company had itself admitted unexplained investment in stock to the extent of Rs.4,39,25,355/-, therefore, the A.O made an addition of the balance amount of Rs.1,76,51,940/- [Rs.6,15,77,295/- (-) Rs.4,39,25,355/-].

69. On appeal, the CIT(Appeals) duly considered the multi-facet objections that were raised by the assessee as regards the valuation carried out by the DVO, viz. (i) that the DVO had wrongly taken density of "Anthracite coal" (solid state-highest density of 1.506MT/Cu.Mtr.) which was neither available in the mines of the State of Chhattisgarh or in the nearby States, and had lost sight of the fact that the assessee was using "Bituminous coal" (broken state-lowest density of 0.833 MT/Cu.Mtr); (ii) that as the maximum storage capacity of three bunkers of the assessee company for storing sponge iron, viz. Bunker (A2); old PSB Bunker (F1); and New PSB Bunker (F1) was 100 MT, 100 MT and 125 MT, respectively, but the A.O had wrongly taken the same at 137.500 MT, 160 MT and 224 MT respectively, as a result whereof he had wrongly exceeded the available maximum

storage capacity of the said bunkers of the assessee company (i.e. even if it was to be presumed that all the said three bunkers were being used to their full capacity on the date of search i.e. 21.06.2011); (iii) the DVO apparently had assumed that some part of stock of sponge iron was lying in open area/godown, which in light of the peculiar nature of the item viz. sponge iron was not possible as the same would draw moisture from the air and get oxidized, thus, resulting to reduction in its market value; (iv) that the DVO had not adopted any scientific process and methodology for quantifying the inventory of sponge iron lying in the bunkers; (v) that the DVO had himself admitted that the physical measurement of the sponge iron lying in the bunkers was not possible; (vi) that the DVO had fairly admitted that he had not assessed load capacity of the bunkers/structures; (vi) that the DVO had wrongly included low-mack i.e. waste material i.e. 886.20 MT in the quantity of sponge iron; (vii) that as the DVO, viz. Shri Manish Pilliwar (supra) was registered as a valuer for valuation of immovable properties and possessed the qualification provided in Rule 8A(2) of Wealth Tax Rules, 1957, and had prepared the quantity assessment reports as per Rule 8A(2)(ii)(B)(b) of the Wealth Tax Rules, 1957, which pertained to quantity surveying in building construction, therefore, neither was he eligible to carry out the valuation of the stock of raw material/finished goods lying with the assessee nor his report could be acted upon. On the basis of his aforesaid contention, it was the claim of the assessee that if the aforesaid deficiencies in physical stock taking of sponge iron were removed, then,

the variance i.e. as per physical stock taking carried out in the course of the search proceedings conducted on 21.06.2011 as against that recorded in its books of accounts would remain at 44.470 MT, as under :

"(c) The cumulative effect of aforesaid two submissions is as below:

Total difference in sponge iron = (1628.450-501.260)		1127.190 MT
Less : Low Mack Included in sponge iron	=886.220 MT	
Excess quantity taken in bunkers	=196.500 MT	1082.720 MT
Net difference i.e. excess quantity of sponge iron		44.470 MT"

It was the claim of the assessee that as the miniscule variance of 44.470 MT (supra) was less than 10% of the total inventory appearing in its books of accounts, therefore, no adverse inferences on the said count were called for in its hands. The CIT(Appeal) after considering the aforesaid multi-facet contentions of the assesee found favour with the same, observing as under:

> "13. I have carefully gone through the assessment order and submissions of the appellant. It is seen that the A.O has made the addition of Rs.1,76,51,940/- mainly on account of alleged excess stock of sponge iron worked out on the-basis of Quantity Assessment Report of the Departmental Registered Valuer (DRY) namely Mr. Manish Pilliwar as summarized hereunder:-

Product	Stock as per DRV (in MT)	Stock as per Books of Accounts (in MT)	Difference (in MT)	Amount as per Assessment order (Rs.)	Amount of income surrendered by the appellant (Rs.)	Addition by the A.o (Rs.)
Coal	21659.010	6271050	15387.960	3,84,69,900.00	4,39,25,355.00	
Sponge iron	1628.450	501.260	1127.190	2,31,07,395.00	0.00	
Total				6,15,77,295.00	4,39,25,355.00	1,76,51,940.00

> Firstly, it is seen that the A.O himself admitted that the inventory taken by the Valuer at the time of search has certain deficiencies and

discrepancies, as a corollary, the Quantity Assessment Report of the DRV is also vitiated and has deficiencies, it is also seen that the sole basis of addition is the Report of the DRV. It is seen that the appellant had made various submissions before the A.O during the course of assessment proceedings in response to the show cause notice cum query letter issued by the A.O. The appellant had requested for allowing opportunity to cross examine the DRV and the opportunity was afforded to the appellant. The appellant was asked to furnish the copy of statements recorded during the course of cross examination of the DRV namely Mr. Manish Pilliwar and the same was furnished by the appellant. I have carefully perused the statements of Mr. Manish Pilliwar. I find that the appellant has raised a very relevant and serious issue regarding eligibility and competence of Mr. Manish Pilliwar who is registered as a valuer for valuation of immovable properties.

13.1 It is seen that in-response to question no.12 of-the statement - recorded on 13.02.2014, the said DRV admitted that he is registered as Valuer for valuation of immovable properties and he possesses qualifications provided in Rule 8A(2) of Wealth Tax Rules 1957. It is also seen that in response to question no.14 of the statement recorded on 13.02.2014 the said DRY has stated that the work of quantity assessment was carried out as per the competence and qualification mentioned in Rule 8A(2)(ii)(B)(b). The DRV did state that he prepared the Quantity Assessment Report as per his qualification mentioned in Rule 8A(2)(ii)(B)(b) of Wealth Tax Rules, 1957 which pertains to Quantity surveying in building construction. Undisputedly, the appellant is not engaged in any construction work. I do find force in the submissions of the appellant that the report of the DRV is vitiated as the DRV applied irrelevant knowledge which has no nexus with the business of the appellant and product under consideration.

13.2 I do find considerable force in the submissions of the appellant that different Sub-rules of Rule 8A of Wealth Tax Rule, 1957 are mutually exclusive and there is no overlapping, therefore, the quantity assessment of movable items such as the sponge iron in the present case, cannot be carried out by the Valuer who is registered as a Valuer for valuation of immovable properties, in other words, a person who is registered as a Valuer for valuation of jewellery cannot be engaged for quantity assessment of movable items other than jewellery, similarly, the DRV engaged namely Shri Manish Pilliwar being valuer for immovable properties could not have been engaged for valuation of movable items such as the items of inventory in the instant case. Hence, in my considered view, the reliance placed by the A.O on the said Quantity Assessment Report of the DRV, despite having accepted the deficiencies in the quantity assessment report, is clearly misplaced and not sustainable. Therefore, the addition

made by the A.O solely on the basis of said quantity assessment report also cannot be sustained.

Although, the addition made by the A.O is liable to be deleted for the reasons elaborately mentioned above, the submissions of the appellant on merits have also been considered. The precise submission of the appellant with regard to sponge iron is as under:-

(a) The DRV had included Low Mack items in the quantity assessment of sponge iron even though the same was pointed out by the appellant company's representative during the course of valuation and as a result of this mistake, the quantity of sponge iron is overvalued by 886,220-MT.

(b) The DRV has wrongly taken excess quantity in the bunkers which is even more than the maximum capacity of the Bunkers and due to this mistake, the quantity of sponge iron is overvalued by 196.500 MT.

(c) The cumulative effect of aforesaid two submissions is as below:

Total difference in sponge iron = (1628.450-501.260)		1127.190 MT
Less : Low Mack Included in sponge iron =886.220 MT		
Excess quantity taken in bunkers	=196.500 MT	1082.720 MT
Net difference i.e. excess quantity of sponge iron		44.470 MT

The appellant has claimed that the net difference of 44.470 MT is quite negligible and less than 10% of total inventory appearing in books and therefore, no addition is warranted in respect of such differential quantity of 44.470 MT. I find that in support of its submission regarding Low Mack i.e. waste items having been included while-quantifying the inventory of sponge iron, the appellant has relied. upon the statement of Shri L. Das, Manager of the appellant company recorded during the proceedings u/s 132. I have carefully perused the statement of Shri L. Das and I do find that in response to question no.7 of the statement, Shri L. Das, in clear terms, had stated that items mentioned in serial no.1,2,3,6 of the rough sheets are waste material i.e. Low Mack and not sponge iron. In my considered view, the submissions of the appellant cannot be said to be an afterthought as the statement was given during the course of search itself and the objection was expressed during the course of search itself and the A.O. has not brought on record any evidence to rebut the statement of the appellant company's representative with reference to any specific finding of the search team based on exercise, if any, carried out by the search team for ascertaining the true facts.

13.3 I also find that Shri Manish Pilliwar, DRV engaged by the investigation wing to carry out the quantity assessment himself accepted that he does not possess any knowledge about iron and steel sector or about the minerals and the same is emanating from the statements given by Shri Manish Pilliwar himself.

13.4 I also find that the appellant has submitted the duly notarized affidavit of Mr. L. Das wherein he has affirmed by way of affidavit that there was mistake in stock taking and the four heaps containing waste material was wrongly taken as pure sponge iron and that this fact was duly brought to the notice by way of statement recorded on 21.06.2011, I find that the said affidavit has remained un-rebutted.

13.5 In view of specific defect and error having been pointed out by the appellant company's representative during the course of quantity assessment itself, in my considered view, as the same has remained un-rebutted on the strength of cogent evidence that those waste materials were in fact sponge iron, the addition cannot be sustained for the differential quantity of 886.200 MT.

As regards excess quantity taken by the DRV in the Bunkers, I find that the appellant did submit certificate from the registered valuer regarding capacity of the bunkers.

I find that in support of its submission regarding excess quantity taken in bunkers, the appellant has placed on record certificate from the Registered Valuer namely Mr. Sunil Bhandari wherein the capacity of the bunkers has been certified.

13.6 It is also seen that the appellant company's representative namely Mr. L. Das has also affirmed the same by way of an affidavit. As per the certificate of another registered valuer relied upon by the appellant in support of its contention, the following position emerges :-

Sl. No.	Identification of the Bunker	Capacity (in MT) as per Registered Valuer namely, Mr. Sunil Bhandari	Quantity taken by Shri Manish Pilliwar, DRV (MT)	Excess Quantity (MT)
1.	A2	100	137.50	37.500
2.	Old PSB Bunker F1	100	160	60.000
3.	New PSB Bunker-F1	125	224	99.000

	Total	325	521.50	196.50

I find that the A.O has not brought on record any evidence to rebut the Certificate of another registered valuer relied upon by the appellant and also the declaration made by Shri L. Das by way of an affidavit. In view of above, in my considered view, it is incorrect on the part of the A.O. to state that the appellant has not brought on record any evidence in support of its submissions. I am convinced with the submissions of the appellant that sponge iron cannot be kept in open space as the submission of the appellant is getting substantiated from the certificate of registered valuer namely Mr. Sunil Bhandari dated 18.08.2011.

13.7 In view of above, I am convinced that the sponge iron cannot be kept in open space as presumed by the DRY namely Shri Manish Pilliwar. I am convinced with the submissions of the appellant that the DRY has taken the quantity in the Bunkers merely on the basis of presumption and on estimate basis which is not supported by any measurement either of the carrying capacity of the Bunkers or load capacity of the structures. I also find that the A.O. has not rebutted the submission of the appellant that the Bunkers are like closed Bins which are placed above the surface of the land at a height so much so that a truck can go underneath the Bunker for loading of sponge iron directly in the truck from the bunkers and therefore, there is no question of sponge iron to lie anywhere near the bunkers. In view of above, I am convinced that the appellant has been able to substantiate its contention by way of cogent evidences and reasoning, upon correction of aforesaid two mistakes, it is seen that the difference is only 44.470 MT and I am in agreement with the submissions of the appellant that the same is quite negligible and also less than 10% of the total inventory and hence, no addition is warranted for such a negligible difference considering the overall scale of operations of the appellant. Therefore, the addition made by the A.O. solely on the basis of report of the DRV cannot be sustained."

70. We have deliberated at length on the aforesaid issue, i.e., reasons leading to the excess stock in the hands of the assessee company, and have considered the contentions of both the parties. As the CIT(Appeals) on the basis of his very well-reasoned observations, had after addressing at length the multi-facet issues therein involved vacated the addition of Rs.1.76 Crore (approx.) that was made by the A.O on the basis of the report of the DVO, who has observed by us

hereinabove, did not possess the requisite qualification for carrying out the verification of stock of raw-material and finished goods lying with the assessee, therefore, finding no infirmity in the view taken by him resulting to vacation of the addition of Rs.1.76 crore (supra) by him, uphold his order to the said extent. The **Grounds of appeal Nos. 3 & 4** are dismissed in terms of our aforesaid observations.

71. In the result, appeal of the revenue in ITA No.268/RPR/2014 for A.Y.2012-13 is dismissed in terms of our aforesaid observations.

CO No.31/RPR/2015
(Arising from ITA No.268/RPR/2014)
A.Y.2012-13

72. The Ld. AR at the very outset submitted that as per instructions he seeks to withdraw the cross-objections filed for A.Y.2012-13.

73. Considering the aforesaid concession of the Ld. AR, the CO No.31/RPR/2015 for A.Y.2012-13 filed by the assessee is dismissed as not pressed.

74. Resultantly, both the appeal filed the revenue and cross-objections filed by the assessee for A.Y.2012-13 are dismissed in terms of our aforesaid observations.

ITA No.101/RPR/2017
A.Y.2013-14

75. We shall now take up the appeal filed by the revenue in A.Y.2013-14, wherein the impugned order has been assailed on the following grounds of appeal before us :

> "1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting additions made by the A.O of Rs.2,80,85,926/- on account of suppression in production by showing less yield and Rs.5,39,20,000/-on account of unexplained Share premium u/s. 56(2)(viib) of the Income Tax Act, 1961 without appreciating the facts and evidences brought into light by the A.O during assessment proceedings.
>
> 2. The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal."

76. Succinctly stated, the assessee company had e-filed its return of income for A.Y.2013-14 on 30.09.2013, declaring a loss of Rs.(-) 14,20,19,413/-. Thereafter, the case of the assessee company was selected for scrutiny assessment and notice u/s.143(2), dated 19.09.2013 was issued to it.

77. Search and seizure proceedings u/s.132 of the Act were conducted at the business premises of various concerns and the residence of the individuals belonging to "Mahamaya Group". The assessee company being a group entity was also covered under the aforesaid search proceedings.

78. During the course of the assessment proceedings, it was observed by the A.O that the assessee had disclosed its yield of manufacturing of sponge iron from iron ores at 57.72%, which as per him was found to be lower than the average yield in the industry of 60%. On the basis of his aforesaid observations, the A.O

made an addition of Rs.2,80,85,926/- on account of low/suppressed yield of 2.08%. It was further observed by the A.O that the assessee company during the year under consideration had issued 1348000 equity shares of a face value of Rs.10/- each at a premium of Rs.40/- per shares to its three sister concerns. Holding a conviction that there was no reasonableness of charging of premium @Rs.40/- per share by the assessee company, the A.O made an addition of the entire amount of share premium of Rs.5,39,20,000/- u/s.56(2)(viib) of the Act. Accordingly, the A.O vide his order passed u/s.143(3) of the Act dated 30.03.2016 after making the aforesaid additions assessed the loss of the assessee company at Rs.(-) 6,00,13,487/-.

79. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). The CIT(Appeals) after deliberating at length on the contentions advanced by the assessee, observed that the A.O had without any basis rejected the yield of sponge iron manufactured by the assessee company and had most arbitrarily substituted the same on an ad-hoc basis by 60%. The CIT(Appeals) not finding any justification in the addition of Rs.2,80,85,926/- that was made by the A.O towards deficit/suppressed yield of sponge iron, thus, vacated the same. As regards the addition of Rs.5,39,20,000/- made by the A.O u/s.56(2)(viib) of the Act, the CIT(Appeals) was of the view that as the assessee company had issued its equity shares at FMV, which in turn was determined as per the method prescribed

under Rule 11UA of the Income Tax Rules, 1963, therefore, no addition on the said count was called for in its case. Accordingly, the CIT(Appeals) finding favour with the contentions advanced by the assessee company allowed its appeal.

80. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

81. Apropos the aforesaid addition of Rs.2,80,85,926/- made by the A.O towards suppressed yield of sponge iron by adopting the average yield of sponge iron of 60% as a yardstick, we find that as the said issue is perpetuating in the case of the assessee company over the years i.e. A.Y.2006-07 to A.Y.2009-10, therefore, the same as on date is squarely covered by the order that was passed by the Tribunal while disposing off the appeal's of the assessee company for the said years in ITA No.262 to 265/RPR/2014 dated 21.10.2021. The Tribunal while vacating the impugned addition towards alleged low/suppressed yield of sponge iron that was made in the aforementioned respective years on the basis of an innocuous standard of 60% set up by the A.O, had observed as under:

> "20.4 On facts, the broad counters of the multiple contentions of the assessee are that even if it is momentarily assumed that the yield shown by the assessee is less than industrial average, in the absence of any corroborative material, the adverse inference remains unsubstantiated. Even if, it is assumed that production facilities and resources even not utilized optimally or efficiently, this by itself will not entitle the AO to allege unaccounted production by presuming higher yield by some mathematical calculation. With reference to the tabular statement at page nos. 59 to 70 of the paper book in conjunction with first appellate order it was submitted that despite repeated requests, the AO completely failed to point out any

suppression of production based on any cogent and incriminating material in his possession against the assessee. The low yield in comparison to the benchmark adopted by the AO could not be the basis to reject the books of accounts under s.145(3) of the Act without bringing any material on record pointing out towards falsehood in the accounts. The search team could not come across any unaccounted sales as recorded in para 9.38 of the first appellate authority. The inventory appearing in the elaborate excise records and excise returns were also found to be matching with the financial records.

21. We note that after taking note of the facts and circumstances of the case objectively, the CIT(A) rightly concluded that the action of the AO in rejecting the books of accounts merely owing to the reason that yield achieved by the assessee is less than standard yield percentage i.e. 60% which has not been achieved even by other assessee engaged in similar line of business. While concluding in favour of the assessee the CIT(A) also observed that the AO has not brought on record the manner in which he worked out the standard yield of 60% of sponge iron. The basis for determining standard yield @ 60% of input was not given despite repeated request by the assessee either.

21.1 We observe that the CIT(A) has capsulated the findings of the AO and reproduced the tabulated statement wherein year-wise yield of finished goods (sponge iron) shown by the assessee were compared with the an innocuous standard of 60% set by the AO. The AO consequently calculated the difference in the actual production vis-à-vis standard production [yield of 60% considered as standard production] and computed the value of difference in actual production versus standard production as unaccounted production/ sales in respective assessment years. We similarly observe that the CIT(A) has also recorded the detailed submissions of the assessee filed in its defense whereby reasons for justification of the actual yield generated by the assessee were given. The CIT(A) also recorded the comparative analysis of the yield of the assessee versus various other companies who are engaged in production of sponge iron and operating in the same field in the state of Chhattisgarh. By this exercise, the assessee has attempted to show that actual production shown by the assessee is either higher than its peers or quite comparable and bracketed in the same range. The standard yield presumed by the AO was thus sought to be demolished on facts.

21.2 Having examined the findings of the AO and the submissions of the assessee in rebuttal, the CIT(A) has made wide ranging observations noted hereunder:

(i) The AO has failed to establish the nexus between the mathematical calculations of highest and lowest consumption of power, iron ore (raw material) etc. with yield of 60% adopted by the AO.

(ii) The basis for arriving at the standard yield of 60% has not been disclosed despite repeated requests on behalf of the assessee. The CIT(A) himself attempted

to work out the average yield in the industry based on data available from the department but failed to arrive at this so called standard figure of 60%.

(iii) Comparison of yield declared by the other assessee engaged in the similar line of business was carried out as tabulated in para 9.4 of the appellate order. On the basis of such comparison, arithmetical mean of yield stands at 53.97% in respect of other parties vis-à-vis 59.40% shown by the assessee. It was also found by the CIT(A) that yield declared by the different parties in the same year is not uniform and every party has declared a different yield. Likewise, there is a wide variation in the yield of one year with another year in other cases as well. Not even a single comparable instance was found declaring yield of 60% adopted by the AO. The yield achieved by the assessee is generally more than average industry yield.

(iv) Financial results of the assessee as well as other parties engaged in similar line of business was also compared as discussed in para 9.5 to para 9.8 of the order. On analysis of factual data tabulated in the first appellate order, it was observed that the gross profit & net profit declared by the assessee is stronger than its peers despite marginally lower yield at some instances. It was thus noted by the CIT(A) that the percentage of yield cannot be said to be sole decisive factor while assessing reliability of books of accounts and merely low yield cannot lead to an indefeasible presumption with books of accounts of the assessee are unreliable and true profit earned by the assessee cannot be deduced therefrom. In para 9.9 of its order, the CIT(A) has made reference to the excise records maintained by the assessee and the returns filed with the Central Excise Authority on monthly basis and daily basis. On analysis of such records, it was found to be tallying with the financial records.

(v) The CIT(A) also took cognizance of the fact that capacity utilization in an industry depends on number of working days and in the case of assessee where the kiln used for manufacturing of sponge iron need to be shut down periodically, the production operation consequently halts and effect the yield. The CIT(A), thereafter, observed that no infirmity in the details furnished by the assessee has been found by the AO in this regard.

(vi) The assessee has brought on record the certificate from registered valuer according to which the average yield of sponge iron unit using iron ore and coal as raw material may vary from 40% to 60% and coal consumption may vary from 1.62 to 2.1mt depending upon fixed carbon in coal. The quantitative CIT(A) observed that the quantity details of consumption of sponge iron and coal were found to be within reasonable range as certified by registered valuer. The CIT(A) also noted that it is impractical to presume uniform quality of coal and iron ore.

(vii) The AO has proceeded to estimate higher yield on the basis of mathematical and mechanical calculations. The AO has laid too much emphasis on statistics which cannot be said to have been gathered as a result of search only. The

statistics relied upon by the AO are those which are quite routinely called for even during the regular assessment proceedings under s.143(3) of the Act. The AO has not stated what according to him should have been the average consumption of coal iron ore etc.

(viii) The statement of Shri Rishikesh Dixit recorded on 21.06.2011 was taken note of from which it was gathered that the aforesaid Director stated in clear terms that the quantity recorded in the loose slips tallies with the quantity recorded in the regular books of accounts and excise records. These loose slips are destroyed after it becomes redundant with the passage of time. The CIT(A) further observed that neither in the show cause notice nor in the assessment order, there is any whisper of any such loose papers which bears the figure of production and which the appellant failed to reconcile with the entries in the regular books of accounts and excise records/returns.

(ix) The alleged low yield in comparison to benchmark of 60% adopted by the AO is the basis whereof is still in dark and not known, cannot in itself provide a ground to reject the books of accounts without showing any defect in books by tangible evidence.

(x) The AO has merely proceeded on the basis of suspicion and conjunctures. It is trite that suspicion howsoever strong cannot take place of proof.

(xi) The CIT(A) in para 9.22 onwards analyzed the decision rendered by the co-ordinate bench in similar factual matrix to find that addition on account of low yield as made by the AO is not sustainable in law in the absence of tangible material.

21.3 In conclusion, the CIT(A) observed that assessee has furnished explanation on all the documents seized during the course of search and the explanation of the assessee were test checked with reference to seized material, books of accounts, bills/invoices and other evidences and found to be satisfactory. It was further noted that the AO has not pointed out any infirmity in the explanation of the Assessee.

21.4 The CIT(A), in our mind, has analysed the factual matrix threadbare and passed a very speaking order. Without repeating all the observations of the CIT(A), we find ourselves in complete agreement with the conclusion drawn by the CIT(A). The CIT(A) has objectively analyzed the factual situation and found complete absence of any adverse material against the assessee which can support the allegation of the AO towards unaccounted production presumed on the basis of alleged low yield declared by the assessee. On facts, the CIT(A) has found that the yield declared by the assessee is neither low nor the book results could be impeached by some tangible material to indulge in rejection of books of accounts. We are unable to discern any error whatsoever in the process of reasoning

> adopted by the CIT(A) while reversing the totally untenable action of the A.O. We, thus, decline to interfere with the order of the CIT(A) on this score."

82. We have given a thoughtful consideration, and finding ourselves in agreement with the aforesaid view taken by the Tribunal in the assessee's own case for the preceding years, thus, respectfully follow the same. We, thus, in terms of our aforesaid observations finding no infirmity in the order of the CIT(Appeals), who had rightly vacated the addition of Rs.2,80,85,926/- (supra) made by the A.O towards alleged suppression of yield of sponge iron, uphold the same. The **Ground of appeal No. 1** (to the extent relevant) is dismissed in terms of our aforesaid observations.

83. We shall now deal with the grievance of the revenue that the CIT(Appeal) had erred in vacating the addition of Rs.5,39,20,000/- that was made by the A.O. on account of unexplained share premium u/s.56(2)(viib) of the Act.

84. The genesis of the controversy leading to an addition of Rs.5,39,20,000/- u/s.56(2)(viib) lies in a narrow compass i.e., the dissatisfaction of the A.O as regards issuance by the assessee company of its 1348000 shares of a face value of Rs.10/-each at premium of Rs.40/- each. In sum and substance, the A.O being of the view that the assessee company could not satisfactorily explain the reasonableness of charging of premium of Rs.40/- per share, had thus, made an addition of the entire amount of share premium of Rs.5.39 crore (approx.)

u/s.56(2)(viib) of the Act. The observations of the A.O which had formed the basis for making the aforesaid addition are culled out as under:

> "5. Further, it was found that the assessee company during the year under consideration has received share premium amounting to Rs. 5,39,20,000/- from three of its sister companies. The assessee companies allotted 13,48,000 shares of face value of Rs.10/- each at a premium of Rs. 40/- per share to its three sister companies. During the course of assessment proceedings the assessee was requested to explain the reasonableness of charging premium of Rs.40/- per share. The A.R. of the assessee submitted that the fair market value of the shares of the company valued as per Rule 11U/11UA of the I.T. Rules as on 01/04/2012 was Rs.50.39. However, the explanation submitted by the assessee was not found to be satisfactory."
>
> (iv) Also I have carefully considered the submissions of the assessee relating to addition proposed to be made on account of share premium received of Rs.5,39,20,000/- u/s.56(2)(viib) of the I.T Act. However, the submission of the assessee company substantiated in this regard is not found to be satisfactory for the following reasons:
>
> a. The assessee company has determined the Fair Market Value of the share as on 01/04/2012 whereas, the investing companies have invested for acquisition of the shares of the assessee company in the last quarter of the F.Y. under consideration.
>
> b. The financial position of the assessee company is not sound to that extent that it could fetch a premium of Rs.40/- in an open market.
>
> c. The shares of the assessee company is not listed either on BSE or NSE.
>
> d. There are many shares which are available in the open market having better EPS and P/E than the assessee company which could have been acquired by the investor companies.
>
> e. The share premium has been paid to the assessee company which all are sister companies of the assessee company.
>
> f. It appears that the motive of the investing companies are not to invest in the assessee company rather, the same appears as an internal arrangements for some other motive best known to the assessee company."
>
> "(ii) Share premium receipt: During the year under consideration the assessee company has received share premium of Rs.5,39,20,000/- from

> three of its sister companies. During the purse of assessment proceedings the assessee company failed to explain the huge. share premium received and also for the reasons discussed in the previous para the submission of e assessee company was not found to be satisfactory. Therefore, the share premium of Rs.5,39,20,000/- received by the assessee company is added to the total income of the assessee u/s.56(2)(viib) of the I.T. Act, 1961. As the assessee has concealed income, penalty proceedings u/s.271(1)(c) of the I.T.Act,1961 are initiated separately."

85. On appeal, the CIT(Appeals) observed that the "Fair Market Value" (FMV) of the shares of the assessee company was Rs.50.39/- per share. The CIT(Appeals) was of the view that as the shares that were issued by the assessee company at Rs.50/- per share was commensurate with its FMV, therefore, no addition could have been made u/s.56(2)(viib) of the Act. The observations of the CIT(Appeals) on the aforesaid issue are culled out as under:

> "3.3 Facts being as above the AO added share premium of Rs. 5,39,20,000/- u/s.56(2)(viib). As per this section where the premium received by the company is in excess of value of the share the excess has to be disallowed and added as income of the assessee. In the preset case the assessee has allotted share to some companies which are sister concerns at fair value of Rs.10/- and premium of Rs.40/- whereas the fair market value of the shares was Rs.50.39/- per share. AO did not accept assessee's plea that the action should not be made. He has given following reasons :-
>
> i. The assessee company has determined the Fair Market Value of the share as on 01/04/2012 whereas the investing companies have invested for acquisition of the shares of the assessee company in the last quarter of the FY under consideration.
>
> ii. The financial position of the assessee company is not sound to that extent that it could fetch a premium of Rs.40/- in an open market.
>
> iii. The shares of the assessee company is not listed either on BSE or NSE.

> iv. There are many shares which are available in the open market having better EPS and P/E than the assessee company should have been acquired.by-the investor companies.
>
> v. The share premium has been paid to the assessee company which all are sister companies of the assessee company.
>
> The last available balance sheet of the company was for 31/03/2012 as per which fair market value of assessee's share was Rs.50.39/-. As the consideration does not exceed the fair market value of shares, therefore, on these facts the provisions of Sec.56(2)(vii) are not applicable. Even if attempt is made to capture the excess consideration, the excess would be rupees (50 minus 50.39) i.e. a negative value. Final position of company is reflect by the value of its shares and therefore it is as strong as any other company having fair market value of Rs.50.39/-. Shares of the company are not listed in BSE or NSE that is why provisions of Sec. 56(2)(viib) are applicable provided the consideration exceeded fair market value. Whether the shares have been bought by a sister concern or a third party, if consideration is commensurate with the fair market value which is the net worth of shares, then no adverse inference can be drawn against the assessee. Therefore the addition made by the AO is hereby deleted and assessee's ground is allowed."

86. The revenue being aggrieved with the order of the CIT(Appeals) who had deleted the addition of Rs.5.39 crore (supra) made by the A.O has carried the matter in appeal before us.

87. We have given a thoughtful consideration to the aforesaid issue in the backdrop of the contentions advanced by the Ld. Authorized representatives of both the parties as regards the same.

88. Before proceeding any further, we deem it fit to cull out Section 56(2)(viib) of the Act as had been made available on the statute vide the Finance Act, 2012, w.e.f. 01.04.2012, as under:

"56. xxxxxxx

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—

Xxxxxxx

Xxxxxxx

[(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

Provided that this clause shall not apply where the consideration for issue of shares is received—

(*i*) by a venture capital undertaking from a venture capital company or a venture capital fund; or

(*ii*) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

"[Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (it) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year.]

Explanation.—For the purposes of this clause,—

(*a*) the fair market value of the shares shall be the value—

(*i*) as may be determined in accordance with such method as may be prescribed; or

(*ii*) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,

whichever is higher;

[(aa) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alterna-tive Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(ab) "trust" means a trust established under the Indian Trusts Act, 1882 (2 of 1882) or under any other law for the time being in force;] (b) "venture capital company",

> "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of 75[Explanation] to clause (23FB) of section 10;]"

89. As the assessee is not a company in which the public are substantially interested therefore, the provisions of section 56(2)(viib) would be applicable in its case. As per section 56(2)(viib) if a company, not being a public limited company, receive, in any previous year, from any person being a resident, any consideration for issue of shares that exceed the value of such shares, then, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income tax under the head "income from other sources." As observed by us hereinabove, the manner for determining the "Fair Market Value" of the shares is provided in the "Explanation" to Section 56(2)(viib) of the Act, which for the sake of clarity is culled out as under:

> "Explanation.—For the purposes of this clause,—
>
> (*a*) the fair market value of the shares shall be the value—
>
> (*i*) as may be determined in accordance with such method as may be prescribed; or
>
> (*ii*) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,
>
> whichever is higher;
>
> [(aa) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alterna-tive Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
>
> (ab) "trust" means a trust established under the Indian Trusts Act, 1882 (2 of 1882) or under any other law for the time being in force;] (b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings

> respectively assigned to them in clause (a), clause (b) and clause (c) of 75[Explanation] to clause (23FB) of section 10;]"

As provided in the aforesaid "Explanation" (supra), the FMV of the shares may be determined in accordance with such method as prescribed in Rule 11UA r.w. Rule 11U of the Income Tax Rules, 1963. On a perusal of the records, it transpires that the assessee company had determined the FMV of the shares based on the "balance sheet" as on 31.03.2012 as per Rule 11UA (2)(a) at Rs.50.29/- per share, as under:

S. No.	Particulars	Referred in the Rule 11UA(2)(a) as	Amount	Amount (Rs.)
1.	Book value of Assets in the Balance sheet as on 31.03.2012	'A'		1243135139
2.	Total book value of liabilities in the Balance Sheet as on 31.3.2012		1243135139	
3.	Less : The paid up capital in respect of equity shares;		95445250	
4.	Less: Reserves and surplus by whatever name called even if the resulting figure is negative, other than those set apart towards		385487106	

	depreciation;			
5.	Book Value of Liabilities in the Balance Sheet as on 31.03.2012	'L'	762202783	762202783
6.	Assets Less Liabilities	'A-L'		480932356
7.	Number of shares issued as on 31.03.2012	'PE'		9544525
8.	Book Value per share	'PV'	A-L/PE (480932356/9544525)	50.39
9.	Rounded off to			50

As the FMV of the equity shares that were issued by the assessee company at Rs.50/- per share (supra) had been determined by the assessee company as per the method prescribed by the legislature i.e., Rule 11UA(2)(a) at Rs.50.39/- per share, therefore, the provisions of Section 56(2)(viib) of the Act could not have been triggered by the A.O, as the same would come into play only where the consideration received on issuance of shares exceeds the FMV of such shares. Our aforesaid view that an A.O is obligated to compute fair market value of the shares in accordance with the prescribed method is supported by the order of the ITAT, Hyderabad in the case of M/s. Medplus Health Services Pvt. Ltd. Vs. ITO, ITA No.871/Hyd/2015, dated 08.03.2016. Also, a similar view had been taken by the

ITAT, "F" Bench, Mumbai in the case of Vodafone M-Pesa Ltd. Vs. DCIT, Circle 8 (3)(2), Mumbai, ITA No.1073/MUM/2019 dated 13.12.2019.

90. We, thus, on the basis of our aforesaid observations are of the considered view that now when the assessee company had issued its 1348000 equity shares (of face value of Rs.10/- each) at Rs.50/- per share, and the FMV of the same as determined by the assessee company as per the prescribed method, i.e., Rule 11UA(a) works out at Rs.50.39/- per share, therefore, as observed by the CIT(Appeals) and, rightly so, no addition could have been made by the A.O u/s.56(2)(viib) of the Act. At this stage, we may herein observe that neither any infirmity in the determination of FMV of the shares by the assessee company as per Rule 11UA(a) at Rs.50.39/- per share is discernible from the records nor anything has been brought to our notice by the Ld. DR which would prove otherwise. The **Ground of appeal No. 1** (to the extent relevant) is dismissed in terms of our aforesaid observations.

91. Resultantly, the appeal filed by the revenue in ITA No.101/RPR/2017 for A.Y.2013-14 is dismissed in terms of our aforesaid observations.

92. In the combined result, all the captioned appeals filed the revenue and cross-objections filed by the assessee are dismissed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 30th March, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT, (Central), Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.