

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री टी.आर.मीना, लेखा सदस्य एवं श्री ललित कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI T.R.MEENA, AM & SHRI LALIET KUMAR, JM

आयकर अपील सं./ITA No. 1103/JP/2011
निर्धारण वर्ष/Assessment Years : 2008-09

Assistant Commissioner of Income Tax, Circle-7, Jaipur.	बनाम Vs.	M/s Dhanlaxmi Equipment Pvt. Ltd., F-79(A), Jetpura Industrial Area, Jetpura, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACD 5583 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri P.R. Meena
निर्धारिती की ओर से/ Assessee by : Shri Rajiv Sogani &
Shri Rohan Sogani (CA)

सुनवाई की तारीख/ Date of Hearing : 04/02/2016
उद्घोषणा की तारीख/ Date of Pronouncement : 21/03/2016

आदेश / ORDER

PER: T.R. MEENA, A.M.:

The Revenue has filed this appeal against the order of the Id.
CIT(A)-III, Jaipur dated 01/09/2011 for the assessment year 2008-09
raising therein the following grounds as under:-

- “i. The CIT(A) has passed a perverse order in accepting inadmissible evidence to delete the addition of Rs. 2.16 crores made under Section 68 of the Act.*
- ii. The CIT(A) has erred in overlooking the fact that the entire submissions including the affidavits of the creditors were contrived and orchestrated and lacked validity in the facts and circumstances of the assessee.*
- iii. the CIT(A) has erred in holding that the onus of proof had shifted to the A.O. even when the assessee had not discharged its burden under Sec. 68 of the I.T. Act, 1961.”*

2. The assessee is engaged in the business of manufacturing and trading of transformers. The assessee filed its return of income on 30/09/2008 declaring total income of Rs. 6,34,790/-. The case was scrutinized U/s 143(3) of the Income Tax Act, 1961 (in short the Act). All the grounds of the revenue are against deleting the addition of Rs. 2.16 crores made U/s 68 of the Act considering the affidavits and not discharging the burden casted on the assessee. The Id Assessing Officer observed that the assessee had introduced fresh cash capital of Rs. 6,11,50,000/- in three different heads, Rs. 80,00,000/- as unsecured loan, Rs. 2,25,00,000/- in Reserve and Surplus and Rs. 3,06,50,000/- as share application money. A letter was sent to ADIT(Inv.), Unit-3(III), Kolkata to verify the source of cash capital introduction in the case of assessee during the F.Y. 2007-08. The Id Assessing Officer got the interim report

from ADIT, Kolkata, which was received on 14/12/2010 in the office. According to the report in nine cases, copies were returned back. Departmental Inspectors were deputed to ascertain the existence of 9 concerns. They were also could not ascertain the existence of these companies at their respective given addresses. The notices issued U/s 131 of the Act had been served in respect of 21 concerns with which transactions were made by the assessee. Some other parties, which are traceable but they could not explain the source of the fund advanced to the assessee. The summary of the loan/share capital as per Assessing Officer is as under:-

Companies which are not traceable:

S.No.	Name of the concerns	Postal remarks by ADIT	Amount Receipt in Dhanlaxmi
1.	M/s Rajdeep Marchandise Pvt. Ltd., 6, Waterloo Street, Kolkata.	Not known	Rs. 25,00,000/-
2.	M/s Pushpak Advisory Pvt. Ltd., 28, Vivekanand Road, Kolkata	-Do-	Rs. 9,00,000/-
3.	Divine Tie Up Pvt. Ltd., 14A, Madhu Roy Lane, Kolkata-700006	No such company Divine Tie Up Ltd. in this address 14A Madhu Roy Lane, Kolkata-6, hence not known	Rs. 45,00,000/-
4.	M/s Lake View Vinimoy Pvt. Ltd., 13, Mother Tala Lane, Howrah-711106	Not Known	Rs. 4,50,000/-

5.	M/s Shibpujan Agencies Pvt. Ltd., 50B, Gariahat Road, Ground Floor, Kolkata 700019	Left	Rs. 13,50,000/-
6.	Nischay Distributors Pvt. Ltd., 13, Mothr Tala Lane, Howrah-711106	Not Known	Rs. 22,50,000/-
7.	Ujjal Vanijya Pvt. Ltd. 13, Mother Tala Lane, Howrah-711106	Do	Rs. 9,00,000/-
8.	M/s Pandhmukhi Commodities Pvt. Ltd., Tollygune House Street, Emergency Police Line, Block-4, R.No. 33, Kolkata-33	Do	Rs. 4,50,000/-
9.	Gaylord Merchandise Pvt. Ltd., 6, Waterloo Street, Kolkata-700069.	Could not be served	Rs. 30,00,000/-

Companies where source of fund is unexplained

Sl.No.	Name of the concerns	Postal remarks by ADIT	Amount Receipt in Dhanlaxmi
1.	Sankhu Balaji Trade Com Pvt. Ltd., 5/1, Clive Row, 2 nd Floor, R.N.-54, Kolkata-700001	Served	Rs. 5,00,000/-
2.	Brajal Sati Tracom Pvt. Ltd.	Do	Rs. 5,00,000/-
3.	Safal Dealers Pvt. Ltd. 52B, Tal Talla Lane, Kolkata-700016	Do	Rs. 4,50,000/-
4.	Evergreen Trafin Pvt. Ltd., 52B, Tal Talla Lane, Kolkata-700016	Do	Rs. 13,50,000/-
5.	Gurukripa Projects Pvt. Ltd.	Do	Rs. 25,00,000/-

The Id Assessing Officer gave reasonable opportunity of being heard to the assessee why loan shown in the name of company which are not traceable and companies where source of fund unexplained should not be assessed U/s 68 of the Act. The assessee replied vide letter dated 27/12/2011, it was submitted that the department had not enquired on their changed addresses and all the datas are available on MCA site. It is clear from the report sent by the ADIT that as per new addresses provided by the ACIT, Circle-7, Jaipur inquiry were also made by deputing departmental inspectors to verify the existence of the concerns but they could not find out any business activities done by these concerns. So she held that there is a reason to add back whole amount received from 9 companies, which are not traceable. She further held that in case of some companies, investment fund was unexplained. The creditworthiness of the creditors had not been proved. She also considered the case laws cited by the assessee but which were found distinguishable. Accordingly, the Id Assessing Officer made addition of Rs. 2.16 crores U/s 68 of the Act.

3. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id CIT(A), who had allowed the appeal by observing as under:-

"2.3. I have carefully examined contents of the 'Interim Report' dated 14/12/2010, of ADI (Inv.) Kolkata, which has formed the sole basis of the given by the AO in the impugned assessment order, viz. the issues under consideration and also the detailed counter submissions made by the Ld. AR in this regard. From the assessment order, it is evident that mainly the AO has made the additions u/s. 68 of the IT Act, i.r.o., the part of share application money record and also towards the unsecured loans, received by the appellant, during the relevant period. Here, it is also relevant to mentioned that as per the provisions of Sec. 68 of the Act, to prove the genuineness of any cash credit, the assessee has to prove three vital aspects .i.e. identity, capacity of creditors and the genuineness of such transaction. The above views have been expressed in the various decisions, including in the cases of Rajshree Synthetic Pvt. Ltd (256 ITR 331) (Raj) and Aravali Trading Co. (220 CTR 622)(Raj). Accordingly, while deciding the present appellate proceeding, the above crucial guidelines were also applied to appreciate and understand the intricacies involved in the above rival stands of the AO and Ld. AR, viz. the issue under consideration. Based on the above aspects, my issues wise findings and conclusion are being discussed as under:-

2.3.1. Unsecured Loans: - From the assessment order, it can be seen that the appellant has received total loans of Rs. 80 lacs, from the following parties –

a. M/s. Rajdeep Merchandise P. Ltd. Rs. 80 lacs

- b. M/s. Gayload Merchandise P. Ltd. Rs. 30 lacs*
c. Garu Kripa Projects P. Ltd. Rs. 25 lacs
Rs. 135 lacs

As per the ADI's above report, the summons u/s. 131 could not be served through postal authority as well as through ward inspector, at the office premises M/s. Rajdeep Merchandise P. Ltd. and M/s. Gayload Merchandise P. Ltd. Thus based on the above finding, the AO considered such loans as none genuine in nature. Similarly as reported by the ADI, in the case of M/s. Garu Kripa Projects P. Ltd., though the person concerned attended before the ADI (Inv.), Kolkata, in response to the summon u/s. 131 of the Act, however considering the financial status of such company, the AO was of the opinion that the sources and genuineness of such loans transactions were not proved satisfactorily. On the other hand, the Ld. AR has submitted that to prove the identity, capacity and genuineness of the above loan transactions, they have submitted confirmations, affidavits, PAN No., copy of relevant returns of income, bank statement of relevant period and complete address of such creditors etc. Accordingly, the loans under considerations should be considered as proper and genuine u/s. 68 of the IT Act.

In the light of the above factual and legal positions, I tent to agree with the Ld. AR that as far as appellant is concerned they have discharge their legal obligation u/s. 68 by filing all the possible evidences and statutory documents, as discussed above. The AO has simply followed the 'Interim Report' of the

ADI, which itself is found of non conclusive and half cooked in nature, being not a final report as such. Moreover,- the non availability aspect, i.r.o,, to cash creditors is concerned, in my opinion the ADI report is not very clear about the exact reason and the follow-up action taken in this regard, specially when theses parties are not only assessed to tax but filed the returns for the relevant period also. In the light of the voluminous documentary evidences, it would be rather difficult to understand and appreciate the findings given by the ADI in this regard. Moreover in the case of M/s. -Garu Kripa Projects P. Ltd., since the concerned person as appeared and submitted the relevant documents and confirm the loans transaction, in the light of settled legal position they are not supported to explain the source of the source and the onus lied on the appellant got discharge, as such. The above views have been expressed by the Hon'ble Rajasthan High Court in the case of Arivali Trading Co. Ltd. (220 CTR 662). In the light of the above deliberation, it is concluded that the AO was not justified in treating the loans of Rs. 80 lacs from the above three parties, simply on the basis of general observation/findings of the ADI (Inv.) Kolkota, whereas the documentary evidences submitted in this regard, suggest otherwise, as such.

2.3.2 *Share Capital/Application Money In this regard the total share capital/share application money of Rs. 1.36 crores received from 11 entities were considered as unproved, u/s. 68 of the IT Act, for various reasons and grounds by the AO, mainly*

based on the findings given in the ADI report, as discussed above. The gist's of the above stands of the AO are as under:-

i. In seven cases, the notices could not be served by the ADI, Kolkata, either through the postal method or through the Ward-Inspector, therefore, the same have been treated as deemed income of the appellant, u/s. 68 of the Act of the AO. The details in this regard are as under:-

<i>i. M/s. Pushpak Advisory P. Ltd</i>	<i>Rs.9,00,000/-</i>
<i>ii. Divine Tie Up P. Ltd.</i>	<i>Rs. 45,00,000/-</i>
<i>iii. M/s. Lake View Vinimoy.P.. Ltd</i>	<i>Rs. 4,50,000/-</i>
<i>iv. M/s. Shipujan Agencies P. Ltd.</i>	<i>Rs.13,50,000/-</i>
<i>v. Nischay Distributors P. Ltd.</i>	<i>Rs.22,50,000/-</i>
<i>vi. Ujjwal Vanijay P. Ltd.</i>	<i>Rs.9,00,000/-</i>
<i>vii. M/s. Panchmukhi Commodities Ltd.</i>	<i>Rs.4,50,000/-</i>

ii. In four cases, though the compliance of summons u/s. 131 were made by such companies with necessary details and documents before the ADI, Kolkata, however, in the light of their financial status, the ADI and the AO did not considered respective share capital investment, as genuine, as such. The details of such concerns are as under:-

<i>i. Safal Dealers P. Ltd.</i>	<i>Rs.4,50,000/-</i>
<i>ii. Evergreen Trafin P. Ltd.</i>	<i>Rs.13,50,000/-</i>
<i>iii. Sankhu Balaji Trade Com P Ltd.</i>	<i>Rs.5,00,000/-</i>
<i>iv. Brajal Sati Tracom P. Ltd.</i>	<i>Rs.5,00,000/-</i>

The undisputed facts i.r.o. of the above share capital/application money received by the AO are that the investors/creditors of such transactions are 'Private Limited Companies' only. Accordingly while deciding the issue under consideration, the above vital aspect has to be kept in mind. In this regard, the appellant has submitted confirmations, affidavits, PAN No., copy of relevant returns of income, bank statements of relevant period and complete address of such companies alongwith the R.O.C. papers also. Here the ratios upheld by various courts, including the Hon'ble Supreme Court in the case of M/s. Lovely Export Pvt. Ltd. 216 CTR 195 and M/s. Stellar Investment Ltd. 251 ITR 463, are found quite relevant and applicable, as found dealt with the issue, similar to the present appellate proceedings also.

In the above decision, the Hon'ble Apex Court has categorically held that even if the share application money has been received from so- called bogus share holders, whose identity have been given and proved, under no circumstances such share capital can be regarded as undisclosed income of the company. In the present case the appellant has given sufficient documentary evidences in the form of confirmation, affidavit, PAN No., copy of return of income, R.O.C. paper showing existence and addresses of investing company etc., to establish the identity and genuineness of such companies, as such. In the light of the above decisions and also such voluminous and statutory evidences submitted by the appellant, in my considered view,

simply non serving of notices at given addresses or inadequate financial resources of such companies etc, to support such investment as perceived by the ADI/the AO, cannot be a valid ground to make the addition of such share capital investment in the hands of the appellant company, u/s. 68 of the IT Act.

In another recent judgment of Hon'ble Delhi High court, given in the case of Dwarkdhis Investment Pvt. Ltd. (330 ITR 298) having the similar issue under consideration, the court has held that though in Sec. 68 proceedings the initial burden of proof lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN or income tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft; then the onus of proof would shift to the revenue and just because the creditors/share applicants could not be found at the address given, it would not give the revenue the right to invoke Sec. 68 as revenue has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the source of source. As in the instant case, the tribunal has confirmed the order of the CIT (A) of deleting the impugned addition, while holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques or draft etc. Thus no question of law arises in the given situation. From the above discussion, it is apparent

that the above ruling is squarely applicable in the present case also.

Conclusion - *In view of the above factual and legal position, I am of considered views that the appellant has discharged its initial burden/onus cased u/s. 68 of the Act, i.r.o. the cash credits of Rs. 80 lacs and share capital/application money of Rs. 1.36 crores, by providing all possible documentary/statutory evidences, as discussed above. It is also found that the AO has disapproved or disbelieved the above transactions, simply on the basis of a half cooked and inconclusive observations of the ADI (Inv.) Kolkota, discussed in his interim report. In the light of the various court's decisions, including of the Apex Court and the Jurisdictional High Court and Tribunal as relied upon by the appellant also, it is evident that the AO has failed to make out any reasonable and proper case u/s. 68 of the Act towards share capital money and cash credits received by the appellant, by refuting the documentary evidences submitted in these regards. On the other hand, it is felt that the AO has also simply rejected the voluminous supporting evidences of the appellant in a cryptic and summary manner in the impugned assessment order, which cannot be upheld, under the given circumstances. Accordingly the entire addition of Rs. 2.16 crores made u/s. 68 of IT Act is hereby deleted. Consequently this ground of appeal is upheld.*

4. Now the revenue is in appeal before us. The Id DR has vehemently supported the order of the Assessing Officer and argued that the assessee had not proved the identity, genuineness and creditworthiness of the creditors. The Id Assessing Officer had enquired through ADIT, Kolkata and came to conclusion that loan transaction had not proved as per the provisions of Section 68 of the Act. The Id CIT(A) had deleted the addition without satisfying all three basic ingredients i.e. identity, capacity and genuineness of the transaction. He simply relied on the decision of Hon'ble Supreme Court in the case of M/s Lovely Export Pvt. Ltd. 216 ITR 195 and M/s Stellar Investment Ltd. 251 ITR 463. It is further argued that the affidavit of the creditors were contrived and orchestrated and are lacked of validity in the facts and circumstances of the assessee. All the companies had been indulging in providing accommodation entries to various parties in lieu of the commission charges. It was also found that they used to receive cash equivalent to the share application money from the interested party, which were deposited in the bank accounts and cheques/DDs of equal amount have been issued as a share application money to such party concerned on given addresses. No such companies were found. The assessee failed to produce the Directors of such companies for further verification to examine the genuineness of such

investments U/s 68 of the Act for onus. The Id DR further relied on the decision in the case of CIT Vs. Kishori Lal Santosh Lal 216 ITR 9 (Raj.). The case laws cited by the assessee i.e. Sophia Finance Ltd. 205 ITR 98 and Steller Investment Ltd. (supra) are not squarely applicable. The Hon'ble Supreme Court decision in the case of CIT Vs. Lovely Exports is also not applicable as the Hon'ble Supreme Court has dismissed the SLP on the ground that there is no law point involved, the matter ready to actual aspect. He further relied on the decision in the case of S.P. Jain 87 ITR 370 wherein it has been held that in the case of unexplained investment in form of share capital made by the assessee, benami entity, the IT authorities were justified including such investment in the hands of the assessee, as such. He also relied on the decision in the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC). Reliance has also been placed on the following case laws:-

- i. CIT Vs. Rathi Finlease Ltd. 215 CTR 429 (MP).
- ii. CIT vs. Himalaya International Ltd. 214 CTR 437 (Del).
- iii. CIT Vs. Prateek Finance & Investment Co. Ltd. 215 ITR 272 (Del).
- iv. CIT Vs. Nivedan Vanijya Niyojan Ltd. 263 ITR 623 (Cal)
- v. Hidusthan Tea Trading Co. Ltd. Vs. CIT 263 ITR 289 (Cal)
- vi. CIT Vs. Dhar Ispat (P) Ltd. 180 CTR 491 (MP).
- vii. CIT Vs. Biju Patnaik (SC) 160 ITR 674

- viii. Roshan De Hatti Vs. CIT (SC) 107 ITR 938
- ix. Sumati Dayal Vs. CIT (SC) 214 ITR 801
- x. Vasantibai N. Shah Vs. CIT (Bom) 213 ITR 805
- xi. Sreelekha Banarjee & Ors. Vs. CIT (SC) 49 ITR 112
- xii. CIT Vs. Precision Finance P. Ltd. (Cal) 208 ITR 465
- xiii. K.C.N. Chandrasekhar Vs. ACIT (ITAT, Bang) 66 TTJ 355
- xiv. CIT Vs. United Commercial & Industrial Co. (P) Ltd. (Cal) 187 ITR 596.
- xv. CIT Vs. Sophia Finance Limited (Del) 205 ITR 98
- xvi. CIT Vs. Active Traders P. Ltd. (Cal) 214 ITR 583
- xvii. CIT Vs. Nivedan Vaniya Niyojan Ltd. (Cal) 263 ITR 623
- xviii. CIT Vs. Bhagwati Jewels Ltd. (Del) 201 ITR 461
- xix. CIT Vs. Rathie Finance Ltd. (MP) 215 CTR 429
- xx. ACIT Vs. Dhanlaxmi Steel Re-rolling Mills (ITAT, Hyd) 57 ITD 361.
- xxi. Pradip Kumar Loyalka Vs. ITO (ITAT, Pat-TM) 63 ITD 87.

Therefore, order of the Assessing Officer may please be confirmed.

5. At the outset, the Id AR of the assessee has reiterated the arguments made before the Id CIT(A). The Id Assessing Officer accepted the share capital receipt from all the parties to be genuine. However, he did not accept the corresponding share premium amount to be genuine. The details are as under:-

S.No.	Name of the Party	Share Capital (X)		Share Premium (Y)		Total (X+Y)
1	Pushpak Advisory Private Limited	Accepted as Genuine by Id. AO	100,000	Not Accepted as Genuine by Id. AO	900,000	1,000,000
2	Divine Tieup Private Limited		500,000		4,500,000	5,000,000
3	Lakeview Vinimay Private Limited		50,000		450,000	500,000
4	Shivpujam Agencies Private Limited		150,000		1,350,000	1,500,000
5	Nischay Distributors Private Limited		250,000		2,250,000	2,500,000
6	Ujjawal Vanijya Private Limited		100,000		900,000	1,000,000
7	Panchmukhi Commodities Private Limited		50,000		450,000	500,000
8	Safal Dealers Private Limited		50,000		450,000	500,000
9	Evergreen Trafin Private Limited		150,000		1,350,000	1,500,000
	Sub-total (A)		1,400,000		12,600,000	14,000,000
10	Hariom Vancon Private Limited	Accepted as Genuine by Id. AO	200,000	Accepted as Genuine by Id. AO	1,800,000	2,000,000
11	Nirmal Viniyog Private Limited		550,000		4,950,000	5,500,000
12	Monitor Suppliers Private Limited		150,000		1,350,000	1,500,000
13	Energy Distributors Private Limited		200,000		1,800,000	2,000,000
	Sub-total (B)		1,100,000		9,900,000	11,000,000
	Total (A+B)		2,500,000		22,500,000	25,000,000

Share application money received by the assessee company through proper channel amounting to Rs. 10 lacs, which was subsequently returned back through banking channel. He referred the order of the Id CIT(A) for this purposes. The assessee company produced all the required

documents to prove the identity, genuineness and creditworthiness of the companies, who had invested lent money. All the parties are private limited company duly regulated by the stringent provisions of the Companies Act, 2013 and their complete details could be verified from the MAC website. The department has also issued them PAN. These companies are regularly assessed to tax. Thus, the onus, on the part of the assessee company, stood fully discharged. The Id Assessing Officer had solely taken decision on the basis of interim report of ADIT, Kolkata. Nothing was brought on record by the Assessing Officer to shift the burden on the assessee company. The Id AR has further submitted that the following companies had been served notices by the income tax department, which is reproduced as under:-

S.No	Name of Company	Address	PB
1.	M/s Rajdeed Merchandise Pvt.Ltd.	6, Waterloo Street, Kolkata – 700069	266-267
2.	Divine Tie Up Pvt.Ltd.	25B, Raja Raj Ballav Street, Ground Floor,Kolkata - 700003	266
3.	M/s Lake view VinimoyPvt.Ltd.	202, Jessore Road, Shyam Lake Garden, Block – B, Shop No.5, Kolkata – 700089	266
4.	M/s Shivpujan Agencies Pvt. Ltd.	3, Raja Debendra Narayan Deb Lane, Kolkata – 700005	266
5.	M/s Panchmukhi Commodities Pvt.Ltd.	4B, Gopi Bose Lane, Kolkata – 700012	266
6.	Gaylord Merchandise Pvt. Ltd.	6, Waterloo Street, Kolkata – 700069	266
7.	M/s Pushpak Advisory Pvt. Ltd.	28, Vivekanand Road, Kolkata – 700007	266

There is no evidence with the Assessing Officer directly or indirectly that the assessee's unaccounted money had been routed through these deposits. In absence of this finding, no addition can be made in the income of the assessee merely on suspicion. Since the identity of the cash creditors had been established by the assessee company. The Id Assessing Officer at best could have assessed such amount in the hands of those companies. There is also no allegation by the Id Assessing Officer or in the interim report by ADIT Kolkata that these companies were part of any racket or were entry operators. The Id Assessing Officer made routine enquiry to ADIT, Kolkata. There is also no information on which these cases were assessed by reopening. He further relied on the following case laws:-

- (i) CIT Vs Vacmet Packaging (India) (P) Ltd. (2014) 367 ITR 217 (All).
- (ii) CIT Vs Pranav Foundations Ltd. (2014) 51 Taxmann.com 198 (Mad).
- (iii) CIT Vs Vrindavan Farms (P) Ltd. ITA No. 71/2015 Delhi High Court.
- (iv) CIT Vs Som Tobacco India Ltd. (2014) 42 taxmann.com 310 (All).
- (v) Fair Finvest Ltd. (2013) 357 ITR 146 (Delhi).
- (vi) CIT Vs Morani Automotives (P) Ltd. (2014) 264 CTR 86 (Raj.)
- (vii) CIT Vs First Point Finance Ltd. (2006) 286 ITR 477 (Raj.).
- (viii) CIT Vs Supertech Diamond Tools (P) Ltd. (2014) 44 taxmann.com 460 (Raj).

- (ix) M/s Bells Paper Board (P) Ltd. ITA No. 575/JP/2011, M/s Misty Meadows (P) Ltd. ITA No. 422/JP/2012.
- (x) Shree Markha Synthetics Ltd. (2006) 155 Taxman 289 (Raj.)

5.1 The Id AR further argued that when the identity has been established by the assessee, there is no need to establish the source of money infused by the creditors, for which he relied on the following decisions:

- (i) KanhaialalJangid v Asst. CIT (2008) 217 CTR (Raj) 354.
- (ii) Aravali Trading Co v ITO (2008) 220CTR (Raj) 622
- (iii) Labh Chand Bohra v ITO (2010) 189 Taxman 141 (Raj)
- (iv) CIT vs. Jay Dee Securities & Finance Ltd.(2013) 350 ITR 220 (ALL.)

It is further argued that Section 68 amended by the Finance Act 2012 w.e.f 1.4.2013 goes to confirm that prior to this amendment the person in whose name such credit was recorded in the books of the company was not expected to offer any explanation about the nature and source of such sum. The factual background of the creditor is to be understood and has held by the Hon'ble Supreme Court in Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297 (SC). He further relied on the decision of Hon'ble ITAT-A Bench Mumbai in the case of Superline Construction Private Limited ITA No. 3644/Mum/2014 wherein it has been held that such receipts cannot be regarded as the undisclosed income of the assessee company and in case the department has information about the alleged

bogus shareholders, then the department should proceed to reopen the individual assessments of the investors. Therefore, he prayed to confirm the order of the Id CIT(A).

6. We have heard the rival contentions of both the parties and perused the materials available on record. The Id Assessing Officer during the course of assessment proceedings, noticed that the assessee has shown deposits, fresh capital of Rs. 6,11,50,000/- in different form i.e. unsecured loan, reserve and surplus and share capital money. The Id Assessing Officer verified the information submitted by the assessee through ADIT, Kolkata, who had sent interim report, which was received on 14/12/2010 whereas assessment was completed on 30/12/2010. In interim report, as per Assessing Officer in 9 cases, notices were returned back but it was not informed to the assessee about the conclusion of the enquiry by the ADIT, Kolkata or Assessing Officer of the assessee. The Id Assessing Officer heavily relied on the Inspector's report in confirming the addition but result of the enquiry of the Inspector has not been communicated to the assessee, which is against the principles of natural justice. As per Assessing Officer, in case of 5 companies, the source of fund was not found explained. The Id Assessing Officer again gave show cause notice on 23/12/2010. The assessee filed reply on 27/12/2010 and it was

claimed before the Assessing Officer that no enquiry has been made by the Assessing Officer on changed addresses. The Id Assessing Officer had not considered the evidence filed by the assessee during the course of assessment proceedings i.e. affidavits confirming the transaction, PAN number, complete addresses of creditors, copy of balance sheet, ITR for A.Y. 2008-09, bank statement and form No. 18. The assessee had discharged its onus by providing the requisite evidences to prove the identity, genuineness and creditworthiness of the cash creditors. The Id Assessing Officer herself had accepted the remaining cash creditors to the tune of Rs. 3.95 crores explained on the basis of similar evidences produced by the assessee as genuine. The loan/share capitals were received from the private limited companies. They also are filing return under the company's law and all information is available on MCA website. The ADIT report was not conclusive to held that the cash creditors were not genuine. It is not required under the law to prove the source of source U/s 68 of the Act. Primary burden lies on the assessee has been discharged by filing the requisite evidences before the Assessing Officer and shifted on the Assessing Officer to disprove the cash creditors' transactions are not genuine or bogus. The share application money was received by the appellant and subsequently returned though banking

channel. In case of 7 companies, the notices were served on it on given addresses. There is no evidence directly or indirectly with the Assessing Officer that the assessee had routed undisclosed money in the guise of share application money or loan. The Id DR's argument have also not convinced us that these parties were in accommodation entries in form of loan and share application money after charging certain commission as such no survey/search has been carried out on the creditors to prove that these companies are habitual to provide loan/share application money even there is no evidence with the Id DR for making such allegation during the course of written submissions. The case laws relied by the Id AR are squarely applicable on the given facts and circumstances. The Id DR has also not controverted the finding given by the Id CIT(A). Accordingly, we uphold the order of the Id CIT(A).

7. In the result, revenue's appeal is dismissed.

Order pronounced in the open court on 21/03/2016.

Sd/-
(ललित कुमार)
(Laliet Kumar)
न्यायिक सदस्य / Judicial Member

Sd/-
(टी.आर.मीना)
(T.R. Meena)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 21st March, 2016
*Ranjan

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

1. अपीलार्थी / The Appellant- The ACIT, Circle-7, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Dhanlaxmi Equipment Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1103/JP/2011)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar