

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 1992/2019

(Arising out of impugned final judgment and order dated 07-08-2018 in ITA No. 111/2018 passed by the High Court Of M.P. At Indore)

PR. COMMISSIONER OF INCOME TAX (I) Petitioner(s)

VERSUS

M/S CHAIN HOUSE INTERNATIONAL (P) LTD. Respondent(s)

(FOR ADMISSION and I.R. and IA No.27450/2019-CONDONATION OF DELAY IN FILING and IA No.27451/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.27453/2019-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 18-02-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOTRA

For Petitioner(s) Mr. Sanjay Jain,ASG
Ms. Akanksh Kaul,Adv.
Mr. Chinmaya Chandra,Adv.
Mr. Vidur Mohan,Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s) Ms. Kavita Jha,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

We see no reason to interfere with the impugned order. The special leave petition is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

(NARENDRA PRASAD)
COURT MASTER

(SUMAN JAIN)
COURT MASTER

HIGH COURT OF M.P. BENCH AT INDORE
Pg. No.--1-- (ITA No.112/2018 & Other connected matters)

D.B.:Hon'ble Shri P.K. Jaiswal
Hon'ble Shri S.K. Awasthi, JJ.
ITA No.112/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.111/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.110/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.113/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Rohtak Chain Co. (P) Ltd.)

ITA No.114/2018

Principal Commissioner of Income Tax (1) Indore

Versus

Bharat Securities Ltd.

ITA No.115/2018

Principal Commissioner of Income Tax (1) Indore

Versus

Bharat Securities Ltd.

Shri V.N. Dubey, Advocate for the appellant.
Shri Sumit Nema, learned Senior Advocate with Shri G. Tiwari,
Advocate for the respondent.

ORDER
(7.08.2018)

This order shall govern the disposal of ITA No.112/2017,
ITA No.111/2017, ITA No.110/2017, ITA No.113/2017, ITA
No.114/2017 and ITA No.115/2017. For the sake of convenience,

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--2-- (ITA No.112/2018 & Other connected matters)

the facts are borrowed from ITA. No.112/2017.

3. The present bunch of appeals have been filed by the revenue against the order dated 27.12.2017, passed by the Income Tax Appellate Tribunal, Indore Bench, Indore in ITA No.596 & 597 / Del / 2017, for the assessment year 2012-13 and 2013-14, whereby the learned Appellate Tribunal affirmed the order passed by the Commissioner Income Tax (Appeals) in First Appeal bearing No.18/16-17 and other connected appeals, and dismissed all the six appeal of the revenue.

4. Facts of the case are that the search, seizure and survey operations under section 132/133A of the Income Tax Act, 1961 (herein after referred as 'the Act') were conducted on 17.12.2013, along with other concerns / group companies of the assessee company having its PAN No.AAGCA5346J at various residential and business premises and a notice under Section 153A of the Act was issued to the assessee on 23.9.2015 by the assessing officer where-after in response to the said notice, the assessee (M/s. Chain House International (P) Ltd, New Delhi). filed its returns on 5.10.2015 declaring its total income of Rs.1,03,12,520.

5. During the course of search, it has been revealed that the assessee has received an unsecured loan of Rs.30.00 Crores from

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--3-- (ITA No.112/2018 & Other connected matters)

M/s. Bharat Securities Pvt. Ltd. (herein after referred as 'BSPL') who shown to have got a bogus share application money and premium of Rs.55.00 Crores from 5 entry providing companies viz. M/s. Aadhaar Ventures India Ltd (Rs.40.75 Crores), Emporis Project Ltd (Rs.3.00 Crores), Dhanus Technologies Ltd. (Rs.9.75 Crores), L.N. Polyester Ltd (Rs.0.75 Crores) and Yantra Natural Resources Ltd. (Rs.0.75 Crores) during the Financial Years 2011-12 and 2012-13 in the form of accommodation entires and the some share capital with exorbitant premium from the said 5 companies against payment of unaccounted cash which was inter-alia routed back as share capital and share premium during F.Y. 2011-12 & 2012-13. Further it was found that M/s. BSPL has transferred the said receipts of Rs.55.00 Crores of bogus share capital and premium to the main Group companies ie., Rs.30.00 Crores during the Financial Year 2011-12 as unsecured loan which was transferred to M/s. Chain House International Pvt. Ltd and again Rs.8 Crores during the Financial Year 2012-13 as unsecured loan were transferred to M/s. Chain House International Pvt. Ltd and further during Financial Year 2012-13 and Rs.17.00 Crore was transferred as unsecured loan to M/s. Rohtak Chain Company Pvt. Ltd. During the investigation, it was found that commission @ 5%

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--4-- (ITA No.112/2018 & Other connected matters)

had been charged by the aforesaid 5 entry providers companies for providing accommodation entries, therefore, commission of Rs.30,00,00,000/- (5% of Rs.30 Crores) for the Financial Year 2011-12 and Rs.1,25,00,000/- (5% of Rs.25 Crores) for Financial Year 2012-13 was added to the total income on the assessee company for infusion of accommodation entries as unexplained expenditure under Section 69C of the Act.

6. After the search the investigation wing issued notices under Section 131 (1A) of the Act to the investor companies and also to its Directors. The Directors and the four investor companies (except L.N. Industries Ltd) complied with the requirement as per the notices. They replied the notices accompanied with copy of balance sheets, copy of ITR Ledger Account etc. Investor companies confirmed the investment made by them in the share capital of assessee company. The investigation wing, Delhi was having some information relating to statements of Shrish Chandrakant Shah (SCS) and Sawan Kumar Jajoo (Jajoo) and who have stated that they were engaged through the web of various companies including the five companies who had contributed to the share capital of M/s. Bharat Securities (P) Ltd, in providing accommodation entries to various entities. The

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--5-- (ITA No.112/2018 & Other connected matters)

statements Mr. Jajoo were recorded on 18.12.2013 and 23.12.2013. On being asked by the investigation wing, the company consented to cross examine the witnesses and later on letter was issued by the department for cancelling the cross examination and also required him to produce the Directors of the investors company. During the assessment proceedings the assessing officer issued notice under Section 133(6) of the Act to all the investor companies and also their Directors separately requiring them to furnish their books of accounts, balance sheets, profit and loss accounts, copy of bank statement and also the details of all the investments including the source made by them in the share capital of BSPL. All the investor companies, except Dhanus Technologies Ltd, complied with the notices. All of them confirmed the investment made in the assessee company and in support thereof furnished the relevant supporting documents including the ledger Account of BSPL in their books of accounts, copy of ITRs, bank statements and also explained their source of investments.

7. M/s. Dhanus Technologies Ltd. was under liquidation vide order of the Madras High Court dated 26.11.2013. The Assessing Officer made necessary enquiries from the Official Liquidator,

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--6-- (ITA No.112/2018 & Other connected matters)

appointed by the Madras High Court, who after conducting the enquiries from internal auditors, bank BSE confirmed the investment made by Dhanus Technologies Ltd. in the assessee company in 65,000 shares amounting to Rs.9.75 crores. The Official Liquidator also found that the seized record of the company contained annual report for the period ending 31.12.2011 as inventory item. The Official Liquidator confirmed the investment and also sent copies of various supporting documents including copy of bank statement, copy of board resolution, copy of the share application forms, copy of share certificates, and copy of the annual report.

8. At the request to assessing officer the assessee company filed detailed explanation with evidences and documents with regard to Section 68 of the Act in case of each investor company, which includes confirmation of investment, copy of bank statement, copy of balance sheet reflecting the investment made in BSPL, ledger account of assessee company in the books of accounts of investor companies, copy of ITRs, copy of allotment letter dispatched to investor companies through speed post, copy of share certificates, copy of Form No.2 filed with ROC, Memorandum & Articles of Association of the investor companies

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--7-- (ITA No.112/2018 & Other connected matters)

etc.

9. On 2.2.2016, the assessing officer issued show cause notice alleging therein that the assessee company received accommodation entries of Rs.55 crores from five listed companies. In response to the show cause notice the assessee company, ie., BSPL submitted its reply dated 12.2.2016, refuting all the allegations of assessing officer and emphasised that the investor companies and their Directors had on several occasions filed confirmations and all supporting documents before the investigation wing as well as before the assessing officer confirming the investment in BSPL. The share of the investor companies were traded in Stock Exchange on regular basis. All the share applicant companies have submitted their audited balance sheets displaying the investment made by them in the share capital of BSPL. The investor companies had also furnished details of the source of capital investment. During the course of search on the assessee company Xerox copy of the share certificate, original counter foils were found and seized by the revenue. The assessee company has, therefore, relied very heavily on sub section 4A of Section 132 providing that all documents etc found during the course of search are to be

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--8-- (ITA No.112/2018 & Other connected matters)

presumed as correct and genuine and also such documents belong to the person in whose custody these were recovered. Regarding reliance on the statements the assessee company very vociferously stated that no reliance should be placed on such statements for various reasons such as statements were recorded behind the back of the assessee company, recorded during the search of others and also recorded much prior to the date of search on the assessee company. During such search BSPL was not in picture at all and such persons have never referred the name of BSPL. The submission of the assessee company that no reliance should be placed on such statements or at-least unless the opportunity of cross examination was provided. The assessee company had also explained that the assessing officer had completely failed to bring even iota of evidence on record to prove any generation of unaccounted money and also transfer of such money in exchange of share capital.

10. During the course of search on the assessee company no incriminating material whatsoever proving any accommodation entry was unearthed. Finally the assessee company filed voluminous material in the form of evidences and documents supporting the identity and creditworthiness of the investor and

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--9-- (ITA No.112/2018 & Other connected matters)

genuineness of the transactions. The assessing company produced Directors of major investor company namely Aadhaar Ventures India Ltd who contributed Rs.40.75 crores out of total investment of Rs.55 crore, before the assessing officer. He was examined and his statement was recorded. He produced the books of accounts of the company. He confirmed the investment made by his company in the share capital of the assessee company. The books of accounts produced by him were examined by the Assessing Officer. The Director in his statement has deposed that his company was never engaged in providing accommodation entries and on the contrary was carrying on real business where the turnover runs into approx. 171 crores in Assessment Year 2012-13 and 133 crores in Assessment Year 2013-14. He also produced the bank account of the company with reference to the investment made. He also admitted having known BSPL and its Directors. He stated that share were subscribed @ Rs.1500/- per share including the amount of share premium which was on the basis of mutual decision. He disagreed with the statements of Shri Chandrakant Shah (SCS) and Sawan Kumar Jajoo (Jajoo). He stated that his company was not engaged in providing any accommodation entries and the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--10-- (ITA No.112/2018 & Other connected matters)

investment of Rs.40.75 crores was real, correct and genuine. He also stated that share capital was not invested in exchange of any cash. On 15.3.2016, the assessing officer issued show cause notice wherein it was informed that an adverse inference was being drawn against assessing company regarding share capital of Rs.55 Crore. The assessing company filed its reply on 2.3.2016 and emphasized on the cross examination of the persons on whose statements the assessing officer has placed reliance against the assessing company. Copy of statement and Somabhai Sunderbhai Meena and Aadhaar Ventures India Ltd were also sought from the assessing officer, their cross examination were also demanded, however, opportunity of cross examination of such person was not granted nor copies of their statement were also given. The assessee company further stated that the assessee company can only contact the investor company who had contributed to the share capital.

11. Share capital had been contributed by the company and not by the Directors in their individual capacity. It is only the books of accounts and the balance sheets which speak itself. Besides, in this letter itself it was informed that the assessee company was not clothed with the power under Section 131 of

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--11-- (ITA No.112/2018 & Other connected matters)

the Act, which is enjoyed by the revenue and the assessee company did not succeed except that it had able to produce only the Direcotr of Aadhaar Ventures India Ltd. So far as the other Directors are concerned the assessee company was making request right from beginning that the assessing officer may kindly issue summons under Section 131 of the Act to such Directors and then record their statements and allow cross examination to the assessee company but the assessing officer did not gave any attention to the same and never took any action on the said request of the assessee company.

12. While passing the assessment order under Section 143(3) read with Section 153C of the Act, the assessing officer did not agree with the evidences filed and treated the amount of Rs.55 Crore as income of the assessee company under Section 68 of the Act on the basis of statement / evidence of various persons, which were recorded behind the back of the assessee company.

13. The assessing officer on the basis of such statements / affidavits and also on the basis of 13 conclusions drawn by him as explained in the assessment order, treated the amount of Rs.55 Crores as income of the assessee company under Section 68 of the Act. Such addition was made by the assessing officer in the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--12-- (ITA No.112/2018 & Other connected matters)

hands of the assessee company on protective basis and substantive addition was made in the hands of sister concerned namely Chain House International (P) Ltd. and Rohtak Chain Co. (P) Ltd on the ground that the assessee company had transferred such share capital to its group companies. The assessing officer passed the assessment order on 31.3.2016, by making addition of Rs.31,50,00,000/- for the Assessment Year 2012-13 and addition of Rs.26,25,00,000/- for the Assessment Year 2013-14 under Section 68 of the Act.

14. In appeal, the appellate authority found that appeal before Commissioner of Income Tax (A), the assessee company has been demanding cross examination of the various witnesses, before the investigation wing and also before the assessing officer whose statements were strongly relied upon by the assessing officer, but unfortunately this cardinal principle of rule of natural justice was violated by these authorities by denying the assessee opportunity cross examine the witnesses. The appellate authority (A) exercising the powers available under Section 250(4) of the Act, summon all such persons by issuing the summons under Section 131. The appellate authority recorded the statements of the persons who appeared before her. The statement of Shrish

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--13-- (ITA No.112/2018 & Other connected matters)

Chandrakant Shah (SCS) was recorded by the appellate authority wherein he stated that he was not engaged in providing any accommodation entries and on the contrary he was in the business of providing consultancy services and data hub services to various companies. He was also engaged in purchase and sale of shares. He also stated that he did not know BSPL or its C.A. He disowned his earlier statement and stated that the same was recorded under fear. Sawan Kumar Jajoo (Jajoo) also appeared during the proceedings before first appellate authority and his statement was recorded by the appellate authority (A) wherein he stated that neither he had provided any accommodation entries to BSPL nor acted as a broker in any such transactions. He never introduced BSPL to Shrish Chandrakant Shah (SCS). He also denied to provide any chart containing certain entries to the officers who had recorded his statement at his residence on 18.12.2013. he also denied of any acquaintance with BSPL or any of its Directors. He also denied to have received any cash from BSPL or from any other person on its behalf. He also denied his earlier statement and stated that the same was recorded under fear and misrepresentation. He was extensively cross examined by the assessing company.

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--14-- (ITA No.112/2018 & Other connected matters)

15. Mr. Chandan Kumar Singh, an employee of Shrish Chandrakant Shah (SCS) appeared and his statement was recorded by the appellate authority (A). He stated that he was working as computer operator with Shrish Chandrakant Shah. He stated that Shrish Chandrakant Shah was engaged in the business of providing financial services and data hub services to different parties. He also stated that Shrish Chandrakant Shah was not engaged in business of providing RTGS against receipt of cash. He also stated that Shri Kumar Raichand Madan was also taking consultancy services for his companies from Shrish Chandrakant Shah. He also denied to have arranged staff for Shrish Chandrakant Shah. It was stated that during search on SCS no physical books of accounts of other companies were found. In fact, soft copies of financial details of certain companies who were taking financial consultancy and data hub services from Shrish Chandrakant Shah. It was stated that he did not know Shri Sawan Kumar Jajoo or CA Shri Murari Lal Agarwal. He also never seen Shri Subhash Chand Verma in the office of Shrish Chandrakant Shah. He stated that he had never heard the name of BSPL. He disowned his earlier statement and stated that the same was recorded in fear and misrepresentation.

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--15-- (ITA No.112/2018 & Other connected matters)

16. Shri Omprakash Anandilal Khandelwal, the then Director of Aadhaar Ventures (I) Ltd appeared before appellate authority (A) and his statement was recorded wherein he stated that his company was not engaged in any business of providing any accommodation entries. He also stated that Shrish Chandrakant Shah was not controlling the business of his company. He was only a financial consultant. He stated that his company was engaged in the business of textiles, finance and investment. He produced the books of account for the Assessment Year 2012-13 and 2013-14 consisting of cash book, ledger, journal, bank book etc. The investment made in the appellant company was found recorded and source of such investment was also explained. He stated that audited balance sheet of the company for both the years reflecting the investment made in shares of BSPL. These books of accounts were examined by CIT (A). He also stated that prior to making the investment a due diligence enquiry from a company secretary regarding BSPL was also made. He also stated that a share valuation report of shares of BSPL was provided to them. He also stated that his company subscribed 105000 shares @ of Rs.1500/- per share in the Assessment Year 2012-13. He further stated that his company subscribed to 80,00,000 shares

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--16-- (ITA No.112/2018 & Other connected matters)

@ Rs.125/- per share in the Assessment Year 2013-14 for the purpose of acquiring controlling stake in BSPL and thereby acquire control of its subsidiary company Chain House International (P) Ltd. he also stated that he knew BSPL and its Directors. He had visited their residence and also visited business premises of its sister concerns. He stated that Shrish Chandrakant Shah was their financial consultant and he did not know Shri Sawan Kumar Jajoo. His company had made genuine investment in BSPL. He also denied to have received or collected any cash from anybody in exchange of RTGS made to BSPL for subscribing share capital. He further stated that the earlier affidavit was filed under fear and pressure.

17. Shri Kumar Raichand Madan, Director of Dhanus Technologies Ltd in the statement, stated that his company had made investment in 6500 equity shares of BSPL for Rs.9.75 crores in Assessment Year 2012-13. The share price was based on share valuation report and on mutual consent. He produced audited balance sheet of the company as on 31.12.2011 reflecting the investment made in BSPL. He also stated that his company was engaged in the business of telecom, BPO and flee track prior to going into liquidation. On being asked by appellate authority, he

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--17-- (ITA No.112/2018 & Other connected matters)

stated that there are two main concerns of Shri Naresh Kumar. One is situated at Chandni Chowk, Kucha Majajan, Delhi under the name of Rohtak Chain Co. and the other is situated at first floor of Bank Street, Karol Bagh under the name of Chain House. He also stated that all the decision including the decision of making investment in BSPL was taken by the Board of company. He denied to have any connection or knowledge of Shri Sawan Kumar Jajoo. He also stated that it is not correct to say that he was supplying any dummy directors to Shrish Chandrakant Shah. In fact Shrish Chandrakant Shah was providing data hub services to his company.

18. Shri Garlapati Surender Reddy, Director of M/s. L.N. Industries Ltd stated that he was a Director in the company since 1993. His company was engaged in manufacture of texturized twisted polyesters dyed yarn and nylon dyed yarn. He produced the books of accounts of the company. Its turnover for Assessment Year 2012-13 was Rs.76.98 crores. He company was paying excise duty and sales tax which was Rs.27,55,164/- in Assessment Year 2012-13. His company had paid rent of Rs.300000/- for its office at Hyderabad Rs.114500/- for its office at Silvasa and Rs.501600/- for its office at Mumbai. The company

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--18-- (ITA No.112/2018 & Other connected matters)

had taken cash credit limit from State Bank of Hyderabad. The packing credit limit availed by his company was Rs.7.35 crores as on 31.3.2012. The company had paid interest of Rs.1.74 crores on term loan and Rs.1.29 crores on working capital. He confirmed the investment made in BSPL. He also provided ledger account of Bharat Securities in the books of his company where the factum of investment was found recorded and examined by appellate authority (A). He also explained the source of investment. He stated that his company is still holding the shares of BSPL. He also produced audited balance sheet of his company containing the details of investment made in BSPL and Naresh Kumar very well. He also stated that Shrish Chandrakant Shah (SCS) was working as a consultant of his company since 2013 and it is not correct to say that his company was controlled and managed by Shrish Chandrakant Shah (SCS) or his company was engaged in providing any accommodation entries. He never met any person namely Shri Sawan Kumar Jajoo and disassociated his company from any statement given by such person. He also submitted copy of the board resolution for subscription in the shares of BSPL and also submitted a copy of share certificate issued by BSPL and received by his company through post.

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--19-- (ITA No.112/2018 & Other connected matters)

19. Shri Dhiresb Uttamchand Munver, Director of M/s. Emporis Project Ltd. and M/s. Yantra Natural Resources Ltd. stated that he knew BSPL and its directors since 7-8 years. He also know other business entities of Naresh Kumar namely Rohtak Chain and Chain House. He also confirmed the investment made in BSPL by both of his companies. He also produced book of accounts of both the companies. The investment made was found duly recorded in the books of accounts which were examined by the CIT(A). he also provided bank accounts of his companies and categorically explained the source of investments. The turnover of his company Yantra Natural Resources Ltd was Rs.91.94 crores in the AY 2012-13. He also stated that the shares were subscribed on the basis of valuation report and mutual decision. He also denied that his companies were managed by Shrish Chandrakant Shah (SCS). SCS was simply a consultant. He further stated that his company was not engaged in any accommodation entry business. He did not know Sawant Kumar Jajoo. He further stated that his companies had always complied with the enquiries made by investigation wing, Delhi or by AO, Central Circle – 18, New Delhi in connection with the transactions with BSPL and always confirmed the fact of investment made in BSPL and submitted the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--20-- (ITA No.112/2018 & Other connected matters)

relevant documentary evidence. He further stated that the earlier affidavit was filed under Pressure. The assessing officer after receipt of the order of the statement of the aforesaid witnesses did not raise any objection on the contents of their statements and accepted all the factual position. He also agreed with the nature of business of the investor companies. The assessing officer requested the appellate authority to decide the appeals on merits of the case by ignoring the said statements. This has been recorded by the ITAT in para 26 of the order which reads as under :-

“26. After recording the statements of the said witnesses, the CIT(A) forwarded copies of all statements to the AO for his comments. The AO had perused such statements in extensor and sent his comments on each and every question and answer recorded in respect of each and every statement. The AO did not raise any objection on the contents of these statements. He almost accepted all the factual position. He also agreed with the nature of the business of investor companies. The AO almost accepted the contents of the statements. However, he opined that there was mismatch between the two statements, such statements may not be relied upon and also statements should not be accepted at this stage. But finally the AO requested the CIT(A) that the appeal may be decided on merits of the case by ignoring the said statements.”

20. After considering the entire factual scenario of the case, the appellate authority found that the earlier statements did not merit acceptance for the reasons such as earlier statements were recorded behind the back of the assessee and also behind the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--21-- (ITA No.112/2018 & Other connected matters)

back of the AO. No opportunity of cross examination was allowed despite specific and repeated requests. The earlier statements were recorded much before the search on the appellant company. BSPL was not in the picture and was not an issue during these statements. In such statements none had named BSPL and held that the statement recorded by the CIT (Appeals) are more authentic in all respect and held as under :-

"I examined this issue in detail and found that there is no evidence to prove, firstly generation of unaccounted cash and transfer of such cash to others for obtaining accommodation entries. In have also found that during the course of search at the appellant company and also on its associate companies and residence of the directors when every corner of the house was searched, not a single paper, evidence or record was unearthed by the search team which support the allegation of generation of any unaccounted cash and transfer of such cash for the purpose of obtaining accommodation entries. In the absence of any evidence of such cash transfer, the AO was unjustified in holding that the appellant company had routed back its own unaccounted cash. In this connection it would be also relevant to state that during the process of examining these investor companies I have found that there is no transfer of cash from the appellant company to these investor companies or to anybody else for this purpose. I hold that there is no generation of cash outside the books of account and also there is no transfer of any such cash by te appellant company to anyone else and, therefore, I old that there is no accommodation entry and the share capital received is genuine."

21. The appellate authority (A) held that the assessee company was not connected with the money trial and the assessee company was only concern with the source of share capital which

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--22-- (ITA No.112/2018 & Other connected matters)

stands proved. The appellate authority also examined the issue of share capital and held as under :-

"I find that the position in the present case is otherwise. All the five companies have produced the books of accounts. There is an audit reports. All the investors have appeared personally. The books of accounts were examined thoroughly and I find that such books of accounts contain purchases and sales transactions, payments and receipts by banking channels, incurring of various expenses such as payments of rent, electricity excise duty, sales tax, bank interest, staff salaries etc. He himself examined the director of major shareholder Aadhaar Ventures namely Somabhai Sunderbahi Meena and also examined the books of accounts produced by him during the course of assessment. It is very pertinent to note here that even the AO could not find discrepancies with the books of accounts or the documents produced or the fact of investment and source thereof. The AO had never disagreed with the various evidences and documents submitted before him by the director of the investor company."

22. The appellate authority held that investment made by the five listed companies in the share capital of the assessing company was genuine and there was no question of taking and providing any accommodation entries by the assessee company.

23. After considering the statement of Shri Somabhai Sunderbahi Meena, Director of major investor company namely M/s. Aadhar Ventures India Ltd which was recorded by the AO during assessment proceedings, the CIT(A) arrived to the following findings :-

"The appellant company had purchased one director of

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--23-- (ITA No.112/2018 & Other connected matters)

Aadhaar Ventures namely Shri Somabhai Sunderbhai Meena before the AO during assessment proceedings. He confirmed that his company had invested a sum of Rs.40.75 crores in the share capital of the appellant company in FY 2011 -12 and 2012-13. he produced the books of accounts of the company and was thoroughly examined by the AO. This investment was found recorded in the books of accounts as verified by the AO. He explained the source of investments with reference to the books of accounts. Such source was then examined by the AO also obtained copies of the necessary ledger accounts with reference to the source of investments. He explained that his company was never engaged in providing accommodation entire and on the contrary was carrying on real business where the turnover runs into approx 171 crores and 133 crores in FY 2011-12 and 2012-13 respectively. He also produced the bank accounts of his company with reference to the share capital invested in Bharat Securities. The AO also required him to send certain documents. Consequently copy of resolution, shareholding pattern, copy of share certificate, copy of MOU, copy of arbitration award, copy of due diligence report, copy of share valuation report and legal notice were sent by his company vide letter dated 18.3.2016. The AO never disagreed with the contents of objection was that Somabhai was not a director of the company at the time of making investment in Bharat Securities. Now two other directors of the same company namely Shri Jils Raichand Madan and Shri Omprakash Anandilal Khandelwal appeared before me and their statements were recorded. Both of them were directors of Aadhaar Ventures at the time of making the investment in Bharat Securities. Their statements have already been discussed in the earlier para and to avoid any repetition I simply want to reiterate that the present statements given by both the directors of Aadhaar Ventures before me are totally confirmatory and corroborative to the earlier statement of Somanbhai Sunderbhai Meena Recorded by the AO during the assessment proceedings.

24. The appellate authority found that in the case of the appellant company summons under Section 131 and notice under Section 133(6) were duly served and complied with. The investor

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--24-- (ITA No.112/2018 & Other connected matters)

companies have confirmed the investment made in BSPL. The Director personally attended and admitted the investment. There was no cash deposit in the bank accounts of the investor companies. The object and purpose of raising the share capital is clearly explained.

25. The appellate authority had considered all the issues raised before her and had recorded her findings separately, on the conclusion of the assessing officer that the assessee had received bogus share capital and premium of Rs.55.00 Crores as held as under :-

"The appellant company had filed enormous evidences in support of the identity, creditworthiness and genuineness of the transaction during the assessment proceedings. I have examined all such evidences. All the five listed companies have been examined by me. Statements recorded. They have admitted to have invested in the share capital. They produced their books of accounts wherein the transactions of investment in the appellant company were found recorded. They have explained the source of investment. The entire amount of share capital has been received through banking channel. All the five companies have their definite addresses. Notices and summons have been served and complied with. No involvement of cash has been found anywhere. Even after conducting extensive enquires from various bank accounts of the source of the investor companies up to 6-7 levels no cash deposit was found in any of the bank account of different parties. All the five companies are assessed to tax and have been allotted permanent account numbers. All of these are listed in Bombay Stock Exchange. All the five

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--25-- (ITA No.112/2018 & Other connected matters)

companies have produced the audited balance sheets and such Balance Sheets have declared investment made by them in the appellant company....."

"Transfer of funds by Bharat Securities to the associate concerns is no ground for holding that the associate concerns had paid unaccounted money for acquiring any accommodation entries. Hence there is no ground for making the substantive addition in the hands of the associate concerns. It also clearly establishes that the AO himself was not sure as to who had paid the alleged unaccounted cash, if any....."

"In view of the above facts and circumstances, I hold that the share capital has been genuinely received and genuinely reinvested. I am also satisfied with identity, creditworthiness of the investors, and genuineness of the transactions. Therefore, I am satisfied that the condition u/s 68 stands satisfied. Hence the conclusion of the AO is rejected."

26. On the allegation of the assessing officer regarding appointment of dummy directors, the appellate authority held the following :-

"The appellant company had argued without prejudice to the merits of the conclusion, that any statement recorded in the search of others without providing opportunity of cross examination cannot be used in the assessment of the appellant company while making the assessment. In any case for that matter, I have myself recorded the statement of the persons who all have deviated from there earlier statements which were stated to be recorded under fear and misrepresentation. During examination the books of account were also produced by the concerned directors. They satisfactorily explained and replied all the queries raised by me regarding the business activities of their respective companies, explained the investment made in the appellant company and also explained the source thereof. They were found to be fully acquainted with the directors

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--26-- (ITA No.112/2018 & Other connected matters)

of the investee company. They also explained about the business premises and activities of the associates companies of the appellant. They fully explained the purpose of making the investment in the appellant company. Under this background I have no hesitation in holding that none of these persons were acting as dummy directors. Hence this conclusion of the AO is rejected.”

27. In respect of the allegation against the five listed companies for providing accommodation entries, the appellate authority has held as under :-

“The basis of such conclusion is the statement of SCS and some others as recorded in the search of others and also on the back of the appellant company. The appellant had argued that such statements are outside the jurisdiction of the assessment u/s 153A since they were recorded not in connection with the search on the appellant company. No cross examination was done. It is pertinent to note here that the appellant was very keen to cross examine the persons. This keenness is proved by the fact that on 18.09.2014 when the opportunity of cross examination of SCS and Jajoo was offered to the appellant, the director Naresh Kumar reached at the designated place at Mumbai on time to cross examine the witnesses. However, the department has withdrawn such opportunity. This opportunity was never provided to the appellant despite repeated requests during assessment proceedings. I hold that reliance on statements without cross examination is against the settled principle of natural justice. Even otherwise SCS and others have appeared before me and admitted that SCS was not managing and controlling these companies for the purpose of providing accommodation entries. All the companies are engaged in the real business having substantial turnover, paying rent, salaries, electricity bill etc. One of the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--27-- (ITA No.112/2018 & Other connected matters)

companies is also paying excise duty and sales tax. Some of the companies have taken secured loans from banks. As I understand the reference to key associates could be the employee of SCS namely Chandan Kumar Singh. In the statement recorded by me he has denied all such allegations. He has admitted that SCS was not involved in any business of providing accommodation entries and nor he has ever seen SEC Controlling these five companies. Hence I do not agree with the conclusion arrived at by the AO."

28. In respect of finding of the assessing officer that Sawan Kumar Jajoo (Jajoo) had acted as broker for arranging accommodation entries for BSPL through the companies controlled by Shrish Chandrakant Shah (SCS), the appellate authority has held as under :-

"The AO had relied on the statement of Sawan Kumar Jajoo recorded by Mumbai Directorate at his residence u/s 131 on 18.12.2013 and also recorded at the office of the Income Tax, Mumbai on 23.12.2013. The statements were recorded at the back of the appellant. Cross examination was not allowed to the appellant company. It is pertinent to note here that the appellant was very keen to cross examine the persons. This keenness if provide by the fact that on 18.09.2014 when the opportunity of cross examination of SCS and Jajoo was offered to the appellant, the director Naresh Kumar reached at the designated placed at Mumbai on time to cross examines the witnesses. However, the department has withdrawn such opportunity. This opportunity was never provided to the appellant despite repeated requests during the assessment proceedings. I hold that reliance on statements without cross examination is against the settled principle of natural justice. The appellant had argued that under these circumstances I against the appellant. Under these circumstances I summoned Sawan

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--28-- (ITA No.112/2018 & Other connected matters)

Kumar Jajoo and examined him. During his statement he had denied of working as a broker for arranging accommodation entries for the appellant company. He had denied of receiving any cash from the appellant company or from anybody else in its behalf. He had also denied of providing any chart to the officer recording his earlier statements. The appellant had also argued that had there been any such chart provided by Jajoo, the department must have seized such chart and made such chart part of his statement. Jajoo has clearly denied of introducing the CA of Bharat Securities to SCS for providing accommodation entries in Bharat Securities. During his cross examination he could not even recognize the CA or the Director of the appellant company. Under these circumstances the conclusion drawn by the AO is not agreeable. Hence the conclusion is rejected.”

29. In respect of conclusion of assessing officer that the bank accounts of Shri Manish Mirgh was utilized by Shrish Chandrakant Shah (SCS) for accommodation purposes, the appellate authority has held as under :-

“I do not find myself in agreement with the AO in as much as this conclusion does not help the AO in any manner since the appellant have not received or acquired any share capital from Manish Mirgh. Infact I find that the appellant company is not concerned in any way to Manish Mirgh and nor it had received any fund from Manish Mirgh. Manish Mirgh has also in his statement not given or stated the name of the appellant company.”

30. On the basis of statements of Shrish Chandrakant Shah (SCS), in respect of the allegation that Shrish Chandrakant Shah (SCS) was utilizing companies to provide accommodation entries to BSPL the appellate authority has held as under :-

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--29-- (ITA No.112/2018 & Other connected matters)

“I have recorded the statement of SCS who had denied use of such companies for the purposes of providing accommodation entries. He had also explained the availability of books of accounts and other materials of different companies in his office premises. He has stated that he was providing data hub services and financial consultancy services to different companies. He has also given the reasons for earlier statement. I am unable to rely on the statement recorded earlier. I cannot reject the statement recorded by me mainly for three reasons such as earlier SCS never stated or referred the name of Bharat Securities (P) Ltd. and secondly Bharat Securities was not in picture at all during those statements and finally SCS denied for providing any accommodation entries to Bharat Securities. I disagree with the conclusion drawn by the AO and, therefore, reject the same.”

31. On the allegation of the assessing officer that from the bank trail it is established that the funds were layered mainly through the companies controlled by SCS, after considering the facts of the case and rival submissions the CIT (A) held as under :-

'The AO has not found either the source or the source of the source as vague or untrue. The AO has not examined these companies from where RTGS has arisen. The amount of RTGS had come on surface in the books of accounts somewhere else and these entities have not been proved bogus or non-existent. But in any case it is settled law that the appellant have to prove the source of investment received. It is not supposed to go beyond that and explain further in this matter. Additionally SCS in his statement has denied for being involved in any entry providing business. In view thereof, the conclusion drawn by the AO is devoid of any merit and hence rejected.'

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--30-- (ITA No.112/2018 & Other connected matters)

32. On the conclusion that the entry providing companies failed to prove the genuineness of their source of investment made in BSPL including the amount of premium, the appellate authority held as under :-

"All the listed companies have given the required evidence to prove the source of their investments in Bharat Securities (P) Ltd. One of the major investing company appeared before the AO with the books of accounts and demonstrated the source of the share capital. Similar is the position with regard to other companies whose directors appeared before me and produced the books of accounts except Dhanus showing the source of the investment, Dhanus was under liquidation. Its director had produced the confirmation admitting the investment and also containing the source thereof. The Balance sheets of all the companies are audited. The auditors have given a clear report. Looking to the entire scenario of the case I am satisfied with the source of the investment of all the five listed companies and hold that the source is fully explained and hence the conclusion is rejected."

33. In respect of allegation of the assessing officer that BSPL could produce only one director of Adhaar and even the director produced was not the director or associated with the company when the share application money was received, the appellate authority has held as under :-

"The appellant company had received the investment from the investor companies and not from the directors. The persons who was a director earlier would probably not be available on the date of summon and also the company may not be able to force him to appear before any authority. In my view the position of earlier or present director has not significance. What is

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--31-- (ITA No.112/2018 & Other connected matters)

important is the books of accounts and not the status of the director earlier or the present. I have also summoned Jils Raichand Madan who was a Director at the time of investment and continued to remain till date. He produced the books of accounts of the company and confirmed the investment. I have also examined the ex-director of Aadhaar Omprakash Khandelwal who was also the director at the time of investment and he also confirmed the making of investment. Therefore, I do not rely or subscribe to the viewpoint of earlier or present director. What is necessary is the share application money recorded in the books of accounts. Hence the conclusion drawn by the AO is rejected."

34. On the allegation of the assessing officer that Naresh Kumar could not give replies to the queries related to share capital and share premium and only made excuses on one or other pretext, the appellate authority held as under :-

"In my opinion reliance should be placed on reality, actuality and what is found recorded in the books of accounts. The recorded material in the books of accounts would be acceptable. In my view there can be several reasons for no immediate reference of the investors and if found recorded the non-reference should not be given any weightage. What is necessary is the evidence. I have gone through the statement recorded and I find that whatever he has stated has been found to be true, correct and genuine. Infact the statement recording officer narrated the names of five companies and enquired about these companies. Immediately the reply given was that these are the five companies which have invested funds in Bharat Securities (P) Ltd. I do not expect what more is required. The appellant company had also explained before me that the statement of Naresh Kumar was recorded continuously for about 17-18 hours and continued even after mid-night and yet he replied to the best of his memory and whatever struck to his mind at the spur of the moment. In ability to remember cannot render a genuine transaction into bogus. Under this background I do not agree with the AO that Naresh Kumar made excuse on one or other pretext and could not give replies related to receipt

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--32-- (ITA No.112/2018 & Other connected matters)

of share capital. Hence this conclusion is also rejected. "

35. In respect of allegation of the assessing officer that the assessee has not given any basis of charging high premium of Rs.1,490/- per share, the appellate authority has held as under :-

"The appellant company was in the process of procuring fund to reinvest in its associate concern namely chain House International (P) Ltd. who was planning to open gold chain retail stores on pan-India basis. The directors of the associate company namely Naresh Kumar and has sons where already in the business of gold chain and their another group companies namely Rohtak Chain Co (P) Ltd was already a very renowned name in the Gold Chain Industry. The Purpose of investment was very well within the knowledge of the investors and they were also convinced that their investment will bring lucrative results in future. Valuation report of the shares of the appellant company was also provided to them. The value of the share determined in the valuation report was Rs.1500/- per share. Moreover, one of the major shareholders in order to secure return on its investment insisted for some written assurance about the safety of their investment, Finally a MOU was signed between the investor, the appellant company and the promoter of the investee company. It was specifically agreed that the promoter would be bound to purchase the shares of appellant company held by Aadhaar @ Rs.2500/- per share after the expiry of five years from the ate of allotment if Aadhaar decide to off load its holding. Even the Income Tax Act did not place any restriction on such issue of shares at premium up to the assessment year 2012-13. So far as the assessment year 2013-14 is concerned the appellant had allotted the shares as per statutory norms. I hold that the basis of share premium has been fully explained and hence I also reject this conclusion of the Assessing Officer."

36. In respect of allegation that the appellant company and its group companies could not have commented such a heavy premium and, therefore, had introduced its own unaccounted

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--33-- (ITA No.112/2018 & Other connected matters)

funds generated over the years in the name of the premium, the appellate authority has held as under :-

"The Assessing Officer has suspicion in his mind that the group has introduced its own unaccounted money generate over the year and the same was introduced in the group companies in the form of share capital. It would also be in fitness of things to report that appellant company had come into existence only in the FY 2010-11. The Assessing Officer was not justified in holding that unaccounted income was generated over the year. On a minute analysis of the conclusion drawn by the Assessing Officer I had reached to a conclusion that the Assessing Officer is refereeing to group companies. It means the unaccounted money was earned and paid by others and not by the appellant, if the version of the Assessing Officer is relied upon the addition made by in here in this case would automatically go out of reckoning. There cannot be any addition if the unaccounted income or surplus is earned by any other company. The Assessing Officer himself is of the opinion that the appellant has not earned any unaccounted income since he has assessed this amount in the hand of the appellant company only on protective basis. In my opinion the finding of the Assessing Officer that the unaccounted money had been earned by other by itself is sufficient to take the addition out of the addition web unjustifiably created by the Assessing Officer either on substantive basis of on protective basis infect there is no question of any addition on any basis since I have already held that the receipt of the share capital of Rs.30 Cr. Stands explained in terms of sec. 68. So far as the question arranging accommodation entries against payment of unaccounted cash is concerned, I find that during the search on the appellant company no evidence of any nature was found which indicate that the appellant company or anybody else on its behalf had ever paid any cash to anybody much less the investors for this purposes. The Assessing Officer had made extensive enquires from all the bank accounts of different parties involved in the source of the source up to 6-7 levels, no deposit of cash was found in any of the accounts in any of the parties. Additionally there is no evidence to prove that appellant's own money is routed back to received the share capital. For all these reasons discussed above, I hold that there is no case of any addition in the hands of the appellant company either

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--34-- (ITA No.112/2018 & Other connected matters)

on protective basis or on substantive basis. I hold that the share capital has been genuinely received and I therefore, reject this conclusion of the Assessing Officer "

37. In respect of allegation that the appellant company had paid commission to acquire the accommodation entries is also treated as unexplained expenditure made outside the books of account, the appellate authority has held as under :-

"The addition has been made u/s. 68 whereas such addition, if any, could be made only if anything is found credited in the books of accounts. The perusal of the conclusion would prove that nothing has been found recorded and hence the addition is rootles. The Assessing Officer does not figure out any name of the recipient, There is no evidence on record to indicate that the assessee company or anybody else on its behalf had ever paid any cash to investor companies or to anybody else as commission. Even if the provision of sec.69C is invited the addition would go out of the assessment since the expenditure has not been proved. Nothing has been brought on record by the Assessing Officer to prove that the appellant company had made such expenditure. This is besides my findings of no accommodation entries received by the appellant company. Hence I do not agree with the conclusion of the Assessing Officer."

38. The appellate authority gave a detailed finding on each and every issue and held that there was no validity basis of making any addition either on substantive basis or protection basis and directed the assessing officer that addition of Rs.55.00 Crores be deleted. Addition made on account of payment of alleged commission was also directed to be deleted.

39. Being aggrieved by the finding recorded by the learned

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--35-- (ITA No.112/2018 & Other connected matters)

appellate authority, the revenue has filed six appeals before the ITAT on the ground that the examination of Shrish Chandrakant Shah (SCS), Chandan Kumar Singh and others has established that all the five companies are listed companies from whom the assessee has obtained share application money were named lender and mere accommodation entries provider on commission basis. The Directors of these companies were not found on given address nor appeared before the assessing officer. Therefore, the assessee has failed to discharge his onus cast upon him under Section 68 of the Act. The learned appellate authority was not justified in deleting the addition made by the assessing officer and prayed for restoration of order of the assessing officer.

40. The stand of the assessee before the learned ITAT was that creditworthiness of all the investor had been duly explained and established. All the contribution to the share capital has been made though banking channel, allotment letters were sent though speed post, original counter foils and zerox copies of the share certificates were found and seized during the course of search of the assessee company. The Director of one of the major investor company appeared before the assessing officer with the books of account and confirmed the investment and also explained the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--36-- (ITA No.112/2018 & Other connected matters)

source thereof. The assessee company has proved the identity of all the investors, their creditworthiness and genuineness of the transaction of receipt of share capital and share premium. Merely on the basis of apprehensions and on third party statements, without allowing the cross-examination and bringing any concrete material, the finding recorded by the assessing officer was perverse and prayed for dismissal of the appeals.

41. The ITAT after considering the issue in great detail given the following finding in para 121 to 137, which reads as under :-

“121. On careful consideration of rival submissions, material documentary evidence placed on record before us and respectful & thoughtful consideration of ratio of the decisions, as made in detail in above we reach to a logical conclusion that the Ld. CIT(A) rightly held that the addition made by the Assessing Officer are not sustainable as the assessee had discharge onus lay on his shoulder as the per requirement of section 68 of the Act. i.e. to establish identify and creditworthiness of the investor and genuineness of the transaction. After considering stand of the Assessing Officer and conclusion drawn by the Ld. CIT(A) in the light of facts and circumstances of the case emerged from appreciation of evidence alongwith ratio of the decision relied by the both the parties, we are of the fortified view that as the assessee discharge its onus as per mandate of section 68 of the Act. which could not be controverted by the Assessing Officer in any manner right from assessing order to remand report to submitted to the Ld. CIT(A). Thus, we are unable to see any mistake, ambiguity, perversity or any valid reason to interfere with the conclusion drawn by the first appellate authority.

122. In the light of above discussion, we held that the AO was not justified in making addition of Rs. 30 crores by treating the share application money received

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--37-- (ITA No.112/2018 & Other connected matters)

by the assessee as unexplained cash credit under section 68 of the Act. Therefore, we are in agreement with the findings of ld. CIT(A) in deleting the same, as there was no case for making such addition either on protective basis or on substantive basis. Since, we have held that the assessee company has genuinely received share application money, therefore, question of payment of any commission does not arise and therefore, we find no infirmity in the order of CIT(A) accordingly, her findings are upheld. Accordingly, all the grounds of appeal of Revenue are dismissed.

Revenue appeal in I.T.A. No.599/Del/2017/A.Y.2013-14 in Bharat Securities Pvt. Ltd.

123. *By Ground No. 1 and 2, the revenue has challenged the deletion total additions of Rs.26,25,00,000/- comprising of addition of Rs. 25 crore received as share capital & share premium through accommodation entries and addition of Rs. 1.25 Crore on account of alleged commission @ 5% for arranging such fund as an accommodation entry.*

124. *The brief facts are that the assessee has received Rs.25 crores as share application money from Aadhar Ventures India Ltd. during the year under consideration. The AO and the CIT(A) have given their findings in A.Y. 2013-14, which are same as given in A.Y. 2012-13. Since, according to the AO the share application money received from Aadhar Ventures India Ltd. are not genuine hence, he made addition of Rs. 25 crores under section 68 and also estimated the commission amount of Rs. 1.25 crores spent for acquiring accommodation entry. Thus, the AO made total addition of Rs. 26.25 crores on this account by treating it as accommodation entry and commission paid thereof. Thereafter, the AO held that the amount of Rs. 25 crores is taxable in the hands of Bharat Securities Pvt.Ltd. on protective basis and since Bharat Securities Pvt. Ltd. has advanced out of this amount Rs. 8 crores to M/s Chain House International Pvt. Ltd. and Rs. 17 crores to M/s Rohtalk Chain Co. Pvt. Ltd. hence, substantive addition was made in the case of above named two companies.*

125. *We have heard the rival submissions and perused the relevant material on record. We find that the CIT(A) has held the assessee has genuinely*

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--38-- (ITA No.112/2018 & Other connected matters)

received share application money from Aadhar Ventures India Ltd. hence, for the reasons discussed above in respect of Aadhar Ventures India Ltd. in ASSESSMENT YEAR 2012-13 the addition so made was deleted. Since we have already confirmed the findings of the CIT(A) for the A.Y. 2012-13 in above paras and the facts are identical, therefore, we uphold the findings of ld. CIT(A) of deletion of addition of Rs. 26.25 crores including commission payments of Rs.1.25 crores on the basis of our findings as given above in this order for A.Y. 2012-13. Therefore, the protective addition so made and as deleted by the CIT(A) is confirmed and appeal of revenue on this ground for the assessment year 2013-14 is therefore, dismissed. As we have held in the earlier part of this order that the assessee had genuinely received share application money. The assessee BSPL is a Non Banking Finance Company (NBFC) duly registered with RBI. It has invested these funds in the group companies in the normal course of its business. We find that no infirmity in making investments in group companies by the assessee BSPL as unsecured loan. Therefore, the said amount of Rs. 17 crores advanced to M/s Rohtak Chain Co. Pvt. Ltd. and Rs. 8 crores advanced to M/s Chain House International Pvt. Ltd. are also deleted by the Ld. CIT(A). Accordingly, we uphold the findings and conclusion drawn by the Ld. CIT(A) and consequently appeals of revenue in the cases of above two companies are therefore, dismissed.

Revenue appeal in I.T.A. No. 584/Del/2017/A.Y. 2013-14 in M/s Rohtak Chain Co. Pvt.Ltd.

126. By ground No. 1 and 2, the revenue has challenged the deletion total additions of Rs.17,85,00,000/- on account of unsecured loan amounting to Rs.17 Crore and on account of alleged commission amounting to Rs. 85 lacs on substantive basis and protective addition in the case of M/s Bharat Securities Pvt. Ltd.

127. The brief facts are that M/s Bharat Securities Pvt. Ltd. has received Rs. 25 crores as share application money from Aadhar Ventures India Ltd. during the year under consideration. The AO and the CIT(A) have given their findings in A.Y. 2013-14, which are same as given in A.Y. 2012-13. Since, accordingly to the AO the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--39-- (ITA No.112/2018 & Other connected matters)

share application money received from Aadhar Ventures India Ltd. are not genuine hence, he made addition of Rs. 25 crores under section 68 in the case of M/s. Bharat Securities Pvt. Ltd. on protective basis and also estimated the commission amount of Rs. 1.25 crores spent for acquiring accommodation entry. Thus, the AO made total addition of Rs. 26.25 crores on this account by treating it as accommodation entry and commission paid thereof. Thereafter, the AO held that the amount of Rs. 25 crores is taxable in the hands of Bharat Securities Pvt. Ltd. on protective basis and since Bharat Securities Pvt. Ltd. has advanced out of this amount of Rs. 17 crores as unsecured loan to M/s Rohtak Chain Co. Pvt. hence, substantive addition was made in the case M/s Rohtak Chain Co. Pvt. Ltd. and also addition of Rs. 85 lacs was made on account of alleged commission payment. Similarly, Rs. 8.40 crores of unsecured loan with alleged commission made in the case of M/s. Chain House International Pvt. Ltd. for A.Y. 2013-14.

128. We have heard the rival submissions and perused the relevant material on record. We find that the CIT(A) has held the assessee has genuinely received share application money from Aadhar Ventures India Ltd., hence, for the reasons discussed in this order as above in respect of Aadhar Ventures India Ltd., hence, the addition so made was deleted. Since we have confirmed the deletion of addition by the CIT(A) for the A.Y. 2012-13 and A.Y. 2013-14 in above paras and facts are identical, therefore, we uphold the findings of ld. CIT(A) of deletion of addition of Rs. 26.25 crores including commission payments of Rs. 1.25 crores on the basis of our findings as given above in this order. Therefore, the protective addition so deleted by the CIT(A) is confirmed and appeal of revenue on this ground for the assessment year 2013-14 is therefore, dismissed. As we have, in the earlier part of this order, held that the assessee had genuinely received share application money, RBI/ SBFC Point therefore, the addition of said amount of Rs. 17.85 crores (including commission) as advanced to M/s. Rohtak Chain Co. Pvt. Ltd. and Rs. 8.40 crores (including commission) advanced to M/s. Chain House International Pvt. Ltd. is also deleted by the CIT(A).

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--40-- (ITA No.112/2018 & Other connected matters)

Accordingly, we are unable to see any valid reason to interfere with the findings we upheld the same and therefore, the appeal of revenue in the case M/s Rohtak Chain Co. Pvt.Ltd. in deleting of addition of Rs. 17.85 crores and M/s. Chain House International Pvt. Ltd. deleting addition of Rs. 8.40 crores are dismissed.

Revenue appeal in I.T.A. No. 596/Del/2017/A.Y. 2012-13 in the case of Chain House International Pvt. Ltd.

129. By Ground No. 1 and 2, the revenue has challenged the deletion total additions of Rs. 31,50,00,000/- being share capital amounting to Rs. 30 crores and Rs. 1.50 crore alleged commission on substantive and protective basis in the case of M/s Bharat Securities Pvt. Ltd.

130. The brief facts are that the assessee has received Rs. 30 crores as share application money from M/s Bharat Securities Pvt. Ltd. during the year assessment year 2012-13 and the AO treated the same as income under section 68 of the Act and further added a sum of Rs. 1.50 crores as unexplained amount spent on account of commission for acquiring such accommodation entries of Rs. 30 crores. After doing so, the AO had further held that this amount of Rs.31.50 crores was taxable in the hands of the assessee substantive basis in the hands of the assessee and protective basis in the case of M/s. Bharat Securities Pvt. Ltd. since such amount has been received from said company. In turn, M/s. Bharat Securities Pvt. Ltd. has received the share application money amounting to Rs.15.75 crores from Parraneta Industries Ltd. / Aadhar Ventures India Ltd., Rs. 9.75 crores from Dhanus Technologies Ltd., Rs. 3 crores from M/s. Emporis Projects Ltd., Rs. 75 Lakh from M/s Yantra Natural Resource Ltd. and Rs. 75 lakhs from M/s. L.N. Industries Ltd. totaling to Rs. 30 crores. while assessing M/s. Bharat Securities Pvt. Ltd., the AO held receipts of above amount of Rs. 30 crores from five companies is not genuine hence, treated the same as unexplained under section 68 of the Act. The AO further observed that since M/s. Bharat Securities Pvt. Ltd. had thereafter, invested this amount of Rs. 30 crores as share capital with the assessee company and therefore, this amount of Rs. 30 crores was added on substantive basis in the case of the assessee and

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--41-- (ITA No.112/2018 & Other connected matters)

protective basis in the case of M/s. Bharat Securities Pvt. Ltd. The CIT(A) had deleted the addition by holding that said share application money was genuinely received by M/s. Bharat Securities Pvt. Ltd. consequently, the addition made in the case of the assessee was also deleted. The revenue is in appeal before us.

131. We have heard the rival submissions and perused the relevant material on record. We find that the CIT(A) has held the assessee has genuinely received share application money from M/s. Bharat Securities Pvt. Ltd. who had received it as share capital from five listed companies namely Aadhar Ventures Pvt. Ltd. Dhanus Technologies Ltd., M/s Emporis Projects Ltd., M/s. Yantra Natural Resources Ltd. and M/s L N Industries Ltd., hence, for the reasons discussed in the case of M/s. Bharat Securities Pvt. Ltd. the addition so made was deleted. The Revenue had filed appeal against the order of CIT(A) in the case of M/s. Bharat Securities Pvt. Ltd. before this Tribunal and by the earlier part of this order we have dismissed appeal of the Revenue by confirming the findings of the CIT(A) for the A.Y. 2012-13. Since facts are identical, therefore, we uphold the findings of Id. CIT(A) of deletion of addition of Rs. 31.50 crores including commission payments of Rs. 1.50 crores on the basis of our findings as given in I.T.A. No. 598/Del/2017 for A.Y. 2012-13 in the case of M/s. Bharat Securities Pvt. Ltd. order dated 26.12.2017. Therefore, the substantive addition deleted by the CIT(A) is confirmed in the case of the assessee and appeal of revenue on this ground for the assessment year 2012-13 is therefore, dismissed.

Revenue appeal in I.T.A. No. 597/Del/2017/A.Y. 2013-14

132. By Ground No. 1 and 2, the revenue has challenged the deletion total additions of Rs.8,40,00,000/- (on account of unsecured loan amounting to Rs. 8 crores and alleged commission payments of Rs. 40 lakhs).

133. The brief facts are that the M/s. Bharat Securities Pvt. Ltd. a sister concern of the assessee has received Rs. 25 crores as share application money from Aadhar Ventures India Ltd./ Parraneta Industries Ltd.

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--42-- (ITA No.112/2018 & Other connected matters)

During the year assessment year 2013-14. The AO and the CIT(A) have given their findings in A.Y. 2013-14, which are same as given in A.Y. 2012-13. According to the AO, the share application money received from Aadhar Ventures India Ltd. are not genuine hence, the AO has made addition of Rs. 25 crores under section 68 and also estimated the commission amount of Rs. 1.25 crores spent for acquiring accommodation entry. Thus, the AO made total addition of Rs. 26.25 crores on this account by treating it as accommodation entry and commission paid thereof. Thereafter, the AO held that the amount of Rs. 25 crores is taxable in the hands of Bharat Securities Pvt. Ltd. on protective basis and since Bharat Securities Pvt. Ltd. has advanced out of this amount of Rs. 8 crores to M/s. Chain House International Pvt. Ltd. and Rs. 17 crores to M/s. Rohtak Chain Co. Pvt. Ltd. hence, substantive addition was made in the case of above named two companies. The CIT(A) had held that M/s. Bharat Securities Pvt. Ltd. has genuinely received. Therefore, the CIT(A) had deleted the addition by holding that said share application money was genuinely received by M/s. Bharat Securities Pvt. Ltd., consequently, the addition of Rs. 8.40 crores made under section 68 in the case of the assessee on substantive basis was also deleted. The revenue had filed this appeal before Tribunal.

134. We have heard the rival submissions and perused the relevant material on record. We find that the CIT(A) has held that M/s. Bharat Securities Pvt. Ltd. genuinely received share application money from Aadhar Ventures India Ltd., hence for the reasons discussed in appeal in the case of M/s. Bharat Securities Pvt. Ltd., the addition made were deleted. The Revenue had filed appeal in the case of M/s. Bharat Securities Pvt. Ltd., which has been decided by us confirming the findings of the CIT(A) for the A.Y. 2012-13 in above paras of this order and for A.Y. 2013-14. Since facts are identical, therefore, we uphold the findings of ld. CIT(A) of deletion of addition of Rs. 8.40 crores including commission payments of Rs. 0.40 crores on the basis of our findings as given in I.T.A. No. 598 & 599/Del/2017 for A.Y. 2012-13 & 2013-14 in the case of M/s. Bharat Securities Pvt. Ltd. in this order as above. Therefore, the substantive addition

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--43-- (ITA No.112/2018 & Other connected matters)

deleted by the CIT(A) is confirmed in the case of the assessee and appeal of revenue on this ground for the assessment year 2013-14 is therefore, dismissed.

Cross Objection by the assessee in Co. No. 77 & 78/Del/2017 A.Y. 12-13 & 13-14 in case of M/s. Bharat Securities Pvt. Ltd. and Cross Objection No. 65/Del/2017 A.Y. 13-14 in case of M/s Rohtak Chain Co. Pvt. Ltd. and Cross Objection No. 67 & 68/Del/2017 in the case of M/s Chain House International Pvt. Ltd. for A.Y. 2012-13 & 13-14.

135. From bare perusal of Cross Objection, we find that in the Ground No. 1 to 6 and 9 in Cross Objection No. 77/Del/2017/A.Y. 12-13 and in CO. No. 78/Del/2017/A.Y. 13-14 in the case of M/s. Bharat Securities Pvt. Ltd. by the assessee are relates to validity of search by which the assessee wants us to examine the validity of search and seizure operation. It is well settled position that this Tribunal has no jurisdiction to examine the validity of search and seizure operation, hence, these Cross Objection of respective assessee's are dismissed being misconceived and out of the ambit of powers of the Tribunal.

136. So far as remaining ground No. 7, 8 and 10 to 24 in Cross Objection No. 77/Del/2017/A.Y. 12-13 and Ground No. 7, 8, 10 to 23 in CO. No. 78/Del/2017/A.Y. 13-14 in the case of M/s. Bharat Securities Pvt. Ltd. are concerned in these Cross Objection, the assessee is challenging the dismissal of legal grounds which were dismissed by the CIT(A) in first appeal and Ground No. 7, 8 and 11 to 21 in Co. No. 77/Del/2017 and Ground No. 7, 8, 11 to 20 in Co. No. 78/Del/2017 relating to merits of addition which and are covered by Revenue appeal wherein we have dismissed the revenue appeal. However, we may point out that the learned counsel for the assessee did not place any arguments during hearing before us; hence, we presume that the assessee is not serious about these Cross Objections. Since, by earlier order we have dismissed appeals of Revenue on merits confirming the deletion of addition, hence, Cross Objection of the respective assessee have become academic and infructuous and we dismissed the same as having become infructuous.

137. In the final result, the appeal of the Revenue in

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--44-- (ITA No.112/2018 & Other connected matters)

I.T.A. No. 598 & 599/Del/2017 for A.Y. 2012-13 and A.Y. 2013-14 in case of M/s. Bharat Securities Pvt. Ltd. and I.T.A. No. 584/Del/2017 for A.Y. 2013-14 in the case of M/s. Rohtak Chain Co. Pvt. Ltd. are dismissed and the appeals of the Revenue in the case of Chain House International Pvt. Ltd., ITA No. 596 & 597/Del/2017 Similarly Cross Objection No. 77 & 78/Del/2017 in the cases of M/s. Bharat Securities Pvt. Ltd. & Cross Objection No. 65/Del/2017 for A.Y. 2013-14 in the case of M/s. Rohtak Chain Co. Pvt. Ltd. and Cross Objection No. 67 & 68/Del/2017 in the case of Chain House International Pvt. Ltd. for ASSESSMENT YEAR 2012-13 and 2013-14 are also dismissed. Finally, all the five (5) appeals of the Revenue and all the five (5) Cross Objection of the assessee are dismissed for all the relevant assessment years.

42. In the case in hand, all the witnesses appeared before the appellate authority and they were examined by the Commissioner (Appeals) and their statements were recorded, an opportunity of cross-examination was given to the assessee. Their statements were found to be strongly supporting the explanation and stand of the assessing company. These statements and other relevant evidence for cross-examination, verification and comments of the assessing officer providing due opportunity to him. However, the assessing officer has not made any adverse comments on these statements except contending the same cannot be considered in favour of the assessee. The learned ITAT held that the first appellate authority was right in considering the same in right perspective and found no valid reason to interfere with the finding

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--45-- (ITA No.112/2018 & Other connected matters)

recorded by the appellate authority and all the appeals were dismissed by the ITAT.

43. Shri Dubey, learned counsel for the appellant - revenue has drawn our attention to the detailed findings recorded by the ITAT and submitted that the learned ITAT was not justified in affirming the decision of the appellate authority and deleting the addition made by the assessing officer. He submits that it is necessary for the assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof includes proof of identity of his creditor; capacity of such creditor to advance the money and genuineness of the transaction. He submits that these things must be proved prima facie by the assessee and only after the assessee has adduced the evidence to establish the prima facie the aforesaid, the onus shifts on the department.

44. He also submits that in the present case, the assessee establishes only the identity of the creditor and nothing more whereas the assessee has to prima facie prove the genuineness of the transaction, namely whether it has been transmitted through banking or other indisputable channels. The creditworthiness or financial strength of the creditor, the onus would not stand dismiss if the creditor / subscriber denies or repudiates the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--46-- (ITA No.112/2018 & Other connected matters)

transaction setup by the assessee nor should the assessing officer take such repudiation at face value and construe it, without more, against the assessee. He further submitted that the Directors or persons behind the companies making the investment in their shares were not related or known to them. It is highly implausible that an unknown had made substantial investment in a private listed company without adequately protecting the investment and ensuring appropriate returns.

45. His submission is that the assessee here is a private limited company. It cannot issue shares in the same manner in which a public limited company does. It has to generally depend on persons known to its directors or shareholders directly or indirectly to buy its shares. Once the monies are received and shares are issued, it is not as if the share-subscribers and assessee-company lose touch with each other and become incommunicado. The share-subscribers in the present case has each invested substantial amounts in the assessee's shares. Most of them, barring two or three themselves are private limited companies. It was not open to the assessee, to direct the assessing officer to go to the web-site Company Law Department / Registrar of the Companies and search for the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--47-- (ITA No.112/2018 & Other connected matters)

address of the share / subscribers and then communicate with them for proof of genuineness of the share subscription. That is the onus of the assessee not the assessing officer. The onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempted from taxation under the provisions of Act.

46. He has also placed reliance in the case of **Shankar Industries V/s. Commissioner of Income Tax, (1978) 114 ITR 689 (CAL), Commissioner of Income Tax V/s. Divine Leasing & Finance Ltd. (16.112.006 DELHC): MANU/DE/9645/2006, Commissioner of Income Tax V/s. N. Tarika Properties Investment Pvt. Ltd.(28.11.2013 – DELHC) MANU/DE/4388/2013, Commissioner of Income Tax V/s. NR Portfolio Pvt. Ltd (22.11.2013 – DELHC) : MANU/DE/4284/2013, Commissioner of Income Tax V/s. Nova Promoters & Finlease (P) Ltd., (15.02.2012) – DELHC) : MANU /DE/0480/2012, CIT V/s. Nipun Builders & Developers Pvt. Ltd. (07.01.2013 – DELHC) MANU/DE/0037/2013, Commissioner of Income Tax V/s.**

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--48-- (ITA No.112/2018 & Other connected matters)

Rathi Finlease Ltd. (11.10.2007) – MPHC) : MANU /MP/0588/2007, Commissioner of Income Tax V/s. Kundan Investment Ltd, (20.03.2003) – CALHC) : MANU /WB/0060/2003, Sreilekha Banerjee & Ors. V/s. Commissioner of Income Tax, Bihar & Orissa (27.03.1963 – SC : MANU/SC/0101/1963 and Kale Khan Mohammad Hanif V/s. Commissioner of Income Tax, Madhya Pradesh & Bhopal (08.02.1963 – SC) : MANU/SC/0292/1963 and prayed that all these appeals be allowed.

47. Per contra, Shri Sumit Nema, learned Senior counsel has submitted that the present batch of appeals filed by the Revenue under Section 260-A of the Act does not involve any substantial questions/s of law. All the questions are purely in the realm of text and the first appellate authority vide order dated 1.11.2016 and second appellate authority vide impugned order dated 27.12.2017 have given a detailed finding in favour of the assessee after scrutinizing the facts and documents placed on record at the time of hearing in a form of consolidated paper book and as such no substantial question of law arises in regard to the issue of addition on account of share capital and share premium and Rs.1.50 Crore as alleged expenditure of commission for such

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--49-- (ITA No.112/2018 & Other connected matters)

share capital. Concurrent finding of fact cannot be reiterated as question of law and prays for dismissal of the appeals.

48. In the case of **Andman Timber Industries V/s. Commissioner of Central Excise, 2015 (3) STD 805 (SC)**

wherein, it has been held that not allowing the assessee to cross examine the witness is serious flaw, which makes the order nullity in as much as it violates the principle of natural justice.

49. In the case of **CIT V/s. Rajesh Kumar, 306 ITR 27 (Delhi)** wherein, it has been held that no addition could be made on the basis of statements recorded behind back of the assessee, without proving any opportunity for cross-examination.

50. In the case of **CIT V/s. Lovely Exports (P.) Ltd, 2008 (319) ITR (ST) 5 → (2010) 14 SCC 761**, the Apex Court held that if the share application money is received by the assessee from alleged bogus shareholders, whose names are given to the assessing officer, then the department is free to proceed to reopen their individual assessments, in accordance with law, but this allotment of share money cannot be recorded as undisclosed income under Section 68 of the Act. The M.P. High Court in the case of **CIT V/s. STL Extrusion Pvt. Ltd, LAWS (MPH)-2010-10-86** has held that where the assessee had duly furnished

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--50-- (ITA No.112/2018 & Other connected matters)

names, ages, address, date of filing of application of share, number of shares of each subscriber, there was no justification for assessing officer for making impugned addition and accordingly, it was deleted. The Delhi High Court in the case of ***CIT V/s. Divine Leasing and Finance Ltd, 2007 158 Taxman 440 (Delhi)***, considering the similar question held that the assessee company having received subscription to the public / right issue through bank channel and furnished complete details of the share holder, no addition could be made under Section 68 of the Act in absence of any positive evidence to indicate that the shareholders were Benami or fictitious person or that any part of the share capital represented company's own income from undisclosed income.

51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyester Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--51-- (ITA No.112/2018 & Other connected matters)

subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon'ble Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in para 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--52-- (ITA No.112/2018 & Other connected matters)

day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

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

54. There is no dispute about the receipt of funds through banking channel nor there is any dispute about the identity, creditworthiness and genuineness of the investors and, therefore, the same has been established beyond any doubt and there should not have been any question or dispute about premium paid by the investors therefore, unless there is a limitation put by the law on the amount of premium, the transaction should not be questioned merely because the assessing authority thinks that the investor could have managed by paying a lesser amount as Share Premium as a prudent businessman. The test of prudence by substituting its own view in place of the businessman's has not

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--53-- (ITA No.112/2018 & Other connected matters)

been approved by the Supreme Court in the decisions of **CIT** V/s.

Walchand & Co. Pr. Ltd. [(1967) 65 ITR 381] and **J.K.**

Woollen Manufacturers V/s. **CIT** [(1969) 72 ITR 612].

55. The question of share premium has been considered by the

Delhi High Court in the case of **Commissioner of Income Tax**

V/s. **Anshika Consultants Pvt. Ltd.**, 2015 62 taxmann.com 192

(Delhi) wherein it was held thus :-

"The onus cast upon the assessee under [Section 68](#) of the Act to satisfy the department about the true identity of an investor, its creditworthiness and genuineness of a transaction was explained by the Supreme Court in CIT Vs. Lovely Exports (P) Ltd., 216 CTR 295,. Whilst, the AO acted legitimately in enquiring into the matter, the inferences drawn by him were not justified at all in the circumstances of the case. Whether the assessee company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of [Section 68](#) is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed on 31.12.2007, the investigation report which was specifically called from the concerned department in Kolkata was available but not discussed by the AO. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the AO in the form of balance sheets income tax returns, PAN details etc. While arriving at the conclusion that he did, the AO did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--54-- (ITA No.112/2018 & Other connected matters)

that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the CIT (Appeals) and the ITAT, these conclusions were clearly baseless and false. This Court is constrained to observe that the AO utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents."

57. It is well settled that if the creditworthiness of the investor company and genuineness of the transaction is proved no addition under Section 68 could be made and no substantial question of law arises. The M.P. High Court in the case of of ***CIT V/s. Metachem Industries, (2000) 245 ITR 160 (MP)*** has held thus :-

"Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--55-- (ITA No.112/2018 & Other connected matters)

Assessing Officer to take appropriate action under [Section 69](#) of the Act, against the person who has not been able to explain the investment."

58. The M.P. High Court in the case of ***Commissioner of Income-tax, Bhopal (M.P.) V/s. Peoples General Hospital (2013) 356 ITR 65 (M.P.)*** has held in para 14 and 17 which reads

as under :-

"14. In the light of the aforesaid factual position, the legal position may be looked into because the aforesaid factual possession has not been disputed by the parties.

17. As the Apex court has considered the law in Lovely Exports (P.) Ltd's case (supra) and in view of law laid down by the Apex Court we find that the substantial questions framed in these appeals do not arise for our consideration. Accordingly, all these appeals are dismissed with no order as to costs."

59. In ***Santosh Hazari V/s. Purushottam Tiwari (2001) 3 SCC 179***, the Supreme Court has observed that :-

"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--56-- (ITA No.112/2018 & Other connected matters)

consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

60. In **Mangalore Ganesh Beedi Works** V/s.

Commissioner of Income-tax, Mysore (2015) 378 ITR 640

(SC) the Apex Court in para 19 has held thus :-

19. We are not at all impressed with the submission of learned counsel for the Revenue. There is a clear finding of fact by the Tribunal that the legal expenses incurred by the Assessee were for protecting its business and that the expenses were incurred after 18th November, 1994. There is no reason to reverse this finding of fact particularly since nothing has been shown to us to conclude that the finding of fact was perverse in any manner whatsoever. That apart, if the finding of fact arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court. The Revenue did not seek the framing of any such question. In this regard, reference may be made to [K. Ravindranathan Nair v. Commissioner of Income Tax](#)[3] wherein it was observed:

“The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of act reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.”

61. In the case of [K. Ravindranathan Nair v. Commissioner of](#)

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--57-- (ITA No.112/2018 & Other connected matters)

Income Tax the Apex Court has observed thus:

“The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.”

20. Accordingly, we hold that the High Court was not justified in upsetting a finding of fact arrived at by the Tribunal, particularly in the absence of a substantial question of law being framed in this regard. Therefore, we set aside the conclusion arrived at by the High Court on this question and restore the view of the Tribunal and answer the question in favour of the Assessee and against the Revenue.

62. The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe to shares at such a premium or not and moreover the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants which same has been discharged by the respondent authority and the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--58-- (ITA No.112/2018 & Other connected matters)

same has been accepted by the appellate authorities thus, the same cannot be reconsidered in these appeals as it is a pure question of fact.

63. In the matter of **Principal Commissioner of Income-tax (Central)-I V/s. Goodview Trading (P.) Ltd., (2017) 77 taxmann.com 204 (Delhi)**, the Delhi High court in para 8 has observed the following :-

"8. It is quite evident from the CIT (A)'s reasoning in paragraph 4.3, that the materials clearly pointed to the share applicants' possessing substantial means to invest in the assessee's company. The AO seized certain material to say that minimal or insubstantial amounts was paid as tax by such share applicants and did not carry out a deeper analysis or rather chose to ignore it. In these circumstances, the inferences drawn by the CIT (A) are not only factual but facially accurate."

64. In the matter of **Principal Commissioner of Income-tax V/s. N.C. Cables Ltd., (2017) 88 391 ITR 11 (Delhi)**, the Delhi High court in para 8 has observed the following :-

"8. As far as the addition is concerned, the assessee had furnished large amounts of materials in the form of documents to evidence the genuineness of the identity and the transactions as well as the creditworthiness of the parties. The AO apparently conducted the perfunctory inquiry by deputing an inspector to the premises. As is contended by the assessee, the absence of these parties, after seven or eight years, ipso facto could not have led the AO to conclude that the parties were fictitious or non-existent. The assessee had provided details of the Permanent Account Numbers (PAN) and Income Tax Returns (ITR) for the relevant years. Nothing prevented the AO from inquiring into these details in support of its

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--59-- (ITA No.112/2018 & Other connected matters)

suspicion that the transactions were not genuine. Undoubtedly, the AO had certain bank statements which disclosed facially that the amounts were infused in cash at the relevant time before the shares were subscribed to or the credits were given. Those suspicious circumstances at the same time could not have been the conclusive factor in this case."

65. In the matter of **Commissioner of Income-tax-VIII**

V/s. SVP Builders (I) Ltd., (2016) 67 taxmann.com 5 (Delhi),

the Delhi High court in para 23 to 25 has observed the following :-

23. Coming to the core issue concerning the identity, creditworthiness and genuineness of the investor companies, it is seen that as far as the Table I investor were concerned, only 9 were searched and in their cases, the ITAT on a very detailed examination was satisfied that they not only existed, but that the Assessee had discharged the primary onus of proving their creditworthiness and genuineness. They had responded to the summons issued to them. Directors of 14 of these companies appeared before the AO and produced their books of accounts.

24. As regards Table-III companies, notices were issued under [Section 131](#) of the Act to which many of them responded confirming having made investments. The Assessee had been asked by the CIT (A) to produce 7 directors of the Table III companies. 6 directors appeared and their statements were recorded. They had confirmed that they had subscribed to the share capital of the Assessee. These directors had not only produced the books of accounts but showed that the source of investment was duly recorded therein. The Revenue on the other hand did not produce any further evidence to dispute the above evidence produced by the Assessee.

25. As far as Table II shareholders were concerned, if the Revenue was of the view that they were simply using the Assessee for parking their undisclosed income, then it was certainly open to the Revenue to make additions to the income of those Table-II companies. As far as Table-I shareholders was concerned, none of them denied having made the investment in the Assessee company. The AO does not appear to have undertaken any particular investigation into the affairs of the Table-I, II or Table III

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--60-- (ITA No.112/2018 & Other connected matters)

companies apart from issuance of the notices under [Section 131](#) of the Act which were duly responded to.

66. In the matter of **Commissioner of Income-tax-15** V/s.

Haresh D. Mehta, (2017) 86 taxmann.com 22 (Bombay), the

Bombay High court has observed the following :-

"15. Therefore, the Tribunal, in concurring with the First Appellate Authority, found that the Assessing Officer had made addition under Section 68 of the Income Tax Act without any reasonable basis. The first appellate authority has analyzed the transaction with each and every creditor and assigned reasons as to why the loans have to be treated as genuine. The assessee has produced details like copy of PAN card, copy of return of income, balance sheet with all the annexures and copy of bank accounts before the Assessing Officer. If there was any doubt, the Assessing Officer should have made further investigation. Once the initial burden was discharged, the Assessing Officer had then to find out that despite production of record in relation to these parties, the version of the assessee cannot be accepted. It is in these circumstances that the First Appellate Authority rightly stepped in. In fact, in paragraph 3.4 of the Tribunal's order, it quoted that two of the creditors not only appeared before the Assessing Officer, but had also admitted of giving loan. There was nothing suspicious or doubtful in the version of these persons. That is why the order of the First Appellate Authority was upheld. It did not suffer from any legal infirmity.

16. We also agree with the Tribunal, and particularly when it proceeded to analyze the transactions and the issue in an overall manner. It did not agree with the Assessing Officer but with the First Appellate Authority because there was overwhelming documentary evidence on record to support the conclusion of the First Appellate Authority."

67. In the matter of **CIT** V/s. **Dolphin Canpack Ltd.,** (2006)

283 ITR 190 (Delhi), the Delhi High court has observed the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--61-- (ITA No.112/2018 & Other connected matters)

following :-

"7. There is no dispute with the proposition stated in the above passage. An Income-tax Officer is indeed entitled to examine the truthfulness of the explanation. In cases where the credit entry relates to the issue of share capital, the Income-tax Officer is also entitled to examine whether the alleged shareholders do in fact exist or not. Such an inquiry was conducted by the Assessing Officer in the present case. In the course of the said inquiry, the assessed had disclosed to the Assessing Officer not only the names and the particulars of the subscribers of the shares but also their bank accounts and the permanent account numbers issued by the Income-tax Department. Superadded to all this was the fact that the amount received by the company was all by way of cheques. This material was, in the opinion of the Tribunal, sufficient to discharge the onus that lay upon the assessed. This is evident from the passage extracted from the order passed by the Tribunal earlier. In the absence of any perversity in the view taken by the Tribunal or anything to establish conclusively that the finding regarding the genuineness of the subscribers and the transaction suffers from any irrationality, we see no substantial question of law arising for our consideration in this appeal to warrant interference. This appeal accordingly fails and is hereby dismissed."

68. In the matter of **Santosh Hazari V/s. Purushottam**

Tiwari (2001) 3 SCC 179, the Hon'ble Supreme Court court has

observed the following :-

"A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--62-- (ITA No.112/2018 & Other connected matters)

of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

69. In the matter of **Mangalore Ganesh Beedi Works V/s.**

Commissioner of Income-tax, Mysore (2015) 378 ITR 640,

the Hon'ble Supreme Court court has observed the following :-

"19. We are not at all impressed with the submission of learned counsel for the Revenue. There is a clear finding of fact by the Tribunal that the legal expenses incurred by the Assessee were for protecting its business and that the expenses were incurred after 18th November, 1994. There is no reason to reverse this finding of fact particularly since nothing has been shown to us to conclude that the finding of fact was perverse in any manner whatsoever. That apart, if the finding of fact arrived at by the Tribunal were to be set aside, a specific question regarding a perverse finding of fact ought to have been framed by the High Court. The Revenue did not seek the framing of any such question. In this regard, reference may be made to **K. Ravindranathan Nair V/s. CIT** [3] wherein it was observed:

"The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact-finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. Unless and until a finding of act reached by the Tribunal is canvassed before the High Court in the manner set out above, the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--63-- (ITA No.112/2018 & Other connected matters)

High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it."

20. Accordingly, we hold that the High Court was not justified in upsetting a finding of fact arrived at by the Tribunal, particularly in the absence of a substantial question of law being framed in this regard. Therefore, we set aside the conclusion arrived at by the High Court on this question and restore the view of the Tribunal and answer the question in favour of the Assessee and against the Revenue.

70. In respect of ITA.No.111/2018 is concerned, the assessee company (M/s. Chain House International (P) Ltd) belongs to BSPL group of company wherein search and seizure operation was carried on 7.2.2013. During the course of assessment proceedings, the assessing officer noticed that the assessee has received share application money amount of Rs.37.80 Crores in financial year 2009-10 from M/s. Sonata Investment Ltd (presently known as REL Utility Engineers Ltd) and Rs.25 Crores as share capital from BSPL during the assessment year 2012-13 and Rs.8.00 Crores as unsecured loan from BSPL. The shares of 18,00,000 were allotted having face value of Rs.10 at a premium of Rs.200 per share to M/s. Sonata Investment Pvt. Ltd in assessment year 2010-11, a reliance group company. Subsequently, the said company has sold these shares to Shri Naresh Kumar, promoter of M/s. Chain House International Pvt. Ltd. The statement of Naresh Kumar, recorded by the assessing

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--64-- (ITA No.112/2018 & Other connected matters)

officer on 26.12.2013. Thereafter, the assessing officer called for information under Section 133(6) from M/s. Sonata Investment Pvt. Ltd vide letter dated 5.11.2015. The said company submitted its reply, stating therein that the investment was made out of borrowed funds; hence the assessing officer has held that the submissions of M/s. Sonata Investment Pvt. Ltd are not credible and made addition of Rs.37.80 Crores on account of accommodation entries and Rs.1.89 Crores @ 5% of Rs.37.80 Crores as commission paid by the assessee for acquiring share application money.

71. The appeal filed by the assessee has been allowed and the learned appellate tribunal affirmed the aforesaid finding by dismissing the appeal of the revenue and also dismissed the cross objection of the assessee for the assessment year 2010-11. In this appeal also the ITAT considered each and every ground and reproduced the findings recorded by the appellate authority and thereafter given its own finding in para 24 to 48.

72. M/s. Sonata Investment Ltd presently known as REL Utility Engineers Ltd was incorporated with Registrar of Companies, Bombay on 17.6.2003 vide Incorporation No.U45200MH2003PL 140946. The company is registered under Section 45-IA of

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--65-- (ITA No.112/2018 & Other connected matters)

Reserve Bank of India Act, 1934 as a Non-Banking Financial Company, having registration No.N-13.01757 and is permitted to carry out NBFC activities and adheres to all the prudential norms prescribed by RBI for "Systematically Important NBFC". That "Systematically Important NBFC" is a NBFC not accepting / holdings public deposits and having total assets of Rs.100 crores and above as shown in the last Audited Balance Sheet. The aforesaid company is primarily engaged in dealing in financing activities by way of investment in equity shares of reputed company and the company is also engaged in lending business in the nature of short term loan to eligible borrowers. The Company has its own address where all the notices issued either by Investigation Wing, Delhi or by AO were duly served and complied with confirming the investment in assessee company. The company has its own Bank Account which could be opened or continued only on proving the necessary KYC norms to the Bank. The investor company is assessed to tax and has been allotted permanent account number vide PAN AACCR7266A. The investor company had been assessed under Section 143(3) for the relevant assessment year 2010-11 and assessed at Rs.30.03 crore audit paid tax on Book Profit of Rs.62.53 Crore under

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--66-- (ITA No.112/2018 & Other connected matters)

Section 115J copy of the assessment order under Section 143(3) for assessment year 2010-11 was also submitted before the CIT(A) and before ITAT.

73. The investor company has made investment of Rs.742.45 crore in shares of Reliance Industries Ltd. The investor company also has made investment of Rs.641.02 crore in the shares of Reliance Communication Ltd. The net worth of the investor company as on 31.3.2010 was Rs.3979.51 crore which includes Reserve and surplus of Rs.3947.48 crore. The investor company had been assessed under Section 143(3) for the relevant assessment year 2010-11 and assessed at Rs.30.03 crore and paid tax on book profit of Rs.62.53 crore under Section 115J. The investor company also filed its return of income for assessment year 2010-11 declaring taxable of Rs.24.85 crore. Income from operations and other income during the assessment year 2010-11 was amount to Rs.217.25 crore whereas in the previous year it was Rs.261.15 crore. The Commissioner Income Tax (Appeals) and appellate tribunal have taken into account the following facts and documents to arrive at the conclusion that the genuineness of the investigation has been proved :

"(i). On 17.12.2013 action under Section 132 was taken. During post search enquiries, the assessee

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--67-- (ITA No.112/2018 & Other connected matters)

submitted the details of share capital received by the assessee company including receipt of share capital from M/s Sonata Investment Ltd. Mumbai amounting to Rs.37.80 crore.

(ii). On 13.1.2014, the investigation wing, Delhi made necessary enquires by issue of notices under Section 133(6) to the investor company.

(iii) On 11.2.2014, the investigation wing, Delhi received confirmatory reply dated 5.2.2014 from Sonata Investment Ltd. confirming the investment made.

(iv). Thereafter, the case was centralised with AO, Central Circle-18, New Delhi.

(v). The AO issued various questionnaires dated 12.10.2015, 13.10.2015 and 02.11.2015 (questionnaires dated 13.10.2015 and 2.11.2015 are exactly same and identical to the assessee company.

(vi) On 5.11.2015 the assessing officer made enquiries from Sonata Investment Ltd. by way of notice under Section 133(6) dated 5.11.2015.

(vii) On 16.12.2015 the assessing officer received the reply from Sonata Investment Ltd. vide their letter dated 15.12.2015 confirming the subscription of share capital of Rs.37.80 crore (inclusive of share premium) by way of banking channels. Copy of notices under Section 133(6) dated 5.11.2015 and reply from Sonata Investment Ltd dated 15.12.2015 are available at pages 11 to 14 of order of the CIT(A)."

74. The ITAT examined the identity and creditworthiness of the investor / share applicant and genuineness of the transaction and given the following finding in para 25 23, 41, 42, 43, 44, 45 and 46 which reads as under :-

"25. We find that M/s. Sonata Investment Ltd. presently known as REL Utility Engineers Ltd. the subscriber company had made investment in share application money at Rs.37.80 crores out of which it had received Rs.37.30 crores from top Industrial house of the country namely Reliance Infra. The investor company enjoyed Rs.3979 crores net worth as on 31.3.2010. Therefore the said subscriber had sufficient fund to make investment. We support our

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--68-- (ITA No.112/2018 & Other connected matters)

view by relying decision of Hon'ble Delhi High court in the case of Goodview Trading Pvt. Ltd. 77 taxmann.com 204 (Delhi) wherein it was held that no addition can be made where there is a sufficient net worth of the investor company. Similarly we find that there was no incriminating documents found during search hence, no addition could be made in the hands of the assessee as held by the Hon'ble Delhi High court in the case of Kurle Paper Mills)P) Ltd. 380 ITR 571 dated 6.7.2015. During the course of assessment proceedings, in response to notice under section 133(6) issued by the AO, M/s. Sonata Investment Ltd. presently known as REL Utility Engineers Ltd. in compliance to said notice, had confirmed the investment so made and furnished the relevant supporting document including copy of balance sheet for the financial year 2009-10 and 2010-11, details of investment made in the assessee company. We also note that premium paid was as per offer for the issue of shares. It is also seen that deal was direct and no broker was involved. We also find that the assessee had filed detailed reply through letter vide dated 23.12.2015 before the AO and copy of which was also submitted to CIT (A) explaining the identity, creditworthiness of the investors and genuineness of transaction. The CIT (A) has also reproduced this reply at Page No.14 to 24 of her appellate order. We further find that said Subscriber Company had filed copy of share allotment letter, copy of counterfoil of share certificate issued, copy of Board Resolution passed, Form No.2 filed with ROC, Memorandum of Association and Articles. The subscriber company has duly complied with the notice under section 133(6) issued by the AO. Therefore, in view of above facts and evidence brought on record, we are of the view that identity of the subscriber has been established. We further find that the entire amount was received by cheques and there is no cash deposit before issue of cheques in the bank statement as filed. The assessee filed copy of bank statement of subscriber showing RTGS to the assessee company. Therefore, genuineness of transaction is also not to be doubted. Further, the subscription of Rs.37.80 crores is made out of funds acquired from Reliance Group Company to whom the investor company belonged and the subscriber company had sufficient funds to make investment and made investment of Rs.740 crores in shares of M/s. Reliance Industries Ltd. and Rs.641 crores in

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--69-- (ITA No.112/2018 & Other connected matters)

M/s. Reliance communication Ltd. Thus, we find that the investor company had sufficient funds at its disposal, all transaction are through banking channel. We cannot ignore this vital factum that during the course of search and seizure operation or during post search enquiries no fact was brought in light that the investor or its earlier sources deposited any cash prior to transmitting the amount to the amount to the assessee company. Neither it is a case of the AO that the assessee generated unaccounted cash which was given to the investors for making alleged investment in shares. Hence, creditworthiness of the subscriber is also established.

23. Further, the assessee has filed copy of the share application forms (PB-333-334, 1204 to 1210, 1395, 1787, 2436), copy of share allotment letter (PB-370) copy of ITR acknowledgment (PB460-462), Balance sheet (PB-311 to 368), copy of bank statement of investor company (PB-306-310) copy of Memorandum of Association and Articles (PB-323 to 957) copy of Form No.2 filed with ROC (PB-323), copy of resolution passed by the Board (PB323), and reply to notice issued under section 133(6) by the AO duly served on the investor company furnished by said company (PB159-160 Refer Page No.11-12 of assessment order) Reply to notice u/s.133(6) submitted to the AO by investor company (PB161-218) and Page No.12 to 14 of assessment order). These evidences brought on record proves that the identity, creditworthiness and genuineness of transaction of said investor. On the other hand, the AO has not brought on record anything contrary and merely held that the investment by the said subscriber is not genuine on the basis of suspicion and stating that statement of Shri Naresh Kumar was evasive and vague. The AO has not brought on record any evidence to show that the transaction is not genuine. No such evidence or incriminating material was found during the course of search and seizure carried out on the business premises as well as residences of the directors of the company. Therefore, no addition can be made as held in the case of Kurle Paper Mills (P) Ltd. 381 ITR 571 (Del). Moreover, the Id. CIT (A) has examined the details of transaction and given at length finding regarding every aspect on the issue. Therefore, no addition on account of share application money can be made particularly when shares are allotted and transaction are through banking channel and concerned party

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--70-- (ITA No.112/2018 & Other connected matters)

replied to notices issued by the AO. Accordingly, identity and creditworthiness of investor company and genuineness of transaction has been duly established. Therefore, the addition of Rs.37.80 crores with commission of Rs.1.89 crores made in respect of this subscriber deleted by the Id. CIT(A) is upheld.

41. In the instant case, the assessee company having received share application money through banking channel and furnished complete details of bank statements, copy of accounts and complied with notices issued, therefore, identity, creditworthiness and genuineness of transaction has been proved in the light of ratio laid down by the Hon'ble High Court in above decision. Therefore, respectfully following the decision of Hon'ble Jurisdictional High Court as referred above, no addition can be made under section 68 of the Act. There is no finding of the AO that any point or stage of investigation regarding source of funds he caught any instance of cash deposit by the Investor / share applicant or of its sources account.

42. We further note that decision of the Hon'ble Apex Court in the case of CIT V. Lovely Exports (P) Ltd. [2008] 319 ITR (St.) 5 (SC) [2008] 216 CTR (SC) / 18 ITJ 717 (SC) is relevant on this issue. The Hon'ble Apex Court has held that "***if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee.***"

43. If the totality of facts and the ratio of judicial pronouncements as discussed hereinabove, are analyzed, we are of the considered opinion that the onus primarily cast upon the assessee, as provided under section 68 of the Act, has been duly discharged by the assessee as the identity of the share subscribers, creditworthiness and genuineness of the transaction is not to be doubted or it can be said that the same has been proved / explained by the assessee. Now, the onus has reverted back upon the Revenue to prove otherwise which has not been discharged by the AO before making additions under section 68 of the Act.

44. The Id. AO merely relied upon the suspicion and statement recorded from Shri Naresh Kumar

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--71-- (ITA No.112/2018 & Other connected matters)

during night considering it vague and whereas the inquiries made under section 133(6) were duly complied with by the investor company / The AO was expected to disprove the claim of the assessee with the help of evidence, if any, received from the investigation wing, as has been claimed by the Revenue. The Revenue has nowhere proved that any malafide is done by the assessee. Failure to do so, vitiate the addition made under the set of facts. Reference can be made to the decision in CIT V. Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC) and the ratio laid down in the decision of Hon'ble Gauhati High Court in the case of Khandelwal Construction v. CIT 227 ITR 900 (Guw.). The satisfaction has to be derived from the relevant facts and that to on the basis of proper enquiry by the Assessing Officer and such enquiry must be reasonable and just.

45. In the present case, the AO has not brought any evidence on record that the amounts received from M/s. Sonata Investment Ltd. presently known, as REL Utility Engineers Ltd. is merely accommodation entry. As mentioned earlier, the AO has acted merely on the basis of statement of Shri Naresh Kumar and high premium amount only. The ratio laid down by Hon'ble Madhya Pradesh High court in CIT v. Peoples General Hospital Ltd. [2013] 356 ITR 65 (MP), [2013] 216 Taxman 320(MP)/ [2013] 35 taxmann.com 444 (Madhya Pradesh) is squarely gives shelter to the assessee, wherein it was held that where the assessee establishes the identity of share applicant, burden of proving creditworthiness was not on assessee.

46. In view of the above facts, circumstances and discussion, we are of the view that if the identity and other details of share applicant are available, the share application money cannot be treated as undisclosed income in the hands of the company. In the present case, the assessee even has proved the source of source, therefore, the creditworthiness was also proved, consequently, no addition made under section 68 of the Act can be said to be justified. Therefore, respectfully following the decisions from Hon'ble Apex Court, Hon'ble High Courts and Hon'ble jurisdictional High court, we find no infirmity in the order of Id. CIT (A), resultantly, the grounds of appeal of the Revenue are dismissed."

75. The ITAT on a very detailed examination was satisfied

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--72-- (ITA No.112/2018 & Other connected matters)

about identity, creditworthiness and genuineness of the investor companies and held that there the assessee had discharged the primary onus to prove their creditworthiness and genuineness. The ITAT in concurring with the first appellate authority found that the assessing officer has made addition under section 68 of the Act without any reasonable basis. The first appellate authority has analyzed the transaction with each and every creditor and assigned reasons as to why the loan(s) have to be treated as genuineness and upheld the order of the first appellate authority ie., Commissioner of Income-tax (Appeals) and held that it did not suffer from any legal infirmity.

76. We also agree with the tribunal, and particularly when it proceeded to analyse the transaction and the issue in an over all manner.

77. We are not at all impressed with the submissions of the learned counsel for the Revenue. There is a clear finding of fact by the tribunal and there is no reason to reverse this finding of fact particularly since nothing has been shown to us to conclude that the finding of fact was perverse in any manner whatsoever.

78. From the above, there is a clear finding of fact by the appellate authority and the learned ITAT after examining the

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--73-- (ITA No.112/2018 & Other connected matters)

same upheld the same. A decision on the fact of ITAT can be gone into by this court only if a question has been referred to it which says that the finding of the tribunal on facts is perverse. Accordingly, we are of the view that there is no merit on the arguments of the learned counsel for the revenue nor any substantial questions of law are arising in these appeals. The ITA No.112/2018, ITA No.110/2018, ITA No.113/2018, ITA No.114/2018, ITA No.115/2018 and ITA.No.111/2018, filed by the appellant have no merit and are, accordingly, dismissed.

(P.K. JAISWAL)
JUDGE

(S.K. AWASTHI)
JUDGE

SS/-

HIGH COURT OF M.P. BENCH AT INDORE

Pg. No.--74-- (ITA No.112/2018 & Other connected matters)

HIGH COURT OF MADHYA PRADESH : INDORE BENCH

D.B.:Hon'ble Shri P.K. Jaiswal

Hon'ble Shri S.K. Awasthi, JJ.

ITA No.112/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.111/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.110/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Chain House International (P) Ltd.)

ITA No.113/2018

Principal Commissioner of Income Tax (1) Indore

Versus

M/s. Rohtak Chain Co. (P) Ltd.)

ITA No.114/2018

Principal Commissioner of Income Tax (1) Indore

Versus

. Bharat Securities Ltd.

ITA No.115/2018

Principal Commissioner of Income Tax (1) Indore

Versus

Bharat Securities Ltd.

ORDER FOR CONSIDERATION

(P.K. JAISWAL)

JUDGE

/8/2018

HON'BLE SHRI S.K. AWASTHI, J.

(S.K. AWASTHI)

JUDGE

HIGH COURT OF M.P. BENCH AT INDORE
Pg. No.--75-- (ITA No.112/2018 & Other connected matters)

/8/2018

Post for _ _____/8/2018

(P.K. JAISWAL)
JUDGE
/8/2018

HIGH COURT OF M.P. BENCH AT INDORE
Pg. No.--76-- (ITA No.112/2018 & Other connected matters)

HIGH COURT OF MADHYA PRADESH : INDORE BENCH

D.B.:Hon'ble Shri P.K. Jaiswal
Hon'ble Shri S.K. Awasthi, JJ.

ITA No.112/2018

ITA No.110/2018

ITA No.113/2018

ITA No.114/2018

ITA No.115/2018

Indore Dt.28.6.2018

Shri V.N. Dubey, Advocate for the appellant.

Shri Sumeet Nema, learned Senior Advocate with Shri G.

Tiwari, Advocate for the respondent.

Heard.

Reserved for orders.

(P.K. JAISWAL)
JUDGE

(S.K. AWASTHI)
JUDGE

SS/-