

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SHRI H.S. SIDHU, JUDICIAL MEMBER**

**ITA No. 2821/Del/2009  
Assessment Year: 2006-07**

ITO,  
Ward 13(2),  
New Delhi.

vs.

Neelkanth,  
Finbuild Ltd.,  
E-281, Greater Kailash,  
New Delhi.  
**AAACN3882C**

(Appellant)

(Respondent)

Appellant by : Sh. P. Dam Kanunjna, Sr. DR  
Respondent by : Sh. O.P. Mody, Adv.

Date of hearing: 26/03/2015  
Order pronounced on: 01/04/2015

**ORDER**

**PER H.S. SIDHU, J.M.**

The Revenue has filed the present appeal against the impugned order dated 27/02/2009 on the following grounds:

1. *“The ld. CIT(A) erred in law in deleting the addition of Rs. 5,00,000/- made u/s 68 with respect to the money claimed to have been received as share capital from, M/s Paras Infotech Pvt. Ltd. without appreciating the facts and the circumstances of the case in the right perspective.*
2. *The ld. CIT(A) erred in law in deleting the addition of Rs. 10,00,000/- made u/s 68 with respect to the money claimed to have been received as share capital from Sh. V.K. Angami without appreciating the facts and the circumstances of the case in the right perspective.*

3. *The ld. CIT(A) further erred in deleting the addition without appreciating the adverse evidences in the form of inability of the assessee to produce the share applicants, the absence of creditworthiness, the collusive evasion of enquiries into the sources of deposits and not deciding the issue in the light of latest decision of the jurisdictional High Court in the case of Indus Valley Promoters Ltd. vs. CIT, 305 ITR 202 (Delhi HC).*
4. *The ld. CIT(A) further erred in law in deleting the addition of Rs. 12,500/- as unexplained expenditure with respect to commission for raising the share capital of Rs. 5,00,000/- without appreciating the facts and circumstances of the case in the right perspective.*
5. *The appellant craves to be allowed to add, delete or amend any other grounds of appeal.”*

2. The brief facts relating to the issue are that the assessee filed its return of income on 30/10/2006 declaring an income of Rs. 3,25,660/-. Subsequently, the case of the assessee was selected for scrutiny assessment. During the year under consideration, the assessee had received share application money of Rs. 15 lacs from M/s Paras Infotech Pvt. Ltd., Rs. 5 lacs and Sh. V.K. Angami Rs. 10 lacs. As per information received from the Investigation Wing of the Department, the AO in the assessment order passed u/s 143(3) of the I.T. Act, 1961 (hereinafter called the Act) has treated the said receipts to the extent of Rs. 15 lacs as unexplained cash credit as per the provision of section 68 of the I.T. Act in the hands of the assessee. The AO also disallowed expenditure pertaining to exempt income of Rs. 33,284/-. All these additions have been contested by the assessee in the appeal before the Id. First

Appellate Authority who vide impugned order dated 13/03/2009 deleted the addition in dispute by partly allowing the appeal filed by the assessee. Now the Revenue is in appeal against the impugned order dated 13/03/2009 filed the present appeal. At the time of hearing, Id. DR relied upon the order passed by the AO and reiterated the contentin raised by the Revenue in its grounds of appeal. On the contrary Id. Counsel for the assessee relied upon the order passed by the Id. First Appellate Authority. He has also filed a paper book attaching various documentary evidences supporting the impugned order passed by the Id. First Appellate Authority.

3. Ld. Counsel for the assessee relied upon the order passed by the First Appellate Authority. He has also filed a paper book containing page 174 pages in which he has attached various documentary evidence supporting the claim of assessee and he requested that appeal filed by the revenue may be dismissed.

4. We have heard both the parties perused the record available with us specially orders passed by the revenue authority along with the documentary evidence filed by the assessee. We are of the view that the Assessing Officer during the course the assessment proceedings has made the following observation in the assessment order on the issues in dispute.

*“During the year under consideration, the assessee company has increased its share capital by Rs.1,0,000/- having issued 11,00,000 equity shares @ 20/- each. From the perusal of details furnished by the assessee company, it was*

noticed that share application money of Rs. 15,00,000/- is claimed to have been received from the following two persons:

Sl No.	Name	Amount Received (Rs.)	Cheque No. And Date	Drawn on Bank
1.	<b>M/s Paras Infotech (P) Ltd. E-71, Amar Colony, Lajpat Nagar, Delhi-24</b>	<b>5,00,000/-</b>	<b>000009 dated 25/13/2006</b>	<b>Kotak Mahindra Bank, Old Rajinder Nagar Delhi</b>
2.	<b>Sh. V. K. Angami, R/o 21/2 Mile, Dimapur, Asam</b>	<b>10,00000</b>	<b>Amount received in Cash</b>	

**Share application money received from M/s Paras Infotech Pvt. Ltd.**

Before proceeding further, it may be mentioned that the Investigation Wing has carried out certain investigations into an accommodation entry racket being run by some persons. It has been found that the said M/s Paras Infotech Pvt Ltd. is also one of the "companies" floated by these persons and is being used as for the purpose of arranging accommodation entries. It has been found that this "company" is not carrying out any actual business activity, It does not have creditworthiness nor does it have any worthwhile sources of income, It is a corporate entity in name only. The bank accounts existing in the names of these persons are being used as conduits for the purpose of providing accommodation entries. A person/party who provides such entry is known as Entry Operator and the person/party taking such entry is called Beneficiary.

An entry operator operates a number of accounts in the same bank/branch or in different branches in the names of companies, firms, proprietary concerns and individuals. For the operation of these bank accounts, filing income tax returns etc. persons are hired Except for two or three persons who are required to regularly visit bank and to do other spade work like collection of cash etc., most of the other persons involved are on part time basis. The part time employees are called up and when required to sign documents, cheque books etc.

A person interested in introducing its undisclosed money into his/her/it, business approaches the entry operator and hands over the cash. along with commission and takes cheques DD/PO. The cash is deposited by the entry operator in a bank account either in his own name or in the name of relative/friends or other person hired him for the purposes of opening bank account. The other person, in whose name the account is opened. only sign: the blank cheque -book and hands over the same to the main entry operator

The entry operator, in turn. Issues cheques/DD/POs in the name of the Beneficiary either from the account in which the cash is deposited or after multi-layering and further obscuring the trail by rotating it through other account or accounts, which are used only as conduits and in which the funds are transferred through clearing in two or more stages.

Thus, the beneficiary's unaccounted money sails through several accounts before round-tripping back to it, only disguised in the form of share application money, unsecured loan, gift etc. While most of the concerns/individual have obtained PAN from the department and are filing returns as well. what is shown in the return are not actual state of affairs.

*During the course of the assessment proceedings, the assessee company furnished a copy of the purported confirmation from the Director of the said company, namely Sh. Mukesh Gupta. The said Sh. Mukesh Gupta S/o Sh. R. D Gupta, R/o WZ-414, Naraina Village, Delhi, along with his associates, has given sworn statements u/s 131 before the Addl. Director of Income Tax (investigation), Unit-I, New Delhi. In the said statements they have admitted that the "companies" and other such concerns owned/controlled/managed by them are not carrying on any actual business activities. They have categorically admitted that they are engaged in the activity of providing accommodation entries, The deposits reflected in the bank accounts existing in the ruimes of the "companies" controlled by them actually belong to the persons approaching them for taking accommodation entries. These bank accounts existing in their names have been used only as conduits for the purpose of arranging accommodation entries for others in the garb of share capital etc. as described above.*

*In view of the above facts, notice u /s 131 of the Act addressed to the Principal Officer of M/s Paras Infotech Pvt Ltd (directed at the above address) was issued requiring the director of the said "company" to attend this office personally, along with its books of accounts, evidence in support of its creditworthiness, the original share certificates issued by the assessee company etc. However, the notice was received back undelivered with postal remarks to the effect "no such company"*

*A perusal Of the bank statement Of the said "company" revealed that there was a cash deposit of Rs. 9,98,000/- in the account (A/c No, 179 2000000192) on 25.03.2008, prior to the release of funds in favour of the assessee by way of cheque dated 25.03. 2006.*

*The AR was confronted with the above facts from time to time during the course of the assessment proceedings and was required to explain as to why adverse inference ,may not be drawn regarding the genuineness of the transaction and the capacity of the said "company". He was also asked to produce the director of the company (Sh. Mukesh Gupta). The AR was also provided copies Of the following sworn statements Of Sh. Mukesh Gupta and his other associates given before the Additional Director of **Income Tax Investigation), Unit-I, New Delhi.***

- a) Statements dated 14.0 I. 2004 of Sh. Mukesh Gupta.*
- b) A joint letter/statement dated 11. 05. 2004 addressed to the Addl. DIT (Investigation), Unit-1, New Delhi by Sh. Mukesh Gupta, Sh. Rajan Jassal and Sh. S. P. Singh.*

*In reply to the show-cause, the A R finished his reply vide written submission dated 15. 12.2008. The substance of the reply is as under ..*

- a) The assessee company has filed "confirmation ", copy of the ITR etc. of the said company. It is company duly incorporated under the Companies Act. The assessee company has discharged its onus by filing above documents evidencing their identity and creditworthiness.*
- b) The statements given by the above persons are vague and general in nature and the name of the said company does not figure in the companies/concerns identified by them.*

*The assessee's contentions in support of the genuineness of the transactions and the documents purporting to be confirmations etc of the above share applicants have been considered, but have not been found to be sufficient in view of the facts and circumstances of the case. The assessee's contention is that the onus*

*on it stands discharged in view of the above documents filed by it in support of the identities of the share applicants. This rather simplistic contention of the assessee has no legal basis. The Hon'ble High Court of Delhi in the case of CIT v. M/s Himalaya International Ltd. (rendered on 30.07.2007 in ITA 1509 of 2006) has clearly held that the onus is all the assessee to establish the identity & creditworthiness of the subscribers of shares as well as the genuineness of the transaction. The following observations made by the Hon'ble High Court in the case of CIT Vs. Divine Leasing and Finance Ltd., General Exports and Credits Ltd., Lovely Exports (P) Ltd (299 ITR 268) in para 2 I of the judgment, should lay to rest any further lingering doubts on the import of the section 68 vis a vis the question of share capital*

*" But we hasten to clarify that the statement of law made by the ITA T to the effect that in case of share capital no additions could be made if it is established that the shareholders exist is no! completely correct, and has not been so enunciated by this Court in Sophia Finance"*

*Before evaluating the credibility of the purported evidence sought to be relied on by the assessee against the overwhelming circumstantial evidence exposing the real nature of the transactions, the import and ingredients of section 68 may be briefly discussed. If has been judicially established that the primary onus is on the assessee to prove the identity & creditworthiness of the party and the genuineness of transactions in respect of cash credits in its books of account. The identity and creditworthiness. in the context of the provisions of section 68, cannot be seen as two separate elements but as two sides of the same coin. The PAN or other assessment particular are at best, only peripheral documents as while allotting PAN or processing the ret urns, the actual affairs are seldom verified. The creditworthiness essentially means some financial standing in one's own right backed by one 's inherent capacity to earn income or the capacity of some profit-making apparatus available to one.*

***Further, the degree of onus contemplated/ls 68 depends on the facts of each case and no standard degree of proof can be applied in all cases irrespective of the nature of receipt. Whether the onus, in a particular case, is stringent or light, would depend upon the facts of the case. For example, where the amount it received from close relatives or friends by way of loan or deposit or otherwise, the onus would be stringent or light, would depend upon the facts of the case. For example, where the amount is received from close relatives or friends by way of loan or deposit or otherwise, the onus would be stringent since the assessee is supposed to know all the particulars. In case where the share capital is received through public issue, the company is not supposed too know about the source from which share applicant makes the investment. Therefore, the onus would be light. However, where the shares are issued by a private limited company, the onus would be stringent for the reason that the public issue cannot be made by a private limited company and the capital is received through private placement normally to known persons i.e. the relatives and friends of directors. The degree of the onus would be even stringent when the very credentials of the 'director' of an investor company "are suspect because of the fact that he has admittedly been running on accommodation entry racket through the medium of many "companies "floated by him.***

*It is now proposed to consider the purported evidence sought to be relied upon by the assessee in the light of the facts and circumstances of the case.*

**(1)** *As discussed above, simply furnishing the PAN or assessment particulars is not enough. The so-called evidence in the form of return of income*

etc. Does not facilitate cross verification. **While on the purported "confirmation "filed on behalf of the investor "company", its address is mentioned as E -71, Amar Colony, Lajpat Nagar, Delhi", the summons sent at the above address has been received back undelivered with postal remarks "no such company".** The acknowledgement of return etc., by themselves, are not sufficient to prove the true identity of a person or to disclose a true address. This is not a case where some legal proceedings are shown to have been made in the hands of the said "company" at the said addresses and they are shown to have attended the proceedings. The identity should be seen in perspective that the person has got to have some standing in a particular line of activity. Identity is defined in the new shorter oxford dictionary as "The condition or fact of a person or thing being that specified unique person or thing". The person has to have some sign of identification other than merely on paper. **These signs could be the infrastructure of business, place of work, staff members, books of accounts, substantive evidence of the business carried by the persons in the form of tools and apparatus of business, inputs of the business, process involved etc. Or anything which can prove that some actual activity is going on. Having PAN or assessment particulars is merely a response to the applications and returns filed. These types of identity are merely on paper.**

- (2) The person has neither been produced nor has any substantive evidence produced in support to its actual affairs and creditworthiness that could only be examined. given the/acts of the cc/se, if somebody on its behalf is produced along with necessary evidence of the nature and details of their activities on the ground, the sources of deposits and their books of accounts. For accepting the identity and the availability of funds in their hands in its own capacity, it is necessary to have at least some idea, if not complete details, of the actual "business" in which it is said to be engage **As mentioned above, there was cash deposit in the said bank account prior to the release of funds in favour of the assessee.** In fact, there are specific reasons for not maintaining/ producing books of accounts and filing annexures showing composition a/investments in such cases. For one, the amounts given as share application money etc. are lost forever (as they are one time entries). Another reason for not filing the schedule of investment and loans is that while the amount shown in the balance sheet may be less the actual amounts may be more. For example, if one crore has been actually routed through the bank accounts the amount shown in the balance sheet may be just ten or twenty lakhs. Providing the schedule of investments and assets makes it difficult for them to give a confirmation to anyone whose name is not available in the schedule.
- (3) (2) The assessee company is private limited company In the case of such companies, there is close and proximate relationship between the promoters/directors and the shareholders. The closely-held companies

are permitted to accept the subscriptions of share capital or deposits only from the friends or relatives of the promoters/directors and such companies are not allowed to accept subscriptions or deposits from the general public. The shares are, therefore, subscribed by a small number of persons who are known to the promoters or are related to them by family members. **As such, there should have been no difficulty on the part of the assessee to produce the so-called investor, had the whole apparatus not been merely a conduit to plough back the unaccounted money of the assessee-company in the garb of share application money. There is no reason why a genuine investor would evade inquiries into its affairs. The investors are at least supposed to produce the original share certificates.** It is also hard to believe the assessee's contention that it has had no contact with the so-called share-holder in the light of the fact that a genuine contributor in the share capital would not abandon his investment

4(3) Mere payment by account-payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. As mentioned above, cash has been deposited into the account just prior to the issue of the cheque. Therefore, unless the creditworthiness of the "company" and the transactions represented by the entries in the bank are correlated with the "business activity" or their sources of income, **the deposit of cash immediately before the release of funds in favour of the assessee only corroborates the fact that the account has been used only for the purpose of providing accommodation entries. The evidence afforded by the above facts is only fortified by the aforesaid statements of Sh. Mukesh Gupta** That the money has come through banking channel per se does not make the transaction genuine when there is presence of other factors present suggesting otherwise The nature of deposits in its accounts cannot be explained except by the truth that these amounts represent the money of the beneficiary routed through it. The beneficiary has to have the money in its account through normal banking channel This is the sole reason/or arranging the entire transaction.

4) The assessee has further contended that the name of the said "investor company" does not appear in the statements given by the above persons. This argument does not carry any force. That Sh. Mukesh Gupta himself is "director" in the said "company" has not been denied The said "company" has clearly been identified in the information/report received from the Wing as one of the entities belonging to the group and through which accommodation entries are being provided Further, the above statements by themselves are sufficient to impeach the credentials of the said Sh. Mukesh Gupta. Apart from this tell-tale connection, the other factors, namely, **the**

***pattern of the transactions, the deposit of cash in the bank account immediately before the release of funds in favour of the assessee, the non-furnishing of any evidence in support of any actual business being carried out by the said "company", the non-production of original certificates by it, the fact of the notice having received back undelivered, considered in their totality clearly establish that M/s Paras Infotec P Ltd. is also one of the entities being used to arrange accommodation entries.***

*In the light of the above, the onus lay heavily on the assessee to establish the genuineness of the transactions and the creditworthiness of the alleged share applicants and the genuineness of the transactions. Considering the totality of the circumstances, it is obvious that the "transaction" was only a camouflage. The total amount of Rs. 5,00,000/- stated to have been received from the said .. investor company" represents the assessee's own unaccounted money which has sought to be introduced into its business in the garb of share application money. Thus, keeping in view the totality of the facts, the amount of Rs. 5,00,000/- is added back to the income of the assessee company u/s 68 of the IT Act.*

***Share Capital of Rs. 10,00,000/- received from Sh. V.K. Angatnt***

- (4) *As per the details filed, the assessee has also received a sum of Rs. 10,00,000/- from Sh. V K. Angami, R/o 21/2. Mile, Dimapur, Assam. The entire amount of Rs. 10,00,000/- has been received in cash. Notice u/s 133(6) was sent to Sh. Angami on 06.09.2007, calling for the following:*
- (5) (a) *Confirmed copy of account of the assessee in his books of accounts for the year under consideration*
- (6) (b) *Source of investment in share capital of the assessee company with copies of the bank statement. Copy of his Balance Sheet/ Statement of Affairs as on 31. 03. 2006.*
- (c) *His PAN and I T Particulars with copy of acknowledgement for I T. Return for the A. y, 2006-07.*

*However, the notice was received back unserved. The AR was informed that the notice U/s 133(6) to Sh. Angami has been received back. Further, no evidence (IS to the identity & creditworthiness of said person) was furnished by the assessee company. The AR was asked to show cause as to why the amount received from Sh. Angami be not treated as unexplained as the genuineness of the transaction, and the identity & creditworthiness of the share applicant remained unverified. In response to the show-cause, the AR, vide his written submission dated 5. 12.2008, stated as under: "Regarding the share application money of*

*Rs. 10, 00, 000/- received from Sh V K, Angami, we are enclosing the following documents/details for your consideration.*

*a) A copy of the certificate certifying Sh. Angami as a Schedule Tribe in the state of Nagaland.*

*b) A copy of the election 1 Card of Sh. V. Khriuto Angami. The aforesaid documents clearly establish the identity as well as the creditworthiness of Sh. V K. Angami and he is capable to invest so much amount of money Regarding PAN, the persons concerned is a scheduled tribe in the state of Nagaland ( certificate in this regard is enclosed as above) and the income so earned by him in the state of Nagaland is exempted income vide section 10(26) of the Income Tax Act.. "*

*The A R, vide written submission dated 24.12.2008, also furnished on affidavit purportedly from Sh. VK. Angatni to the effect that he has invested in the share capital of the assessee company and that "the investment has been made out of the own source of fund and payment made out of my cash balance"*

*The law with regard to the admissibility of an affidavit as an evidence is 'well- settled The matter relating to evidence by affidavits is governed by Order of the Code of Civil Procedure. Such evidence by affidavit may be admitted only if the same fulfils the conditions precedent thereto. In terms of Order 19, Rule 1 of C. P. C, the court may at any stage permit a party to adduce evidence by affidavit on assigning sufficient or cogent reasons. An affidavits are not evidence since it is not included in the definition of evidence in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons, the Court passes an order under Order 19 Rules 1,2 of CP. C as observed by*

*Supreme Court in Sudha Devi V MP Narain AIR 1988 (SC) 1381. (1988) 2 SC) 422. In view' of the same, furnishing of an affidavit in itself and that too at a time when it was not even required under any law of the land reflects that evidence was being created artificially/ superfluously in anticipation of it being required in the course of assessment proceedings. Therefore. affidavit of alleged "investor" which has been filed suo-mote is not even admissible evidence, specially when no evidence in support of [he assertions mode therein is forthcoming.*

*The documents filed in the form of the schedule tribe certificate and the voter card are just cord are just photocopies, which are not attested by on)' competent authority. Further, the name os appearing in the said certificate is " M Khrietuo S/o Vizokhol ,. and that appearing on the voter cord is only "Khrieto S/o Vizukhol ", Neither the affidavit, nor the written submission Filed by the assessee is accompanied by any evidence whatsoever (or even description of the sources of income or the Sh. Angami) in support of the creditworthiness of the "investor ". A bare assertion that the amount has been invested out of "own source of*

*fund" is not sufficient. Therefore, the above documents. by themselves, do not in 0/1)' II'([Y substantiate the creditworthiness of the said person and the genuineness or the transaction. It is well settled that where moneys have been received ill cash or even Demand Drafts the standard of proof u/s68 of the ACI would be much more rigorous and :stringent than where the transaction is by cheque where the date and source of the investment cannot be manipulated. For example, the availability of the same cash may well be used for "confirming" similar transactions in multiple cases.*

*The pressing need for this payment having been made in cash by Sh. Angami is highly suspect as there is no reason why the same was not routed through normal banking channels, if at all the said amount was maintained in any bank account. This assumes greater significance as it is highly improbable that anybody would actually maintain a cash of Rs. 10,00,000/-. The letter addressed to Sh. Angami at the given address **(21/2 Mile, Dimapur, Assam)** has been received back undelivered with postal remarks 'Address insufficient. **Addressee could not be traced out.** This further suggests that the said Sh. Angami, if he really existed at the given address or even thereabout. could not have been a man of such financial standing as has been sought to be made out. As per the documents filed, the entire creditworthiness is being sought to be established merely on the basis of mere self-serving assertions which are not supported by any evidence whatsoever, documentary or otherwise, in support of his financial status and the immediate source of the said amount. Even in the alleged "investor" has chosen to remain silent about the source of this amount of Rs. 10,00,000/-. In view of the above, the identity & creditworthiness of the alleged share applicant and the genuineness of the transaction remain unsubstantiated. Therefore, this amount of Rs. 10,00,000/- is treated as unexplained and added to the income of the assessee u/s 68 of the Act .. "*

5. On the appeal filed by the assessee, Ld. First Appellate Authority in the impugned order had adjudicated the issue in dispute the findings of the Ld. CIT(A) is as under:-

*“I have gone through the facts and circumstances of the case, observation of the A.O. as contained in the Assessment Order, submissions of the AR of the appellant and judicial pronouncements on this issue.*

*During the year under consideration, the appellant company had increased its Share Capital by Rs. 1, 1 0,00,000/- by issuing 1 1,00,000 equity shares of Rs. 10/-each from various parties. The Assessing Officer, in the Assessment Order has added the Share Application Money received from 2 parties, namely M/s Paras Infotech Pvt. Ltd. (Rs. 5,00,000/-). Shri V.K. Angami (Rs. 10,00,000/-) as unexplained cash credit. in the hands of the appellant company. The addition in respect of first company was made on the basis of information received from the Investigation Wing of the Department and on the statement of Shri Mukesh Gupia given before the officers of the Investigation Wing. whereas the addition in respect of Sh. V. K. Angarni was made as the said payment was received in cash and was not supported by any immediate source of the said cash.*

*The Assessing Officer had issued summons to the principal officer of the company u/s 131 of the I.T. Act during the course of assessment proceedings for producing the books of accounts and other evidences in support of its creditworthiness. I however, the said summons was received back with the remarks 'no such company exists on the given address'. The AR of the appellant company was asked to produce the director of the company and he' was also provided copies of the statement given by Sh Mukesh Gupta and his associates before the Addl. Director of Income-tax (Investigation) Unit-I, New Delhi. The appellant company to substantiate that the amount of share application money received from the said party was genuine. provided supporting evidence vide its letter dated 15.12.2008 to prove the identity and creditworthiness of the party in the form of confirmation, Copy of ITR, certificate of Incorporation of the said company. Copy of PAN Card. In respect of Sh. V.K Angami who is a resident of 21/2.Mile Dirnapur, the appellant filed copy of certificate (certifying that the Sh. V. K. Anagami is a Schedule Tribe in the State of Nagaland, copy of Election Card and salary certificate of having received salary from M/s Numen Enterprises Pvt. Ltd. as Director. The appellant further stated that Sh. Angami had capacity to invest the money and income so earned by him is exempt u/s 10(26) of the Income-tax Act, 1961. The appellant on 24.12.2008 also furnished an affidavit of Sh. V.K. Angami to the effect that he has invested in the share*

*capital of the appellant company and the investment has been made out of his own source of funds and payment made out of his cash balance.*

*Since the investors failed to appear before the AO in response to summons issued u/s 131 of the IT Act, the AO disregarded the other evidences produced and emphasized that identity and creditworthiness of the investors has not been proved. He accordingly held that the amount of Rs.5,00,000/- from M/s Paras Infotech Pvt. Ltd and Rs.10,00,000/- from Sh. V.K. Angami received by the appellant as share application money from the said two parties cannot be treated as genuine and is only an accommodation entry. On these observations, the appellant relied upon the direction of Honble ITAT, Mumbai Bench in the case of Kashuka Trading & Services Pvt. Ltd. Vs. ITO, ITA NO.1145/Mum.106 wherein it is held that mere non-compliance of summons and notice, it cannot be held that the assessee has failed to discharge his burden u/s 68..*

*On the same issue, the appellant has also relied upon the Hon'ble Supreme Court judgement in the case of CIT Vs. Orissa Corporation 159 ITR 78 (SC) wherein it is held that in case the creditor does not appear in response to summon issued u/s 131. no adverse inference can be drawn.*

*Hon'ble Delhi High Court in the case of CIT vs. Pradeep Gupta 207 CTR 115, which has also been relied upon by the Delhi IT A T in recent judgement in the case of Babita Gupta ITA No. 2897/06, wherein it is held that in the facts of the case before us it may be seen that from the very beginning Ld A. 0. had shifted entire burden Upon the assessee and no material was brought by him to prove his allegation that the impugned amount represented assessee company's undisclosed income. Therefore, on this ground alone the entire addition deserves to be deleted and may kindly be held so.*

*In the Assessment Order, the AO has not given any details about the enquiry conducted by him on the basis of which it was held that the said parties were involved in the business of providing accommodation entry. The Honble Delhi High Court in the case J.T. (India) Exports and another vs. UOI and another (2003) 262 ITR 269 (Del-FB) has held that the Assessing Officer must pass a speaking order giving reasons for the conclusions arrived at, and opportunity of being heard must be provided to the assessee before passing any adverse order. It has been further held that in the notice issued by the A.O. specific requirement should be indicated and reasonable opportunity must be granted. It was held by the Hon 'ble Delhi High Court that in absence of a*

*notice of the kind and such reasonable opportunity, the order passed against the person in absentia and becomes wholly vitiated.*

*The AO in the Assessment Order has simply relied upon the information received from the Investigation Wing of the Department without making any effort to verify the facts stated therein. It has also been held by the various courts that AO must bring on record some positive material or evidence to indicate that the share holders were benamidars, fictitious persons or that any part or the share capital money represented the company's own income from undisclosed sources. The appellant has cited various case laws in the its submissions wherein it has been held that the Share Capital issued cannot be treated as undisclosed income of the appellant and cannot be added u/s 68 of the Income Tax Act.*

*The appellant in its submissions relied upon by the case law of CIT vs. Samir Biotech Pvt. Ltd. ITA No415/I2008 of Delhi High Court, wherein it is held that if subscribers are having bank accounts, issuing account payee cheque, assessed to income- tax showing investment in the balance sheet, balance sheet were audited by the statutory auditors, their credit worthiness, identity and genuineness of the transactions are well established. The appellant further stated that in the case of Paras Infotech Pvt. Ltd., it has submitted the copy of the income-tax return, confirmations and affidavit of the director of the company who has given share application money. All these documents establish the identity and creditworthiness of M/s Paras Infotech Pvt. Ltd.*

*With regard to Sh. V.K. Angami, the appellant submits that he has filed affidavit of Sh. V.K. Angami confirming the transaction. copy of election identity card, copy of the Schedule Tribe Certificate and copy of the salary certificate received from M/s Newman Enterprises Pvt. Ltd. for the salary paid as Director. All these documents prove the identity and creditworthiness of the investor. In support of this, the appellant has relied upon the case law of Shri Barakha Synthetics Ltd. Vs. ACIT (2006) 155 Taxman 239 (Raj.) wherein it has been held that once the receipt of the confirmation letter from the creditor is proved and the identity and the existence of the investor has not been disputed, no addition on account of share application money in the name of such investor can be made in the assessee's hands.*

*"In respect of the share application money received from investors, the assessee company has only to prove that the existence of the persons in whose name*

*share application is received. No further burden is cast upon the assessee to prove whether that person himself has invested the said money or some other person made investment in his name."*

*The appellant has also relied upon the judgement of Hon'ble Supreme Court in the case of CIT Vs. Lovely Export 299 ITR 268 (SC) which has confirmed the order of the Delhi High Court. It has been held that once' the identify of the share holder have been established. even if there is a case of bogus share capital, if cannot be added in the hands of the company unless any adverse evidence is not record. In the instant case, the appellant has provided confirmations from the said parties, as well as various evidences to establish the genuineness or the transaction.*

*With regard to AO's observation in the Assessment Order that before issue of cheque by M/s Paras Infotech Pvt. Ltd .. there was a cash deposit in the said bank account. On these observations, the appellant has relied upon the judgement of Nemichand Kothari Vs. CIT (2003) 264 ITR 254 (Gauh.) wherein it is held that it is a settled law that the burden of the assessee is to prove the genuineness of the transaction as well as the creditworthiness of the creditor must remain confined to the transactions which have taken place between the assessee and the creditor. It is not the business of the assessee to find out the source of the money of his creditors*

*Similar observations have been made in the cases 01' S. Hastimal 49 ITR 273(Mad) and Daulatram Rawatmall (1973)87ITR 349(S C) wherein it is held that source of the source can not be enquired from an assessee which unfortunately seems to be the case in the instant case.*

*In a recent judgement dated 30.1.2009 Honble Delhi High Court in the case of CIT vs. Gangour Investment Ltd. (ITA No. 34/2007) has held that Revenue can make addition under section 68 of the Act only if the assessee is unable to explain the credits appearing in its books of accounts. In the said case the appellant has duly explained the said credit entries in the form of various documentary evidence filed. The said documentary evidence contained details, which set out not only the identity of the subscribers, but also gave information, with respect to their address, as well as, PAN numbers, Assessment particulars etc. Based on these facts, the Hon "ble Delhi Court dismissed the appeal of revenue.*

*In yet another decision as to the correctness of treating share application money on par with cash credit, the Hon'ble Delhi High Court in CIT vs, Value Capital Services P. Ltd. (2008) 307 ITR 334 (Delhi) found after referring to the two of the decisions of the Delhi High Court on the subject that in respect of share capital amounts, they cannot be assessed in the hands of the company, unless the Department is able to show that the amount received towards share capital actually emanated from the coffers of the assessee company.*

*After going through various facts of the case and **judicial pronouncement on this issue, cited supra**, it is seen that the appellant's case is covered by the above judgments.*

*After going through the facts of the case and the judicial pronouncements on this issue, I am of the opinion that the appellant has discharged the initial onus of establishing the bona-fide of the transactions and the AO was not justified in ignoring various evidences provided to him by the appellant. It is seen that the Assessing Officer had not done any investigation / enquiry, during the course of assessment proceedings. The Assessment Order has been framed by the Assessing Officer only on the basis of the information received from the Investigation Wing of the Department. without making any further investigation. Nothing adverse has been brought on record by the AO to establish that the Share Application Money received by the appellant. represented its own undisclosed income.*

*Further, if there was doubt about the source of investment or the said investors, then additions should have been made in the case of those parties and not in the hands of the appellant company. The appellant has relied upon the decision of Hon'ble Supreme Court in CIT' vs. Divine Leasing & Finance Ltd. (CC 375/2008) dated 21.01.2008 wherein it was held -*

*.. We find no merit in this Special Leave Petition for the simple reason that If the share application money is received by the assessee company alleged bogus shareholders, whose names are given to the Ao. then the Department is Free to proceed to re-open their individual assessments in accordance with law"*

*In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by it were genuine transactions and the same were not accommodation entries, I also do not find*

*any evidence collected by the AO. Which could prove otherwise. Accordingly. the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.*

*In view of the aforesaid discussion, I delete the addition of Rs. 15,00,000/- made by the A.O. u/s 68 of the I. T. Act, 1961.”*

6. Keeping in view of the findings given so Assessing Officer as well as the Ld. First Appellate Authority and the documentary finding by the assessee before us. We are of the considered view that Ld. First Appellate Authority has deleted the addition in dispute on the basis of various documentary evidence filed by the assessee before the Assessing Officer as well as before him. Hon<sup>ble</sup> Supreme Court of India in the case of CIT VS. Lovely Export 299 ITR 261 (SC) which has confirmed the order of Hon<sup>ble</sup> Delhi High Court has held that once the identity of the share holder have been established, even if there is a case of bogus share capital, it cannot be added in the hands of company unless any adverse evidence is not on record. Ld. First Appellate Authority has examined the documentary evidence filed by the assessee before the Assessing Officer as well as before him and held that the assessee has provided confirmations from all the parties as well as various evidences to establish the genuineness of the transaction, assessee has also relied upon the judgment of Nemi Chand Kothari Vs. CIT 264 ITR 254 (Gauhati) wherein it has held that it is a certain law that the assessee is to prove the genuineness of transaction as well as the creditworthiness of the creditor must remain confined to the transactions

which have taken place between the assessee and the creditor. It is not the business of assessee to find out the source of money of creditors. Similar observation has also been given in the case of Hastimal 49 ITR 273 (Madr) and Daulatram Rawatmal (1973) 87 ITR 349 (SC). Ld. First Appellate Authority has cited various decisions rendered by the Hon<sup>ble</sup> Supreme Court of India as well as the Hon<sup>ble</sup> Jurisdictional High Court in the impugned order and finally has held that the assessee has substantiated the transaction regarding share application money received by it was genuine transaction and the same were not accommodation entries. He did not find any evidence collected by the AO which could prove otherwise and deleted the additions in dispute. As regard to the addition of Rs.12,500/- made on account of commission which was presumed to have been allowed by the assessee for obtaining the Hawala entry in dispute, the Id. CIT(A) observed that the Assessing Officer was not able to brought anything on record that it was assessee's own money which was rooted in the form of share application money and has rightly deleted the same.

7. Keeping in view all the facts and circumstances , we are of the considered view that the Ld. First Appellate Authority has passed the impugned order under the law and according to the facts of the present case and has rightly deleted the addition in dispute. We find no infirmity

in the impugned order and upheld the impugned order by dismissing the appeal filed by the revenue.

8. In the result, appeal filed by the Revenue is dismissed.

**The order is pronounced in the open court on 1<sup>st</sup> April 2015.**

Sd/-  
**(N.K. SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 01/04/2015  
\*Kavita, P.S.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

**ASSISTANT REGISTRAR**

Sl. No.	Description	Date
1.	Date of dictation by the Author	31.03.2015
2.	Draft placed before the Dictating Member	01.04.2015
3.	Draft placed before the Second Member	01.04.2015
4.	Draft approved by the Second Member	01.04.2015
5.	Date of approved order comes to the Sr. PS	01.04.2015
6.	Date of pronouncement of order	01.04.2015
7.	Date of file sent to the Bench Clerk	01.04.2015
8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	

