

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.2534/Del./2018  
Assessment Year 2014-2015

M/s. PriyatamPlaschemPvt. Ltd., X.-53, Okhla Industrial Area, Phase-II, New Delhi – 110 020. PAN AABCP4629G	vs	The Income Tax Officer, Circle-20(1), Room No.219, C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Gautam Jain, Shri Piyush K. Kamal, Advocates Shri Lalit Mohan, C.A. & Shri Mayank Mohanka, C.A.
For Revenue :	Shri Atiq Ahmed, Sr. D.R.

Date of Hearing :	17.07.2018
Date of Pronouncement :	10.08.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-XXV, New Delhi, dated 13<sup>th</sup> March, 2018, for the A.Y. 2014-2015.

2. We have heard the learned Representatives of both the parties and perused the material on record. Ground No.1 is not pressed, same is dismissed as not pressed.

3. On Ground Nos. 2 and 3, assessee challenged the addition of Rs.6 crores under section 68 of the I.T. Act as well as challenged the Order of the Ld. CIT(A) in presuming that valuation report of the shares, in justification of premium, was not given by the qualified valuer as per guidelines of ICAI, without bringing any material on record,

4. On Ground No.4, assessee challenged the addition of Rs.12 lakhs on account of unexplained expenditure under section 69C of the I.T. Act on account of alleged commission paid towards alleged accommodation entries.

5. Briefly, the facts of the case are that the assessee-company filed e-return on 09.09.2014 declaring an income of Rs 92,29.619/-. The case was selected for scrutiny. The A.O. noticed that assessee has received Rs.6 crores from M/s. Mekastar Finlease P. Ltd., (Investor) as share application

money. The assessee re-valued its assets and issued shares of face value of Rs.10/- at the premium of Rs.1190/-. For verification of the share application money, notice under section 133(6) was issued to the investor M/s. MekastarFinlease. The investor filed confirmation along with ITR and bank statement to the A.O. The perusal of the bank account statement shows that the investor has received money from M/s. SKPJ and Bilberry before issue of corresponding amounts to the assessee-company. The details are noted at page-3 of the assessment order. The A.O. noted that the investor company and M/s. SKPJ and Bilberry belongs to S.K. Jain group of companies which have been held as accommodation entry companies. The A.O. noted that in the case of M/s. RKG Finvest Ltd., finding with regard to M/s. MekastarFinlease i.e., Investor Company and its further investor companies above have been held to be bogus companies. The details of finding in the case of M/s. RKG Finvest Ltd., are reproduced in the assessment order. The A.O. noted that investigation wing has made investigation in the

case of S.K. Jain Group and filed a report which point out that S.K. Jain and his brother V.K. Jain have controlled large number of companies and have provided accommodation entries. Simultaneously, survey were also conducted in their cases in which it was found out that S.K. Jain group have been operating from a small room and did not find books of account or the employees at those addresses. From single address many Companies have been registered but did not exist. They maintained all the bank account. The assessment in the case of S.K. Jain for A.Y. 2005-2006 has been completed in which additions for accommodation entries have been made and confirmed by the Ld. CIT(A) as well. Accordingly, show cause notice was issued to the assessee as to why the share application money/share premium should not be treated as unexplained under section 68 of the I.T. Act. The assessee filed detailed reply before A.O. in which it was submitted that in course of regular assessment proceedings, assessee has discharged its onus to prove identity of the investor, its creditworthiness and genuineness of the

transaction. The assessee produced complete details i.e., name, CIN No. PAN No and Registered Address, Master Data of the Investor Company. Its balance sheet shows that investor has sufficient funds/amount to make investment in assessee company and the master data sheet of the investor as per Ministry of Corporate Affairs website shows that it is an “Active Company.” The financial parametres of the investor shows their creditworthiness is proved through their audited balance sheet, ITR and return of income filed by them with the Income Tax Department. The A.O. alleged that investor company received credits in its bank account from M/s. SKPJ and Bilberry prior to the issue of cheques towards share application money to the assessee. It was submitted that in the absence of any corroborating material or evidence placed on record, nothing is proved against the company. Since the assessee has discharged the initial onus to prove conditions of Section 68 of the I.T. Act, therefore, burden shifted upon the Revenue Department to prove their case. In case Revenue Authorities have any doubt, it can make an independent

enquiry from the investor company or the sub-investor companies and made their independent assessments. The A.O. however, was not satisfied with the explanation of assessee and noted that why an investor would invest with an entity about whose business activities he does not have any knowledge. Why an investor would invest his hard earned money in such a manner which would not yield any return and there is no security of the amount invested. The assessee failed to produce the Directors of the Investor Companies during the extended period. The A.O. noted that the evidence collected from Jain brothers clearly show that an attempt has been made to give a form of genuineness of the transaction which otherwise falls squarely on substance to be a 'sham transaction'. He has relied upon decision of Hon'ble jurisdictional Delhi High Court in the case of N.R. Portfolio Pvt. Ltd., 42 taxmann.com 339. The A.O. on the basis of investigation conducted in the case of S.K. Jain group and Associates, made addition of Rs.6 crores in the hands of assessee considering it to be unexplained under section 68 of

the I.T. Act. The A.O. also disallowed Rs.12 lakhs and made the addition on account of commission paid for arranging accommodation entries.

5.1. Both the additions were challenged before the Ld. CIT(A). Detailed submissions of the assessee are noted in the appellate order in which the assessee reiterated the submissions made before the A.O. The assessee relied upon decision of Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., 299 ITR 268 and M/s. Earthmetal Electrical Pvt. Ltd., dated 30<sup>th</sup> July, 2010. The assessee also relied upon decisions of Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls & Investment Ltd., 237 Taxman 104 (Del.), MOD Creation (P) Ltd., vs. ITO (2013) 354 ITR 282 (Del.), CIT vs. Vrindavan Farms Pvt. Ltd., ITA.No.71 of 2015 dated 12.08.2015 (Del.) (HC), CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) and CIT vs. Kamdhenu Steel & Alloys Ltd., 361 ITR 220 (Del.) (HC). It was submitted that assessee produced sufficient evidences

before A.O. to explain the identity, creditworthiness and genuineness of the transaction in the matter. Investor also confirmed transaction under section 133(6) of the I.T. Act. Many more decisions of the Hon'ble jurisdictional Delhi High Court were also relied upon to prove that it was a genuine transaction. The assessee also explained that there were justification for issue of shares at premium. The valuation of aforesaid equity shares have been done in accordance with the provisions of Explanation to Section 56(2)(viib) of the I.T. Act, read with Rules 11 UA(2)(a) of the I.T. Rules and accordingly, the fair market value of one equity share of the respondent company has been arrived at Rs.1121/-. Copy of the valuation report was filed. It was submitted that no statement were confronted to assessee which were recorded in the cases of others, therefore, same cannot be read in evidence against the assessee. It was submitted that assessee company is owner of immovable property consisting of go-down, building and built-up area of 6091.96 Sq. Mt. built over a free hold land measuring 8.852 Sq. Mt. situated at Bakoli Tehsil, Narela, New

Delhi. The said godown is rented-out to M/s. Pepsico Pvt. Ltd., and assessee company earned rental income of Rs.1.09 crore during F.Y. 2013-2014 relevant to assessment year under appeal. Based on the valuation report of Government approved valuer, the said property had been re-valued at its fair market value of Rs.20.95 crores on 01.10.2013. The investor has made an investment in assessee company through their own source. The A.O. never asked the assessee to produce Director/Principal Officer of the investor company at all. Copy of the entire order sheet is placed on record which support the explanation of assessee. The assessee, therefore, explained that addition is wholly unjustified. The Ld. CIT(A), however, did not accept the contention of assessee in the light of findings given in the case of S.K. Jain group of cases for providing accommodation entries. The Ld. CIT(A) also relied upon investigation conducted in the case on the same reasoning given by the A.O, confirmed the addition under section 68 of the I.T. Act. The Ld. CIT(A) also noted that in the absence of assessee furnishing reliable and robust basis of

valuation of such equity, the assessee did not satisfy as to why the shares were allotted at premium amount. It is also noted that it is not clear whether the Chartered Accountant issued the Certificate, was duly authorized as per the guidelines of ICAI. This ground was accordingly dismissed. Consequently, grounds were also dismissed.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that assessee filed all the documents to prove identity of the investor and the balance-sheet of the investor shows that it has availability of the funds of Rs.300,36,48,781/- which is sufficient to make investment in assessee company. The investor has fixed assets along with non-current investments and long term loans and advances. All the documents are filed in the paper book to support creditworthiness of the investor and genuineness of the transaction into the matter. The transactions were completed through banking channel. The investor have replied to the

notice under section 133(6) of the I.T. Act directly to the A.O. along with documents, copies of which is filed at page-185 of the paper book. The A.O. never asked the assessee to produce Directors of the investor company which is proved through the order sheets of the A.O. The investor is a NBFC Company and therefore, no adverse inference should be drawn against them. The A.O. did not make any enquiry from the investor and even no notice issued under section 131 of the I.T. Act to make enquiry from the A.O. of the investor or banker of the investor or Registrar of Companies. The low income of investor is irrelevant consideration and the net worth is to be seen to verify the creditworthiness of the creditor. The material relied upon by the A.O. namely Order of assessment of M/s. RKG Finvest Pvt. Ltd., and order of S.K. Jain have not been confronted to the assessee. Addition on account of Section 56(2)(viib) of the I.T. Act is misconceived. No amount came from the coffers of the assessee company. The share capital have been accepted on merit. Since investor is NBFC and registered with Reserve Bank of India, therefore, genuineness

of the transaction should not be doubted. The investor has shown name of the assessee in their balance sheet (PB-155). PB 204 is the valuation report. Learned Counsel for the Assessee, therefore, submitted that the investor is fully identifiable corporate entity and assessed to tax. The entire share capital has been received through banking channel and no material was found during the course of search to prove that money came from the coffers of the assessee company. The financial statement of the investor shows that investment is made in assessee company. There were no basis to make any suspicion against the assessee. Apart from the decisions relied upon before the authorities below, Learned Counsel for the Assessee also relied upon the following decisions.

6.1. ITO vs. XO Infotech Ltd., (2018) 53 CCH 297 (Del.) (Tribu) in which in paras 8 to 12 it was held as under :

*“8. The Ld. D.R. relied upon the order of the A.O. He has submitted that there were no compliance to the statutory notices at assessment stage. Notice under*

*section 133(6) were issued which were partly complied by the assessee. Copy of the same is filed at pages 74 and 75 of the paper book. The sale and purchase are made with the two parties only. The Ld. CIT(A) admitted the additional evidence without any reasons. The creditworthiness of all the creditors/investors are doubtful. The A.O. made the addition under section 68 of the I.T. Act because its conditions are not satisfied. In case, A.O. has not made further enquiry of the documents furnished by the assessee, the Ld. CIT(A) could have made inquiry at appellate stage having co-terminus powers to that of the A.O. In support of this contention, he has relied upon the decision of the Hon'ble jurisdictional Delhi High Court in the case of Jen Sampark Advertising & Marketing Ltd., 375 ITR 373. Bank statement of the investors are on the same pattern and only one investor transferred the funds in the investor companies which is source of payment of share application money. Therefore, the findings of the Ld. CIT(A) may be reversed. He has relied upon decision of the*

*Hon'ble jurisdictional Delhi High Court in the case of Nova Promoters &Finlease Pvt. Ltd., 342 ITR 169 and Pr. CIT vs. Bikram Singh (2017) 399 ITR 362 (Del.)*

9. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that except notice under section 143(2), no other notice have been received by assessee. In the first notice dated 14.11.2011 (PB-64) even address of the assessee is not mentioned. PB-65 is reply of the assessee. The assessee is a public limited company and its share are quoted and listed by Bombay Stock Exchange of which PB-76 to 79 are approval of Bombay Stock Exchange Limited for issuing shares which were passed before issue of shares. Out of 19 investor companies, 17 investor companies are similarly Public Limited Companies. Therefore, no doubt should have been raised by the authorities below. The assessee received the amount earlier also from the same companies and all the

*documentary evidences were filed before A.O. as well as before Ld. CIT(A). There is no challenge to the admission of the additional evidences in the present appeal before the Tribunal. Opportunity was given to the A.O. to examine and rebut the evidence produced on record. But A.O. did not verify and examine the facts and the documents on record either at the assessment stage or at the appellate stage (remand proceedings). It is well settled law that no source of the source is to be proved by the assessee. he has filed chart of all the investor companies supported by confirmation, ledger account, PAN, acknowledgment of ITR, balance-sheet, annual accounts, share application form and bank statements of all the investor companies. He has submitted that since assessee company is a listed company, therefore, permission of SEBI for allotment of additional shares were also obtained. Copies of the same are filed in the paper book. Learned Counsel for the Assessee submitted that it was explained before the authorities below that assessee-company is a listed*

*company and all the issuance of shares are done as per SEBI guidelines and during the year, assessee company has increased its paid-up equity share capital from Rs.217.284 millions to Rs.386.784 millions, adding the value of Rs.169.50millionsand also specified manner of issue of warrants. The details of shareholders whose share warrants are converted in the equity shares and against paid-up value were brought to the notice of the authorities below. All the details were furnished before the authorities below. However, A.O. has not made any investigation on the same. Learned Counsel for the Assessee submitted that assessment record was summoned in this case which have not been produced by the Department to verify the facts on the record. He has relied upon the following the decisions.*

*9.1. Judgment of the Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Value Capital Services (P)*

*Ltd., (2008) 307 ITR 334 (Del.) in which it was held as  
under :*

“CIT(A) having accepted the existence of the share applicants and the Revenue having not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company, addition was rightly deleted by the Tribunal; no substantial question of law arises.”

9.2. *Judgment of the Hon’ble Punjab & Haryana High Court in the case of CIT vs. G.P. International Ltd., (2010) 325 ITR 25 (P & H) in which it was held as under :*

“AO having not doubted the identity of the persons from whom the assessee company has shown receipt of share application money, impugned transactions cannot be treated as non-genuine merely because some of the applicants did not respond to the notice issued by the AO

under s. 133(6) and, therefore, addition was not sustainable.”

9.3. *Judgment of Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Victor Electrodes Ltd., (2010) 329 ITR 271 in which it was held as under :*

“When the assessee had filed copies of resolution passed by the board of directors of applicant companies, besides their bank statements and IT returns which were not found to be non- genuine, without making further inquiry from the internal record of the Department or from the concerned banks, the addition could not be made on the ground that the directors or representatives of the applicant companies were not produced.”

9.4. *Judgment of Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Orbital Communication (P) Ltd., (2010) 327 ITR 560 in which it was held as under :*

“In view of the decision of the Supreme Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195, the Tribunal was justified in upholding the order of the CIT(A) deleting addition made on account of share application money when substantial evidence was produced by the assessee to establish the identity of share applicant.”

9.5. *Judgment of Hon’ble jurisdictional Delhi High Court in the case of CIT &Ors. Vs. Five Vision Promoters Pvt. Ltd., &Ors. (2016) 380 ITR 289 (Del.) in which it was held as under :*

“Provisions of s 68 can be invoked only where assessee offers no explanation at all or explanation offered is unsatisfactory; and addition thereunder can be made only on that condition.”

9.6. *Judgment of Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Shiv Dhooti Pearls &*

*Investment Ltd., (2016) 237 Taxman 104 (Del.) in which it was held as under :*

“In terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of assessee to prove creditworthiness of source(s) of sub-creditors.”

9.7. *Judgment of Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Gangeshwari Metal (P.) Ltd., (2013) 30 taxmann.com 328 (Del.) in which it was held as under :*

“Where assessee in support of transaction of receipt of share application money brought on record various documents such as names and addresses of share applicants, etc., no addition could be made in respect of same under section 68.”

*And submitted that in the case of CIT vs. Gangeshwari Metal (P.) Ltd., the Hon'ble jurisdictional Delhi High Court considered its decision in the case of Nova Promoters Finlease Pvt. Ltd., (supra), relied upon by the Ld. D.R. He has, therefore, submitted that order of the Ld. CIT(A) may be confirmed and appeal of the Revenue may be dismissed.*

10. *We have considered the rival submissions, It may be noted here that before the appeal was finally heard, the Ld. D.R. was directed to produce the assessment record for perusal of the Bench. Even last opportunity was given to the Ld. D.R. to produce the assessment record. However, assessment record has not been produced for the inspection of the Bench. The assessee in this case has categorically submitted before Ld. CIT(A) that various replies were filed before A.O. at assessment stage along with the documents, on which, no inquiry have been conducted by the A.O. and no further query have been*

*raised from the assessee. The Ld. CIT(A), after verification of the facts accepted the contention of assessee. Since, it is a Departmental Appeal, therefore, in order to verify the fact whether assessee filed documents and replies at assessment stage, record was summoned through Ld. D.R. However, assessment record has not been produced for inspection of the Bench. We, therefore, draw adverse inference against the Revenue and hold that all the documents were filed before A.O. even at assessment stage. It is not in dispute that assessee is a Listed Public Company and its shares are listed at Bombay Stock Exchange Limited. Learned Counsel for the Assessee also submitted before Ld. CIT(A) as well as before us that out of 19 investor companies, 17 are Public Limited Companies. This fact is not disputed by the Revenue through any evidence or material on record. It is not in dispute that assessee produced sufficient documentary evidence before the authorities below to prove identity, creditworthiness of the investors and genuineness of the transaction in the*

*matter with regard to payments like cheque no. date, confirmation copy of the ledger account with explanation for credit entries, bank statement, PAN, ITR and copy of the balance sheet of all the investor companies before A.O. The A.O. instead of making any inquiry on the documents filed before him, ignored the same and made the addition against the assessee without application of mind. When the assessee filed all the documents before the Ld. CIT(A) and requested for admission of the additional evidences, same were again referred to the A.O. for examination/verification and comments. The A.O. however, did not verify and examine the additional evidences and merely objected to the admission of the same. The Ld. CIT(A) on perusal of the same, correctly noted that these documents are relevant and essential for disposal of the matter. The Ld. CIT(A) vide impugned order admitted the additional evidences under Rule 46A of the I.T. Rules. However, the Revenue Department did not challenge those finding of fact recorded by the Ld. CIT(A)*

*for admitting additional evidences at appellate stage. No grounds of appeal have been raised by the Revenue. No material is produced before us to contradict the findings of fact recorded by the Ld. CIT(A). In the absence of any challenge to the admission of additional evidences which were already part of the record of the A.O, the contention of the Ld. D.R. is rejected that additional evidences should not be admitted by the Ld. CIT(A). In this case, it is an admitted fact that assessee produced the documentary evidences before the authorities below to prove the identity of the investors, their creditworthiness and genuineness of the transaction in the matter. The shares of the assessee are listed with the Bombay Stock Exchange and permission of the SEBI for allotment of the additional shares have been obtained in this case. Copies of the approval are filed in the paper book. Further, the bank statements of the investors shows they are having sufficient funds with them to make investment in the assessee company and all the transactions are recorded in*

*their books of account and the audited accounts and balance sheet. The A.O. instead of making inquiry on the documentary evidence at assessment stage as well as at appellate stage by the Ld. CIT(A), merely rejected the claim of assessee, without any just reasons. The A.O. did not make any independent inquiry on the documents furnished by the assessee and no further inquiry have been conducted under section 133(6) of the I.T. Act. No cash was found to have been deposited in the bank account of the investor companies. The Ld. D.R. referred to some pages of the bank statements of the investor companies filed in the paper book to show that on the date of investment in assessee-company, identical amount through transfer entry have been transferred to their accounts. However, such arguments has no relevance to the mater in issue because it is not a case of the Department that the transfer entry in the account of investor companies have been transferred through the source of the assessee company. The investors might have*

*taken capital from their own source through transfer entry, therefore, there is nothing wrong in the explanation of assessee in this regard. Further, if A.O. suspected anything wrong have been committed by the investor companies, the matter should have been investigated thoroughly by referring to their concerned A.O. to investigate the source held by them. Further, no such attempt have also been made in this case. It is well settled law that no source of the source shall have to be proved by the assessee. It is, therefore, clear that A.O. did not make any inquiry on the documentary evidences filed by the assessee. The A.O. merely rejected the explanation of assessee because none of the investors have their creditworthiness and copies of the bank statement and audited accounts are not filed and that they did not have any assets for business. However, the finding of fact recorded by the Ld. CIT(A) clearly prove that the investor companies have their creditworthiness to make investment in assessee company and the copies of the bank statement*

*and audited accounts have been filed on record. Therefore, finding of fact recorded by the Ld. CIT(A) have not been rebutted by the authorities below. The details furnished by the assessee also shows that prior to assessment year under appeal, 11 investor companies have also made investment in assessee company in earlier years which would strengthen the case of the assessee that it has received the amount from genuine parties having creditworthiness. There is no material on record to disprove the explanation of assessee. The Ld. CIT(A) was, therefore, justified in holding that assessee proved creditworthiness of the investors and genuineness of the transaction in the matter. We, rely upon the following decisions.*

10.1. *Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., &Ors. 361 ITR 220 (Del.) in which it was held as under :*

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

*10.2. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12<sup>th</sup> August, 2015 (Del.), in which it was held as under :*

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity

of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High Court.

*10.3. Decision of jurisdictional High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No.169 of 2017 dated 14<sup>th</sup> March, 2017, in which it was held as under :*

“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon'ble Apex Court in the case of Lovely Exports Pvt.Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon'ble High Court in view of the above findings noted that the assessee had provided several

documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

*10.4. Decision of the Hon'ble Supreme Court in the case of Earth Metal Electric Pvt. Ltd., vs. CIT dated 30<sup>th</sup> July, 2010 in SLP.No.21073 of 1999, in which it was held as under :*

*"We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside."*

10.5. *Decision of Hon'ble jurisdictional High Court in the case of Divine Leasing & Finance Ltd., 299 ITR 268, in which it was held as under :*

“No adverse inference should be drawn if shareholders failed to respond to the notice by A.O.

10.6. *Decision of Hon'ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under :*

“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the

non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied."

10.7. *Decision of Hon'ble jurisdictional High Court in the case of CIT vs. (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under :*

“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the

Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been

received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”

*10.8. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under :*

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had

stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

*10.9. The Hon’ble jurisdictional Delhi High Court in the case of CIT vs. Gangeshwari Metal (P.) Ltd., (supra), considering its decision in the case of Nova Promoters Finlease Pvt. Ltd., (supra), relied upon by the Ld. D.R. has decided the issue in favour of the assessee.*

*11. Considering the facts of the case in the light of material on record, it is clear that assessee produced sufficient documentary evidences before A.O. at the assessment as well as appellate proceedings to prove the ingredients of Section 68 of the I.T. Act. The A.O. however, did not make any further inquiry on the documents filed by the assessee. Thus, the A.O. failed to conduct scrutiny of the documents at assessment stage and merely*

*suspected the transaction between investor companies and the assessee on irrelevant reasons which were disproved in the findings of the Ld. CIT(A). Therefore, the totality of the facts and circumstances of the case, clearly prove that the assessee discharged its initial onus to prove the identity of the investor companies, their creditworthiness and genuineness of the transaction in the matter. No material is produced before us to rebut the finding of fact recorded by the Ld. CIT(A). We, therefore, did not find any justification to interfere with the order of the Ld. CIT(A) in deleting the addition. There is no merit in the Departmental Appeal and the same is dismissed.*

12. *In the result, Appeal of the Department is dismissed.”*

6.2. Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Genesis Commet (P.) Ltd., (2007) 168 Taxman 482 (Del.) in which in paras 9 to 11 of the order it was held as under :

“9. The Tribunal took a view that the fact that the assessee was not in a position to produce the two commission agents is not its fault and the Assessing Officer could have exercised powers available to him to summon and cross-examine these two parties if, for some reason, he did not accept the statement furnished by these two parties. The Assessing Officer could also have made independent enquiries from the customers of the assessee. However, none of this was done.

10. Therefore, we are of the opinion that the Tribunal has not committed any error in the view that it has taken. The assessee produced all the material that it could possibly produce and if the Assessing Officer was not inclined to believe the material produced, he could have used the coercive powers available to him, which he failed to exercise.

11. Therefore, we are of the view that in this case, no substantial question of law arises for our consideration.”

6.3. Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. M/s. AdamineConstruction Pvt. Ltd., ITA.No.130 of 2018, dated 06.02.2018, in which in paras 3 to 5 it was held as under:

*“3. The Revenue in its appeal urges that the lower appellate authorities fell into error in not placing much emphasis on the report obtained by the AO during the course of the proceedings in the form of replies to queries received from the concerned Commissioners. It was submitted that these materials clearly pointed to the entities who were shown as share applicants, in fact, did not exist and their financial transactions were dubious. It was submitted that the CIT(A)’s conclusions with respect to the assessee having discharged its onus were anomalous.*

*4. The material on record in the form of the orders of the lower appellate authorities disclosed that both the assessee and later the share applicants (upon receiving*

*notice under Section 131 of the Act) had produced documentary proof. These included the assessments and income-tax returns filed by the share applicants as well as confirmation and acknowledgment documents. If the AO wished to pursue the matter, there were sufficient clues for him to have proceeded – for instance, it could have issued notices and obtained statements from the bankers of the share applicants or even the balance sheets which existed in the income-tax records of their Assessing Officers. He did not choose to pursue both but instead rested his conclusions entirely on the basis of remarks received from the Commissioner. These remarks can at best be considered opinion but not primary evidence to displace the inferences that had to be drawn with respect to the genuineness of the transaction and the creditworthiness of the parties.*

5. *In these circumstances, no question of law arises; the appeal is, therefore, dismissed.”*

6.4. Learned Counsel for the Assessee further submitted that assessee did not make any payment of the alleged commission on any accommodation entry, therefore, addition is wholly unjustified.

7. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that assessee has not explained why higher value have been shown of the assets for issuing shares at premium. The assessee received amount from the accommodation entry provider who were not actively working. Therefore, addition is correctly made by the authorities below and commission was also correctly disallowed.

8. We have considered the rival submissions. The A.O. noted that assessee has received share application money/ share premium of Rs.6 crores from the Investor Company M/s. MekastarFinlease in assessment year under appeal. For verification of the share application money, the A.O. issued notice under section 133(6) of the I.T. Act, to the investor

company who have replied the same directly to the A.O, copy of which is filed at page-185 of the paper book in which the investor has confirmed the transaction with the assessee company and to make the aforesaid investment. The reply is supported by copy of the confirmation of accounts, copy of acknowledgment of filing of ITR, balance sheet ending on 31.03.2014, copy of bank statement, copy of NBFC Registered Company with source to make investment in assessee company. Thus, the investor has duly confirmed that it has made investment of Rs.6 crores in assessee company. The assessee filed copy of their CIN No and details of their Directors and Auditors. The balance sheet of the Investor (PB-149) shows that as on 31.03.2014, it has total availability of funds of Rs.300,36,48,781 and name of assessee-company is mentioned at PB-155. The assessee also produced before A.O. copy of the Master Data of ROC of Investor Company, Copy of Confirmation of Accounts, Copy of the Board Resolution of Assessee, Copy of Bank Statement of Investor, Copy of intimation of allotment to investor, Copy of letter to M/s. Anuj

& Associates from assessee company in respect of fair market value of shares, Copy of the audited financial statements of the assessee-company, Copy of share valuation report of assessee-company, Copy of Notification for New Circle Rate applicable to NCT of Delhi, Copy of Memorandum from CPWD, Copy of Bank Statement of Investor Company and their minutes etc. These documents on record clearly proved that assessee-company has established the identity of the Investor which is not disputed by the authorities below. The assessee-company also proved the creditworthiness of the Investor and genuineness of the transaction in the matter. The contention of assessee that it has not been directed to produce Director of the Investor Company was supported by the order sheet of the A.O. which have not been disputed by the authorities below. The investor company directly confirmed transactions to the A.O. in response to notice under section 133(6) of the I.T. Act and also established that investor is NBFC Company registered with the Reserve Bank of India. Thus the assessee has satisfied the conditions of Section 68 of the I.T. Act and

initial burden upon the assessee have been discharged. The A.O. however, did not accept the contention of assessee because the investor company has received funds from M/s. SKPJ and Bilberry which belongs to S.K. group of companies who have provided accommodation entry. However, law is well settled that assessee may be asked to prove the source of the credit in its books of account but cannot be asked to prove source of the source. The authorities below have also relied upon the assessment orders in the case of S.K. Jain and group and investigation conducted in their cases. However, according to the Learned Counsel for the Assessee, such reports, assessment orders and statements recorded in their cases, have not been confronted to the assessee and same were subjected to cross-examination on behalf of the assessee. There is no finding given on the same in the orders of the authorities below. Therefore, the contention of the assessee cannot be disputed and as such, no adverse view could be taken against the assessee because the same cannot be read in evidence against the assessee. Further, assessee has not

taken any amount directly from Shri S.K. Jain and others. The contention of assessee has also not been disputed through any evidence or material on record that the assessee company has owned immovable property which has given on rent and assessee received rental income of Rs.1.09 crores in assessment year under appeal. Therefore, the valuation report of the Government approved valuer was based on the material on record to show that assessee has rightly re-valued the property at its fair market value. Thus, there was no basis to take any adverse view against the assessee. Share Valuation report is filed at page-201 of paper book which is not rebutted through any evidence by Ld. D.R.

9. The Hon'ble jurisdictional Delhi High Court in the case of MOD Creations Pvt. Ltd., vs. ITO (2013) 354 ITR 282 (Del.) (HC) held as under :

*“Section 68 of the Income-tax Act, 1961, only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee.*

*The presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditors.*

*The Assessing Officer, for the assessment year 2002-03, after perusing the material placed before him and the explanation given by the assessee, came to the conclusion that both the genuineness of the transactions as also the creditworthiness of the creditors, who were directors and shareholders of the assessee, remained unexplained for the reasons that (i) at the point in time when the loans were advanced to the assessee, the creditors did not have*

*sufficient balance to their credit in their respective bank accounts; (ii) cheques were issued from the creditors' bank accounts in favour of the assessee in close proximity to the date when monies were received by the creditors in the form of commission/gifts. De hors these receipts, the creditors would not have had sufficient money to advance to the assessee in the form of loan; (iii) the statement made by one of the directors of the assessee under section 131 showed that he was unaware of some of the aspects related to his earnings and receipt of gifts etc. Therefore, the entries in the books of account of the assessee were in the nature of accommodation entries; (iv) out of five creditors, four creditors did not personally appear before the Assessing Officer in response to the summons issued to them; and (v) the creditors had paid small amounts as tax qua their individual returns and that tax had not been deducted at source in respect of the commission received by them. Consequently, the Assessing Officer added the unexplained credit in the books of account of the assessee*

*to the extent of Rs.8.24 lakhs to its income. The Commissioner (Appeals) reversed the view taken by the Assessing Officer. The Tribunal reversed the view taken by the Commissioner (Appeals). On appeal:*

*Held, allowing the appeal, (i) that the assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, could be of no avail. The Revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The Revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The Tribunal without*

*adverting to the principle laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this it construed the intentions of the assessee as being mala fide. The Tribunal ought to have analysed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the Assessing Officer. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their income-tax returns, it could gather the necessary information from the sources to which the information was attributable. No such exercise had been conducted by the Assessing Officer. Both the Assessing Officer and the Tribunal lost track of the fact that they were dealing with the assessment of the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their creditworthiness,*

*the Revenue could always bring the sum in question to tax in the hands of the creditors or sub-creditors*

*(ii) That notices were issued to the sub-creditors on February 24, 2005. The Assessing Officer without giving sufficient time for service of the notices, to be effected, within a period of four days proceeded to frame the assessment order. As a matter of fact the Assessing Officer observed in the assessment order, that the notices had preferred not to reply to the summons issued to them. There was no observation whatsoever as to the date on which the notices were dispatched and thereafter served on the notices. This showed that the Assessing Officer framed the assessment in haste. If he was genuinely interested in establishing the allegations made in the assessment order, that the assessee had routed its own money through the device of creditors and sub-creditors, he ought to have given sufficient time to the notices to*

*produce the relevant material before him. These were aspects which the Tribunal did not examine.”*

9.1. The Hon'ble Gujarat High Court in the case of CIT vs. Rohini Builders (2002) 256 ITR 360 (Guj.) (HC) held as under :

*“The assessee was a firm engaged in the business of dealings in land. During the assessment year under consideration the assessee had taken loans from various parties and during the course of assessment proceedings, the assessee had furnished the loan confirmations giving full addresses, GIR numbers/permanent account numbers, etc., of all the depositors. The Assessing Officer however issued summons to some of the creditors and also conducted inquiries into the genuineness or otherwise of the loans taken by the assessee. After considering the evidence, the Assessing Officer made an addition of Rs.12,85,000*

*to the returned income of the assessee. This was confirmed by the Commissioner of Income-tax (Appeals). On further appeal to the Tribunal the Tribunal held that the phraseology of section 68 of the Income-tax Act, 1961, was clear, that the Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year, that the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year", that the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as income of the assessee. The Tribunal found that the assessee had discharged the initial onus which lay on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/ permanent account numbers and the copies of assessment orders wherever readily*

*available, that it had also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee was not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source. Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular the fact that the Assessing Officer had not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or even in the subsequent years, and tax had been deducted at source out of the interest paid/credited to the creditors, the Tribunal held that the Departmental authorities were not justified in making the addition of Rs.12,85,000. On appeal to the High Court:*

*Held, that considering the facts and circumstances of the case narrated by the Tribunal and the law explained by it, the appeal was liable to be dismissed.”*

9.2. Hon'ble Delhi High Court in the case of CIT vs. Fair Investment Ltd., 357 ITR 146 in which it was held that A.O. did not summon investors and did not make efforts. There is no finding that material disclosed was untrustworthy. The Appellate Authorities rightly deleted the addition.

9.3. Decision of Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 in which it was held as under:

*“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, 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 assessee company.”*

9.4. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., &Ors. 361 ITR 220 (Del.) in which it was held as under :

*“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”*

9.5. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12<sup>th</sup> August, 2015 (Del.), in which it was held as under :

*“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.*

9.6. Decision of jurisdictional High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No.169 of 2017 dated 14<sup>th</sup> March, 2017, in which it was held as under :

*“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon’ble Apex Court in the case of Lovely Exports Pvt.Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299*

*ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon'ble High Court in view of the above findings noted that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.*

9.7. Decision of the Hon'ble Supreme Court in the case of Earth Metal Electric Pvt. Ltd., vs. CIT dated 30<sup>th</sup> July, 2010 in SLP.No.21073 of 1999, in which it was held as under :

*“We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside.”*

9.8. Decision of Hon'ble jurisdictional High Court in the case of Divine Leasing & Finance Ltd., 299 ITR 268, in which it was held as under :

*“No adverse inference should be drawn if shareholders failed to respond to the notice by A.O.*

9.9. Decision of Hon'ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under :

*“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-*

*resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied.”*

9.10. Decision of Hon’ble jurisdictional High Court in the case of CIT vs. (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under :

*“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the*

*initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition*

*in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”*

9.11. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under :

*“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”*

9.12. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :

*“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”*

10. Considering the facts of the case, in the light of material on record and the above decisions, it is clear that assessee produced sufficient documentary evidence before A.O. at the assessment as well as appellate stage to prove ingredients of Section 68 of the I.T. Act. The A.O. however, did not make any further enquiry on the documents filed by the assessee. Thus, the A.O. failed to conduct scrutiny of the

documents at assessment stage and merely suspected the transactions in question on the irrelevant reasons. The A.O. did not make any enquiry from the Banker of the Investor and Income Tax record of the Investor Company. The valuation report filed by the assessee support explanation of assessee that shares were issued at premium which were below the fair market value per share of Rs.1221/- (PB 204 and 205). The assessee, thus, proved the identity of the Investor, its creditworthiness and genuineness of the transaction in the matter. No material has been produced before us to rebut the explanation of assessee. We, therefore, did not find any justification to sustain the addition. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.6 crores. There is no material available on record to justify if assessee paid any amount of Rs.12 lakhs as alleged commission to obtain any accommodation entry. Orders of the authorities below were not justified in making addition of Rs.12 lakhs. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs.12 lakhs.

11. In the result, both these grounds of appeals of assessee are allowed.

12. In the result, appeal of Assessee is partly allowed.

Order pronounced in the open Court.

Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 10<sup>th</sup> August, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "F" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.