

-आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘D’**

[Conducted Through Virtual Court]

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.437/Ahd/2018
निर्धारण वर्ष/ Asstt.Year: 2013-14**

Deem Roll Tech Ltd. C/3/301, Anushruti Apartment Opp: New York Tower Nr.Jain Mandir, S.G.Highway Thaltej, Ahmedabad 380 054. PAN : AABCD 9176 A	Vs.	DCIT, Cir.1(1)(2) Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Shri P.F.Jain, AR
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/08/2020

घोषणा की तारीख /Date of Pronouncement: 11/08/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT

Assessee is in appeal before the Tribunal against order of the Id.CIT(A) passed for the Asstt.Year 2013-14.

2. The assessee has taken nine grounds of appeal, but its grievance revolves around a single issue viz. the Id.CIT(A) has erred in confirmation the addition of Rs.2.00 crores which was added by the AO with aid of section 68 of the Income Tax Act.

3. Brief facts of the case are that the assessee at the relevant time was engaged in manufacturing of iron & steel roll. It has filed its return of income electronically on 30.9.2013 declaring total income at Rs.75,91,120/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On verification of balance sheet along with return, the ld.AO came to know that the assessee has received share application money of Rs.2.00 crores from 28 persons/entities. He has noted the details viz. names of persons from whom such money was received and the amount received by the assessee from each individual. Therefore in a brief assessment order the ld.AO recorded that the assessee failed to discharge onus cast upon it by virtue of section 68, and made addition of Rs.2.00 cores. He determined taxable income at Rs.2,75,91,120/- as against returned income of Rs.75,91,117/-. Dissatisfied with the assessment order, the assessee carried the matter in appeal before the ld.CIT(A). Assessee had filed application for permission to lead additional evidence. Such application was allowed and the assessee was permitted to place on record additional evidence. The ld.CIT(A) provided opportunity of hearing to the ld.AO for admission of such evidence and for rebutting evidence submitted by the assessee. The AO has submitted two remand reports, which are being reproduced by the ld.CIT(A) in para-2.4 and para-7.7 of the impugned order. On the comments of the AO, the ld.CIT(A) took explanation of the assessee also. After going through all material, the ld.CIT(A) concurred with the AO, and confirmed the addition of Rs.2.00 crores. The ld.counsel for the assessee while impugning order of the ld.Revenue authorities raised two fold contentions. He submitted that though cheques by the share

applicants bore the dates before 31.3.2013 i.e. 25th March and 26th March, 2013, in the balance sheet a journal entry was passed recognizing the receipt of share application pending allotment. But actually neither these cheques were presented to the bank nor were encashed before 31st March. The details to this effects were submitted before the Id.CIT(A) exhibiting the fact that these cheques ere encashed in the month of May and June, 2013. Therefore, the issue regarding genuineness of these transactions cannot be verified in the Asstt.Year 2013-14. For buttressing this contention, he relied upon the order of the ITAT, Chandigarh Bench rendered in ITA No.316/Chd/2019 in the case of Luxmi Foodgrains P.Ltd, where one of us (Judicial Member) is the author. Similarly, he relied upon the order of ITAT, Kolkatta Bench in the case of Bhagvat Marcom P.Ltd., reported in 178 ITD 684. He thereafter made reference to Hon'ble Calcutta High Court in the case of Jatia Investment Co., 206 ITR 718. He has placed on record copies of these three decisions. On the strength of these details, he propounded that no real inflow of cash was materialized before 31st March, 2013, and therefore no investigation on this issue under section 68 could be made.

4. In his next fold of submissions, he has submitted that the assessee has discharged the burden cast upon it by virtue of section 68. For this purpose, he drew our attention towards details placed on record in tabulated form from pages (A) to (K) in the paper book filed. For the facility of reference, we take note of these details along with brief note submitted by the Id.counsel for the assessee explaining as to how such addition under section 68 could not be made on merit also. Such details read as under:

Sr. No.	Name of the Share applicant	Address	PAN	Amount	Date of deposit of cheque in Bank	Documents Furnished in support of share application money
1.	Alpesh C. Gajjar	A-7, Jaimin Park, Nr. Picnic Park, Vatva, Ahmedabad.	ABYPG5546J	7,50,000/-	03/06/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Syndicate Bank (PBP No. 15 to 22)
2.	Atul L. Rathod	B-1/2, Shayona City, Part-1, Ghatlodia, Ahmedabad	ADSPR7042N	7,50,000/-	03/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 23 to 30)
3.	Atul L. Rathod-HUF	B-1/2, Shayona City, Part-1, Ghatlodia, Ahmedabad	AAHHA6717M	7,50,000/-	26/04/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 31 to 38)
4.	Bharat Chimanbhai Patel	8, Haridarshan Tenament, Ghodasar, Ahmedabad	ARLPP4162E	7,50,000/-	30/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Bank of Baroda (PBP No. 39 to 46)
5.	Bharat Kantilal Vaidya	B-2, Shayona City, Part-1, Ghatlodia, Ahmedabad	ACCPV7442B	5,00,000/-	10/04/2013	Confirmation, Share Application form, PAN Card, Relevant extract of Bank Statement of Canara Bank (PBP No. 47 to 51)
6.	Dahyabhai P. Suthar	B-1/12, Shayona City, Part-1, Ghatlodia,	AJBPS2388B	5,00,000/-	18/04/2013	Confirmation, Share Application form, PAN Card,

		Ahmedabad				ITR Ack., Relevant extract of Bank Statement of Vijaya Bank (PBP No. 52 to 57)
7.	Dharmistha R. Makwana	C/80/956, Shreenath Appartment, Nava wadaj, Ahmedabad	AMCPM0246J	7,50,000/-	23/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Canara Bank (PBP No. 58 to 65)
8.	Geetaben I. Patel	A-1, RamKrishna Apartments, Hirawadi, Saijpur Bogha, Ahmedabad	BCHPP8534L	7,50,000/-	27/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of SBI (PBP No. 66 to 72)
9.	Haresh I. Patel	A-1, RamKrishna Apartments, Hirawadi, Saijpur Bogha, Ahmedabad	ANQPP9723J	7,50,000/-	27/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Bank of India (PBP No. 73 to 79)
10.	Heenaben Hareshbhai Patel	A-1, RamKrishna Apartments, Hirawadi, Saijpur Bogha, Ahmedabad	BBOPP6467J	7,50,000/-	15/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Bank of Baroda (PBP No. 80 to 86)
11.	Hemant Chunibhai Mistry	Nilgiri Society, Part-1, B/h. Rajaram High School, Vatva, Ahmedabad	AAKHR1360Q	5,00,000/-	12/05/2013	Share Application form, PAN Card. (PBP No. 87 to 88)
12.	Ishwarbhai B. Patel	A-1, RamKrishna Apartments, Hirawadi,	ANQPP9643P	7,50,000/-	18/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Aadhaar

		<i>Saijpur Bogha, Ahmedabad</i>				<i>Card (PBP No. 89 to 95)</i>
13.	<i>Jigar D. Suthar</i>	<i>B-1/12, Shayona City, Part-1, Ghatlodia, Ahmedabad</i>	<i>BMWPS6238K</i>	<i>7,50,000/-</i>	<i>12/05/2013</i>	<i>Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 96 to 102)</i>
14.	<i>Jigarbhai Ishwarbhai Patel</i>	<i>A-1, RamKrishna Apartments, Hirawadi, Saijpur Bogha, Ahmedabad</i>	<i>ALCPP7787Q</i>	<i>7,50,000/-</i>	<i>26/04/2013</i>	<i>Confirmation, Share Application form, PAN Card, ITR Ack., Relevant extract of Bank Statement of SBI (PBP No. 103 to 108)</i>
15.	<i>Khushboo Engineerin g and Enterprise</i>			<i>10,00,000/ -</i>	<i>06/04/2013</i>	<i>Cheque cleared on 08/04/2013 in ICICI CC A/c No. 2451000150.</i>
16.	<i>Mehul D. Suthar</i>	<i>B-1/12, Shayona City, Part-1, Ghatlodia, Ahmedabad</i>	<i>BMWPS6239J</i>	<i>5,00,000/-</i>	<i>10/04/2013</i>	<i>Confirmation, Share Application form, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 109 to 112)</i>
17.	<i>Neeraj J. Parikh</i>	<i>6, Shaswat Bungalow, Satellite, Ahmedabad</i>	<i>AASPP5826F</i>	<i>12,50,000/ -</i>	<i>08/05/2013</i>	<i>Share Application form, PAN Card. Cheque cleared in ICICI Bank CC A/c 2451000150 on 10/05/2013. (PBP No. 113 to 114)</i>
18.	<i>Rachna Patel</i>	<i>A-1, RamKrishna Apartments, Hirawadi, Saijpur Bogha, Ahmedabad</i>	<i>CCRPP5743E</i>	<i>7,50,000/-</i>	<i>30/05/2013</i>	<i>Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Bank of Baroda, Aadhaar card (PBP No. 115 to 124)</i>

19.	Rajesh M. Makwana	C/80/956, Shreenath Appartments, Nava wadaj, Ahmedabad	AJPPM9595G	7,50,000/-	23/05/2013	Share Application form, PAN Card, (PBP No. 125 to 126)
20.	Rajesh M. Makwana HUF	C/80/956, Shreenath Appartments, Nava wadaj, Ahmedabad	AAKHR1360Q	7,50,000/-	07/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 127 to 134)
21.	Reena N. Parikh	6, Shaswat Bungalow, Satellite, Ahmedabad	AAUPP1502C	10,00,000/-	01/05/2013	Share Application form, PAN Card, (PBP No. 135 to 136)
22.	Savan D. Contractor	262/B, Sundarvan Appartments, Sola Road, Naranpura, Ahmedabad.	ALVPC8020E	7,50,000/-	04/04/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Canara Bank (PBP No. 137 to 146)
23.	Shakuntala ben Patel	120, Soni no Vas, Village:-Ognaj, Ahmedabad	BBKPP2721D	7,50,000/-	15/05/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 147 to 153)
24.	Shanabhai Rathod	Silver Oak Staff Quarters, S.G.Highway, Gota, Ahmedabad	ASCPR9977P	5,00,000/-	18/04/2013	Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Vijaya Bank (PBP No. 154 to 161)

25.	<i>Shree Shiv Enterprise (Babulal R. Ghanchy)</i>	<i>Plot No. 552, Ambica Estate, Naroda, Dehgam Road, Ahmedabad.</i>	<i>AEEPG5636A</i>	<i>10,00,000/-</i>	<i>06/04/2013</i>	<i>Cheque cleared in ICICI Bank CC A/c 2451000150 on 08/04/2013.</i>
26.	<i>Vishnubhai Gandabaha i Prajapati</i>			<i>5,00,000/-</i>	<i>06/04/2013</i>	<i>Cheque cleared in ICICI Bank CC A/c 2451000150 on 08/04/2013.</i>
27.	<i>Vishnu Gordhanbhai Patel</i>	<i>120, Soni no Vas, Village:-Ognaj, Ahmedabad</i>	<i>AQDPP0056G</i>	<i>7,50,000/-</i>	<i>18/05/2013</i>	<i>Confirmation, Share Application form, PAN Card, ITR Ack., Statement of Income, Relevant extract of Bank Statement of Canara Bank (PBP No. 162 to 169)</i>

Return of allotment of shares in prescribed form No. PAS-3 as per The Companies Act, 2013 has been filed with ROC along with the details of above share applicants and the resolution of the Company, placed at paper Book Page No. 225 to 236.

For verification of above documents, no inquiry was made by the A.O. except issuing summons to the depositors. But the Ld. A.O. has not carried out any inquiry with regard to documents placed before him which included Bank Extract of most of the depositors and simply on the basis of doubt and suspicion, he justified the addition in his remand report to the CIT(Appeal). No verification of bank details of depositors, no inquiry from the A.O. of the depositors on the basis of return receipt furnished, etc was made and the entire addition u/s 68 has been justified simply because share applicants did not respond to the summons issued. Further he has not discussed anything with regard to the fact that no money was received during the year and there was only journal entry without receipt of money and the facts of non receipt of money in this year are amply proved from the bank slips of subsequent year by which these cheques were deposited and the respective entries appearing in the Bank Statements of subsequent year. The Ld. CIT(Appeals) has also neither discussed anything regarding non receipt of money during this year, nor has given any finding in this regard and the appeal order is silent on this core issue. He based his finding by extensively quoting from the decision of Nova Promoters, but didn't appreciate the decision of Oasis Hospitalities Private Limited mentioned in this very decision pointing out that when assessee produced PAN, Bank Account, Copies of ITR Returns, primary onus of assessee is discharged and addition u/s 68 was not held to be sustainable but in the case of Nova Promoters, the AO has made investigation of all the facts which in the case of assessee has not been made and hence the decision of Nova Promoters is not applicable to the facts of assessee. Therefore it is submitted that the assessee has discharged the onus cast on it u/s 68 and in this connection reliance is also placed on the following decisions:

1.) ITA No. 3619/A/2015, A.Y. 2011-12 in the case of assessee itself.

The Hon'ble Tribunal after discussing various decisions for addition u/s 68, in Para 11 of the order has held that A.O. has to carry out investigation and demonstrate that materials are not sufficient for discharging the onus but no such steps were taken and referring to decisions of Delhi High Court has observed that share applicants are individuals and they are not shell companies from Kolkata who are indulged in the accommodation entries and considering all these facts, the ITAT held that A.O. failed to carry out any inquiry for falsifying evidence submitted by the assessee in support of its explanation and therefore addition was deleted. This decision squarely applies to the facts of A.Y. 2013-14 also.

2.) NRA Iron and Steel Private Limited (2019) 412 ITR 161 (Supreme Court)

In this case also the apex court referring to various decisions of High Courts has observed that A.O. ought to conduct an independent inquiry to verify the genuineness of credit entries. In the case of assessee, no such independent inquiry was made.

3.) Oasis Hospitalities Private Limited (2011) 333 ITR 119 (Delhi) ITA No. 2093 and 2095 of 2010 (Delhi High Court).

In this case, the Hon'ble Delhi Court has held that when assessee produced PAN, Bank Account, copies of IT Returns of share applicants, primary onus of assessee is discharged. Therefore addition not sustainable u/s 68.

4.) CIT v/s Kannan Kunhi (Supreme Court) 87 ITR 395.

The Hon'ble Apex Court has disapproved the addition u/s 68 because according to the Court where the explanation of the assessee was not absurd and it was capable of being examined, IT authorities acted arbitrarily in rejecting the explanation without making proper inquiry, the explanation was just brushed aside with the observation, "That the assessee has no proper or satisfactory explanation for the source of these amounts." In the case of assessee also, no proper inquiry has been made and all the evidence placed on record have simply been rejected out of doubt and suspicion.

5.) Ranchhod Jivabhai Nakhava TA No. 50 of 2011 Gujarat High Court.

6.) M/s. Dataware Private Limited – ITA No. 263 of 2011 GA No. 2856 of 2011 – Calcutta High Court.

7.) For alternative submission which can be taken by the assessee, decision relied upon is Ghai Lime Stone Com. – High Court of M.P. 144 -ITR – 140

8.) When amount is not received, addition u/s 68 cannot be made. Decisions relied upon are:

i) M/s Luxmi Foodgrains Private Limited – ITAT Bench "A" Chandigarh – ITA NO. 316/CHD/2019 – A.Y. 2013-14 dated 07/11/2019.

ii) Jatia Investment Co. – 206 ITR 718 – High Court of Calcutta.

iii) Bhagvat Marcom Private Limited – ITA No. 223 (Kol) – 178 ITD -684.

iv) Mahendrakumar Agarwal – ITAT – Jaipur -142 TTJ (J.P.)(UO) -35.

v) Orissa Corporation Private Limited – 159 ITR 78 (Supreme Court)

5. On the other hand the Id.DR relied upon the orders of the Revenue authorities. He submitted that the AO has made reference to the balance sheet of the assessee, where the assessee itself has cognized the receipt of money before 31st March. Therefore, it is under an obligation to explain the source of such receipt, credit worthiness of the present person from whom money was received as well as to prove genuineness of the transaction. The Id.AO has submitted detailed comments in his remand report, which has been reproduced by the Id.CIT(A), and basically he drew our attention towards para-2.10 on page no.31 of the CIT(A)'s order.

6. We have duly considered rival contentions and gone through the record carefully. On page no.8 of the impugned the Id.CIT(A) has reproduced details of alleged share application in tabular form. Such details indicate the names of applicants, cheque number, amount, name of bank and date of debit in the bank of share applicants. We take note of these details, which read as under:

Sr. No. as per Order	Name of Applicant	Cheque No.	Amount	His Bank Name	Date of Debit in his Bank
1	<i>Alpesh C Gajjar</i>	<i>401574</i>	<i>750,000</i>	<i>Synd Bank, Ghodasar</i>	<i>04/06/2013</i>
2	<i>Atul L Rathod</i>	<i>801964</i>	<i>750,000</i>	<i>Vijaya</i>	<i>04/05/2013</i>
3	<i>Atul L Rathod (HUF)</i>	<i>925073</i>	<i>750,000</i>	<i>Vijaya</i>	<i>27/04/2013</i>

4	<i>Bharat Chimanbhai Patel</i>	000036	750,000	BOB	31/05/2013
5	<i>Bharat Kantilal Vaidya</i>	169573	500,000	Canara	12/04/2013
6	<i>Dayabhai P Suthar</i>	930648	500,000	Vijaya	20/04/2013
7	<i>Dharmishta Rajesh Makwana</i>	171246	750,000	Canara	24/05/2013
8	<i>Geetaben Ishwarbhai Patel</i>	639508	750,000	SBI	28/05/2013
9	<i>Haresh Ishwarbhai Patel</i>	000025	750,000	BOB	28/05/2013
10	<i>Heenaben Hareshbhai Patel</i>	000026	750,000	BOB	17/05/2013
11	<i>Hemant C Mistry</i>	434694	500,000	ICICI	14/05/2013
12	<i>Ishwarbhai B Patel</i>	169679	750,000	Canara	20/05/2013
13	<i>Jigar D Suthar</i>	802528	750,000	Vijaya	14/05/2013
14	<i>Jigar Ishwarbhai Patel</i>	369507	750,000	SBI	27/04/2013
15	<i>Khushboo Engineering & Enterprise</i>	750085	1,000,000	Union Co-Op	08/04/2013
16	<i>Mehul D Suthar</i>	802502	500,000	Vijaya	12/04/2013
17	<i>Neeraj J Parikh</i>	327211	1,250,000	ICICI	10/05/2013
18	<i>Rachna Jigar Patel</i>	000007	750,000	BOB	31/05/2013
19	<i>Rajesh M Makwana</i>	179602	750,000	Canara	24/05/2013
20	<i>Rajesh M Makwana (HUF)</i>	900755	750,000	Vijaya	08/05/2013
21	<i>Reena N Parikh</i>	254502	1,000,000	ICICI	01/05/2013
23	<i>Savan Dineshbhai Contractor</i>	386522	250,000	Canara	10/04/2013
	<i>Savan Dineshbhai Contractor</i>	386523	500,000	Canara	09/05/2013
24	<i>Shakuntalaben V Patel</i>	907206	750,000	Vijaya	17/05/2013
25	<i>Shanabhai Rothod</i>	959287	500,000	Vijaya	20/04/2013
26	<i>Shree Shiv Enterprise</i>	687889	1,000,000	Union Co-Op	08/04/2013

27	Vishnubhai Gandabhai Prajapati	148927	500,000	Union Co-Op	08/04/2013
28	Vishnu G Patel	397963	750,000	Canara	20/05/2013
Total Amount (Rs.)			2,00,00,000		

7. On page 7 para 7.7, the Id.CIT(A) took note of identical details that contained the date of presentation of cheque also. In order to avoid the repetition, we observe that presentation of cheques is just one or two days before its clearance, i.e. in the case of Shri Alpesh C. Gajjar cheque was encashed on 4.6.2013. It was presented in the bank of assessee on 3.6.2013. Similar is the effect in other cases. There is a variation of one or two days between the presentation and encashment. A perusal of the table would indicate that all the cheques were presented after 31.3.2013 and they were encashed after 31st March. In other words, the cheques were neither presented nor encashed in the accounting year relevant to the assessment. The date of issuance of cheque is immaterial. Thus, the assessee has not received any money on account of share application during the accounting year relevant to the Asstt.Year 2013-14, and it was a notional receipt only, therefore, its source cannot be inquired in this year. A somewhat identical aspect was examined by ITAT, Chandigarh Bench in the case of Luxmi Foods (supra). The Bench has put reliance upon the decision of ITAT, Kolkatta Bench in the case of ITO Vs. Bhagwat Marcom P.Ltd. The fact in the case of Luxmi Foods was that the assessee has issued 13,115 equity shares having face value of Rs.10/- each. It charged share premium of 590 per equity shares resulting increase in share application by Rs.1,13,150/- and in share premium by Rs.77,37,850/-. The Id.AO was of the view that fair market value of per share to be calculated under Rule 11UA which comes to

Rs.156/- per share, and therefore, excessive rate at Rs.444/- per share received by the assessee amounting to Rs.58,23,060/- is required to be treated as income of the assessee from other sources. The assessee took the plea that it had just passed a journal entry. The cheques were not encashed and ultimately cheques were returned. Therefore, it has not received any money which requires addition. This aspect was examined by the Tribunal, and following finding has been recorded:

"6. We have duly considered rival submissions and gone through the record carefully. There is no dispute with regard to the fact that cheques for sale of these shares representing premium have not been encashed by the assessee. In other words, the amount has not been actually received by the assessee, and credited in its accounts. Let us take note of section 56(2)(viib) of the Act, which reads as under:

"56(2)(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:

7. A perusal of this section would reveal that the expression "receive" employed in this clause would indicate that the assessee should have actually received the amounts, and not a notional one, because in various authoritative pronouncements it has been construed that the amounts should have been actually received. ITAT, Kolkatta Bench has considered identical aspect, and made following discussion:

"6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that its shares were issued by the assessee-company during the year under consideration at premium to certain companies in lieu of the shares held by the said companies and there was thus no inflow of cash involved in these transactions. The said transactions were entered into in the books of account of the assessee-company by way of journal entries and it did not involve any credit to the cash amount. The learned DR at the time of hearing has not brought anything on record to rebut or

controvert this position. He however has contended by relying on the decision of Hon'ble Madhya Pradesh High Court in the case of V.I.S.P. (P) Ltd. (supra) as well as the decision of Mumbai Bench of this Tribunal in the case of Panna S. Khatau (supra) that section 68 was still applicable in the present case involving credit to the share capital and share premium ITA No No.316/Chd/2019 amount. It is however observed that the facts involved in the case of V.I.S.P. (P.) Ltd. (supra) were different inasmuch as the liability in question in the said case represented trading liability of the assessee accruing as a result of purchases made by the assessee during the relevant year and since the said liability was found to be a bogus liability, addition made by the AO was held to be sustainable by the Hon'ble Madhya Pradesh High Court.

7. In the case of Panna S. Khatau (supra) cited by the learned DR, both sections 68 and 56(2)(vi) were held to be applicable by the Tribunal but no concrete or cogent reasons were given to justify the applicability of section 68 to the credits not involving any receipt or inflow of cash in the relevant year. Moreover, the view taken by the Tribunal in the said case is contrary to the decision of Hon'ble Calcutta High Court in the case of Jatia Investment Co. (supra) relied upon by the ld. CIT(A) to give relief to the assessee on issue under consideration in the present case. In the said case, the three NBFCs had taken loans from proprietary concern belonging to the same group. Since the said loans were required to be liquidated as per the RBI guidelines and there was no cash available with the NBFCs to repay the loans, the shares held by the three NBFCs were transferred to a partnership firm namely Jatia Investment Co., and the amount receivable against the said sale of shares was adjusted by the NBFCs against the loan amount payable to proprietary concern. The partnership firm of M/s. Jatia Investment Co. thus received shares from the three NBFCs and also took over the loans payable by the said NBFCs to the proprietary concern. These transactions were entered into in its books of account by the partnership firm through cash book by debiting the investment in shares and crediting the loan amount of the proprietary concern. This credit appearing in the books of account of the partnership firm, M/s. Jatia Investment Co. was treated by the AO as unexplained cash credit u/s 68 and on confirmation of the same, when the matter reached to the Hon'ble Calcutta High Court, it was held by their lordship that when the cash did not pass at any

stage and since the respective parties did not receive cash nor did pay any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise. In our opinion, the ratio of this decision of the Hon'ble Jurisdictional High Court in the case of Jatia Investment Co. (supra) is squarely applicable in the facts of the present case and the ld. CIT(A) was fully justified in deleting the addition ITA No No.316/Chd/2019 made by the AO u/s 68 by holding that the said provision was not applicable."

8. Since assessee has not received actual consideration, it has only received cheques which have not been encashed, therefore, the proposition laid down in the above order of the ITAT, Kolkata Bench is clearly applicable on the facts of the present case. We allow the appeal of the assessee and delete the addition."

8. The ld.DR during the course of hearing was unable to controvert the proposition laid down in these two judgments. In the present case also no actual money was received during this year. The assessee has just passed journal entry and ultimately share application was received in the subsequent year i.e. Asstt.Year 2014-15. Therefore, no inquiry could be made in this year. As far as second point raised by the ld.counsel for the assessee is concerned, i.e. whether the assessee is able to discharge of its onus of explaining the source of alleged money received by it or not; or whether this amount is required to be added with aide of section 68 or not ? In this regard we find that the assessee has filed a paper book containing 287 pages. We have taken note of all the details tabulated by the ld.counsel for the assessee in his paper book with respect to each share applicant. However, we do not deem it necessary to go through all these details, and record some finding of fact because ultimately even if it is held that assessee was not able to prove the identity or credit-worthiness or genuineness of the transaction, then also in this accounting year this amount cannot be added; because section 68

of the Income Tax Act contemplates that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year. The assessee has demonstrated that it has not received any money on account of share application during this year. This statement has been proved by the assessee from the details obtained from the bank, which we have taken note of. Thus, it is to be construed that no amount in real sense has been found to be credited in the accounts of the assessee for the Asstt.Year 2013-14 and if that be so, then how an inquiry for the purpose of section 68 can be made. Therefore, there is no need to examine this evidence i.e. confirmation, capacity and genuineness of 28 applicants. For reasons stated above, we are of the view that this addition is not sustainable in the Asstt.Year 2013-14 and it is deleted.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 11th August, 2020 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated 11/08/2020