आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.801/JP/2019
निर्धारण वर्ष/Assessment Year : 2009-10

The ITO Bundi	बनाम Vs.	M/s. Aravali Prime Consultants Pvt. Ltd. Jajoo Sadan, Khoja Gate Road, Bundi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAGCA6396 N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by: Smt. Runi Paul , Addl. CIT -. DR &
Shri B.K. Gupta, CIT – DR

निर्धारिती की ओर से/ Assessee by : Shri S.L.Poddar, Advocate

सुनवाई की तारीख/ Date of Hearing : 08/09/2020
उदघोषणा की तारीख/Date of Pronouncement: 14/09/2020

आदेश/ ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the Revenue against the order of ld.CIT (A), Kota dated 26.03.2019 for the Assessment Year 2009-10 passed under section 143(3)/263 of the Income Tax Act, 1961 on the ground mentioned hereinbelow.

> ''On the facts and in the circumstances of the case, the ld. CIT(A) has erred in deleting addition made by the AO of 2,63,15,000/- on account of disallowance of share premium

received on issue of share without appreciating the facts discussed by the AO in the assessment order.'

2.1 Brief facts of the case are that the assessee filed its return of income on 7-08-2008 declaring income of Rs. 3600/-. In this case, the assessment was completed u/s 143(3)/263 of the Act on 23-11-2017 thereby making addition of Rs. 2,63,15,000/- u/s 68 of the Act by the AO.

2.2 Aggrieved by the order of the AO, the assessee preferred appeal before the ld. CIT(A) who after considering the case of both the parties partly allowed the appeal of the assessee and directed the AO to delete the addition.

2.3 Now aggrieved by the order of the ld. CIT(A), Revenue filed the present appeal before us on the ground mentioned hereinabove.

2.4 At the outset of the hearing, the ld. DR appearing on behalf of the Revenue drew our attention to the application filed by the Revenue for admitting the additional evidences. The application filed by the Revenue is reproduced below.

''Prayer for admitting additional evidence.

In this regard it is humbly submitted that I wish to submit some copies of View Director Master data and copy of name of companies and address taken from ministry of Corporate Affairs portal (MCA 21).

I humbly pray to admit this documents which are also available on public domain. This documents are like background or surrounding situations to understand the issue at hand and to unearth the harsh reality to find out the truth. Without these documents my arguments would be partial and incomplete. So to appreciate the matter in toto and for justice, these documents may kindly be admitted. These documents are very essential and necessary as the issue at hand revolves around it.''

2.5 On the other hand, the ld.AR of the assessee contested the said application filed by the Revenue.

2.6 We have heard the ld. counsel for both the parties and we have also perused the materials placed on record, judgements cited by the parties as well as the orders passed by the Revenue authorities. Before we decide the merit of this application, it is necessary to evaluate the provisions of Rule 29 of Appellate Tribunal Rules, 1963 and the same is reproduced below.

''Production of additional evidence before the Tribunal

The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it pass orders or for any other substantial cause, or , if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced

or witness to be examined or affidavit to be filed or may allow such evidence to be adduced]''

After having gone through the facts contained in the application and also the provision of Rule 29 of the Appellate Tribunal Rule, 1963, we found that it has categorically been mentioned in the said provision that parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal. However, if the Tribunal requires any document to be produced or any witness to be examined so as to enable it to pass the order or for any other substantial cause then for the reasons to be recorded may allow such document to be produced or witness to be examined. However, in the present case, as per facts contained in the application filed by the Revenue, it has nowhere been mentioned as to why the documents need to be filed and even no explanation has been put forth with regard to connectivity of these documents with the controversy in question and as to how in the absence of these documents, the Tribunal would not be in a position to decide the controversy in question effectively and completely. Therefore, in our view the ld. DR has not been able to demonstrate before us that the contents of the application reproduced above for admitting the additional evidence are meeting with the ingredients contained in the Rule 29 of

Appellate Tribunal Rules, 1963. Therefore, in the present facts and circumstances of the case, we are not inclined to allow the present application filed by the Revenue. Hence, the same stands dismissed.

3.1 Apropos solitary ground of the Revenue regarding deleting the addition of Rs. 2,63,15,000/- made by the AO on account of disallowance of share premium received on the issue of shares. The facts as emerges from the order of the ld. CIT(A) is as under:-

> As regards the additional **Ground no. 3,** it is to be seen in consonance with the Ground taken in original form no. 35 filed which challenges the addition of Rs. 2, 63, 18,600/-made u/s 68. In his order passed on 23.11.2017, the A.O. has first narrated the relevant portion from the order u/s 263 in which it is mentioned that for A.Y. 2009-10 the assessee had filed details of share capital/premium to the extent of Rs. 3,02,51,000/- & after deducting the premium of Rs. 39,36,000/- which was opening balance as on 01.04.2008, the premium pertaining to A.Y. 2009-10 came to Rs. 2,63,15,000/- which needed to be examined related to which the A.O. did not make any worthwhile enquiry.
>
> Thus, two things because clear from the observations recorded in the order u/s 263 that:-
>
> (i) The company already had shares on premium in A.Y. 2008-09 amounting to Rs. 39,36,000/- which the department had not questioned or found doubtful [although the per share premium converted in that year was Rs. 240/- as compared to premium of Rs. 190/- per share received during the present year under appeal].
>
> (ii) The action u/s 263 was taken because the A.O. was not found to have made `worthwhile' enquiries in the original assessment to the expectation in the present assessment was to make proper and cogent or 'worthwhile' enquiries in respect of the share premium.
>
> On a perusal of the assessment order it is observed that the investments were made mostly by related parties in the shares & subscription for premium. The appellant is primarily as financial consultancy company any and the main business appears to be to trade in commodities shares securities etc. The A.O. has generalized his findings by mentioning that proper information was not submitted despite giving several opportunities. The information sought & the dates of notices remaining uncomplied with, is nowhere recorded in the order.
>
> Share capital/premium can be added u/s 68 in the hands of recipient-company only when identity of investors (investing companies) and their capacity to invest are not proved. Further, after insertion of

Proviso to section 68, source of investment by investing company has also to be proved. Once assessee-company is able to establish the identity of investing companies and prove that they have invested out of their own resources and no cash is deposited in their bank account for making investment, then onus lying on the assessee is discharged. *Explanation* offered by the assessee along with documentary support about identity of the investor/lender, transfer of money to the assessee through banking channels and absence of enquiry by the AO on such documents render the explanation offered by the assessee not unsatisfactory within the meaning of section 68.

So long as the investing companies have their own worth and funds for investment which they can explain, the explanation furnished by the assessee is not held as unsatisfactory or false, unless a live nexus of payment of cash by assessee-company with the investment into assessee-company is established.

As regards the objection related to addresses of the investors, it is seen that the A.O. has mentioned that the addresses are not being established but also mentions that they have the same address as the assessee appellant. He has also acknowledged that balance sheets 86 bank &, capital accounts in some cases are not available.

This finding is not enough to make addition u/s 68. In a case where assessee proves identity of creditors/ share applicants by either furnishing their PAN numbers or income-tax assessment numbers and shows genuineness of transaction by showing money in his books either by account-payee cheque or by draft or by any other mode, then onus of proof would shift to revenue and just because creditors/share applicants could not be found at address given, it would not give revenue right to invoke section 68. *[CIT v Dwarkadhish Investment (P) Ltd.* [2010] 194 Taxman 43 (Delhil].

Having no business activity or having low income is no criteria to hold that the investor-companies did not have creditworthiness. They may have adequate share capital, other credits or are merely investments companies not doing any business or trade or say they are NBFCs. What is important is that investment into assessee-company is made out of its own coffers. In this regard, one may refer to following judgments:

In CIT v. Value Capital Services (P.) Ltd.* 12008] 307 ITR 334 (Del.), *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."

Prabhatam Investment (P.) Ltd. v. ACIT ITA.Nos.2523 to 2525/Del./2015, dated 17.04.2017 - It was held that:-

(i) The AO cannot ignore the documentation produced by the assessee to show that the investors are genuine, (ii) Section 132(4) statement cannot be relied upon if the assessee is not give right of cross-examination, (iii) Fact that the shareholders did not respond to section 133(6) notices does not warrant an

adverse inference, (iv) Fact that the shareholders have low income does not warrant adverse inference.

CIT v. Vrindavan Farms (P.) Ltd. etc., in ITA.No.71 of 2015 dated 12th August, 2015 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."

Even though the assessee in support of his case that loan/ share capital has been received through banking channels, produces bank account of the lender/investor but AO has not carried out inquiries into the credits appearing in the bank account of the creditors. Where no such inquiry is carried out by AO, or where entry appearing in the bank account and thereafter transferred to assessee through banking channels is explained by the assessee or the investor, courts have opined that then addition u/s 68 will not be justified.

Where share applicants, in addition to their confirmation letters, had provided their particulars, PAN details, assessment particulars, mode of payment for share application money but Assessing Officer failed to conduct any scrutiny of said documents, addition made by Assessing Officer merely on basis of report of investigation wing pointing out that assessee was beneficiary of accommodation entries was not justified. *[Pr. CIT v. Laxman Industrial Resources Ltd.* 12017] 88 taxmann.com 648 (Delhi)].

where lenders were regular income-tax assessees and their PANs were on record, amount had been advanced through account-payee cheques and further, before issuing cheques lenders had got sufficient balance in their account, moreover, amount had also been repaid through account payee cheques, addition of loan u/s 68 was unjustified, merely on the ground that lenders were engaged in providing accommodation entries. *[CIT v. Rahul Vineet Traders* 120141 41 taxmann.com 86/221 Taxman 46 (All.) (Mag.); *CIT v. Vijay Kumar Jain* 120141 41 taxmann.com 433/221 Taxman 180 (All.) (Mag.); *Asstt. CIT v. Shyam Indus Power Solutions (P.) Ltd.* [2018] 90 taxmann.com 424 (Delhi - Trib.)].

As regards the premium, the A.O has mentioned that since the company was newly formed (on 20.11.2017) and had no substantial income, the premium (not questioned in A.Y. 2008-09 @ 240/- per share of Rs. 10/- each), was questionable in the present year (@ 190/- per share of Rs. 10/- each). Further it is not required that some trading or manufacturing activity has to be started for any entity to command confidence of investors. This aspect can be due to prospect 84 enterprise capacity of the persons involved. Further, when as per the A.O. himself most of the investors were related parties, if they decide to mobilize funds on premium based on the prospects of a 'close relative' or person of acquaintance, they were not doing anything illegal.

THE ITAT MUMBAI BENCH 'C' in Deputy Commissioner of Income Tax, Circle 7(3)(2), Mumbai v. Piramal Realty (P.) Ltd. 100 taxmann.com 294 (Mumbai - Trib.) held-:-

Section 68 of the Income-tax Act, 1961 - Cash credit (Share premium) - Assessment year 2012-13 - Assessee-company issued certain number of shares on premium to one, PEPL and received share premium of certain amount - Assessing Officer invoked provisions of section 68 and added share premium received by assessee to its income - It was noted that assessee had filed statutory forms with ROC disclosing number of shares, face value and premium per share and also name of allottee - Assessee had also filed its annual return with ROC disclosing details of allotment of shares, and detail of shareholder including name, address and PAN of shareholder - Further, Assessing Officer had not questioned share capital to extent of face value but had only questioned share premium Whether since assessee had filed sufficient evidences viz., return of income, share allotment, annual return and details of shareholder and same was not negated by Assessing Officer, merely because Assessing officer felt that share premium received by assessee was high, genuineness of transaction could not be doubted for purpose of section 68 - Held, yes

The ITAT referred to the Bombay High Cort judgement in the case of *CIT v. Green Infra Ltd. /2017] 78 taxmann.com 340/392 ITR 7 (Bom.)* Which it held as squarely applicable to the case of the assessee-

Despite being the specific argument of the CIT-DR that the share premium defies commercial prudence, Hon'ble Jurisdictional High Court has held that genuineness of the transaction is proved since the entire transaction is recorded in the books of the assessee and the transaction has taken place through banking channels. The decision of the Hon'ble High Court has specifically held that it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a heavy premium. The Revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. The Tribunal after examining the ingredients of section 68 of the Act held that the addition of share premium under section 68 of the Act cannot be sustained. We hereunder reproduce the relevant paragraph of the decision of Hon'ble Jurisdictional High Court in ease of Green Infra Ltd. (supra) for ready reference:

"3. Regarding question no.(ii):

(a) Before the Tribunal, the Revenue raised a new plea viz. that the so called share premium has also to be judged on the touchstone of Section 68 of the Act which provides for cash credit being charged to tax. The impugned order of the Tribunal allowed the issue to be raised before it for the first time, overruling the objection of the respondentass essee.

(b) The impugned order examined the applicability of Section 68 of the Act on the parameters of the identity of the subscriber to the share capital, genuineness of the transaction and the capacity of the subscriberto the share capital. It found that the identity of the subscribers was confirmed by virtue of the Assessing Officer issuing a notices under Section 133(6) of the Act to them. Further, it holds that the Revenue itself makes no grievance of the identity of the subscribers. So far as the genuineness of the transaction of share subscriber is concerned, it concludes as the entire transaction is recorded in the Books of Account and reflected in the financial statements of the assessee since the subscription was done through the banking channels as evidenced by bank statements which were examined by the Tribunal. With regard to the capacity of the subscribers the impugned order records a

finding that 98% of the shares is held by IDFC Private Equity Fund which is a Fund Manager of IDFC Ltd. Moreover, the contributions in IDFC Private Equity Fundll are all by public sector undertakings.

© *Mr.Chhotaray the learned counsel for the Revenue states that the impugned order itself holds that share premium of Rs.490/ per share defies all commercial prudence. Therefore it has to be considered to be cash credit. We find that the Tribunal has examined the case of the Revenue on the parameters of Section 68 of the Act and found on facts that it is not so hit. Therefore, Section 68 of the Act cannot be invoked. The Revenue has not been able to show in any manner the factual finding recorded by the Tribunal is perverse in any manner.*

(c) Thus, question no.(ii) as formulated does not give rise to any substantial question of law and thus not entertained".

The ITAT also highlighted that-

The insertion of the proviso to section 68 of the Act by Finance Act, 2012 casts an additional onus on the closely held companies to prove source in the shareholders subscribing to the shares of companies. During the course of the hearing, the Ld Counsel explained that the explanatory memorandum to the Finance Bill 2012 makes it clear that the additional onus is only with respect to source of funds in the hands of the shareholders before the transaction can be accepted as a genuine one. Even the amended section does not envisage the valuation of share premium. This is further evident from a parallel amendment in section 56(2) of the Act which brings in its ambit so much of the share premium as charged by a company, not being a company in which the public are substantially interested, as it exceeds the fair market value of the shares. If one accepts the Ld CIT-DR's contentions that section 68 of the Act can he applied where the transaction is proved to be that of a share allotment that here the valuation for charging premium is not justified, it will make the provisions of section 56(2)(viib) of the Act redundant and nugatory. This cannot be the intention of the Legislature especially when the amendments in the two sections are brought in at the same time.

THE ITAT DELHI BENCH 'D' in Assistant Commissioner of Income-tax, Central Circle- IX, New Delhi v. Ravnet Solutions (P.) Ltd. 93 taxmann.com 59 (Delhi - Trib.) held- :-

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment years 2005-06 to 2008-09 - Assessing Officer noted that assessee had shown some receipts as share capital and as share premium - Assessee was asked to file evidences to establish identity and capacity of persons who had given him share capital and share premium - Since assessee had failed to furnish any evidence to establish their credibility and capacity, Assessing Officer made addition under section 68 - Assessee pleaded that no sufficient opportunity had been given to him to file required details and he filed additional evidence, i.e., confirmation of accounts of all investors, their Board Resolution, Copy of Form No. 2, Copy of master data, Copy of PAN, Copy of ITR, Copy of Certificate of incorporation, bank statements and share application forms - Said evidences clearly proved identity of investors, their creditworthiness and genuineness of transaction - Whether Assessing Officer was not justified in treating share capital and share premium as unexplained credits under section 68 - Held, yes.

It may be noted that Courts have opined that valuation is not relevant for determining genuineness of the transaction for the purpose of section 68. It is a settled legal position that 'apparent is real' and the onus to prove that the apparent is not the real is on the party who claims it to be so.

If the department wants to contend that what is apparent is not real, it is the onus of the department to prove that it was assessee's own money which was routed through a third party. Only then can be provisions of section 68 be invoked. The revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. The Assessing Officer did not make any effort to conduct any enquiry directly from these Investors. The Assessing Officer did not issue notices under section 133(6) or summon under section 131 against these Investors for recording their statements.

The issuance of shares at premium is the prerogative of the issuing company in an invitation offer. There is no statutory restriction and it is something which falls within the domain of contractual terms. It is for the prospective shareholders to judge and decide as to whether the share premium was justified from their perspective and when these shareholders so decide, there the matter ends and the business prudence of the investors is not open for questioning. Therefore, I do not find this as a good ground for the Assessing Office to disbelieve that the shares of the appellant company of the face value of Rs. 10/- were sold at premium, without bringing adverse material on record against the appellant.

As regards the amendment in the I.T. Act which the A.O. talks about in this regard, the same is not retrospective 85 is applicable from A.Y. 2013-14 and not from this year under appeal.

Besides the above there is no other finding in the assessment order and based on his above mentioned general observations gone on to make an addition of Rs. 2,63,15,000/- as undisclosed income of the assessee u/s 68. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. But where, (1) it is not established that investing companies are shell companies, (ii) investment into assessee company by the investing companies has been made from their own resources, *(iii)* identity of the investing companies is established, *(iv)* there is no cash deposit in the bank account of investing companies, (v) credit entries in the bank account of investing companies are explained, (vi) there is no evidence that money of the assessee-company is routed through investing company for making investment into assessee-company, then the principles laid down by the Hon'ble Apex Court in *CIT v. Lovely Exports (P.) Ltd.* [2009] 319 ITR 5 cannot be ignored.

He has neither analysed the tax status, credibility or persons involved in the subscription or premium, nor has be brought on record the fact that out of 16 investors, 14 were based in Bundi and were all being assessed by him only. He could have carried out meaningful and in depth enquiries by even going into the source of source, justification of premium in the eyes of the investors, their relation with the main persons involved in the assessee company etc. It is seen that the assessee has submitted a valuation report for charging of premium before the A.O. during the assessment proceedings but

the same has neither been mentioned, nor been controverted in the order passed by the A.O.

The main direction of the Pr. CIT being to examine the source of the share premium and creditworthiness of the share applicants, the A.O. has not done either of the two. It is seen that all the details of the share holders such as their complete address, PAN, copy of tax return, Bank account etc. alongwith confirmations had been furnished to the A.O. but he has not brought these details on record and ignored them while finalizing the order. It is further observed that not even a single notice u/s 133(6) or summon u/s 131 was sent by the A.O. to even cross verify the subscribers of the premium 86 share capital. Thus even it seen from the applicability of provisions of section 68, the onus of proving the identity, genuineness 86 creditworthiness of the subscribers had been discharged by the assessee before the A.O. However, once the onus shifted upon the A.O. he failed to discharge his own burden by carrying out independent enquiries.

If the A.O. had any doubts regarding the source of investment of the subscribers, he could have examined the bank accounts from where the investment was routed. In most cased the transactions are found to be numerous & substantial. No evidence of cash deposits for colluding with assessee by re-routing unaccounted cash through the premium route is established vide the bank accounts or A.O.'s findings. In fact as compared to the investment made, some of the entities have a much higher reserve than the investment made in the premium for example.

Axis Multimetals P. Ltd. has reserves of Rs. 2,66,01,540/- while investment in the premium in the appellate company is Rs. 38 lakhs. Similarly, Apex Experts Consultants has a reserve of Rs. 2.31 crores while investment in premium in the assessee company in Rs. 71.25 lakhs. Similar other investors include Esquire Vyapar P. Ltd. Reserve Rs.3.15 cr. & Premium Rs. 38 lakhs, Geetanjali Realcon has Reserves of Rs. 2.31 Cr and paid Rs. 14.25 lakhs premium, to name a few more.

Further in cases of individuals like Sh. Satya Narain Thebadia the investment in merely Rs. 3 lakh while he has a investment totaling Rs. 29.67 lakhs as per his balance sheet. Similarly Sh. Kushal Chand Jajoo has invested Rs. 2.85 lakhs in premium while his investments (assets) as per the balance sheet amount to Rs. 63.48 lakhs. In fact the premium subscribed by 9 out of 16 subscribers is only Rs. 30, 40,000/ -. It is only the remaining of entities all of which are corporate entities who have subscribed the balance capital. So it would have been a very reasonable enquiry for the A.O. to conduct if he wanted to be fair. However, he chose the easier route of making an addition based primarily on presumption & denial of evidences filed.

As regards the two companies not based in Bundi and being based in West Bengal, since the time between initiation of the proceedings and final order by the A.O. was 7 months, the A.O. could have easily issued commission for examination by the corresponding office or issued notice u/s 133(6) & sought independent verification. In the absence of the same, disbelieving the evidences filed without controverting them with own findings, is not justified.

It is also noticed from the submission given during the appellate proceedings that most of the corporate subscribers were filing returns even till date and are regularly being assessed to tax. Not to mention that all individuals, most of whom were closely associated with the appellant are also

regular taxpayers till date and the A.O. has not brought any adverse finding in this regard also in his order.

Thus, the order of the A.O. is not based on any 'worthwhile' enquiry or correct appreciation of the legal principles involved in the issue. He has not been able to prove that the premium charged by the appellant was unjustified or bogus or sourced from undisclosed or unexplained funds /sources.

SUPREME COURT OF INDIA in Rick Lunsford Trade 8s Investment Ltd. v. Commissioner of Income-tax, Kolkata-177 taxmann.com 110 (SC) held:-

Section 68 of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment year 1983-84 - High Court by impugned order held that addition under section 68 would be justified only of unexplained part of share capital and not whole of it as assessee had partly produced evidence in respect of credit entries in books, accounted for as share capital - Held, yes - Whether special leave petition against said order was to be dismissed - Held, yes

In view of the discussion made on the facts and legal precedents enumerated above in this order, from the material available on record, it emerges that assessee discharged its primary onus in terms of Section 68 of the Act. I am therefore not inclined to uphold the addition of Rs. 2,63,15,000/- made by the A.O. on account of Share Premium attributable to the share Capital subscribed. The same is directed to be deleted. This ground of appeal is treated as **allowed.**"

3.2 During the course of hearing, the ld. DR supported the order of the AO and submitted that the ld. CIT(A) has erred in deleting the addition of Rs. 2,63,15,000/- made by the AO.

3.3 On the other hand, the ld.AR of the assessee relied on the order of the AO.

3.4 We have heard the ld. counsels for both the parties and we have also perused the materials placed on record, judgements cited by the parties as well as the orders of the Revenue authorities. Brief facts of the case are that the assessee is a Private Limited Company and was

incorporated on 20-11-2007. The main object of the company is to carry on the business of trading in shares, securities, deal or trade in commodity exchange, financial consultancy etc. The return was filed on 7-08-2009 by the assessee declaring income of Rs. 3,600/- In this case, it is noted that the AO during the course of assessment proceeding made the addition of Rs. 2,63,15,000/- (138500 shares x Rs. 190 per share) on account of share premium received on issue of shares by the assessee company. Thus the AO observed that the amount of Rs. 2,63,15,000/- is an undisclosed income of the assessee u/s 68 of the Act and made the addition accordingly. In appeal before the ld. CIT(A), Kota, the amount of Rs. 2,63,15,000/- on account of share premium attributable to the share capital subscribed was deleted by the ld. CIT(A) by observing as under:-

> '' In view of the discussion made on the facts and legal precedents enumerated above in this order, from the material available on record, it emerges that assessee discharged its primary onus in terms of Section 68 of the Act. I am therefore not inclined to uphold the addition of Rs. 2,63,15,000/- made by the A.O. on account of Share Premium attributable to the share Capital subscribed. The same is directed to be deleted. This ground of appeal is treated as **allowed.**"

It is not imperative to repeat the facts of this case as ld. CIT(A) has elaborately discussed the issue in question. However, we have deeply gone through this case of the assessee and observed the ld. CIT(A) has dealt with this issue meticulously that the order of the AO is not based

on any worthwhile enquiry or correct appreciation of the legal principles involved in the issues. The AO has not been able to prove that the premium charged by the assessee is unjustified or bogus or sourced from undisclosed or unexplained funds/ source. It is also noted from the available records that most of the corporate subscribers were filing returns and they were being regularly assessed to tax. The AO has not brought any adverse findings against them. It is also noted from the records that the assessee had submitted a valuation report for charging of premium before the AO during the assessment proceeding but the same had neither been mentioned nor controverted in the assessment order by the AO. It is further noted that if the AO had any doubts regarding the source of investment of the subscribers, he could have examined the bank accounts from where the investment was routed. The AO is duty bound to investigate the creditworthiness of the creditors/ subscribers, verify the identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name lenders but it was not properly done. Hence, taking into consideration all these facts, circumstances of the case and decisions cited by the ld. CIT(A), we concur with the findings of the ld. CIT(A). Hence the appeal filed by the Revenue is dismissed.

4.0 In the result, the appeal filed by the Revenue is dismissed with no order as to cost.

Order pronounced in the open court on 14 /09/2020.

Sd/-	Sd/-
(रमेश सी.शर्मा)	(संदीप गोसाई)
(Ramesh C. Sharma)	(Sandeep Gosain)
लेखासदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 14/09/2020.

*Mishra
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:
1. *अपीलार्थी* / The Appellant- The ITO, Bundi
2. *प्रत्यर्थी* / The Respondent-M/s. Aravali Prime Consultants Pvt. Ltd. Bundi
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. *विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.*
6. *गार्ड फाईल / Guard File {ITA No. 80/JP/2019}*

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar