

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.385/Nag./2014
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax
Central Circle-2(1), Nagpur

..... Appellant

v/s

M/s. Mahavir Coal Resources Pvt. Ltd.
Jain Complex, Opp. Amar Dharamkanta
Maihan Road, Pureni, Katani
PAN – AAFCM7014C

..... Respondent

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 26/12/2024

Date of Order – 08/01/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the Revenue is against the impugned order dated 15/05/2014, passed by the learned Commissioner of Income Tax (Appeals)– III, Nagpur, [*"learned CIT(A)"*], for the assessment year 2010-11.

The following grounds have been raised by the Revenue: –

"1) On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in ignoring the outcome of the independent enquiries conducted by the Assessing Officer, with regard to the creditworthiness of the 12 companies which had invested in M/s. Lupin Commodities Pvt. Ltd., which in turn had been invested in the assessee company, as share capital and share application money. The enquiries revealed that all the 12 companies are paper companies having meager income or loss, which were started 6 to 12 months prior to investment in M/s. Lupin Commodities Pvt. Ltd., which is a closely held company of Uttamchand Jain and his family members.

2) *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in ignoring the fact that the DDIT (Inv.), Kolkata, could not find the company, M/s. Lupin Commodities Pvt. Ltd., at the given address, and the assessee failed to furnish the changed address of the said company, even subsequent to this.*

3) *On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) erred in relying on the decision of Hon'ble High Court of Madhya Pradesh, which is reported in 245 ITR 160, to state that source of source cannot be asked, whereas in the case of the assessee, the Assessing Officer made independent enquiries with regard to the concerns, which had invested in M/s Lupin Commodities Pvt. Ltd., which is in accordance with the decision of the Hon'ble High Court.*

4) *Reliance is placed on the decision of Hon'ble High Court of Delhi in the case of CIT vs. Globus Securities & Finance Pvt. Ltd. (2014), reported in 41 Taxmann.com 465, in which reference was also made to the decision in the case of Lovely Export Pvt. Ltd. The Hon'ble High Court in this case, had held as under:*

"In respect of issuing shares Tribunal had noticed but not given due credence to surrounding circumstances which included a huge premium equivalent to four times of face value of shares, credit entries in bank accounts before transfer of money etc. Identity creditworthiness of the shareholders and genuineness of the transactions in all cases is not established by only showings that the transaction was through banking channel or account payee instrument. Surrounding and corroborative factual details are equally important before it is held that onus is discharged."

5) *The Ld. CIT(A) ought to have appreciated the fact that the enquiries conducted by the A.O. revealed that the companies which had invested in M/s. Lupin Commodities Pvt. Ltd., did not have any creditworthiness, and hence, the sources of investment in the assessee company are unexplained.*

6) *The appellant craves leave to add, alter, modify, delete, and amend any of the grounds, as per the circumstances of the case.*

7) *The appellant prays leave to adduce such further evidence to substantiate its case, as the occasion may demand."*

2. Facts in Brief: - There was a search action carried out under section 132(1) of the Act, at the business premises as well as residential premises of the Directors of Mahavir Global Coal Ltd., on 16/03/2011. During the search and seizure operation at the premises of Shri Uttam Chand Jain, certain documents relating to the assessee company were seized. Accordingly, proceedings under section 153C of the Act were initiated and a notice was

issued to the assessee on 12/03/2012 which was dully served on 30/04/2012. The assessee filed the return of income on 02/01/2013, declaring the total income of ₹ 2,10,57,110. The Assessing Officer has observed in assessment order that assessee had raised the capital by issue of Share Application and Share Premium. A total of ₹ 5,38,00,000, has been received as Share Application money and Share Premium by assessee from corporate entity M/s. Lupine Commodities Pvt. Ltd., which is a Kolkata based company. The Assessing Officer asked the assessee to prove the identity, creditworthiness as well as genuineness of transactions from the said company. Though, assessee furnished the detailed submissions during the assessment proceedings to the Assessing Officer, however, the Assessing Officer was not satisfied about the same and accordingly he treated the same as unexplained credits and held that assessee has routed its unaccounted money in the guise of share application and share premium. The Assessing Officer accordingly made addition of ₹ 538 lakh to the total income of the assessee company.

3. In appeal, the learned CIT(A) deleted the addition for detailed reasons indicated in the appellate order.

4. The learned Departmental Representative ("**the learned D.R.**") placed reliance on the order of the Assessing Officer to submit that addition is correctly made for the detailed reason indicated in assessment order. The Learned D.R. submitted that the assessee has not been able to explain the source of source of share capital contribution received by the assessee company during the year under consideration. It was submitted that the learned CIT(A) has not correctly appreciated the facts and evidence on record

and was not justified in deleting the addition made under section 68 of the Act. The learned D.R. thus submitted that the relief granted by the learned CIT(A) be reversed and the order passed by the Assessing Officer be restored.

5. The gist of submission, as submitted by the learned Counsel for the assessee is reproduced hereunder for ready reference: –

"Ground No.1 to 5: Addition in respect to Share Application Money and Share Premium.

- A) *The assessee has received contribution towards share capital from corporate shareholder. Assessee had submitted complete details being Financial Statements, Bank Statements, copy of PAN and details of income tax returns to substantiate the contribution of share capital. The amount was received through proper banking channel and corporate shareholder is assessed to tax. Onus to explain the share capital contribution was discharged by establishing identity and creditworthiness of shareholders. The genuineness of transaction was satisfactorily explained.*
- i) *Acknowledgement and Computation of Income along with Audit Report for Asstt. Year 2012-13 of M/s. Lupine Commodities Pvt. Ltd. (P- 4 – 15) [Vol.- I];*
 - ii) *Acknowledgement and Computation of Income along with Audit Report for Asstt. Year 2011-12 of M/s. Lupine Commodities Pvt. Ltd. (P- 16 – 29) [Vol.- I];*
 - iii) *Acknowledgement and Audit Report for Asstt. Year 2010-11 of M/s. Lupine Commodities Pvt. Ltd. (P- 30 – 38) [Vol.- I];*
 - iv) *Copy of UBI Bank Statement of M/s. Lupine Commodities Pvt. Ltd. (P- 39 – 42) [Vol.- I];*
 - v) *Copy of Master Data as per ROC Record (P- 43) [Vol.- I]; and*
 - vi) *Copy of PAN verification (P- 44) [Vol.- I].*
- B) *Investment made in assessee company was confirmed by M/s. Lupine Commodities Pvt. Ltd. before Investigation Wing of Income Tax Department at Kolkata pursuant to enquiry made at the instance of A.O. Details of payment made to assessee company and Audited Financial statement along with Acknowledgement of Income Tax Return were also submitted before Investigation Wing by Corporate share applicant.*

- i) *Summons to M/s. Lupine Commodities Pvt. Ltd. under section 131 of Income Tax Act 1961 (P- 1) [Vol.- I]; and*
- ii) *Reply by M/s. Lupine Commodities Pvt. Ltd. in respect to summons issued (P- 2 – 3) [Vol.- I].*
- C) *Share capital contribution made by M/s. Lupine Commodities Pvt. Ltd. is reflected as investment in balance sheet of such company. (P 27) [Vol.- I]*
- D) *A.O. has verified the transaction by obtaining the details from website of Ministry of Corporate Affairs. Details obtained corroborated the contribution of share capital and nothing adverse was noted found. (Para 7.5 of assessment order).*
- E) *A.O. has verified bank statement of corporate share holder and it was noted that there are no cash deposit in the bank account of corporate share holder. Nothing adverse can be considered from the details on record. (Para 7.5 of assessment order).*
- F) *The Hon'ble Bombay High Court has concluded that prior to Asstt. Year 2013-14 law laid down by Hon'ble Apex Court in the case of Lovely Exports (P) Ltd. will be applied and thus revenue is not entitled to assess the share capital as unexplained cash credit.*

Reliance on:

- i) *ITA No.1613 of 2014 in the case of M/s. Gagandeep Infrastructures vide order dated 20/03/2017. (P- 10 – 16) (14, 15) [Vol. – II]*
- G) *It is settled proposition of law that contribution to share capital is capital receipt. The shareholder is corporate shareholder assessed to income tax. Assessee has established identity, creditworthiness of share applicant and genuineness of transaction by placing legal evidences on record. No addition can be made for the same as unexplained income.*

Reliance on:

- i) *(2008) 216 CTR 0195 (SC)
CIT vs. Lovely Exports (P) Ltd. (P- 1 – 2) [Vol.- II];*
- ii) *(2008) 307 ITR 0334 (Delhi)
CIT vs. Value Capital Services (P) Ltd. (P- 3 – 5) (4) [Vol.- II];*
- iii) *Hon'ble Bombay High Court order in ITA (L) No.2182 of 2009 in the case of M/s. Creative World Telefilms Ltd. (Earlier known as Link International Services Pvt. Ltd.) vide order dated 12/10/2009. (P- 6 – 7) [Vol.- II];*
- iv) *Hon'ble Bombay High Court in Tax Appeal No.16 of 2012 in the case of Goa Sponge and Power Ltd. vide order dated 13/02/2012 (P- 8 – 9) [Vol.- II];*

- v) *Hon'ble High Court of Bombay in ITA No.1613 of 2014 in the case of M/s. Gagandeep Infrastructure Pvt. Ltd. vide order dated 20/03/2017 (P- 10 – 16) (14, 15) [Vol.- II];*
 - vi) *(2014) 368 ITR 0001 (Bom.) Vodafone India Services Pvt. Ltd. vs. ACIT (P- 17 – 49) (42, 43) [Vol.- II];*
 - vii) *Hon'ble Haryana High Court in ITA No.386 of 2010 (O & M) in the case of M/s. K.C. Pipes Pvt. Ltd. vide order dated 02/08/2016 (P- 50 – 51) (51) [Vol.- II]; and*
 - viii) *Hon'ble Bombay High Court in Writ Petition No.3027 of 2015 in the case of Khubchandani Healthparks Pvt. Ltd. vide order dated 10/02/2016. (P- 52 – 60) (58, 59) [Vol.- II].*
- H) *The contribution of share capital is explained on the basis of legal documents and evidences placed on record. In the course of extensive search at Mahavir Global Coal Ltd. and residential premises of the Directors of MGCL no incriminating evidences or material were found to indicate any adverse evidence in respect to contribution of share capital of assessee company. In absence of any adverse/incriminating evidence addition made by A.O. is unjustified.*
- I) *Perusal of assessment order would indicate that there is no shred of adverse evidence on record for which share capital addition can be made by A.O. Addition made by A.O. is without there being any adverse evidence on record is unjustified and unsustainable.*
- J) *It is settled proposition of law that assessee cannot be asked to explain source of the source.*

Reliance on:

- i) *(2011) 330 ITR 298 (Del.)
CIT vs. Dwarkadhis Investment (P) Ltd.*
 - ii) *(2000) 245 ITR 160 (MP)
CIT vs. Metachem*
 - iii) *Hon'ble High Court of Bombay in ITA No.1613 of 2014 in the case of M/s. Gagandeep Infrastructure Pvt. Ltd. vide order dated 20/03/2017 (P- 10 -16) [Vol.- II]*
 - iv) *Hon'ble Haryana High Court in ITA No.386 of 2010 (O & M) in the case of M/s. K.C. Pipes Pvt. Ltd. vide order dated 02/08/2016 (P- 50 – 51) [Vol.- II]*
- K) *A.O. has made addition and same is not based on any incriminating evidence or material found in the course of search on Mahavir Global Coal Ltd. (MGCL). The present assessment is framed u/s 153C of I.T. Act 1961. Only addition made is in respect to Share Capital and that too not based on any incriminating material found during the course of search. Addition made not based on incriminating material*

unsustainable as A.O. has no jurisdiction to make such addition u/s 153C of I.T. Act 1961.

Reliance on:

- i) Hon'ble Bombay High Court order in ITA No.923 of 2012 in the case of Bharati Vidyapeeth vide order dated 11/09/2014.*
- L) Decision of Hon'ble Delhi High Court in the case of CIT vs. Globus Securities & Finance Pvt. Ltd. relied upon by revenue is distinguishable on facts and is inapplicable to the facts in the case of assessee."*

6. We have heard the arguments of rival parties in the light of the judicial precedents relied upon, perused the other material available on record and gone through the orders of the authorities below. In **assessee's** case, addition has been made by the Assessing Officer at ₹ 538 lakh under section 68 of the Act, in respect to share capital contribution including share premium received from M/s Lupin Commodities Pvt. Ltd. The aforesaid corporate entity is one of the group concerns wherein the directors of the company are from same family. M/s Lupin Commodities Pvt. Ltd. is assessed to tax and is holding PAN AABCL3020H. The aforesaid corporate share holder has confirmed the contribution of share capital with assessee company. PAN details, financial statements and bank statement of corporate share holder are placed on record to substantiate the contribution of share capital contribution.

7. In the paper book and before the authorities below, the documentary evidences are placed, which are as under: –

- i) Acknowledgement and Computation of Income along with Audit Report for Asstt. Year 2012-13 of M/s. Lupine Commodities Pvt. Ltd. (P- 4 – 15) [Vol.- I];*
- ii) Acknowledgement and Computation of Income along with Audit Report for Asstt. Year 2011-12 of M/s. Lupine Commodities Pvt. Ltd. (P- 16 – 29) [Vol.- I];*

- iii) Acknowledgement and Audit Report for Asstt. Year 2010-11 of M/s. Lupine Commodities Pvt. Ltd.
(P- 30 – 38) [Vol.- I];*
- iv) Copy of UBI Bank Statement of M/s. Lupine Commodities Pvt. Ltd.
(P- 39 – 42) [Vol.- I];*
- v) Copy of Master Data as per ROC Record
(P- 43) [Vol.- I]; and*
- vi) Copy of PAN verification
(P- 44) [Vol.- I].*

8. The Assessing Officer had issued commission to Investigation Wing of Income Tax Department at Kolkata to verify the share capital transaction of M/s Lupin Commodities Pvt. Ltd. The DDIT, Investigation Wing, Kolkata, had issued summons under section 131 of the Act on 25/02/2013. Pursuance to this reply along with documentary evidence was submitted on 08/03/2013 before the Investigation Wing of Income Tax Department at Kolkata. The aforesaid documentary evidence is not found to be incorrect in any manner and has not been adversely commented by the Assessing Officer in the assessment framed. Legal evidence obtained by the Assessing Officer in independent enquiry corroborates the transaction of receipt of share capital contribution by assessee company. It is seen from the financial statements that share capital contribution made by corporate share holder is ₹ 538 lakh during the year under consideration. The financial statements of corporate shareholder indicates that it had share capital and reserve surplus on the opening day of accounting year at ₹ 539 lakh. The financial statements for subsequent two years are also placed on record. The investment made in assessee company is properly reflected in financial statement of corporate share holder. The financial statements clearly established creditworthiness of

the corporate share holder to contribute the share capital contribution of ₹ 538 lakh. Bank statement of corporate shareholder is placed on record and no cash deposit is found in bank statement. The transaction of contribution of share capital is through proper banking channel. On above undisputed factual position identity and creditworthiness of the corporate share holder as well as genuineness of transaction of contribution of share capital contribution stands established. Before us, the Revenue is not able to show any adverse evidence on record which discredits the legal evidence on record to explain the cash credit. Even in search conducted, no incriminating evidence is found in respect to contribution of share capital contribution. On above undisputed factual position, addition in respect to share capital contribution under section 68 of the Act 1961 is unjustified and unsustainable.

9. In assessee's case, the learned CIT(A) has considered evidence **available on record and the judicial precedents of the Hon'ble Jurisdictional High Court** as well as the Tribunal, Mumbai Bench, to conclude that the assessee has discharged its onus to explain the share capital contribution. It is thus concluded that addition made under section 68 of the Act is unjustified and was directed to be deleted. We have perused the order of the learned CIT(A) and detailed reasons indicated therein for deletion of addition. We concur with findings of the learned CIT(A) on the facts and evidence discussed in the appellate order as also the reasons indicated for deletion of the addition made.

10. We find that the impugned assessment year under consideration is prior to the assessment year 2013-14 and thus provisions of proviso to section 68

of the Act is not applicable. The Hon'ble Jurisdictional High Court in Gagandeep Infrastructure Pvt. Ltd., vide judgment dated 20/03/2017 at Para-(e) at Page 5 of the judgment, has held as under: –

"(e) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre-proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."

11. The ratio laid down by the decision of Hon'ble Jurisdictional High Court squarely applies to the facts in the case of assessee and respectfully following the same, addition made in the case of assessee is held to be unjustified. Addition made by the Assessing Officer is contrary to law laid down by the Hon'ble Jurisdictional High Court referred to hereinabove. On the facts and evidence on record, the assessee has established and satisfied all the three ingredients being identity, creditworthiness and genuineness of share capital contribution to explain credit in terms of provisions of section 68 of the Act. Argument of the learned Departmental Representative that the assessee had

obligation to explain source of source is unjustified and unsustainable and **contrary to law laid down by Hon'ble Jurisdictional High Court and has no merit.** On the above facts, share capital contribution cannot be said to be unexplained credit.

12. The decision of the **Hon'ble Jurisdictional High Court in the case of Gagandeep Infrastructure (supra)** has been followed by the **Hon'ble Jurisdictional High Court, Nagpur Bench, in M/s Apeak Infotech, Nagpur, being Appeal No.26/2017, vide judgment dated 08/06/2017.** Ratio laid down **by the judgment of Hon'ble Jurisdictional High Court, Nagpur Bench, referred to hereinabove squarely supports the case of assessee.** It has also been **concluded by the Hon'ble Jurisdictional High Court that share premium received is on capital account and is not exigible to tax at the hands of assessee. This is in terms of law laid down by Hon'ble Jurisdictional High Court in Vodafone India Services Pvt. Ltd. reported at 368 ITR 01 (Bom).** Respectfully following the judicial precedents referred to hereinabove, the addition made by the Assessing Officer under section 68 of the Act is unjustified and unsustainable. Various judicial precedents relied upon in the submission of assessee are as under: –

i) *CIT v/s Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC);*

"2. Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company 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. Hence, we find no infirmity with the impugned judgment."

ii) *CIT v/s Value Capital Services (P) Ltd. [2008] 307 ITR 0334 (Del.)*

"7. In any case, what is clinching is the additional burden of the Revenue. It must show that even if the applicant does not have the means to make the investments, the investment made by the applicant actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. This has not been done insofar as the present case is concerned and that has been noted by the Tribunal also."

- iii) Hon'ble Bombay High Court order in ITA (L) No.2182 of 2009 in the case of M/s. Creative World Telefilms Ltd. (Earlier known as Link International Services Pvt. Ltd.) vide order dated 12/10/2009

"2. The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to follow the judgment of the Apex Court in the case of CIT V/s. Lovely Exports (P) Ltd. reported in [2008] 216 CTR 195 (SC) wherein the Apex Court observed that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the assessing officer, then the department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PA / GIR number and had also given the cheque number, name of the bank. It was expected on the part of the assessing officer to make proper investigation and reach the shareholders. The assessing officer did nothing except issuing summons which were ultimately returned back with an endorsement 'not traceable'. In our considered view, the assessing officer ought to have found out their details through PAN cards, Bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the assessing officer. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limini with no order as to costs."

- iv) Hon'ble Bombay High Court in Tax Appeal No.16 of 2012 in the case of Goa Sponge and Power Ltd. vide order dated 13/02/2012.

"Once the authorities have got all the details, including the names and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". xxxxxxxxxxxxxxxxxxxx, we are of the view that the Tribunal's finding that there is no justification in the addition made under section 68 of the Income Tax Act, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."

- v) Vodafone India Services Pvt. Ltd. v/s ACIT, [2014] 368 ITR 001 (Bom.)

"FINDINGS:

The amounts received on issue of share capital including the premium are undoubtedly on capital account."

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In view of the above, we find considerable substance in the Petitioner's case that neither the capital receipts received by the Petitioner on issue of equity shares to its holding company, a non-resident entity, nor the alleged short-fall between the so called fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act."

- vi) *Hon'ble Punjab & Haryana High Court in ITA No.386 of 2010 (O & M) in the case of M/s. K.C. Pipes Pvt. Ltd. vide order dated 02/08/2016. (P- 50 – 51) (51) [Vol.- II]*

"If the shareholders have acquired the money illegally, the respondent – assessee cannot be held liable. There is nothing to show that the money belongs to the Company/assessee itself. The revenue must then proceed against the shareholders."

- vii) *Hon'ble Bombay High Court in Writ Petition No.3027 of 2015 in the case of Khubchandani Healthparks Pvt. Ltd. vide order dated 10/02/2016. (P- 52 – 60) (58, 59) [Vol.- II]*

"We are of the view that the basis of the impugned Notice stands concluded by the decision of this Court in Vodafone India Services Ltd. Vs. CIT 368 ITR 01, wherein it has been held that the share premium being on the capital amount cannot be subjected to tax as income"

- viii) *CIT v/s Dwarkadhish Investment (P) Ltd. [2011] 330 ITR 298 (Del.)*

"8. In any matter, the onus of proof is not a static one. Though in s. 68 proceedings, 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 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 s. 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'."

- ix) *CIT v/s Metachem, [2000] 245 ITR 160 (MP)*

"4. If that person owns that entry, then, the burden of the assessee-firm is discharged. It is open for the AO to undertake further investigation with regard to that individual who has deposited this amount."

Ratio laid down by the aforesaid judgments fully supports the submission of the assessee. Respectfully following the judgments referred to

hereinabove, we hold that addition made in assessee's case under section 68 of the Act, is not in accordance with law and is unjustified.

13. The Hon'ble Bombay High Court in M/s Ami Industries (India) Pvt. Ltd. Being ITA No.1231 of 2017 by judgment dated 29/01/2020 has upheld the order of appellate authorities, deleting the addition made in respect to share capital contribution. Relevant extract of judgment is reproduced hereunder for ready reference: –

"15. It is also a settled proposition that assessee is not required to prove source of source. In fact, this position has been clarified by us in the recent decision in Gaurav Triyugi Singh Vs. Income Tax Officer-24(3)(1), Income Tax Appeal No. 1750 of 2017 decided on 22.1.2020.

16. Having noted the above, we may now advert to the orders passed by the authorities below.

17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs.34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under Section 68 of the Act.

18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under Section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that non-responding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and credit-worthiness of the creditors were available, without any infirmity in such evidence and the explanation required under Section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:-

- a) PAN number of the companies;
- b) Copies of Income Tax return filed by these three companies for assessment year 2010-11;
- c) Confirmation Letter in respect of share application money paid by them; and
- d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:-

"5.7 As per the provisions of Section 68 of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following-

- (a) Identity of the creditor
- (b) Genuineness of the transaction
- (c) Credit-worthiness of the party

(i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.

(ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represent company's own income from undisclosed sources. Accordingly, no addition can be made

u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In NRA Iron & Steel (P) Ltd (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

21. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.

22. Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed. However, there shall be no order as to cost."

Ratio laid down by the abovementioned decision of Hon'ble Bombay High Court squarely applies to the facts in the case of assessee. Addition made in the case of assessee company is held to be unjustified and not in accordance with law in terms of law laid down by the Hon'ble Jurisdictional High Court as discussed hereinabove.

14. In ground no.4, a reference is made by the Revenue to the decision of the Hon'ble Delhi High Court in Globus Securities & Finance Pvt. Ltd. reported

as 41 taxmann.com 465 (Del.). Perusal of the said judgment indicates that the same is distinguishable on facts and ratio laid down therein is inapplicable to facts in the case of assessee. In the aforesaid judgment at Para-8, it has been noted that assessment order records that M/s Parivartan Capital and Financial Services Pvt. Ltd. was controlled by Shri Hari Om Bansal and M/s Sober Associates Pvt. Ltd. and M/s Shri Niwas Leasing & Finance Ltd. were controlled by Shri Mahesh Garg, who in their statements before Director of Income Tax (Investigations) had admitted that they were engaged in the business of providing accommodation entry through various companies **controlled by them. Hon'ble Delhi High Court has remanded the matter back** to the file of Tribunal. It has been noted at Para-18 that Tribunal will also take into account facts and circumstances noted above but the observation made in this order will not be treated as conclusive and final. The facts in the case of assessee indicate that in an independent enquiry contribution of share was confirmed by the corporate share holder before Investigation Wing along with documentary evidence. The evidence brought on record in an independent enquiry has not been found to be incorrect or adversely commented in the assessment order. Thus nothing adverse can be drawn from the said decision in the case of assessee. The Tribunal, Delhi Bench, Delhi, **has decided the appeal after remand order of Hon'ble Delhi High Court** vide order dated 07/12/2018. In the aforesaid judgment, the appeal filed by the Revenue has been dismissed on account of tax effect. In view of above **nothing adverse remains in the judgment of Hon'ble Delhi High Court in the** case of Globus Securities & Finance Pvt. Ltd., as finally addition made in the aforesaid case is held to be unjustified and stands deleted.

15. Considering the totality of facts and circumstances in the case of assessee we hold that assessee has explained the identity, creditworthiness and genuineness of transaction of share capital contribution in terms of provisions of section 68 of the Act. We hold that the learned CIT(A) has correctly deleted the addition in the case of assessee under section 68 of the Act and does not call for any interference. Share capital contribution is not unexplained credit considering facts and evidence on record. In view of above, we find no merits in the appeal filed by the Revenue. Accordingly, the grounds of appeal raised by the Revenue are dismissed.

16. In the result, appeal filed by the Revenue for A.Y. 2010-11 is dismissed.

Order pronounced in the open Court on 08/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 08/01/2025

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Nagpur; and*
- (5) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur