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IN THE INCOME TAX APPELLATE TRIBUNAL,
PATNA BENCH, PATNA

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.25/Pat/2019
Assessment Year : 2010-2011

Manish Finlease Pvt Ltd., Chandi House Exhibition Road, Patna	Vs.	ITO, Ward 2(1), Patna
PAN/GIR No.AACCM 6252 B		
(Appellant)	..	(**Respondent**)

Assessee by : Shri A.K.Rastogi & Rakesh Kumar, ARs
Revenue by : Shri Indrajeet Singh, DR

Date of Hearing : 20/06/ 2019
Date of Pronouncement : 09/08/ 2019

O R D E R

Per Bench

This is an appeal filed by the assessee against the order of the CIT(A)-1, Patna dated 27.9.2018 for the assessment year 2010-2011.

2. The appeal filed by the assessee is delayed by 51 days. The assessee has filed application for condonation of delay stating the reasons for not filing the appeal in time before the Tribunal. After hearing the submissions of the parties, we are satisfied that the assessee had a bonafide reason for not filing the appeal in time. Therefore, we condone the delay and proceed to decide the appeal of the assessee on merits.

3. The assessee has raised the following grounds of appeal"

> *"1. For that the CIT(A) has erred in affirming the order of the Assessing Officer passed u/s.143(3)/147 wherein the Assessing Officer has assessed the appellant on a total income of Rs.3,66,64,440/- as against return of income of Rs.1,64,440/-.*
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> *2. For that the CIT(A) has erred in passing exparte order dismissing the appeal without giving proper opportunity of being heard to the appellant.*
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> *3. For that the CIT(A) has violated the principles of equity, natural justice and fair play which requires proper and adequate opportunity of being heard.*
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> *4. For that the CIT(A) has erred in affirming initiation of proceedings u/s.147/148 of the Income tax Act.*
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> *5. For that the CIT(A) has erred in holding that the Assessing Officer has followed the guideline laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft and has accordingly disposed of the objection of the appellant to the initiation of proceedings.*
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> *6. For that the CIT(A) has erred in holding that the case of the appellant is covered by main provision 147 and not by the first proviso.*
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> *7. For the Ld. CIT(A) has erred in not holding the initiation of proceeding u/s 147/148 to be barred by limitation.*
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> *8. For that the Ld CIT(A) has erred in holding that there has been proper service of notice u/s 148(1) and therefore reassessment proceeding has been validly initiated.*
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> *9. For that the Ld CIT(A) has erred in not adjudicating ground No.4 of the grounds of appeal which reads "for that the initiation of proceeding u/s 143(2) is barred by limitation".*
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> *10. For that the Ld CIT(A) has erred in holding that the appellant company has not been able to establish identity, creditworthiness and particularly genuineness of transaction in respect of share capital and share application money amounting to Rs.3,65,00,000/-.*
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> *11. For that the Ld CIT(A) has erred in holding that the appellant has failed to satisfy the tree critical requirement of Sec-68 in respect of share capital and share application money of Rs.3.65 crores.*

12. For that the Ld CIT(A) has erred in relying on the judicial precedents of the Apex Court and the Hon'ble High courts without confronting the appellant with the same.

13. For that the Ld CIT(A) on the basis of the judicial precedents has erred in concluding that the three vital ingredients of Sec-68 remain unsatisfied in the case of the appellant particularly in view of the detailed enquiry carried out by the Assessing Officer u/s 133(6).

14. For that the Ld CIT(A) has erred in confirming the addition of Rs.3.65 Crores out of total addition of Rs.3.65 crores even after noticing the fact that out of 39 share applicants/subscribers, 32 have complied to the notice u/s 133(6) issued by the Assessing Officer and thus the addition to the extent of Rs.3.65 crores wholly unjustified and contrary to the evidence/material on record.

15. For that the Ld CIT(A) has erred in drawing adverse inference by noticing that the language of the confirmation, the very text and typing font of the confirmation, envelop and the date of dispatch were same even though the companies sending the confirmation were located at two different places.

16. For that the sustenance of addition of Rs.3.65 crores on account of unexplained cash credit u/s 68 is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

17. For that the whole order is bad in fact and law of the case and is fit to be annulled.

18. For that since the CIT(A) has passed the impugned order ex party and without giving proper and adequate opportunity of being heard, the order of CIT(A) may be set aside and restored back to CIT(A) for deciding the appeal afresh after allowing proper and adequate opportunity of being heard."

3. Although the assessee has raised multiple grounds in its appeal but the grievance is consisting of three issues i.e. (i) initiation of proceedings u/s.147 of the Act (ii) confirmation of addition of Rs.3,65,00,000/- made u/s.68 of the Act and (iii) the order passed by the CIT(A) is against the principle of natural justice.

4. Brief facts of the case are that the assessee is a Pvt Ltd Company and filed return of income u/s.139(1) of the Act on 11.10.2010. subsequently, the information was received that the bank account of the assessee has been credited by Rs.55 lakhs from the three companies, namely, M/s Accord Sales Pvt Ltd, M/s Focus Trade Impex Pvt Ltd and M/s Safari Tradex Pvt Ltd during the year F.Y. 2009-10, however, source of the sum were not explained. Accordingly, reasons were recorded for reopening the case and notice u/s.148 of the Income tax Act, 1961 dated 31.03.2017 was issued and served on the assessee. In compliance to the notice the assessee filed written submission stating that the original return filed u/s.139 of the Act, dated 11.10.2010 may be treated as return filed in response to the notice u/s.148 of the Act. Later on the other statutory notice issued to the assessee and the AR of the assessee submitted that the assessee has received Rs.30 lakhs from the above three companies. The assessee made objection for reopening the case on the basis of the facts which were duly disposed off by the AO on 22.11.2017. The other details were also called for from the assessee but no explanation was filed. The assessee filed again objections to challenging the notice u/s.148 of the Act, which was a time barred because the assessee received notice on 03.04.2017 i.e. after 31.03.2017 and earlier objections were also repeated but the AO disposed off the objections vide letter dated 04.12.2017 by way of speaking order. After disposing of the objections of the assessee, ld. AR

issued fresh notice u/s.142(1) of the Act calling for the detailed documents in regard to share capital received during the year with complete name and address and amount received from share applicants which was complied with by the assessee. From the information, it was noticed by the AO that all the companies located at Delhi and Kolkata for ascertaining the genuineness of share capital and share application money received by the assessee. The AO should issue notice u/s.133(6) of the Act to all the share applicants on the basis of address provided by the assessee and it was stated that information should be furnished by 15.12.2017 but till date i.e on 22.12.2017 no comments/compliance was received and it was informed by way of letter to the assessee that no reply has been received from share applicants, therefore, these amounts are liable to be treated as unexplained and assessee was given one opportunity. On 26.12.2017 & 27.12.2017, out of 39 companies, replies were received from 32 companies. From the replies submitted, ld. AO observed as under :-

> *On perusal of these replies, however some very strange facts come to notice. The similarities between the confirmations received from different companies is striking. The language of the confirmation, the very text and the typing font, everything is same, though the companies are located at different addresses. The confirmations of almost all companies located at Kolkata, though at different addresses are identical. Similarly, confirmation of the companies located at Delhi at different addresses are identical. These confirmations carry the same wording, the same text and font. In many cases even the envelope is also identical. Copies of some of such identical confirmations are annexed to this order as annexure-1 containing 1 to 30 pages and the same are part of the order. Also, these confirmations contain only a part of the bank account statement of these entities showing only the transaction relating to share capital*

transferred to the assessee. It is also seen that these" confirmations have been posted from their respective places mostly on same day.

In response to letter dated 22.12.2017 the A.R. of the assessee appeared on 28,12.2017 and stated their earlier contention. On the issue of similar nature pf confirmations received, the A.R. stated that he cannot say anything about confirmations sent by other entities.

Such similarities in confirmation cannot be just coincidence. It is simply beyond human probability that different companies located at different addresses are sending in identical confirmation in the same language and typing font. It is certainly an outcome of an arrangement of dubious nature. Therefore, such confirmations cannot be relied upon. Rather it shows the dubious arrangement behind such transactions through which unaccounted money is being routed through these corporate entities in the form of share capital and share application money. These corporate entities are only conduits of such unaccounted money introduced as share capital into the accounts of the assessee under the corporate veil. It is also pertinent that these entities have furnished only a limited portion of their bank statement showing only the particular entry related to transfer of share application money to the assessee. Assessee also in the confirmation filed by it has done the same thing. In absence of complete account statement, the transactions taking place in these accounts and the source as well as creditworthiness of the corporate entities cannot be ascertained. The very strange nature of the confirmations received shows that these confirmations cannot be considered as genuine and bonafide confirmations rather it shows that the whole transactions of introduction of share capital is an arranged one involving dubious means. As such, these confirmations does not substantiate the genuineness of the share capital and share application money introduced into accounts of the assessee during the year as regards its source. In view of the above facts, the share capital and the share application money introduced during the year amounting to, Rs. 2,63,50,000/- and Rs. 1,01,50,000/- respectively totaling Rs. 3,65,00,000/- is treated as unexplained credit under section 68 of the Income tax Act, 1961 and accordingly added to the total income of the assessee.

From the above observations, the AO treated the entire share capital money received of Rs.3,65,00,000/- as unexplained credit u/s.68 of the I.T.Act, 1961 and made addition into the total income of the assessee.

5. Feeling aggrieved from the order of AO, the assessee appealed before the ld. CIT(A). In the Form 35, the assessee challenged to the reopening of the case as per the Section 147/148 of the Act as well as on merit. Ld.CIT(A) fixed case for hearing and issued notice to the assessee but the assessee did not appear before the CIT(A). Accordingly, the CIT(A) proceeded to dispose off the appeal of the assessee after elaborately discussion to the reopening of the case on the basis of material available before him observing as under :-

> *2.4 I have considered the submission of the appellant as well as the assessment order on record particularly in reference to the reopening of the assessment under section 148 of the Act. It is matter of record that the appellant company is in receipt of share capital & share application money from the aforesaid 3 companies about which there is no explanation in respect of identity, creditworthiness and genuineness of transaction as required under section 68 of the Act.*
> *2.5 The submissions have been considered carefully in the light of the provisions of the Income tax Act, Constitution of India as well as the legal pronouncements on the subject by the Apex Court and various High Courts In this regard, it would be pertinent to look into the provision of this section which is extracted as under :-*
>
> *Income escaping assessment.*
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> *147. If the [Assessing] Officer ^[has reason to believe^] that any income chargeable to tax has escaped assessment/^ for any assessment year, he tl may, subject to the provisions of sections 148 to 153, assess or reassess^ such ^ income ^land also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings^ under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*
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> *Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment yeari, unless any*

income chargeable to tax has escaped assessment for such assessment year by reason of the failure^ on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts_ necessary for his assessment, for that assessment year:
^[Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]
^[Provided ^[also] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production^: before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily^ amount to disclosure within the meaning of the foregoing proviso.
Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—
i where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction allowance or relief in the return ;

(b) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]
(c) where an assessment has been made, but'—
(i) income chargeable to tax has been underassessed ; or
(ii such income has been assessed at too low a ratell; or
(iii) such income has been made the subject of excessive relief under this Act; or
(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]
c) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the

maximum amount not chargeable to tax, or as the case may be, the assessee has understated'the income or has claimed excessive loss, deduction, allowance or relief in the return;]
(d) Where a person is found to have any asset (including financial interest in any entity) located outside India.]
^[Explanation 3.—For the purpose of assessment or reassessment!! under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.]

^[Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

2.6 A plain reading of this provision makes it abundantly clear that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, the assess or reassess such income and any other income which has escaped assessment and which comes to his notice subsequently in the course of the assessment proceedings. This has been furthe elaborated in Explanation 2 to this section which provides that the cases where no return of income has been furnished although total income exceeds the maximum amount not chargeable to tax, such cases would be deemed to be cases where income chargeable to tax has escaped assessment. In the present case, admittedly no return of income has been filed and also that total income has been much in excess of maximum amount not chargeable to tax, accordingly the reassessment has been validly reopened.

2.7 Further, Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. The final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only *question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction of him as held by the Supreme Court in the case of Raymond Woollen Mills Ltd. v. ITO M999] 236 ITR 34. Further, it was held what is to be seen "whether there was prima facie some material on the basis of which the department can reopen the case. The sufficiency or correctness of the material is not to be considered at this stage." If the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.*

2.8 So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 of the Act. While issuing the notice u/s.148 of the Act, for the purpose of reopening of assessment, the final outcome of the proceedings is not relevant and at the initial stage, what is required is "reason to believe" but not established fact of escapement of income. It is further, to be noticed that at the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief, whether the material would conclusively approve the escapement is not the concerned, at the time of reopening of the assessment. The Assessing Officer has not required to establish by conclusive evidence that the issue raised in reopening assessment would be calculated with the addition of income in reassessment order. Issue of notice u/s.148 of the Act, for the purpose of reopening of assessment u/s.147 of the Act is based on material available before the Assessing Officer in respect of income of the appellant having escaped assessment, accordingly he had validly assumed jurisdiction in this regard.

2.9 So far as the test of reason to believe vis-a-vis change of opinion is concerned particularly in the light of judgment of the Apex Court in the case of M/s Kelvinator India Ltd. 320 ITR 561 affirming the judgment of the Full Bench of the Delhi High Court in the same case reported at 123 Taxman 423, the said judgment has to be seen the particular facts of the case. In that case, the assessee had filed its return of income along with computation of income, annual report, tax audit report, etc but the assessee did not claim certain expenses relating to rent, depreciation, etc. So it filed revised return with a claim of rent and depreciation to be allowed under sections 30 and 32. The Assessing Officer determined the taxable income making additions and disallowances. Subsequently, the Assessing Officer issued a notice under section 148 and reopened the assessment *under section 147 on the basis of under assessment. The assessee objected to the reopening of assessment. Though the assessment was reopened on the alleged ground of various disallowable claims, but except for the disallowance of a sum claimed in the revised return neither any claim was disallowed nor any addition was made. On appeal, the Commissioner (Appeals) quashed the reassessment proceedings holding that the assessee had disclosed all the facts and no new fact was available to the Assessing Officer. Therefore, it was mere change of opinion on the part of the Assessing Officer and as such, the reassessment proceedings could not have been validly initiated. The Tribunal upheld the decision of the Commissioner (Appeals) which was subsequently upheld by the Delhi High Court to be later affirmed by the hon'ble Supreme Court. On the particular set of facts, it has validly held to be change of opinion not the reason to believe.*

2.10 But, in the present case, there is no apparent explanation in respect of sources of investment in the form of share capital received on premium found deposited in the bank accounts of the appellant. In view of this, it can be very well be said that the appellant cannot rest its case on the test of reason to believe as laid down in the case of Kelvinator India Ltd. Therefore, the Assessing Officer had validly assumed jurisdiction under section 148 of the Act on the facts and circumstances of the case.

2.11 The expression 'reason to believe' contemplates objective determination based on intelligent care and determination involving judicial review, as distinguished from a purely subjective consideration—Melina Fernandes v. Mohan Nair AIR 1966 Goa 23. The reason for the formation of the belief must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus between the material coming to the notice of the AO and the formation of the belief that there has been escapement of income of the assessee from the assessment as held in the case of ITO v. LakhmaniMewal Das [1976] 103 ITR 437(SC) and Jai GopalMehrav. ITO [1969] 74 ITR 594 (Punj.&Har.).

2.12 The jurisdictional High Court in the case ofBhimrajPannaLal v. CIT [1957] 32JTR £89 (Pat.) held that the words 'reason to believe' do not mean 'reason to suspect'. Section 147 does not give unfettered discretion to the income-tax authorities. The belief entertained by the authorities must not be arbitrary or irrational. It must be reasonable or, in other words, it must be based on reasons which are relevant and material—Ganga Saran & Sons (P.) Ltd. v. ITO [1981] 130 ITR 1(SC).

2 13 Further, the expression 'reason to believe' does not mean a purely subjective satisfaction on the part of the ITO, the belief must be held in good faith; it cannot merely be a pretext—Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 (SC), S. Narayanappav. CIT [1967] 63 ITR 219 (SC) and Y. Rajanv.ITO [1970] 77 ITR 839(AP).The belief must be that of an honest and reasonable person based upon reasonable grounds and that the ITO may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour—SheoNath Singh v. AAC [1971] 82 ITR 147 (SC), Asoke Kumar Sen v. ITO [1981] 132 ITR 707 (Delhi), Manikonda Venkata Narasimhamv. CIT [I960] 39 ITR 575 (AP), R.S. ChiranjiLal& Sons v. CIT [1959] 36 ITR 407 (Punj.), Birds Investments Ltd. v. CIT [1965] 55 ITR 285 (Cat.) and Bhagwan Industries (P.) Ltd. v. CST [1970] 25 STC 420 (All) The expression does not mean a purely subjective satisfaction of the ITO, the forum of decision as to the existence of reasons and the belief is not in the mind of the ITO— Calcutta Discount Co. Ltd.'s case (supra). The formation of belief having a rational connection with or a relevant bearing on the formation of the belief and are not extraneous or irrelevant for the purpose of the section had been so held in the case of ofLakhmani Mewal Das's case (supra).If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, such exercise of the discretionary power by the AO cannot said to legally proper and can be said to be invalid assumption of jurisdiction by the AO—S. Narayanappa's case (supra), Ganga Saran & Sons (P.) Ltd.'s case (supra).The existence of belief and the reason, therefore, but not the sufficiency of the reason is justifiable—SheoNath Singh's case (supra), N.K. Textile Mills v. CIT [1966] 62ITR 58 (Punj.) and RoshanLal& Co. v. CIT [1966162 ITR72(Puni).

2.14 In view of the aforesaid, it is being held that on the given facts and circumstances of the case, the AO has validly and legally assumed jurisdiction under section 148 of the Act on the basis of reason to believe that the income chargeable to tax has escaped assessment in the case of the appellant, therefore, the reopening of the assessment for the year in appeal is being upheld and this ground of appeal is dismissed.

3. In the course of the appellate proceedings of the case, it has been further contended by the appellant company that notice under section 147 of the act had been so beyond the period of limitation as prescribed under section 149(1) of the Act.

3.1 It is found in this regard that notice under section 147 was issued on 31/03/2017, which was served on the appellant on 03/04/2017, leading the appellant company to contend that since the notice had not been served on or before 31/03/2017, the same is barred by *limitation and thus initiation of proceeding under section 147 of the Act is bad in law.*

3.2 I have gone through the assessment order and submissions made by the appellant in the course of the appellate proceeding as well as given careful consideration to the facts and circumstances of the case. The only matter of dispute in this regard is that the service of notice under section 147 of the Act had been made beyond the period of limitation.

3.3 It would be of significance to note in this regard that there is distinction to be drawn between issuance of notice under Section 148 of the Act and service of such notice upon the Assessee as held by the hon'ble Supreme Court in the case of R.K. Upadhyaya v. Shanbhai P. Patel (1987) 3 SCC 96. In the that case, it was held that service of notice under Section 148 of the Act was "not a condition precedent to conferment of jurisdiction in the ITO to deal with the matter". As regards to Section 153 (2) of the Act, there was no time limit for completion of the re-assessment. This was different from the requirement under Section 34 of the Income Tax Act, 1922 (,,1922 Act) In other words as long as notice had been issued under Section 148 of the Act, the AO would have jurisdiction to proceed with the reassessment. The only restriction was that he could not complete the reassessment without notice being served upon the Assessee

3.4 In the instant case, it is not the case of the appellant company that notice under section 147 of the act has not been served on the appellant. Rather, it is contended by the appellant that though the notice had been served it has been served beyond the period of limitation, thus barred by limitation. Further, nowhere it has been denied by the appellant company that proceedings initiated by virtue of issue of notice under section 147 of the Act was not attended to, thus, the case of the appellant company would be covered by virtue of provisions contained in Section 292 BB of the Act, for which reliance could be placed on the decision in CIT v. Shital Prasad Kharag Prasad 280 ITR 541 (All); CIT v. Hotline International Pvt. Ltd. 296 ITR 333 (Del); Sri Nath Suresh Chand Ram Naresh v. CIT 280 ITR 396 (All); P.N. Sasikumar v. CIT (1988) 170 ITR 80 (Ker); Venad Properties (P) Limited v. Commissioner of Income Tax (2012) 340 ITR 463 (Del) and Mayawati v. CIT (2010) 321 ITR 349 (Del).

3.5 In view of these particular facts of the present case, it has to be decided whether notice under Section 148 of the Act is a jurisdictional requirement. The relevant portion of Section 148 (1) reads as under:

"148. Issue of notice where income has escaped assessment - (1) Before making the assessment, reassessment or recomputation under Section 147. the Income-tax Officer shall serve on the Assessee a

notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that subsection."

3.6 The hon'ble Supreme Court in R.K. Upadhyaya (supra), explained that there was a distinct shift in the scheme of the provisions of the 1961 Act in comparison with the corresponding provision i.e. Section 34 under the 1922 Act under which the mandatory requirement was that both the issuance and service of notice had to be completed within the prescribed period. Consequently, the service of notice within the limitation period was the foundation of jurisdiction under the 1922 Act. In Y. NarayanaChetty v. Income Tax Officer, Nellore [1959] 35 ITR 388 (SC) the Supreme Court observed in the context of Section 34 of the 1922 Act,: "The notice prescribed by section 34 of the Income tax Act for the purpose of initiating reassessment proceedings is not a mere procedural requirement; the service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made under section 34. If no notice is issued or if the notice issued is shown to be invalid then the proceedings taken by the Income- tax Officer without a notice or in pursuance of an invalid notice would be illegal and void." This was also the basis for the decision in Banarasi Debi v. ITR (1964) 53 ITR 100.

3.7 However, under the Income-tax Act, 1961, the procedural requirement has been spread over three sections, being Sections 147, 148 and 149. The period of limitation within which notice under Section 148 has to be issued is specified in Section 149. Section 153 (2) of the Act stipulates that no order of re-assessment can be passed beyond the period of one year from the expiry of the financial year in which service of the notice was effected. Section 148 (1), however, is clear that no reassessment can take place without service of notice being effected on the Assessee or his authorised representative.

3.8 In R.K. Upadhyaya (supra) the Supreme Court explained that "the mandate of Section 148 (1) is that reassessment shall not be made until there has been service." However, the said decision does state that jurisdiction becomes vested in the AO to proceed with the assessment once notice is issued within a period of limitation. It also emphasized that no reassessment shall be made "until there has been service." The legal position therefore, even under the 1961 Act, is that service of notice under Section 148 is a jurisdictional requirement for completing the re-assessment. This has been emphasized in several other decisions of varous High Courts as well.

3.9 In C.N Nataraj v. Fifth Income-tax Officer (1965) 56 ITR 250 (Mys), the High Court of Mysore was dealing with the case where the *notice under Section 148 of the Act was issued in the names of the Assessee who were minors and not in the names of their guardians. The notices were served on a clerk of the father of the Assessee who was neither an agent of the Assessee nor authorized to accept notices on their behalf. The Court, relying on the decision in N. Narayana Chetty (supra) observed: "There is no doubt that a notice prescribed under section 148 of the Act for initiating reassessment proceedings is not a mere procedural requirement ; the service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made under section 147. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."*

3.10 In CIT v. Hotline International (P) Ltd. (supra), the hon'ble High Court of Delhi had held that affixation of notice on an address at which the security guard of the Assessee-company refuses to receive such notice cannot be construed to be a proper service of notice under Section 148 of the Act. The security guard was not an agent of the Assessee and therefore, the reassessment proceedings were held to be bad in law. In Dina Nath v. Commissioner of Income-tax [1994] 72 Taxman 174 (J & K) the notice under Section 143 (2) of the 1961 Act was served upon one S, who was neither a member of the family of the Assessee nor his duly authorized agent. However, S had been accepting the notice on behalf of the Assessee and prosecuting the cases on his behalf earlier before the income tax authorities. The High Court held: "the object of issuance the notice or summons is to intimate the concerned person to appear and answer the queries or the question sought to be clarified by a Court or the authorities.

As serious consequences are likely to follow, a notice or summons must necessarily be issued and served in the form and in the manner prescribed by law." The High Court in Dina Nath (supra), referred to Order V Rule 12 CPC as well as Order III Rule 6 CPC. It thereafter concluded that notice must be served personally upon the individual or upon his agent duly authorized in terms of Order III Rule 6 CPC. The contention of the Assessee was upheld and the reassessment proceeding was quashed. In Jayanthi Talkies Distributors v. Commissioner of Income-tax (1979) 120 ITR 576 (Mad) the notice was served by the notice-server of the Department on the Manager of the Assessee-firm. The Manager wrote to the ITO seeking time. Since no return was filed by the Assessee within the time granted, the ITO completed the reassessment under Section 144 of the 1961 Act. On appeal the High Court found that none of the partners of the Assessee-firm had been personally served with the notice. Service was effected only on the Manager of the firm who had no specific or written authority to receive such notice. It was held: "when the statute provides that a notice should be served in a particular mode, *it was not possible to hold that there had been a proper service of notice merely from the fact that the person to whom the notice had been addressed had received the notice through some other source or that he had become aware of the contents of the notice. There had not been a due service of notice as contemplated by the provisions of the Code of Civil Procedure dealing with service of notice or summons. Therefore, the service of the notice on the Manager who had no written authority to receive the same could not be held to be a proper service on the Assessee." In Sri Nath Suresh Chand Ram Naresh v. CIT (supra) it was reiterated that service of valid notice under Section 148 was "the foundation for the initiation of reassessment proceedings and a condition precedent for the validity of the notice." It was held that the Tribunal was not right in holding that the notices under Section 148 addressed as „SCR and the karta „S were valid notices for reassessing the income of the HUF „MM or „MS or its successors. Onus on Revenue to prove service of notice. There is sufficient judicial authority for the proposition that the burden of showing that service of noticed has been effected on the Assessee or his duly authorized representative is on the Revenue. These include Fatechand Agarwal v. Commissioner of Wealth-Tax [1974] ITA No.72 of 2014 Page 16 of 24 97 ITR 701 (Ori) and Venkat Naicken Trust v. ITO [1999] 107 Taxman 391 (Mad). In CIT v. Thayaballi Mulla Jeevaji Kapasi (1967) 66 ITR 147 (SC), the Respondent to whom the notice was directed was not in town. The only information which the process server had was that the Respondent was either in Bombay or Ceylon. Thereafter, the process server affixed the notice on the business premises of the Respondent. The Supreme Court affirmed the essential principle that "if no notice was served within the period, the Income-tax Officer was incompetent to commence proceedings for reassessment under Section 34 of 1922 Act." It was further held that "service of notice under Section 34 (1) (a) within the period of limitation being a condition precedent to the existence of jurisdiction, if the Income-tax Officer was unable to prove that the notice was duly served upon the Respondent within the prescribed period, any return filed by the Respondent after the expiry of the period of eight years will not invest the Income-tax Officer with authority to reassess the income of the Respondent pursuant to such return." On the facts of that case it was held that the Revenue had sufficiently discharged the onus by producing the affidavit of the process server. 35. Under Section 282 (1) of the Act, service of notice may be made by delivering or transmitting a copy thereof to the person to whom the notice is addressed by more than on mode. One of the modes is "in such manner as provided under the Code of Civil Procedure, 1908 („CPC)". For the purpose of service of summons under Order V Rule 12 CPC, service can be taken to complete, if it is effected, on person to whom his address or to another person who is empowered to receive such notice on his behalf. Besides the appointment of such agent by the*

Assessee has to be in writing in order to meet the requirement of Order III Rules 2 and 6 CPC. Therefore, in the instant case, the Revenue had to show that the person on whom the notice was served i.e., Mr. Ved Prakash was in fact empowered by the Assessee to receive notices on his behalf.

3.11 Therefore, the settled legal position is that merely because an Assessee may have participated in the proceedings, the requirement of service of proper notice upon the person in accordance with the legal requirement under Section 148 of the Act is not dispensed with. Is In B. Johar Forest Works v. Commissioner of Income-tax (1977) 107 ITR 409 (J&K) the notice issued by the ITO to the Assessee under Section 22 (2) of the 1922 Act. The notice was served on an employee of the Assessee who was not authorized to accept such notice. Subsequently, the General Manager of the Assessee applied for extension of time for filing the return, which was allowed by the However, the return was not filed within the extended time and an ex parte order was passed. Before the High Court it was contended that the employee on whom the service of the notice was found to have been made was not duly authorized to accept such notice and that the mere fact that the General Manager of the firm applied for time, would not render the service of notice on the employee a valid and a legal service. It is contended that the Assessee had not denied service of notice on such employee. The High Court however negatived the plea of the Revenue and held that in the absence of finding by the Tribunal that the employee of the Assessee was authorized to accept such service on behalf of the Assessee, notice could not be said to have been duly served upon the Assessee. It was held that "acquisition of knowledge in regard to the issuance of a notice under Section 22 (2) of 1922 Act could not be considered to be equivalent to, or a substitute for, the service of the notice on the Assessee." It was further observed that "knowing about the issuance of the notice otherwise than by its service on the person concerned is one thing and the service of the notice on the person is another." In the context of Sales tax the Full Bench of the Allahabad High Court in Laxmi Narain Anand Prakash v. Commissioner of Sales Tax, Lucknow AIR 1980 All 198 it was held that the notice of initiation proceeding under Section 21 of U.P. Sales Tax Act, 1947 was a condition precedent and not only a procedural requirement. The mere fact that the Assessee had obtained knowledge of the proceeding and participated could not validate the proceeding being initiated without jurisdiction. It is subsequently held that "it is firmly established that where a Court or Tribunal has no jurisdiction, no amount of consent, acquiescence or waiver can create it." Decisions referred to by the Revenue The general observations in Venad Properties (P) Limited (supra) to the effect that the failure to comply with a procedural requirement should not defeat substantive justice may not be apposite in the present *context where the failure to serve notice under Section 148 is a jurisdictional and not merely a procedural requirement.*

3.12 To summarize, the conclusions:

(i) Under Section 148 of the Act, the issue of notice to the Assessee and service of such notice upon the Assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.

(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under Section 148 (1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282 (1) of the Act read with Order V Rule 12 CPC and Order III Rule 6 CPC.

(iii) Although there is change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with Section 282 (1) and Section 153 (2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.

(iv) The onus is on the Revenue to show that proper service of notice has been effected under Section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case the

Revenue has failed to discharge that onus.

(v) The mere fact that an Assessee or some other person on his behalf not duly authorised participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the Assessee under Section 148 of the Act.

(vi) Reassessment proceedings finalised by an AO without effecting proper service of notice on the Assessee under Section 148 (1) of the Act are invalid and liable to be quashed.

(vii) Section 292 BB is prospective. In any event the Assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292 BB is not attracted.

4.13 On the facts of the present case, it is found that proper service of notice had been effected under Section 148 (1) of the Act on the appellant-company, therefore the reassessment proceedings is be said to be validly initiated.

Further the CIT(A) has decided the issue on merits, which read as under :-

"8. I have gone through the assessment order and submissions made by the appellant in the course of appellate proceedings as well as given careful consideration to the facts and circumstances of the case. It is matter of record that the appellant company had received share capital and share application money of Rs.3,65,00,000/- during the previous year relevant to assessment year under appeal. It is also matter of record that the identity, creditworthiness and particularly genuineness of the transaction towards the sale subscription of the appellant company could not be established to the satisfaction of the Assessing Officer as required u/s 68 of the Act.

9 1 It is of significance to note in this regard that the AO of the case had carried out all the necessary enquiries and had afforded due opportunities to the appellant-company to establish the identity, creditworthiness and genuineness of the share application but. no evidence whatsoever was brought on record in respect of identity. creditworthiness and genuineness of the receipt of so-called share application money from such share applicants. Since it is found that in spite of the specific request made by the AO. the appellant failed to satisfy the 3 critical requirements of section 68 of the Act in respect of identity. creditworthiness and genuineness of the so-called share applicants and also that the appellant did not offer any explanation in the course of the assessment proceedings of the case, the AO brought this amount to tax in the hands of the appellant as its own money, which is subject matter of appeal. it would be of significant importance to look into the provisions of section 68 of the Act.

9.2 As a matter of fact. section 68 is a statutory recognition to the effect that wherein certain sums of money were claimed by the assessee to have been borrowed from certain persons. it was for the assessee to prove by cogent and proper evidence that there were genuine borrowings as the facts car exclusively within assessee is knowledge. Therefore. cash credits, which are not satisfactory explained may be assessed as income from undisclosed source errors of the appellant.

9 3 In the case of P Mohnakala 291 ITR 278. the honourable Supreme Court had held that a bare reading of section 68 suggests that

a) there has to be credit of amounts in the books maintained by the assessee:

b) such credit has to be a sum of money during the previous year: and

c) either (i) The assessee offers no expulsion about the nature and source of such credit is found in the books or (ii) the explanation offered by the assessee. in the opinion of the AO. is not satisfactory

It is only then that the sum so credited may be charged to income tax as income of the assessee of that previous year.

9.4 Section 68 requires that there is a credit in the books maintained by an oh credit is of a sum during the previous year: and the assessee offers *no explanation about the nature and source of such credit, or the explanation offered by the assessee is not in the opinion of the assessing authority. satisfactory Then the sum so credited may be charged to tax as income of the assessee of that previous year The provisions of section 68 only set up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee The presumption is rebuttable. In refuting the presumption raised. the initial burden is on the assessee. Such burden, which is placed on the assessee. since as soon as the assesse establishes authenticity of transactions as executed between the assessee and its creditors sub-creditors Further. section 68 is not confined to cash entries in accounts. If a liability is shown in the accounts is found to be bogus, in the absence of any plausible and as the explanation offered by the assessee. the model can be added towards the income of the assessee and brought to tax in the hands of the assessee as held in the case of V.I.S.P. (P) Ltd. 265 ITR 202 (MP). The honourable Supreme Court. in the case of A Govindarajalu Mudaliar 34 ITR 8007. the honourable Supreme Court had held that there is ample authority for the proposition that when an assessee fails to prove satisfactorily the source and nature of a certain amount of cash received during the accounting year, the AO is entitled to draw the inference that receipts are of assessable nature. Further, in the case of Kale Khan Mohammad Hanif 50 ITR 1. it has been held that if the assessee dispute celebrity for tax. it is for him to so either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act In the absence of such proof. the AO is entitled to treat it as a taxable income. In the case of Sreelekha Banerjee 49 ITR 112. the Supreme Court held that when a credit entry appears in the books of account of an assessee in and accounting year, the assessee has a legal obligation to explain the nature and source of such credit. If the assessee offers an explanation about the cash credit, the AO can put the assessee to prove of his explanation. and if the assessee fails to tender evidence or does not join an enquiry. then the assessing officer if justified in rejecting explanation and holding that the income is from an undisclosed source. The AO is not required to specify your prove what that source is, which from the nature of the case, must be known only to the assessee.*

9 5 In the case of Oceanic Products Exporting Company 241 ITR 497, the Hon'ble High Court of Kerala had held that after the enactment of section 68. the burden is placed on the assessee to prove a credit appearing in its books of account. That burden has to be discharged with positive material. A conclusion regarding creditworthiness or otherwise of a person is essentially one of fact. It does not give rise to a question of law. unless it is established that the conclusion was contrary to the materials on record. In the instant case. the burden placed on the appellant was not discharged in the course of assessment proceedings, thus, it is held that the most critical ingredient of section 68 is not satisfied in the case.

9.6 In the course of appellate proceedings, it has also been submitted by the appellant that the share capital and share application money received *by the appellant company. A genuine, and no addition in this regard is called for.However, the critical comment of section 68 is that the identity, capacity and genuineness of the transaction has to be cumulatively satisfied failing which the AO can invoke the provisions of section 68 of the Act as the obligation cast to discharge the burden of proof was not met Since. the critical requirement of section 68 of the Act has not been met, the AO had invoked the provisions of section 68 of the Income-tax Act, 1961. The burden under section 68 of the Act is to establish identity of the creditor. capacity of the creditor and genuineness of the transaction to the satisfaction of the AO which is discharged if the assessee proves these three ingredients. The Hon'ble High Court Kolkata in CIT Vs. Korlay Trading Co. Ltd. (1998) 232 ITR 820 (Cal) has held that mere filing of the income-tax file number of the creditors is not enough to prove the genuineness of the cash credit. The creditor should be identified. There should be creditworthiness_ There should be a genuine transaction. In K.M. Sadhukhan& Sons P. Ltd Vs. CIT (1999) 239 ITR 77 (Cal), it has been held that the burden lies on the assessee to prove the genuineness of loan. The Hon'ble High Court has held that the initial burden is on the assessee to prove the identity of the creditor, the capacity of the creditor to advance the loan and the genuineness of the transaction. In CIT Vs. Precision Finance P. Ltd (1994) 208 ITR 465 (Cal). the Tribunal deleted the addition on the footing that since the transactions were through bank account. hence it was to be presumed that those were genuine. Setting aside the order of the Tribunal. the Hon ble High Court of Kolkata has held that : "It is for the assessee to prove the identity of the creditors. their creditworthiness and the genuineness of the transactions. Mere furnishing of the particulars is not enough. All the three constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can lawfully make addition."*

9 7 So far as the case of a company issuing shares vis-a-vis the burden cast u/s 68 in respect of share capital is concerned, the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195(SC), as well as of Stellar Investment (2001) 251 ITR 263 has held 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 the law, but, it cannot be regarded as undisclosed income of the assessee. This judgement has been critically analysed in the case of CIT Vs Maithan International (2015) 277 CTR 65 (Cal)

> *"This reasoning must apply a fortiori to large scale subscriptions to the shares of a public company where the latter may have no material other than the application forms and bank transaction details to give some indication of the identity of these subscribers. It may not apply in circumstances where the shares are allotted directly by the Company/ assessee or to creditors of the assessee. This is why this Court has adopted a very strict approach to the burden being laid almost entirely on an assessee which receives a gift "*

9.8 In this case, the Hon'ble High Court of Kolkata appreciated the possible difficulty which an assessee may be faced with when asked to establish unimpeachable creditworthiness of the share subscribers'. It observed that the "this aspect has to be decided on factual matrix of each case and strict or stringent test may not be applied to arms length angel investors or normal public issues. The said doctrine is applied when there is evidence to show that assessee may not be aware. could not have knowledge or was unconcerned as to the source of money paid or belonging to the third party However, when there is surrounding evidence and material manifesting and revealing involvement of the assessee in the "transaction " and that it was not entirely an arm's length transaction, resort or reliance to the said doctrine may be counter-productive and contrary to equity and justice. The doctrine is not an eldritch or a camouflage to circulate ill-gotten and unrecorded money.- Thereafter in para 25. the Honble High Court specifically considered the judgment in the case of Lovely Exports (supra) It also took into consideration the judgment in the case of CIT Vs. Nova Promoters &Finlease P. Ltd. (2012) 342 ITR 0169 (Del), in which it was held that 'in view of the link between the entry providers and incriminating evidence. mere filing of PAN number, acknowledgement of income tax returns of the entry provider bank account statements etc. was not sufficient to discharge the onus. After thoroughly e Exports judgment in the light of other judgments. the High Court has concluded by holding that: "In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers....In the case of private placement the legal regime WO the same. A delicate balance must be maintained while walking the tightrope 68 and 69 of the Income Tax Act."

9.9 The Hon'ble High Court of Kolkata in CIT Vs. Active Traders (P) Ltd. (19 ITR 583 (Cal) has held that the Assessing Officer in the assessment of the cc has jurisdiction to ask for the information from the shareholders regarding the so investment made in the company. It set aside the view of the tribunal that there be no enquiry regarding the source of investment of the shareholders in the sha the company. Their Lordships observed that : "If a cash credit is shown b company in its books of accounts and if the source cannot be explained proper) ITO may assess the sum as income of the company from undisclosed source.

9 10 Further. in Mimec (India) P. Ltd. &Anr Vs. DCIT &Ors. (2013) 3531TR 0284 wherein the assessee relied on the ratio in the case of CIT vs. Lovely Exports Pvt. for contending that if share application money was received even from bog shareholders. the Department could not regard it as undisclosed income of t, assessee company Repelling such contention. the Hon'ble High Court of Kolke observed that "The judgment in Commissioner of Income Tax vs. Lovely Exports F Ltd was rendered in the particular facts and circumstances of that case. The judgment may not lay down any proposition of law that operates as a binding precedent on ti Court..

9 11 The Hon'ble High Court of Kolkata in CIT Vs. NivedanVanijyaNiyojan Ltd. (20C 263 ITR 0623 (Cal) has held that where the assessee-company *did not produce subscribers of its share capital when required to do so, it failed to establish the identity of said subscribers. prove their creditworthiness and the genuineness of the transactions and therefore addition under section 68 was justified.*

12 The Hon'ble Delhi High Court in CIT Vs. Navodaya Castles Pvt.Ltd. (2014) 367 ITR 0306 (Del) following the principle laid down in Nova Promoters (supra) has held that the share capital in case of a closely held company is required to be examined by the AO in terms of section 68 and the failure of the assessee to satisfy the AO. calls for addition u/s 68. It is useful to mention that the SLP filed by the assessee against this judgment has been dismissed by the Hon'ble Supreme Court which has been since reported as Navodaya Castles Pvt. Ltd. Vs. CIT (2015) 230 Taxman 268(SC).

9.13 Therefore the assessee has to submit the primary evidence of the cash credits i.e. the confirmation from the creditor with PAN which can prove the identity of the party and has further to prove the nature and source as well as the genuineness of the transaction However, the onus does not get discharged simply on filing confirmation letters as is held in the case of United Commercial and Industrial Co(Pvt) Ltd. reported in 187 ITR 596 (Cal). In the case of Precision Finance Pvt. Ltd.. 208 ITR 465 (Cal). it is held that simply because the amount is received by cheque that is not enough to discharge the onus. Further when confirmations were filed and the AO did not proceed further and did not issue any notice u/s 131 to those companies and their directors, the addition is not justified as has been held by the Supreme Court in the case of Orissa Sales Corporation reported in 159 ITR page 78.

9 .14 In short the principles laid down by various courts is that the initial onus is on the assessee to establish the identity. prove the genuineness of the transaction and establish the creditworthiness of the creditor This has again been repeated in the case of Oasis Hospitalities Pvt. Ltd. reported in 333 ITR 119 (Delhi).

9. 15 The appellant in the course of the assessment proceedings as well as in the course of the appellate proceedings had failed to satisfy the three vital ingredients of section 68 of the Act to the satisfaction of the AO particularly in respect of the identity creditworthiness and genuineness of transaction including the bona fide of the transaction in question particularly in light of detailed enquiry carried out by the AO of the case in this regard. As the necessary three ingredients have to be cumulatively satisfied to escape from the clutches of section 68 of the Act in view of the judicial pronouncements supra, the action of the Assessing Officer in adding the amount of share capital and share application money of Rs.3,65,00,000 as unexplained cash credit under section 68 of the Act is hereby upheld and this ground of appeal is thus dismissed."

Accordingly, the CIT(A) dismissed the appeal of the assessee on legal ground as well as on merits also.

6. Feeling aggrieved from the order of CIT(A), the assessee filed appeal before the Income Tax Appellate Tribunal.

7. Ld. AR submitted written synopsis which reads as under :-

The A.O. has drawn adverse inference on the ground that the language in the confirmations, text and typing font in the confirmation are identical although the subscribers are located on different addresses at Delhi/ Kolkata and accordingly the A.O. has disbelieve the confirmation and treated the transaction as dubious in nature and has further held that in absence of complete account statement the source as well as creditworthiness of the subscribers cannot be ascertained. The findings of the A.O. has been affirmed by Ld. CIT(A) who in penultimate paragraph of its order at page 23 has held that assessee has failed to satisfy the three vital ingredients i.e. identity, creditworthiness and genuineness of transaction in view of enquiry carried out by the A.O.

Thus the issue to be decided by this Hon'ble Tribunal is whether the assessee has discharged its onus saddled by section 68 or not ?

It is already on record that the Assessing Officer has issued notices u/s 133(6) on 10.11.2017 to the 3 subscribers whose names were appearing in the reasons recorded (copy placed at page 66 to 73 to of PB). The appellant vide reply dated 06.12.2017 (page 4fe_ toT3 of PB) has submitted the names, addresses and the amount of share application / premium besides the complete details of subscribers' bank account and the distinctive numbers and share certificate numbers of the shares issued to the subscribers along with copy of Form 2 submitted to ROC Bihar, Patna. The Assessing Officer on the basis of the information so furnished has issued notices u/s 133(6) to 36 subscribers. It has been admitted by the A.O. that out of 39 subscribers compliances have been made from 32 subscribers (excluding 3 subscribers mentioned in the reasons recorded), copies of confirmations from 30 subscribers (including 3 subscribers mentioned in the reasons recorded) are forming part of the assessment order marked as Annexure-1 to the assessment order as would be evident from page-6 of the assessment order. Thus out of 39 subscribers, 35 (32+3) subscribers have complied to the notices u/s 133(6) and have confirmed their respective investment. The A.O. at page 6 of the order has clearly stated that the confirmation sent by the subscribers also contains their bank statement showing transfer of the share capital. Thus the admitted fact on record is that 35 subscribers out of 39 have responded to the enquiry instituted by the *department u/s 133(6). In respect of remaining 4, there is no allegation that notices issued to them have not been served and/or returned back with postal remark such as 'addressee not traceable' or 'left the premises' or 'refuse to accept' the notices. The fact remains that notices to the remaining four subscribers were served and no action whatsoever was taken by the A.O. to ensure there compliance. Thus none compliance by four subscribers cannot be attributable to the appellant.*

It would be evident from reply dated 06.12.2017 that out of 39 shares subscribers, shares to 16 subscribers were allotted in subsequent financial year 2010-11 corresponding to A.Y. 2011-12 on 10.05.2010 amounting to Rs. 1,01,50,000/- (page to of PB).The case of A.Y. 2011-12 was also subjected to scrutiny assessment and it is already on record that the A.O. has conducted verification from these 16 subscribers in the year of allotment as one of the reason for selection of case was increase in share capital. On being satisfied the A.O. has completed the assessment u/s 143(3) vide order dated 27.03.2014 (copy enclosed at page of PB). This fact was already intimated to the A.O. in reply dated 06.12.2017 at paragraph (iv), (v) and list of 16 such subscribers were forming part of the said reply (page of PB). Thus besides enquiry in the year under consideration, share capital to the tune of Rs. 1,01,50,000/- out of total share capital of Rs.3,65,00,000/- was enquired into in the year of allotment i.e. A.Y. 2011-12.

On the basis of evidence already on record it is established beyond all reasonable doubt that the appellant has discharged its onus of proving identity, genuineness of transaction and creditworthiness in respect of the share application / capital including premium and hence the finding of the A.O. that the transaction is not genuine and/or creditworthiness has not been established and affirmation of such finding by the CIT(A) is contrary to the evidences / material already on record.

It is respectfully submitted that the case of the appellant is squarely covered by the judgment of the jurisdictional High Court in the case reported in 154 ITR 244 (Pat) - ACIT Vs Bahri Brothers wherein their lordships have held as under :

"In the instant case, the transaction were completed through account payee cheque. The creditors gave the amount in question to the assessee by account payee cheque which were encashed by the assessee through his own Bank. Not only this, the assessee has also submitted the copy of a certificate of the Bank to the effect that the cheques in question, given by the creditors, were honoured in favour of the assessee.

When the assessee disclosed the names of the creditors and the names of the Bank on which the cheques were drawn, the assessee discharged the primary onus and the assessee not only disclosed the identity of the creditor but also the source of income,

In view of these facts, it could not be said that the creditors were fictitious persons. "

If the facts of the appellant's case is tested on the anvil of the aforesaid judgment of the Jurisdictional High Court, there is no dispute that the sum in question had come from subscribers who are assessed to tax, sum in question have been received through proper banking channel, the subscribers are known to income tax, bank and ROC and hence the aforesaid judgment of the jurisdictional High Court applies on all fours to the facts of the appellant's case.

Further, the case of the appellant is covered by the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Stellar Investment reported in 192 ITR 287 which has been affirmed by Apex Court whereby the SLP of the department was dismissed (reported in 251 ITR 263). The relevant portion from the judgment of the Delhi High Court is reproduced hereunder :-

"The petitioner seeks reference of the following question :

"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct both on facts and in law in holding that the provisions of section 263 have not been validly invoked in this case by ignoring the material fact that the Assessing Officer had failed to discharge his duties regarding the investigation with regard to the genuineness and creditworthiness of the shareholders, many of them being students and housewives ?"

In the present case, the subscribed capital of the assessee had been increased. The Income-tax Officer assessed the company and accepted the increase in the subscribed capital. The Commissioner of Income-tax came to the conclusion that the Assessing Officer did not carry out a detailed investigation inasmuch as there had been a device of converting black money into white by issuing shares with the help of formation of an investment company. The Commissioner of Income-tax further held that the Assessing Officer did not make enquiries with regard to the genuineness of the subscribers of the share capital. He thereupon set aside the order of assessment.

The Tribunal reversed this decision for reasons which we need not go into.

8. Further, the ld. AR submitted as under :-

On the last date of hearing i.e. 18/06/2019, the Ld. CIT DR has filed the following documents, a copy of which has been handed over to the appellant in the Bench in course of hearing on 18/06/2019 :-

Letter issued by Income Tax Officer (Technical) addressed to CIT (ITAT), Patna dated 17/06/2019 with following enclosure :-

1. Letter communicating of approval of PCIT-1, Patna vide F.No.CIT-1/Pat/Tech/ U/s 147/2016-17/8335 dated 31/03/2017;
2. Form No.ITNS 10.

After perusal, it was argued on behalf of the appellant that (i) this document i.e. Form no.ITNS 10 cannot be admitted without its forensic examination and (ii) as per the judgment of Hon'ble Patna High Court reported in 189 ITR 786 (copy enclosed at Page 06-15 of this compilation) the validity is to be tested with reference to the reasons recorded u/s 148(2) and none of the authorities are authorized to refer to any other reason even if it can be otherwise inferred and/or gathered from the record.

It would be evident from the letter dated 17/06/2019 that the enclosures (2) containing the alleged antedated satisfaction of the Pr. CIT is forming part of the record of the Pr. CIT and not of the Assessing Officer. Pursuant to petition dated 17/05/2018 (copy enclosed at page16-17 of this compilation) the Assessing Officer has issued certified copy of Form 10 (forming part of PB dated 12/03/2019 at page 41 & 42) which does not contain any satisfaction of the two authorities which are now appearing in the copy of Form 10 given along with letter dated 17/06/2019 before the Hon'ble Tribunal. The forensic examination, before this Form No. 10 could be admitted as an evidence, is necessary as the records are in possession of the authorities i.e. Pr. CIT and is not part of the record of the Assessing Officer. As stated above, the record of the Assessing Officer do contain Form 10, certified copy of which has been given by the AO (page 41 & 42 of PB) which does not contain any alleged satisfaction.

There no variation in respect of the other enclosure i.e. enclosure (1) of letter dated 17/06/2019 which is letter issued from the office of Pr. CIT bearing no.8335 (which is forming part of page 45 of the PB). The certified copy of the order sheet at page 75 of PB refers to the approval of Pr. CIT vide letter dated 31/03/2017 which is Enclosure (1), a certified copy of which has been given by the AO and is enclosed at page-45 of the PB.

The Hon'ble Patna High Court had an occasion to consider a case like in the case of CIT Vs Aggrawala Brothers reported in 189 ITR 786 (copy placed at page 06-15 of PB) wherein the challenge was to initiation of proceedings u/s 147. The Hon'ble Court has noticed the findings of the Hon'ble Tribunal at page 790 (towards the end), the relevant portion is reproduced hereunder :-

Another important fact noticed by the Tribunal in its order is that, as per the report of the inspector, one particular construction has not been shown by the assessee in the accounts though this construction has also been undertaken in this year. It has proceeded to hold that this omission on the part of the assessee has not formed the basis for taking action u/s 147(a) of the Act, in as much as this reason has not been recorded as envisaged u/s 148(2) of the Act and therefore, this cannot be taken to be a basis for sustaining the validity of the impugned action and, accordingly it held the proceedings to be invalid and cancelled the order of reassessment. "

The Hon'ble High Court after considering the above said findings of the Hon'ble Tribunal has given the following verdict :-

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Therefore, the legislative scheme is that the Income-tax Officer can clothe himself with the jurisdiction to assess or reassess under section 147(a) of the Act only if he records the reasons which can stand the test of relevance in accordance with the judicial pronouncements and after obtaining necessary sanction as stated above notices are issued by him but if, in any case, it is found that the reasons recorded by him are not germane to the exercise of jurisdiction under section 147(a) of the Act, then the very assumption of jurisdiction will be ab initio void rendering the entire process of assessment as a nullity. There can be hardly any doubt in holding that the recording of the reasons is a prerequisite to the assumption of jurisdiction by the Income-tax Officer for initiating the proceedings under section 147(a). The reasons so recorded acquire much significance when the action is taken under clause (a) of section 147 because it is only the recorded reasons which can indicate as to why the Income-tax Officer was made to believe that income has escaped assessment for the relevant assessment year. Further, the language employed in section 151 clearly leads to the conclusion that the Board or the Commissioner of Income-tax, while according sanction for issuance of notice under section 148 and for coming to an objective conclusion authorising the Income-tax Officer to take action under section 147(a), are required to confine themselves only to the reasons recorded by the Income-tax Officer.

Therefore, looking at the entire scheme and purpose of the Act, I am of the considered view that the validity of the assumption of *jurisdiction under section 147(a) can be tested only by reference to the reasons recorded under section 148(2) of the Act and the Income-tax Officer is not authorised to refer to any other reason even if it can be otherwise inferred and/or gathered from the records. If the reasons so recorded are such that, on their basis, it can possibly be said that income chargeable to tax has escaped assessment for a certain assessment year because of the omission or failure on the part of the assessee to make a return for that year or to disclose fully and truly all material facts necessary for such assessment, there can be a valid case for invoking the jurisdiction conferred by clause (a) of section 147. If, on the contrary, the reasons recorded by the Income-tax Officer cannot lead to such a conclusion, the proceedings initiated by the Income-tax Officer under that clause must be declared as ab initio void."*

In the present case, the validity of 147 is to be tested with reference to the certified copies issued by the department and Form No. 10 a~~ad Form No. 19~~ does not contain any satisfaction of the Pr. CIT (page-42 of the PB).

The case of the appellant is squarely covered by the judgment of the jurisdictional High Court referred to above and hence it is prayed that the proceedings may kindly be annulled for want of the satisfaction and/or alternatively it is to be held that the satisfaction is mechanical and without application of mind (kindly refer page-5 to 9 of written submission filed along with PB dated 12/03/2019) and in view of the above said judgment of jurisdictional High Court has laid out that "Further, the language employed in section 151 clearly leads to the conclusion that the Board or the Commissioner of Income-tax, while according sanction for issuance of notice under section 148 and for coming to an objective conclusion authorising the Income-tax Officer to take action under section 147(a), are required to confine themselves only to the reasons recorded by the Income-tax Officer. "

The Td. CIT DR has also relied on the judgment of Apex Court in the case of NRA Iron & Steel now reported in 412 ITR 161 which has already been dealt with at pages 35 to 38 of WS submitted along with PB dated 12/03/2019.

The Td. CIT DR has also relied on the order of the Hon'ble Jaipur Bench of Tribunal dated 16/02/2018 which is distinguishable on facts as would be evident from page-48 para 16 wherein the Hon'ble Tribunal has found as a fact that "notwithstanding the same, nothing has been brought to our notice which demonstrates that these confirmations were filed by the asses see company and accepted by the AO during the course of assessment proceedings. " In the present case the Assessing Officer, however, recorded a categorical finding at page-7 of the order which is reproduced hereunder :-

"Out of a total number of 39 corporate entities replies were received in 32 cases. On perusal of these replies, however some very strange facts come to notice. The similarities between the confirmations received from different companies is striking. The language of the confirmation, 'the very text and the typing font, everything is same, though the companies are located at different addresses. The confirmations of almost all companies located at Kolkata, though at different addresses are identical. Similarly, confirmation of the companies located at Delhi at different addresses are identical. These confirmations carry the same wording, the same text and font. In many cases even the envelope is also identical. Copies of some of such identical confirmations are annexed to this order as annexure- 1 containing 1 to 30 pages and the same are part of the order. "

[already quoted at page-14 & 15 of the WS]

The confirmation, balance sheet, bank account, etc. of 35 parties are available out of 39 investors on the record of the Assessing Officer pursuant to the enquiry conducted by the AO u/s 133(6). Thus, the decision relied upon by the Ld. CIT DR is not applicable to the facts of the appellant's case.

The assessment record can be requisitioned and the original record from the office of PCIT as mentioned in letter dated 17/06/2019 may also be requisitioned.

9. Further, ld. AR contended that there is a difference in figure in the reasons recorded and findings recorded by the AO, therefore, the reopening is not sustainable.

10. On the other hand, ld. DR relied on the orders of lower authorities and submitted that the order of the lower authorities should be restored. Ld. DR further submitted that the creditworthiness of the share applicants have not been proved. The share applicants have shown meager amount in their return of income and some of the companies have been created in the financial year 2006-2007 & 2007-2008 and have got huge reserve and surplus without doing any fruitful business. Some of the companies have

shown their income from commission. They have produced their bank statements only for the transactions period most for 2-3 days. The entire bank statement has not been produced, from which it is not possible to find out as to whether the money has been transacted or not. Ld. DR in respect of approval u/s.151 of the Act produced the copy of ITNS-10 forms approved u/s.151 before us and submitted that the copies of the forms was provided to the assessee might have been given copy of the Assessing Officer forms which was submitted before the appropriate authority for approving the case. Therefore, the particular columns were not filed. Accordingly, the approval has been obtained properly. Ld. AO has disposed off the objections two times filed by the assessee by way of speaking order, therefore, the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs. ITO & Ors, 259 ITR 019 (SC) has properly been complied with. Further, ld. DR also relied on the decision of Hon'ble Supreme Court in the case of PCIT vs NRA Iron & Steel Pvt Ltd.,(412 ITR 161) and submitted that the issue of showing meager/zero amount in the return of income by the share applicants has been decided by the Hon'ble Supreme Court in the above case and similar is the position in the case of the present assessee. In the present case in hand, the share applicants have shown meager/zero amount in their return of income and creditworthiness of the share applicants have also not been proved, therefore, the above decision of Hon'ble Supreme Court is squarely applicable in the present case. Ld. DR further relied on the order of coordinate bench of the Tribunal in the case of Shree Bhagwati Concast Pvt. Ltd, in ITA No.33/JP/2015, order dated 16.02.2018.

11. Ld. DR also submitted that the provisions Section 68 require to prove by the assessee of three ingredients i.e. identity of creditors/depositors, creditworthiness and genuineness of the transaction is to be fulfilled by the assessee. In this case, one of the three ingredients i.e. creditworthiness of the share applicants have not been proved, therefore, Section 68 is applicable. Accordingly, ld. DR submitted that the AO has rightly invoked the provisions of Section 68 of I.T.Act and rightly made additions. Ld. DR also submitted that the case relied on by the AR is not applicable in the present facts of the case in hand.

12. After hearing both the parties and carefully perusing the entire material on record and orders of authorities below, we find that during the course of argument ld. AR contended that reopening is time barred because the notice u/s.143(2) of the Act was issued beyond six months from the prescribed period. We observe that the notice u/s.147/148 of the Act was issued on 31.03.2014, which was duly served on the assessee on 03.04.2017 and the assessee stated by way of written submission on 03.04.2017 stated that the original return filed on 11.10.2010 may be treated as return filed in response to notice u/s.147/148 of the Act. Therefore, the return would be deemed to be filed in the financial year

2017-2018. The AO can issue notice within six months from the end of the financial year in which the return has been filed. In the present case, the AO issued notice u/s.143(2) of the Act on 22.11.2017 which is under limitation period and the reassessment has also been completed on 29.12.2017, which is under the limitation period and the reassessment has also been completed on 29.12.2017, which is under the time limit as prescribed u/s.153 of the Act. Therefore, this ground of assessee is also rejected.

13. We further notice that in the grounds of appeal, the assessee has also stated that the CIT(A) has passed the ex-parte order without giving reasonable opportunity of hearing and violated the provisions of natural justice. In this regard, we noted from the order of CIT(A) that he has issued notice to the assessee for compliance but it is clear from the order of CIT(A) that the assessee has not complied the notice issued by the CIT(A) even reasonable opportunity has been given to him. Therefore, the CIT(A) has contested the issue on the basis of material before him. Accordingly, the ground of assessee is also rejected.

14. The AR of the assessee contested that proper approval has not been obtained from the appropriate authority before initiating the proceedings u/s.147/148 of the Act, in this regard we perused the copy of ITNS-10 which is placed at paper book at page 41 & 42 at column Sl. No.12 & 13 which is blank and this form has been certified by Manish Verma, ITO

Ward-2(1), Patna without dated. We also noted from the ITNS -10, which is filed by the CITDR that column No.12 & 13 has duly been filled by the appropriate authority. We are in agreement with the contention of ld. DR that the proposal copy for approval might have been given to the assessee as certified copy which was kept in the file of the AO at the time of sending for approval as one office copy. Therefore, this argument of the ld. AR of the assessee is also rejected.

15. With regard to the contention of ld. AR that the reassessment is not sustainable as there is a difference in figure in reasons recorded and in the findings recorded by the AO. In this regard, we are of opinion, that if there is any difference of figure mentioned in the reasons recorded and the findings recorded by the AO, that will not amount to non-sustainability of the reassessment proceedings. Accordingly, we reject this ground of assessee.

16. We also find that Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs. ITO & Ors, 259 ITR 019 (SC) has held that when a notice under section 148 of the A.T.Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In this case, the

Assessing Officer has given the reasons to the assessee for reopening of the assessment and after considering the objection to the reopening of assessment, has disposed of the objection of the assessee to the initiation of proceedings by way of speaking order passed which has been incorporated in the assessment order. Therefore, the conditions precedent in the decision of Hon'ble Supreme Court in the case of GKN Driveshafts (supra) has been complied with by the Assessing Officer. We also find that the CIT(A) has given a categorical finding with regards to the reopening of assessment and referred various judicial pronouncements on this issue and rejected the ground of initiation of assessment proceedings. We, therefore, uphold the same and dismiss this part of ground of appeal of the assessee.

17. Now, coming to the merits of the case, we find that in this case, the Assessing Officer noticed that the assessee has received Rs.4,93,50,000/- consisting of Rs.1,53,35,000/- as share capital and Rs.3,40,15,000/- as share premium for the company from 39 corporate entities. As all the share applicants are located at Delhi and Kolkata, the Assessing Officer, in order to ascertain the genuineness of share capital and share application money received by the assessee, issued notices u/s.133(6) of the Act to all the share applicants on the addresses provided by the assessee. Out of 39 corporate entities, replies were received from 32 corporate entities. On perusal of the same, the Assessing Officer was of the view that striking similarities have been found in respect of such replies i.e. the language of

the confirmation, very text and typing font of all these confirmations though the corporate entities are located in two different places. He also noticed that identical confirmations have been sent on the same day itself and partial bank statements were also submitted. Therefore, the Assessing Officer observed that these confirmations does not substantiate the genuineness of the share capital and share application money introduced into accounts of the assessee during the year as regards its source. Therefore, share capital of Rs.2,63,50,000/- and Rs.1,01,50,000/- as share application money introduced was treated as unexplained credit under section 68 of the Act and added the same to the total income of the assessee.

18. Before us, Learned A.R. of the assessee relied on the decision of ITAT Kolkata in the case of Baba Bhootnath Trade & Commerce Ltd (supra),wherein, the Tribunal followed the decision of Hon'ble Supreme Court in the case of vs NRA Iron & Steel Pvt Ltd.,((supra) in deciding the issue in favour of the assessee. The Ld. A.R. argued that the onus cast on the assessee is fully discharged and there is no cause to take recourse to section 68 of the Act since the income tax returns and acknowledgements of the investor companies were provided to establish the identity of the investors and genuineness of the transaction. We find that the Hon'ble Supreme Court in the case of NRA Iron and Steel Pvt Ltd (supra) held that the assessee company is under a legal obligation to prove the source of receipt of share capital and/or premium to the satisfaction of the Assessing Officer. Mere

filing of primary evidence of investors does not discharge the onus cast on the assessee company by virtue of section 68 of the Income-tax Act, 1961.

19. With regard to decision relied by ld D.R. in the case of Shree Bhagwati Concast Pvt Ltd., (supra), the fact were that the assessee received share capital and share premium totalling to Rs.1,81,84,399/-. Since the assessee could not furnish necessary details to verify the genuineness of investment and confirmation, the Assessing Officer disallowed the said amount on the ground that mere establishing the identity of the creditor or the transaction have been routed through banking channel is not enough to prove the creditworthiness and genuineness of the transaction. On appeal, the CIT(A) called for remand report from the Assessing officer and after considering the same confirmed the addition. However, the Tribunal has set aside the matter to the file of the Assessing officer to examine the matter afresh considering the requirements to be furnished for claiming the deduction by the assessee.

20. We find that it is the assessee's legal obligation to prove to the satisfaction of the AO the genuineness of the transaction, the identity of the creditors and credit-worthiness of the investors, whether they have the financial capacity to make the investment in question, and thus discharge the primary onus. The AO 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; and 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.

21. The AO issued notice u/s.133(6) of the Act to all corporate assessees out of 39, 32 share applicants have complied the notice of AO and from the statement of share applicants, the AO observed as has been spelled out in the above orders as quoted above. Ld. DR has also relied on the decision in the case of NRA Iron and Steel Pvt. Ltd. (supra), the Hon'ble Supreme Court observed that the share applicants have shown meagre/zero income and the creditworthiness of the share applicants have not been proved, which is necessary as per the provisions of Section 68 of the Act. In the present case also the share applicants have shown meagre income and their creditworthiness have not been proved. Ld. AR has filed documents regard to the above 39 share applicants however, it has not been certified as to whether the documents have been produced before any authorities below. For examination and finding out as to whether the 39 share applicants have fulfilled the ingredients as prescribed in the provisions of Section 68 of the Act, we would like to discuss the documents filed with regard to 39 share applicants in the following paragraphs.

a. M/s Debraj Vincom (P) Ltd. (PB 1 to 5) : (Rs.10,00,000/-)

The documents in relation to share application money of Rs. 10,00,000/- from this company have been filed at pages 1 to 5 of the paper book. The documents include Share Application form, details of Cheque/DD dated 22.09.2009, Acknowledgement of Return Filed for the assessement year 2009-10 declaring total income of Rs. 6007/- PAN CARD and audited balance sheet for the year ending 31.03.2009 without annexure and Schedules notes to accounts. No bank statement filed and Trading and Profit and Loss Accounts filed. On perusal of the balance sheet as on 31/03/2009 available on page 05 of the paper book, we find that share capital of Rs. 35,66,500/-and share premium of Rs. 16,98,58,500/-and Profit and Loss Account of Rs. 4150.50 and also sundry creditors of Rs. 82500 and Provision of Rs. 1856/- are shown. Against this liability, closing stock of Rs. 12,25,66,000/-, Cash and Bank balance of Rs. 3,54,349.50/- and loans and advances of Rs. 5,05,22,357/- and miscellaneous expenditure of Rs. 70,800/- have been shown. The taxable income shown in the income tax return is meagre amount. The date of birth of share applicant is as per PAN CARD 21.08.2008.These figures of the balance sheet, shows that alleged share applicant is not having creditworthiness to make investment in share application to the tune of Rs. 10,00,000/-.

b. <u>Sunima Steel Marketing Prvt. Ltd</u>. (PB 6 to 9) : (Rs.10,00,000/-)

The share applicant has shown nil income in his return of income produced at page No.8. On perusal of the balance sheet filed by the assessee which is placed at paper book page at 9 only summary of balance sheet has been produced in which the share applicant has shown application of funds as on 31.03.2009 under the head current assets, loans advances as under :-

i)	Stock	Rs.163,994,000.00
ii)	Sundry Debtors	--
iii)	Cash & Bank Balances	Rs.597,036.00
iv)	Loans & Advances	Rs.5,620,000.00
	Total	Rs.170,211,036.00

We further observed that the assessee as per share application form had applied for 10,000 shares at a Rs.100/- i.e. for Rs.10,00,000/- and nil return of income has been filed and the assessee has not submitted any trading profit and loss account. Even no bank statement has been submitted by the assessee. Therefore, creditworthiness and genuineness of transactions are not proved.

c. <u>Mastermind Vanijya Pvt. Ltd.(PB Page10 to 19)(Rs.10,00,000/-)</u>:
The bank statement has been filed only for the month of October, 2009. There was opening balance on the beginning of the month is Rs.90,481/- and on 1st October, 2009, Rs.10,00,000/- have been credited into the bank account. The share applicant has issued cheque in favour of the assessee on the same day which has been cleared on 5th Day of October, 2009. Thereafter there is closing balance was remained of Rs.90,481/- and at the

end of the month, after huge transactions just only credited and debited. The closing balance is remained of Rs.5481/-.The Date of Birth of the company is 4th March, 2008.The assessee has shown meagre income of Rs.4,991/-for the ear ending 31.03.2010 and Rs.10,770/- for the financial year 31.03.2009. The turnover for the company of 31.03.2009 is Rs.7,95,960/- and other income shown at Rs.158,794/- totalling to Rs.954,754/- and total expenditure shown at Rs.9,40,984/- containing purchase, salary, audit fees, printing and stationery, preliminary expenses, w/off, general expenses and back charges. The earnings per share shown in the notes of the account at page no.19 of the paper book is 0.09 & 0.04 for the financial year 2008-2009 & 2009-2010 respectively, the source thatthere is a no creditworthiness. We further noticed that there are huge reserve and surplus of the company.

d. Rajkavira Mercantile Pvt. Ltd. (PB page No.20 to 25)(Rs.10,00,000/-): The assessee has shown income of Rs.3547/- for assessment year 2009-2010, only summary of balance sheet has been submitted which is in page book at page no.25 and no details of balance sheet are available and no trading profit and loss account submitted. The bank statement has also not been produced. Therefore, the genuineness of transactions and creditworthiness are not proved.

e. Puspa Dealers Pvt. Ltd. (PB page No.26 to 32)(Rs.15,00,000/-):

The bank statement of the share applicants are available at page No.28 for the period of 7th October to 8th October, 2009. The company has got registered on 7th August, 2007. As per return of income available at paper book page no.30 for the assessment year 2009-2010, the gross total income shown by share applicant is Rs.13,770/-, whereas the huge shareholders funds shown by the applicant is Rs.13,16,22,036/-. The assessee has not submitted the trading profit and loss accounts of the share applicants. No creditworthiness proved.

f. <u>Vivek Tradecomm Pvt. Ltd.(Kolkata) (PB page No.33 to 42)(Rs.10,00,000/-):</u>

On perusal of bank statement, placed at page no.35 of the paper book, the bank statement is available only for the period of 01.10.2009 to 31.10.2009. There was an opening balance of Rs.2,06,237/-. On 13.10.2009, Rs.4,00,000/- was credited and on 16.10.2009, Rs.4,00,000/- was withdrawn. Thereafter on 21.10.2009, Rs.10,00,000/- was credited and on 23.10.2009,Rs.10,00,000/-was debited and paid to M/s Manish Finlease Pvt. Ltd. Vide Cheque No.278257. Thereafter there was a closing balance of Rs.6237/-. There is another debit of Rs.75,000/- and Rs.1,25,000/- on 06.10.2009, respectively. The share applicant has issued cheque in favour of the assessee on 15.10.2009 and on the date of application there was no balance in the bank account. The date of birth of the company is 3rd May, 2008. On perusal of the financial statements, the profit of company is Rs.5,777/- for 31.03.2010 and Rs.11,406/- for the financial year

31.03.2009. The total receipts including turnover of the share applicant is Rs.23,37,464/- and Rs.16,44,076/- for the financial year 31.03.2009 and 31.03.2010, respectively and earning per share for 31.03.2009 & 31.03.2010 is 0.07 and 0.03, respectively. It shows that the company has no creditworthiness.

g. BOR Securities Limited (PB Page No.43 to 48)(Rs.30,00,000/-) :

We noticed from the documents of the share applicants in share application form placed at paper book page no.43 the date of application is 22nd May 2007 running serial No.083and the face value of the share is Rs.10 and share premium is Rs.10 resultantly the value of per share is Rs.20/- (10+10). The share applicant has applied in assessee's company for Rs.1,50,000/- shares and the value of shares is Rs.30,00,000/-. The resolution passed by the share applicants is at page no.22 dated 22nd January, 2009. But only they have authorised to the directors of the company for investing the surplus money in the shares securities, debentures, etc. No separate resolution are available on the record. The share applicants return of income for the assessment year 2009-2010 is placed at paper book at page no.45 showing total income of Rs.6924. The assessee has enclosed only the auditor's report of the share applicants for the year ending 31.03.2010 and there is no balance sheet, trading profit and loss account and bank statements of the share applicants. The assessee has also not submitted latest share application forms. We further observed from the other's share applications forms, it has been issued at Rs.100/- including premium of Rs.90/- but this applicant has been issued at Rs.20/-. Therefore, asper our considered opinion, the creditworthiness and genuineness of the share applicants are not proved by the assessee.

h. <u>Dhanmall Vyapaar Pvt. Ltd.(PB Page No.49 to 58)(Rs.10,00,000/-) :</u>

On perusal of the share application form placed at page no.49, dated 11.01.2010, the share applicant has applied total 10,000 shares at Rs.100/- including premium of Rs.90/- and on perusal of paper book page no.50, which is seem to be confirmation that he has subscribed for 50000 equity shares for Rs.10,00,000/-. On perusal of paper book page no.51, the income of the share applicant has been shown Rs.1530/-. Further on observation of banking statement placed at page no.53 the bank statement is from 01.12.2009 to 13.01.2010, the opening balance is Rs.7046/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same were withdrawn on the same day or on the next day and there is a closing balance of Rs.3,06,934/-. The assessee has not produced trading profit and loss account. Only the balance sheet has been produced. From the page no.58 from financial information it was gathered that the total turnover of the company has been shown at Rs.12,72,530/- and total expenditure has been shown at Rs.12,71,019.06 and the profit before tax is Rs.1510.94 Therefore, the creditworthiness of the transaction could not be proved by the share applicant.

i. <u>Alishan Sales Pvt. Ltd.(PB Page No.59 to 65)(Rs.08,50,000/-) :</u>

On perusal of the acknowledgement of income tax return for the assessment year 2008-09, the share applicant has shown total income of Rs.20,306/-. Page No.60 is not visible. No trading profit and loss account has been produced. Therefore, the genuineness and creditworthiness of the transaction is not proved.

j. <u>Dhanlabh Tie Up Pvt. Ltd.(PB Page No.66 to 75)(Rs.10,00,000/-)</u>

The share applicant has applied on 19.01.2010 for 50,000 equity shares at Rs.20/- including premium of Rs.10/-. On perusal of bank statement placed at page no.68, there is opening balance on 01.01.2010 of Rs.9717 and on 31.01.2010 the same figures are appearing as closing balance. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same were withdrawn on the same day or on the next day or after two days. The company has shown total turnover of Rs.41000/- and total expenses is Rs.42,000/-(containing bank charges, company secretary fees, filing fees, office expenses, postage and stamp, printing and stationery, salary, audit fees and preliminary expenses written off) for the financial year 31.03.2010. No return of income has been produced. The AR of the assessee is unable to prove the creditworthiness of this transaction. We further noted that the assessee company has issued shares to others at Rs.100/- including Rs.90/- as premium.

k. <u>Navratra Commodities Pvt. Ltd (PB Page No.76 to 84) (Rs.5,00,000/-)</u>

The share applicant has applied on 29.01.2010. On perusal of paper book page 78 on the return of income for the assessment year 2009-2010, the share applicant has shown nil income. The total receipts of this share applicant is Rs.1,03,627.33 and Rs.1,72,537/- for the financial year 31.03.2009 & 31.03.2010 and total expenditure is of 101, 337.05 and 170,082.35. No bank statement has been produced. Therefore, the creditworthiness and genuineness of the transaction could not be proved by the assessee.

l. <u>Omkar Agencies Pvt. Ltd. (PB Page No.85-93) (Rs,5,00,000/-)</u>:

He return of income for the assessment year 2009-10, placed at paper book showing nil income. The total receipts for the financial year 31.03.2009 is Rs.1000088.11 and 104,459,for the financial year 31.03. & 31.03.2010 and total expenditure is Rs.97,247 and Rs.1,03,482.90 for financial year 31.03.2010. There is no proof like income tax return and bank statement, submitted for proving the genuineness and creditworthiness of the transaction.

m. <u>Rup Tradecomm Pvt. Ltd. (PB Page No.94 to 106)(Rs.10,00,000/-)</u> :-

On perusal of page no.96 the return of income submitted for the assessment year 2009-2010, the share applicant has shown income of Rs.5955/-. There is no any proof for the genuineness of the transaction. The company is engaged in the purchase and sale of shares. The total turnover is Rs.8,50,03,000/- and total expenditure is Rs.8,49,99,000/- and the profit before tax is Rs.4130/- for the financial year 31.03.2010. The creditworthiness and genuineness of the transaction of the share applicant has not been proved by the assessee.

n. <u>Exclusive Vincom Pvt. Ltd.(PB Page No.107 to 112)(Rs.03,00,000/-)</u>

On perusal of share application form placed at page no.107 the applicant has applied 3000 shares at Rs.100 per share including premium of Rs.90/- whereas we noticed from page no.112 a letter written by share application company without dated he has applied for 15000 equity shares of Rs.20/- per share including premium of Rs.10/- each. There is contradictory documents produced. Both the documents have been issued by the share applicant. On perusal of page no.109 the gross total income shown of Rs.5690/-. The date of birth of the company is 03.03.2008. Further on perusal of paper book page no.111 the bank statement available on record which showing opening balance of Rs.10,857/- and closing balance on 22.07.2010 it showing also Rs.10,857/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The assessee has produced only summary of the balance sheet placed at page no.112 of the paper book. No profit and loss account have been submitted. The creditworthiness of the investing company could not be proved by the assessee company.

o. <u>Genuine Commotrade Pvt. Ltd. (PB Page No.113-122) (Rs.03,50,000/-)</u> :

On perusal of share application form placed at page no.1123 the applicant has applied 3500 shares at Rs.100 per share including premium of Rs.90/- whereas we noticed from page no.114 a letter written by share application company without dated he has applied for 17500 equity shares of Rs.20/- per share including premium of Rs.10/- each. There is contradictory documents produced. Both the documents have been issued by the share applicant. No return of income has been filed. The date of birth of the company is 04.03.2008. On perusal of trading profit and loss account the assessee has shown Rs.10694/- and Rs.4517/- as a net profit for the financial year 31.03.2009 and 31.03.2010 respectively. Opening balance is appearing in the bank statement of Rs.10,05,025/- and on 2nd January and 13th January, 2010, Rs.10,00,000/- has been withdrawn and only Rs.5025/- is remained in the bank account.The total turnover for 31.03.2009 was nil and only interest on loan has been shown of Rs.1,26,247/-. The total turnover for financial year 31.03.2010 is Rs.13,87,660/- and purchase is Rs.12,50,232/- and earing per share is Rs.0.07 and 0.03 for the financial year 31.03.2009 and 31.03.2010 respectively. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The assessee has produced only summary of the balance sheet placed at page no.112 of the paper book. No profit and loss account have been submitted. The creditworthiness of the investing company could not be proved by the assessee company.

p. Anugarh Sales Pvt. Ltd. (PB Page No.123-132) (Rs.15,00,000/-)

On perusal of page no.123, the share application form, the share applicant has applied for 75000 shares at Rs.20/-. On perusal of bank statement at page no.125, the opening balances of Rs.4850/- and closing balance. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The creditworthiness of the investing company could not be proved by the assessee company. The turnover has been shown at Rs.38000/- and total expenses is appearing at Rs.38000/-. No copy of acknowledgement of return has been produced to prove the genuineness and creditworthiness of the transaction.

q. Magic Infrabuilders Pvt. Ltd. (PB Page No.133-175)(Rs.18,00,000/-):

On perusal of page no.133 the share applicant has applied for 50000 shares at Rs.20/- including share premium of Rs.10/-. On perusal of paper book page no.146, it is noticed that the return of income for the assessment year 2008-2009 has been filed declaring income of Rs.1,19,212/- on the turnover achieved by way of commission of Rs.3,51,81,220/- and total expenses have been shown Rs.3,50,62,008/-. The assessee could not produce income tax return for the assessment year 2009-2010 and 2010-2011 as well as other financial statements. The creditworthiness of the investing company could not be proved by the assessee company.

r. Unique Conbuild Pvt. Ltd. (PB 176-219)(Rs.15,00,000/-) :

On perusal of page no.182 the share applicant has applied for 75000 shares at Rs.20/- including share premium of Rs.10/-. The creditworthiness of the investing company could not be proved by the assessee company. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. Copy of the acknowledgment of the return filed for the assessment year 2007-08 showing total income of Rs.61,729/- has been filed by the assessee. After the assessment year 2007-08, no financial statement and income tax return has been produced filed by the assessee, therefore, the creditworthiness and genuineness of the transaction could not be proved by the assessee.

s. Choice Electricals Pvt. Ltd. (PB 220-251)(Rs.10,00,000/-) :

On perusal of the income tax return filed by the assessee for assessment year 2008-2009 the assessee has declared income of Rs.32,498/-. On perusal of paper book at page 222 company master details printed on 08.07.2009 at 11.18 AM, the authorised and paid up capital is Rs.1,00,000/- whereas as per the balance sheet produced the authorised capital issued and subscribed has been shown at Rs.10,00,000/- for the financial year 31.03.2008. No other financial statements and income tax return for the financial year 31.03.2009 has been provided. The bank statement is placed at paper book at page 225 for the period from 20.05.2009 to 20.06.2009, the opening and closing balance is appearing of Rs.9635/-The creditworthiness of the investing company could not be proved by the assessee company. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days.

t. Lavena Sales Company Pvt. Ltd. (PB 252-276)(Rs.10,00,000/-) :

As per share application form placed at page no.252 the share applicant has applied for 50,000 equity shares, the face value of shares is Rs.10/- along with premium of Rs.10/-. The bank statements placed at paper book page no.256 for the period from 28.05.2009 to 29.05.2009, the opening balance of Rs.1283.83 and the closing balance of Rs.1483.83.The creditworthiness of the investing company could not be proved by the assessee company. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. On perusal of page no.259 the return of income has been filed for the assessment year 2008-09 declaring income of Rs.21,640/-. No latest financial statements and income tax return have been produced.

u. Magic Buildwell Pvt. Ltd. (PB 277-312)(Rs.10,00,000/-) :

The company has filed income tax return for assessment year 2008-2009 and has produced financial statements for the financial year 31.03.2008. No latest financial statements and income tax return had been provided. The creditworthiness of the investing company could not be proved by the assessee company.

v. <u>Nitya Sales Company Pvt. Ltd. (PB 313-336)(Rs.10,00,000/-)</u> :

As per share application form placed the share applicant has applied for 50,000 equity shares, the face value of shares is Rs.10/- along with premium of Rs.10/-. The bank statements placed at paper book page no.316 dated 01.06.2009 to 03.06.2009, the opening balance of Rs.1216.05 and the closing balance of Rs.1335.05.A sum of Rs.10,00,119/- has been credited on 02.06.2009 and on the same day it has been withdrawn. The return of income placed at paper book page at 319 for the assessment year 2008-2009, the return of income has been shown of Rs.22,629/-. No latest financial statements and income tax return have been produced. The creditworthiness of the investing company could not be proved by the assessee company.

w. <u>R.M.Electricals Pvt. Ltd. (PB 337-363)(Rs.10,00,000/-)</u> :

On perusal of page no.342 with regard to ban statement filed for 03.06.2009 to 20.06.2009, there is opening balance and the closing balance of Rs.9719/- From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. On perusal of page no.344 the return of income has been filed for the assessment year 2008-09 declaring income of Rs.7286/-. Date of last AGM and date of balance sheet showing nil. Total revenue has been shown as Rs.1,57,474/- and total expenditure is Rs.1,48,565/- for financial year 31.03.2008. No latest financial statements and income tax return have been produced. The creditworthiness of the investing company could not be proved by the assessee company.

x. <u>Tizaro Commercial Paper Pvt. Ltd. (PB 364-366)(Rs.10,00,000/-)</u> :

On perusal of bank statement placed at page book page no.368 filed for 30.05.2009 to 20.06.2009, there is opening balance of Rs.15293/- and the closing balance of Rs.5293/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The share applicant has filed return of income has been filed for the assessment year 2008-09 declaring income of Rs.24,901/-.On perusal page no.365 the company master details generated on 08.03.2009 at 11.25AM the authorised capital is Rs.25,00,000/- whereas paid up capital is showing Rs.2,000/- and further we observed that date of last AGM and date of balance sheet is nil. On perusal of the balance sheet filed by the share applicant, for the financial year 31.03.2007& 31.03.2008 the authorised and paid up capital is appearing of Rs.25,00,000/- and Rs.30,00,000/- No latest financial statements and income tax return have been produced. The creditworthiness of the investing company could not be proved by the assessee company.

y. Wizard Realcon Pvt. Ltd. (PB 387-418)(Rs.15,00,000/-) :

The share applicant has applied for 75000 shares of Rs.20/- including premium of Rs.10/-. On perusal of paper book page no.390 filed for the period from 02.06.2009 to 03.06.2009 the opening balance showing Rs.201127.58 and closing balance is showing Rs.2092.58. The return of income filed for the assessment year 2008-2009 showing income of Rs.82,784/-. On perusal of trading profit and loss account filed for the financial year 31.03.2007 & 2008 is as under :-

Particulars	For the year ending on 31.03.2008	For the year ending on 31.03.2007
Income		
Income from Commission	16.337.982.00	17,829.00
Total	16,337,982.00	17,829.00
Expenditure		
Preliminary Expenses	3,689.00	3,689.00
Audit Fee	13,483.00	5056.00
Other Expenses	16,238,026.00	1,694.00
Total	**16,255,198.00**	**10,439.00**
Profit/Losses before taxation	82,784.00	7,390.00
Provision For Current Tax	25,580.00	2,487.00
Profit after I.Tax	57,204.00	4,903
Profit/Losses brought forward from last year	4,903.00	-
Balance Carried to Balance Sheet	62,107.00	4,903.00
Notes on Accounts		

No latest financial statements and income tax return have been produced. The creditworthiness of the investing company could not be proved by the assessee company.

z. Victor Tracom Pvt. Ltd. (PB 419-443)(Rs.10,00,000/-) :

This company was registered on 21.05.2008 and has filed income tax return for the assessment year 2009-2010 declaring income of Rs.20,022/-. On perusal of the financial statements filed by the assessee, the share applicant is engaged in purchase and sale of shares whereas on perusal of page no.437 the main object clause of the company in the memorandum of association there is not any single word for purchase and sale of shares. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days.No latest financial statements and income tax return have been produced. The creditworthiness of the investing company could not be proved by the assessee company.

aa. Eastend Realtors Pvt. Ltd. (PB 444-452)(Rs.05,00,000/-) :

On perusal of paper book page no.444 with regard to application for sales the share applicant has applied for 5000 equity shares at a premium of Rs.90/- and issued cheque in favour of 19.03.2010. Further on perusal of income tax return placed at paper book page no.447 the income has been declared nil. On perusal of page no.449 & 450 the balance sheet of the company the authorised share capital is Rs.1,00,000/- of 10000 equity shares and face value of Rs.10/- each. The issued subscribed and paid up capital of 10000 equity share capital of Rs.10 each fully paid up for the financial year 31.03.2009 & 31.03.2010. We noticed from paper book page no.449 the share application money has been shown of Rs.3,60,40,800/-, how it is possible, the AR of the assessee has not explained anything about this that if all the shares have been issued on 31.03.2009, then share application money how it can be received as on 31.03.2010. Because all 10000 equity shares were issued, subscribed and fully paid up in the financial year 31.03.2009. The AR of the assessee was unable to explain about the above facts that without increase in authorised share capital of the company how they could receive the share applicant money. No bank statement neither latest financial statements and income tax return have been produced, therefore, genuineness of transaction and in view of the above facts the creditworthiness of the investing company could not be proved by the assessee company.

ab. <u>Edward Impex Pvt. Ltd. (PB 453-456)(Rs.05,00,000/-)</u> :

The company has not filed bank statement, latest financial statements and income tax return and trading profit and loss account, therefore, genuineness of transaction and creditworthiness of the investing company could not be proved by the assessee company.

ac. <u>Freshtex Technologies Pvt. Ltd. (PB 457-474)(Rs.05,00,000/-)</u> :

Trading profit and loss account has not been produced in this case, in view of the above facts genuineness of transaction and creditworthiness of the investing company could not be proved by the assessee company.

ad. Hymn Advertising & Marketing Pvt. Ltd.(PB475-502)(Rs.05,00,000/-)

The share applicant has applied for 5000 equity shares of Rs.10/- each at a premium of Rs.90/- each vide cheque dated 26.03.2010. The return of income placed at paper book page no.477 for the assessment year 2009-2010 showing nil income of the assessee. On perusal of the trading profit and loss account placed at page no.479 the income from operation is Rs.8,80,200/- and administration expenditure has been shown of Rs.8,81,410/- No bank statement has been produced by the assessee. Genuineness of transaction and creditworthiness of the investing company could not be proved by the assessee company.

ae. Megatech Realtors Pvt. Ltd. (PB 503-529)(Rs.10,00,000/-) :

The share applicant has applied for 10000 equity shares of Rs.10/- each at a premium of Rs.90/- and issued cheque in favour of assessee company on dated 22.03.2010. On perusal of the income tax return filed for the assessment year 2009-2010 the gross total income of the assessee shown at Rs.8884/-. The total receipts has been shown in the profit and loss account for 31.03.2009 is Rs.72,145/- and expenditure is Rs.63,261/-. The creditworthiness of the investing company could not be proved by the assessee company.

af. <u>New Age Infrabuilders Pvt. Ltd. (PB 530-538)(Rs.05,00,000/-)</u> :

The share applicant has applied for 5000 equity shares of Rs.10/- each at a premium of Rs.90/- and issued cheque in favour of assessee company on dated 25.03.2010. On perusal of the income tax return filed for the assessment year 2009-2010 the gross total income of the assessee shown at Rs.7987/-. The total receipts has been shown in the profit and loss account for 31.03.2009 is Rs.66,258/- and expenditure is Rs.52,756/-. The creditworthiness of the investing company could not be proved by the assessee company.

ag. <u>Pixel Engineering Pvt. Ltd. (PB 539 -545)(Rs.05,00,000/-)</u> :

The share applicant has applied for 5000 equity shares of Rs.10/- per share at a premium of Rs.90/- and has issued a cheque dated 20.03.2010 in favour of the assessee company. On perusal of page no.542 the return of income has been filed for the assessment year 2009-2010 showing nil income. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The creditworthiness of the investing company could not be proved by the assessee company.

ah. <u>Pranam Foods Pvt. Ltd. (PB 546-562)(Rs.05,00,000/-)</u> :

The share applicant has applied for 5000 equity shares of Rs.10/- per share at a premium of Rs.90/- and has issued a cheque dated 26.03.2010 in favour of the assessee company. On perusal of page no.548 the return of income has been filed for the assessment year 2009-2010 showing nil income. On perusal of trading profit and loss account which is placed at page no.550 the income has been shown nil for the financial year 31.03.2008 and 31.03.2009. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The creditworthiness of the investing company could not be proved by the assessee company.

ai. <u>Sara Agriculture Pvt. Ltd. (PB 563-569)(Rs.05,00,000/-)</u> :

The share applicant has applied for 5000 equity shares of Rs.10/- per share at a premium of Rs.90/- and has issued a cheque dated 15.03.2010 in favour of the assessee company. On perusal of paper book page no.566 the return of income has been filed for the assessment year 2009-2010 showing nil income. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The creditworthiness of the investing company could not be proved by the assessee company.

aj. <u>Wizard Developers Pvt. Ltd. (PB 570-588)(Rs.10,00,000/-)</u> :

The share applicant has applied for 10000 equity shares of Rs.10/- per share at a premium of Rs.90/- and has issued a cheque dated 25.03.2010 in favour of the assessee company. On perusal of page no.575 the return of income has been filed for the assessment year 2009-2010 showing income at Rs.6701/-. On perusal of page no.577 the share applicant has shown income from commission of Rs.70364/- and expenditure of Rs.63,663/- containing preliminary expenses of Rs.2500/- audit fee of Rs.5515/- and other expenses Rs.55648/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. The creditworthiness of the investing company could not be proved by the assessee company.

ak. <u>Accord Sales & Tradex Pvt. Ltd. (PB 589-615)(Rs.10,00,000/-)</u> :

The share applicant has applied for 50000 equity shares of Rs.10/- per share at a premium of Rs.10/- and has issued a cheque dated 28.05.2009 in favour of the assessee company. On perusal of page no.598 the return of income has been filed for the assessment year 2008-2009 showing income at Rs.3278/-. On perusal of page no.599 the share applicant has shown income from commission of Rs.45290/- and expenditure of Rs.42,012/- containing preliminary expenses of Rs.2720/- audit fee of Rs.5618/- and other expenses Rs.33674/-. The opening and closing balance have been shown at page 600 of the paper book at Rs.1676.50. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. Latest balance sheet and income tax return has not been filed. The creditworthiness of the investing company could not be proved by the assessee company.

al. Safari Tradex Pvt. Ltd. (PB 616-638)(Rs.10,00,000/-) :

The share applicant has applied for 50000 equity shares of Rs.10/- per share at a premium of Rs.10/- and has issued a cheque dated 01.06.2009 in favour of the assessee company. On perusal of page no.620 the return of income has been filed for the assessment year 2008-2009 showing income at Rs.7011/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. We further noticed from the bank statement on dated 02.06.2009 there is a credit of Rs.10,00,122/- transferred from Lavena Sales Company Pvt. Ltd. and the account number is tallied, which is also one of the share applicant discussed above. Latest balance sheet and income tax return has not been filed. The creditworthiness of the investing company could not be proved by the assessee company.

am. Focus Tradimpex Pvt. Ltd. (PB 639-664)(Rs.10,00,000/-) :

The share applicant has applied for 50000 equity shares of Rs.10/- per share at a premium of Rs.10/- and has issued a cheque dated 27.05.2009 in favour of the assessee company. On perusal of page no.646 the return of income has been filed for the assessment year 2008-2009 showing income at Rs.4440/-. On perusal of page no.648 the share applicant has shown income from commission of Rs.42690/- and expenditure of Rs.38250/- containing preliminary expenses of Rs.1850/- audit fee of Rs.5618/- and other expenses Rs.30782/-. The opening balance have been shown at page 649 of the paper book at Rs.1016.53 and closing balance has been shown at Rs.1266.53/-. From the bank statement of the share applicant it is also apparent that the amounts are being deposited and the same have been withdrawn on the same day or on the next day or after two days. Latest balance sheet and income tax return has not been filed. The creditworthiness of the investing company could not be proved by the assessee company.

22. We find that the assessee in the course of the assessment proceedings as well as in the course of the first appellate proceedings had failed to satisfy the vital ingredients of section 68 of the Act to the satisfaction of the AO particularly in respect of creditworthiness and genuineness of transaction including the bona fide of the transaction in question particularly in light of detailed enquiry carried out by the AO of the case in this regard. As the necessary ingredients have to be cumulatively satisfied to escape from the clutches of section 68 of the Act, the CIT(A) upheld the action of the Assessing Officer in adding the amount of share capital and share application money of Rs.3,65,00,000 as unexplained cash credit under section 68 of the Act.

23. We further noticed that during the same financial year the assessee has issued share capital to the different share applicants at a premium of Rs.10/- and Rs.90/- and the face value of the share is Rs.10/- only which has deliberately been discussed in the foregoing paragraphs. At the same time, we find it very unusual that investment in shares of the assessee company having face value of Rs 10 per share have been made at a premium which varies between Rs 90/- in individual cases during the same financial year. The same clearly raises an apprehension on the overall genuineness of these and other similar related share transactions during the year under consideration. The genuineness of the transaction is not just limited to issuance of share capital rather it is coupled and necessarily has to be understood and read alongwith receipt and payment of share application money which is commensurate with the value of the shares being issued and allotted to and subscribed by the prospective shareholders. Why would a prospective shareholder invest in a company at a premium of Rs 90/- per share when another shareholder is investing at a premium of Rs.10/- only and that too, during the same financial year. What is the valuation methodology and justification for such premium variation, terms of issue and the payback which has been agreed and acted upon? These are some of the questions which remain unanswered. Atleast the assessee company should have come foreward and answered these questions by itself and for which it doesn't have to depend upon the

shareholders to establish the genuineness of these transactions. Further, we find that the creditworthiness of these shareholders have not been established in the instant case. Mere confirmation or the fact that the money has been received through the banking channel is not sufficient enough to establish the creditworthiness of these shareholders. It is not a case of establishing the source of source but at least basic documentation to establish the creditworthiness of these shareholders should have been brought on record which assessee has failed in the instant case. Whether share subscribers have their own profit making apparatus and were involved in any tangible business activity or were they merely rotated money, which was coming through the bank accounts. These are some of the questions which remain unanswered in the present case.

24. On the similar circumstances the coordinate bench of the Delhi Bench of the Tribunal in the case of M/s Synergy Finlease Pvt. Ltd. in ITA No.4778/Del/2013, order dated 08.03.2019, has decided the issue in favour of the revenue following the decision of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra). The relevant observations of the Tribunal are as under :-

> *"26. The Ld. DR on the other hand relied on number of cases to support his contentions . In the case of Navodya Castle Pvt Ltd. Vs CIT (2015-TIOL-314-SC-IT), it is held that merely showing shareholder companies are duly incorporated and their identity stands established but the deposits in cash in bank accounts prior to issue of cheque or pay orders would raise suspicion and addition can be made on such account. In the instant case also a uniform pattern of deposits in the bank account and*

immediate issue of cheque has been observed in the case of all the share applicants, which makes the genuineness of the transaction vulnerable.

27. In the case of Principal Commissioner of Income Tax-6, New Delhi Vs. NDR promoter's private limited in ITA 49/2018 ,the Hon'ble High Court of the Delhi has held the transaction of share application in similar circumstances as shame and make-believe only. In the above case the addition made u/s 68 of the Act for alleged share application money by the Assessing Officer, was deleted by that Tribunal, however the Hon'ble High Court reversed the decision of the Tribunal and sustained the addition. The Hon'ble High Court has relied on the decision of the CIT Vs Navodaya Castles P Lid (2014) 367 ITR 306 (Delhi). The relevant discussion and finding of the Hon'ble Court in the above case is reproduced as under:

> *"11. Issue of bogus share capital in the form of accommodation entries has been subject matter of several decisions of this Court and we would like to refer to decision in Commissioner of Income Tax Vs. Navodaya Castles Pvt. Ltd. [2014] 367 ITR 306, wherein the earlier judgments were classified into two separate categories observing as under:-*
>
> *"11. We have heard the Senior Standing counsel for the Revenue, who has relied upon decisions of the Delhi High Court in Commissioner of Income Tax Vs. Nova Promoters and Finlease (P) Ltd. [2012] 342 ITR 169 (Delhi), Commissioner of Income Tax vs.. N.R. Portfolio Pvt. Ltd., 206 (2014) DLT 97 (DB) (Del) and Commissioner of Income Tax-ll vs. MAF Academy P. Ltd. 206 (2014) DLT 277 (DB) (Del). The aforesaid decisions mentioned above refer to the earlier decisions of Delhi High Court in Commissioner of Income Tax vs. Sophia Finance Ltd. [1994] 205 IIR 98 (FB)(Delhi), CIT vs. Divine Leasing and Finance Limited [2008] 299 IIR 268 (Delhi) and observations of the Supreme Court in CIT vs. Lovely Exports P. Ltd. [2008] 319 ITR (St.) 5 (SC),*
>
> *12. The main submission of the learned counsel for the assessee is that once the assessee had been able to show that the shareholder companies were duly incorporated by*

> *the Registrar of Companies, their identity stood established, genuineness of the transactions stood established as payments were made through accounts payee cheques/bank account; and mere deposit of cash in the bank accounts prior to issue of cheque/pay orders etc. would only raise suspicion and, it was for the Assessing Officer to conduct further investigation, but it did not follow that the money belonged to the assessee and was their unaccounted money, which had been channelized,*
>
> *13. As we perceive, there are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received thorough banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries were conducted, The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances, The primary requirements, which should be satisfied in such cases is, identification of the creditors / shareholder, creditworthiness of creditors / shareholder and genuineness of the transactions. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct."*

28. In a recent judgment dated 5.3.2019 in the case of Principal CIT(Central)-I vs. NRA Iron & Steel P. Ltd. arising out of SLP (civil) No. 29855 of 2018, the Hon'ble Supreme Court considered the decision of various courts on the issue in dispute and enumerated the principles emerged from various decision as under :-

> *"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. 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.

iii. 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.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

29. After examining the facts of above referred case, in view of the principles on the issue of applicability of section 68 in the cases of credit of share capital/premium, the Hon'ble Supreme Court reversed the orders of Hon'ble High Court, ITAT and 1st appellate authority and restored the order of the Assessing Officer observing as under :-

"12. In the present case, the A.O. had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee.

For example:

a. The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.

b. The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to *substantiate the source of the funds from which the alleged investments were made.*

c. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be nonexistent at the address provided.

The genuineness of the transaction was found to be completely doubtful.

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000 in. the Assessment Year 2009-10, for purchase of shares at such a high premium.

For example:

Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. - Kolkatta filed a NIL return, but had purchased Shares worth Rs.95,00,000 in the Assessee Company - Respondent.

Another example is of Ganga Builders Ltd. - Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company - Respondent, etc. iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10/ - per share.

iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under Section 68 of the Act.

13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money In the Assesse Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company

- Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.

16. The Appeal filed by the Appellant - Revenue is allowed. In the aforesaid facts and circumstances, and the law laid down above, the judgment of the High Court, the ITAT, and *the CIT are hereby set-aside. The Order passed by the AO is restored.*

Pending applications, if any are disposed of."

30. In view of the aforesaid discussion of facts of the case and respectfully following the decision of the Hon'ble Supreme Court in the case of NRA Iron & Steel P. Ltd. (supra) and decision of Hon'ble Delhi High Court in the case of NDR Promoters Pvt. Ltd. (supra), we are of the opinion that share applicant entities are paper entities created by some individuals for providing entries to the persons including the assessee, not having tax paid capital for promoting their ventures. As the entries of credit are appearing in the books of the assessee, it was the onus of the assessee to explain satisfactorily the nature and source of those credits. As the assessee failed to discharge its onus of explaining source and nature of the credit received and failed to establish creditworthiness and genuineness of the transaction as required u/s 68 of the Act, the assessee is liable for addition under section 68 of the Act. Accordingly, we reverse the finding of the Ld. CIT(A) on the issue in dispute and confirm the addition of Rs. 4, 85, 58,000/-in the hands of the assessee in terms of section 68 of the Act. The ground of the appeal of the Revenue is accordingly allowed."

25. In the peculiar facts and circumstances of the case, the case laws relied on by the assessee are not applicable in the present case.

26. From our above discussions as well as the judicial precedence along with the findings recorded by the both the authorities below, it is clear that the creditworthiness of the share applicants, in the present case in hand, have not been proved by the assessee, therefore, we do not find any error in the findings recorded by the CIT(A) and, hence, the same are upheld and appeal of the assessee is dismissed.

27. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 09/08/2019.

Sd/-	Sd/-
(Chandra Mohan Garg)	**(Laxmi Prasad Sahu)**
JUDICIALMEMBER	**ACCOUNTANT MEMBER**

Patna; Dated 09/08/209
B.K.Parida, SPS

<u>Copy of the Order forwarded to</u> :

1. The Appellant : Manish Finlease Pvt Ltd., Chandi House Exhibition Road, Patna

2. The Respondent. ITO, Ward 2(1), Patna
3. The CIT(A)-1, Patna
4. Pr.CIT- 1,patna
5. DR, ITAT, Patna
6. Guard file.

//True Copy// **By order**

Sr. Pvt.secretary
ITAT, Patna