

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1008/Del/2017
Assessment Year : 2012-13**

Jindal Securities (P) Ltd., 10A/1, 1 st Floor, Shakti Nagar, Delhi.	Vs.	ITO, Ward- 13(3), New Delhi.
PAN : AAACJ0010G		
(Appellant)		(Respondent)

Appellant by : Shri Tarandeep Singh, CA
Respondent by : Shri Naveen Chandra, CIT-DR
Date of hearing : 13-07-2017
Date of pronouncement : 11-10-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 09.01.2017 passed by the CIT(A)-5, Delhi relating to assessment year 2012-13.

2. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of sale/ purchase of shares and investments.

It filed its return of income on 28.09.2012 declaring total income of Rs.68,160/-.

During the course of assessment proceedings, the Assessing Officer observed from the details filed by the assessee that the assessee company during the year has received share application money of Rs.65,00,000/- and share premium of Rs.64,35,00,000/- as premium by issue of 6,50,000 shares. The allotment of

shares of face value of Rs.10/- per share at a premium of Rs.990/- each were made to the following parties :-

- (i) Aman Finvest (P) Ltd. – 32500 shares of Rs.10/- each at a premium of Rs.990/- per share.
- (ii) Supreme Portfolio (P) Ltd. 32500 shares of Rs.10/- each at a premium of Rs.990/- per share.

3. He observed that after receiving the amount of Rs.65,00,00,000/- from the above companies, the company has reinvested the amount by purchasing shares at premium of both the above companies i.e. Rs 32 50,00,000/- of Aman Finvest (P) Ltd. and Rs.32,50,00,000/- of Supreme Portfolio (P) Ltd. during the year under consideration. He, therefore, asked the assessee company to furnish the specific details regarding share capital/ share premium through query no.3 vide questionnaire dated 07.01.2015 which reads as under :-

“It is noticed that during the year company has issued share to the tune of Rs.32,50,000/- to M/s Supreme Portfolio Pvt. Ltd. and Rs.32,50,000/- to M/s Aman Finvest Pvt. Ltd. In this regard furnish copies of ROC letters, supporting bank statements and evidence of shares issued to these parties.”

4. The assessee, in response to the said letter, filed the requisite details such as bank statements, copy of ROC Form No.2 and evidence of shares issued to both the parties. The Assessing Officer thereafter asked the assessee to furnish the basis of issue of share at premium with documentary evidence. In response to the same, the assessee company vide its reply dated 02.02.2015 submitted the details, which has been reproduced by the Assessing Officer in the body of the assessment order and which reads as under :-

“The assessee company has issued share to group companies. In the financial year relevant to the assessment year, there was no method prescribed to calculate share premium. The value of share is arrived on estimate basis and was a commercial decision.”

5. The Assessing Officer thereafter asked the assessee company to furnish the following details :-

1. *Furnish note on business activity done by the company.*
2. *Furnish details of income & Net Profit / (Loss) for the A.Y. 2012-13, 2013-14 and 2014-15.*
3. *Details of shareholders as on 31.03.2013 and 31.03.2014*
4. *Related to share issued at premium to Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd.*
 - i. *Copy of share application filed by investors Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd.*
 - ii. *Copy of share transfer register*
 - iii. *Copy of share holder register*
 - iv. *Copy of share certificate issued to investors Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd.*
 - v. *Details of utilization of share premium amount in current assessment year as well as in subsequent years.”*
 - vi. *Copy of share certificate issued by Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd. to the assessee company.*
 - vii. *Business activities done by Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd. as the assessee company has made heavy investment in both the companies.*
 - viii. *Details of Profit received on the investment in shares of Aman Investment Pvt. Ltd. and Supreme Portfolio Pvt. Ltd. during the A.Ys. 2012-13, 2013-14 & 2014-15.*
 - ix. *File the status of the said investments as on date.”*

6. In response to the query raised by the Assessing Officer, the assessee filed the requisite details. The Assessing Officer also called for the following information u/s 133(6) from M/s Aman Finvest Pvt. Ltd. and M/s Supreme Portfolio Pvt. Ltd. regarding the transactions made with the assessee company during the year under assessment :-

1. *Copy of Bank Statement from where funds have been given to above assessee company (M/s JSPL).*

2. *Source of funds raised for making investment in the above company. (M/s JSPL). Please provide complete chain details of funds received in your bank account giving Name/Address/PAN of the persons from whom the said funds have been received.*
3. *Name of the person, who offered the shares of the company on behalf of M/s JSPL. Also submit offer prospects in this regard. Also provide justification of buying the share premium supporting with documentary evidences.*
4. *Name of the person (Mediator) through whom the deal was negotiated for making investments in share/ share application money.*
5. *Copy of application from in respect of share application money paid to M/s JSPL.*
6. *Copy of acknowledgement of receipt share application Form and share certificate.*
7. *Copy of share certificate of the above company (M/s JSPL)*
8. *Please state what is the current status of these shares, whether these are still in your possession or have been sold?*
9. *In case the above certificates have been sold, please confirm with respect to your bank statement. Also give the name/address/PAN of the party to whom these shares of M/s JSPL have been sold.*
10. *Please provide the copy of ITR/Balance Sheet/Computation of Income for the A.Y. 2012-13 and the year in which the transaction mentioned in point no.9 above has been made, reflecting clearly the above transactions in respective balance sheets of your company.*
11. *Provide copy of ITR of Director/Substantial share holders of your company.”*

7. The above two companies filed their response to the information called for by the Assessing Officer u/s 133(6). The Assessing Officer analyzed the finances of the above two companies and observed as under (Page 4 and 5 of the Assessing Officer) :-

1. *Investor- M/s Aman Finvest Pvt. Ltd.*

The book profit of M/s Aman Finvest Pvt. Ltd. on the basis of Financial is as under :

A.Y.	Total achieved share	Turnover Sale of	Interest & dividend income	Total Turnover	Total Income	EPS Claimed by the assessee
2011-12	150555		413314	563869	428495	0.43
2012-13	113560		408922	522482	418417	0.25

2. *Investor- M/s Supreme Portfolio Pvt. Ltd.*

The book profit of M/s Supreme Portfolio Pvt. Ltd. on the basis of Financial is as under :

A.Y.	Total achieved share	Turnover Sale of	Interest & dividend income	Total Turnover	Total Income	EPS Claimed by the assessee
2011-12	286794		419003	708057	438287	0.44
2012-13	398370		361144	759514	372040	0.23

8. From the reply given by the above two companies, the Assessing Officer observed that both the investors had filed the same flowchart to explain the source of investment made by them. The Assessing Officer analyzed the flowchart for investment in shares of assessee company at page 7 to 10 of the order and observed that they did not have their own creditworthiness as the money that came to their accounts seldom rest for a day or two and finds its destination immediately. These companies did not have their own profit making apparatus and have not done any business activity as a major part of the turnover is from dividend and interest income. According to the Assessing Officer, these are accommodation entries just to evade tax. On perusal of the bank statement and the flow chart filed by the investor companies, he noticed that an amount of Rs.5,00,00,000/- has been rotated, nineteen times only single day i.e. on 17.11.2011 and Rs.2,50,00,000/- rotated 43 times on 21.03.2012 & 22.03.2012 in between the investors and the assessee company just to create fictitious net worth and not to earn any business profit. The Assessing Officer analyzed the financial of the assessee company and noted that the company has not done any business activity and major part of the turnover is derived from the dividend income. The company has issued 6,50,000 shares at Rs.1,000/- per shares (face value of Rs.10/- each at premium of Rs.990/- per shares) against book value of Rs.35.76. He also analyzed book profit of the assessee company before issue of shares at a premium i.e. on 31.03.2011 which is as under :-

1. *Shar Holder's funds* (in Rs.)

<i>Share Capital</i>	1,75,00,000
<i>Reserves Reserve and Surplus</i>	4,50,80,227
<i>Total</i>	6,25,80,227
<i>No. of shares</i>	1750000
2. <u><i>Profit/Loss of the company</i></u>	
<i>A.Y.-2011-12</i>	6,16,440
<i>A.Y.-2012-13</i>	7,60,176
<i>A.Y.-2013-14</i>	3,86,196
<i>A.Y.-2014-15</i>	5,03,818

9. After analyzing the financial of the assessee company as well as explanation given by the assessee regarding issue of shares at a premium, the Assessing Officer observed that the issue of shares at high premium is not justified for most of the funds are introduced by the assessee company through its shareholders under the guise of the share premium. The relevant observation of the Assessing Officer at page 11 and 12 of the order on this issue reads as under :-

- “a. *The assessee company has very nominal business profit. It is only common sense that past performance should be given suitable weight age for the valuation of a company and its shares but the same has been totally ignored in the instant case. furthermore, no correspondence or any documentary evidence has been brought on record in the assessee company replies submitted in the course of the assessment proceedings to justify the so called bright future prospects of the company which would enhance the profitability and consequentially lead to higher valuation of the shares.*
- b. *To test the credibility of the valuation, an effort was made to verify the future results of Assessee Company with reference to the financial results filed for A.Y. 2011-12, 2012-13, 2013-14 and 2014-15. The comparative figures are as under :*

A.Y.	Total Turnover achieved	Turnover Sale of share	Interest & dividend income	Total Turnover	Total Income	EPS Claimed by the assessee	Return Income
2011-12	1409409		570894	1980303	6,16,440	0.35	22630
2012-13	3521769		710819	4232588	7,60,176	0.32	68160
2013-14	1304196		346191	1650387	3,86,196	0.16	69650
2014-15	1704365		153320	1857685	5,03,898	0.21	514220

In view of the above, the net-worth of Earning Per Share is only 0.32 during the year. Major net income after claiming expenses constitutes interest and dividend income which are nothing to do with the business objectives of the assessee company.

- c. *Now it is very difficult to digest as to why subscriber/ investor apply for share application money in the company which has no future for running any profit in future years.*
- d. *On perusal of share transaction between the assessee company and subscribers, it is prime facie appear that assessee company as well as the subscriber are well aware of the nature of the share transactions.*
- e. *Thus, the assessee company has totally failed to justify the charging of the premium amounting to Rs.64,35,00,000/-."*

10. The Assessing Officer analyzed the provisions of section 68 and came to the conclusion that the assessee in the instant case has failed to establish the genuineness and creditworthiness of the transactions. He observed that the transactions between the assessee company and its alleged investors are unusual in nature and character. Relying on various decisions including the decisions of the Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More reported in 82 ITR 540, decision in the case of CIT vs. Sri Meenakshi Mills Pvt. Ltd. reported in 63 ITR 609, decision in the case of Workmen of Associated Rubber Industry Ltd. vs. Associated Rubber Industry Ltd. reported in 157 ITR 77 and various other decisions mentioned in the assessment order, the Assessing Officer held that the credit of Rs.65,00,00,000/- (including share capital and share premium) are directly hit by provisions of section 68 of the I.T. Act. Since the assessee in the instant case has failed to discharge its onus, the Assessing Officer, therefore, made addition of Rs.65,00,00,000/- to the total income of the assessee u/s 68 of the I.T. Act.

11. Before the CIT(A), it was explained that the relevant documents evidencing confirmation of loan of two amounts received from M/s Globe

Fincap Ltd., the bank statement/PAN/ITR, annual accounts etc. of that party had been furnished to the Assessing Officer. The genesis of the share capital and premium in the books was explained to be circulation of these loan amounts to create the notional net worth of the assessee. Outflow of funds from the assessee's bank account was explained as investment in the shares of the two related parties. It was explained that after circulation of these amounts in the books of the assessee, the loan was refunded and interest was paid. It was explained that since the source of funds resulting in the notional build up of share capital have been explained there is no case to invoke section 68 of the I.T. Act. It was explained that the notional build up of shares capital was to increase the net worth of the assessee and to avail finance at moderate interest rates and strengthen the business opportunities in the future. Alternatively, it was argued that at best if the Assessing Officer was not convinced of the genuineness of the loan transactions and creditworthiness of M/s Globe Fincap Ltd., he could have telescoped the credit entries by applying the peak credit theory particularly when all the debits and credits have taken place in the same day, the related concerns have not denied their involvement and the transactions were intended to augment the notional share capital in the books. The assessee, inter-alia, explained the manner of issuance of allotment of shares which has been extracted by the CIT(A) and the relevant portion of the same read as under :-

“2. During the year under consideration appellant had received Share Capital money of Rs.65,00,000/- and Share Premium Money of Rs.64,35,00,000/- by issuance of 6,65,000/- shares. The allotment of shares of face value of Rs.10/- per share at a premium of Rs.990/- each was to following sister concerns:

- (a) Aman Finvest (P) Limited (AFPL) – 3,25,000/- shares of Rs.1000/- (including share premium).
- (b) Supreme Portfolio (P) Limited (SPPL) – 3,25,000/- shares of Rs.1000/- (including share premium)

The above transaction of issuance and allotment of shares was carried out in the following manner :-

Step 1 – A loan of Rs.5 crores and Rs.2,50 crore was received by the appellant on 17th November 2011 and 21st March 2012 respectively from M/s Globe Fincap Limited (GFL) which is an unrelated concern. GFL is a group finance company of M/s Globe Capital Market Ltd. (GCML), a SEBI registered share broker of National Stock Exchanger (NSE) and Bombay Stock Exchanger (BSE) and with whom appellant in maintaining a regular share trading account for doing transactions on NSE and BSE. Whenever there was shortfall of funds in the trading account of the appellant with GCML, GFL provided funding to the appellant. The appellant submitted following documentary evidences during the course of assessment proceeding for substantiating the genuineness of loan transaction and creditworthiness of GFL:

- Confirmation from GFL accepting grant of loan from its HDFC Current Account No.00030340030126 (refer page 47 of paper book)
- Copy of Bank statement of GFL wherein transactions of grant of above loan on 17th November 2011 and 21st March 2012 to the appellant and corresponding return of said loan by the appellant on 18th November 2011 and 22nd March 2012 is clearly reflected (refer page 48 and 49 of the paper book).
- Copy of ledger account of the appellant in the books of GFL for the period 01st April 2011 to 31st March 2012 (refer page 50 to 64 of paper book). A perusal of same would clearly depict that a loan of Rs.5 cr was granted by GFL on 17th November 2011 and the same returned back by the appellant on 18th November 2011 (refer page 58). Similarly loan of Rs.2.5 cr was granted by GFL on 21st March 2012 and the same was returned back by the appellant on 22nd March 2012 (refer page 63). As submitted above since a regular funding account charged by GFL for the credit facility provide by it. For the month of November 2011 interest of Rs.81,711/- was charged by GFL (refer page 59), similarly for the month of March 2012 interest of Rs.90,119/- was charged by GFL (refer page 63). During the year under consideration interest was being charged by GFL @ 17%. In this regard a certificate was provided by the appellate to the AO (copy enclosed at page 66A of the paper book).
- Copy of PAN Card of GFL bearing PAN no.AADCG1099D (refer page 65 of paper book).
- Copy of income-tax return of GFL for AY 2012-13 (refer page 66 of paper book). A perusal of this would show that GFL had a Total Taxable Income of Rs.18,54,58,150/- on which income tax of Rs.6,01,87,274/- was paid by GFL.
- Copy of Audited Annual Accounts of GFL for financial year ending 31st March 2012 (copy enclosed at pages 78 to 111 of the paper book).

Step 2 – The above loan amounts were thereafter circulated by the appellant through its sister concerns so as to create a notional net worth in its books of

accounts. A flow chart depicting the flow of money has been noted by the AO in the impugned order at pages 7 to 10. In nutshell for every transaction involving inflow of Rs.5 crores on 17th November 2011 and inflow of Rs.2.5 crores on 21st March 2012 and 22nd March 2012 appellant's share capital was issued to AFPL and SPPL, whereas for every outflow transaction of Rs.5 crores on 17th November 2011 and outflow of Rs.2.5 crores on 21st March 2012 and 22nd March 2012 share capital of AFPL and SPPL was purchased by the appellant. On 17th November 2011 vis-à-vis loan of Rs.5 crores received by the appellant from GFL there were 6 transactions involving credit of Rs.5 crores from AFPL and SPPL in appellant's book of accounts and hence cumulatively Share Capital of Rs.30 crores was issued by the appellant to these parties on this date. Similarly on 21st March 2012 and 22nd March 2012 vis-à-vis loan of Rs.2.5 crores received by the appellant from GFL there were 14 transactions involving credit of Rs 2.5 crores from AFPL and SPPL in appellants books of accounts and hence cumulatively Share Capital of Rs.35 crores was issued by the appellant to these parties on this date. Although AFPL and SPPL are related concerns, yet in order to substantiate genuineness of above transactions involving notional share capital build up following documentary evidences were submitted by the appellant before AO during the course of assessment :

- Board Resolution dated 30th March 2012 for allotment of 3,25,000 share to AFPL and SPPL respectively (refer page 116 of paper book).
- Copy of Return of Allotment of Share Capital in Form 2 submitted to the Registrar of Companies on 06th April 2012 (refer pages 117 to 123 of paper book).
- Ledger account of Share Application Money Paid for Jindal Securities in the account books of AFPL and SPPL (refer pages 11 to 12 of paper book).
- Copy of income tax return of AFPL for AY 2012-13 (refer pages 13 of paper book).
- Copy of income tax return of SPPL for AY 2012-13 (refer pages 14 of paper book).
- Bank account statement of AFPL (refer pages 15 to 17 of paper book).
- Bank account statement of SPPL (refer pages 18 to 19 of paper book).
- Copy of Audited Annual Accounts of AFPL for financial year ending 31st March 2012 (copy enclosed at pages 20 to 33 of paper book).
- Copy of Audited Annual Accounts of SPPL for financial year ending 31st March 2012 (copy enclosed at pages 34 to 43 of paper book).

Step 3 – The loan of Rs.5 crores and Rs.2.5 crores received by the appellant from GFL on 17th November 2011 and 21st March 2012 was returned back on 18th November 2011 and 22nd March 2012. Facts narrated above would demonstrate that the loan facility availed by the appellant from GFL carried an interest burden of 17% which was also borne by the appellant.”

12. Relying on various decisions, it was argued that the addition made by the Assessing Officer should be deleted.

13. However, the Id. CIT(A) also was not satisfied with the explanation given by the assessee. He observed from the various details furnished by the assessee that the source of the share holding, which was the receipt from unsecured loan from M/s Globe Fincap Ltd. of Rs.5 crore on 17.11.2011 and Rs.2.5 crore on 21.03.2012 which admittedly had been received by the assessee company on these dates and which have been, thereafter, circulated between assessee company and its two sister concerns; M/s Aman Finvest (P) Ltd. and M/s Supreme Portfolio (P) Ltd. had not been examined or confronted by the Assessing Officer. Since this was the crux of the entire addition, he noted that it needed to be examined by the Assessing Officer. He, therefore, called a remand report from the Assessing Office with a direction either to conduct a further enquiry, as deemed fit, to substantiate his predecessor's view that the amount was assessable u/s 68 or otherwise furnish his comments on this aspect. The Assessing Officer in the remand report dated 07.11.2016 reiterated the view of his predecessor. The Addl. CIT's report dated 16.11.2016 also did not throw any further light on this aspect. The remand report of the Assessing Officer was primarily on the aspect of the share premium issued with reference to the financial results shown for the A.Ys. 2011-12 to 2014-15 which shows that the assessee company did not have adequate net worth of earning per share in order to justify the premium of Rs.64.35 crores.

14. Ld. CIT(A) confronted the remand report of the Assessing Officer to the assessee. It was submitted that the Assessing Officer has failed to understand the mechanism adopted to build up what is admittedly notional share capital as per which there is virtually no fresh cash introduced in the bank. The Assessing Officer is completely silent on the genuineness of the transactions between the assessee and Global Fincap Pvt. Ltd.

14.1 Based on the argument of the assessee, remand report of the Assessing Officer and rejoinder to such remand report, the CIT(A) upheld the addition made by the Assessing Officer. While doing so, he observed that despite specific remand to the AO to comment on the aspect of the genuineness of the loans of Rs.5 crores and Rs.2.5 crores from M/s Globe Fincap Ltd. taken on 17.11.2011 and 21.3.2012 respectively, which were credited into the assessee's bank current account no 03392560001278 with HDFC Bank, Roop Nagar, from where the impugned two amounts were circulated to Aman Finvest Ltd. and Supreme Portfolio Pvt. Ltd. and received back and re-circulated and hence required to be examined in order to apply section 68, neither the AO nor the Addl.CIT have commented on this aspect except to state that the issue of loan taken or repaid is a different issue but the same does not justify the creation of share capital of Rs.65 crores in the books prior to its repayment. He noted that the loan transactions are evidenced by confirmations of the creditor dated 20.8.2014 and supplemented by the bank statement with HDFC Bank, Surya

Kiran Building, KG Marg, New Delhi, the ledger account of the assessee in the books of Globe Fincap Ltd. for the F.Y. 2011-12, a certificate dated 3.2.2015 endorsing the charge of interest on the loan facility provided, ITR filed for the A.Y. 2012-13 and audited annual accounts of Globe Fincap Ltd. for A.Y. 2012-13. He observed that the AO has not commented on these documents in the assessment or the remand proceedings.

15. The Id. CIT(A) observed that the source of the share holding received by the assessee from its sister concerns M/s Aman Finvest Pvt. Ltd. and M/s Supreme Portfolio Pvt. Ltd. was the amount originally credited in the books of the assessee. He observed from all the three bank accounts that the transactions in question have been undertaken in a circular form as depicted by the way of flow-chart at pages 7 to 10 of the assessment order. The loan amount of Rs.5 crores received on 17.11.2011 has been entered in the books of the assessee, transferred to Aman Finvest P. Ltd. which in turn transferred it to Supreme Portfolio Pvt. Ltd. and this company transferred the amount to the assessee as share application money. Thereafter the chain followed this circular pattern three times. Rs.15 crores was received in this manner from Supreme Portfolio Pvt. Ltd. Thereafter after receipt in the assessee's bank account, the amount was circulated first to SPPL, and routed through AFPL back to the books of the assessee. This transaction is repeated three times and thus Rs.15 crores had been

received from AFPL. It is at this stage that the amount was refunded to Globe Fincap Ltd. on the same day by the assessee.

16. Similarly, he observed that the second amount of Rs.2.50 crores on receipt by the assessee on 21.03.2012 has been transferred to the account of Supreme Portfolio Pvt. Ltd. and received back as share application money and this transaction with Supreme Portfolio Pvt. Ltd. and received back has been repeated 7 times to create Rs.17.50 crores as share application money paid to Supreme Portfolio Pvt. Ltd. by the assessee. Coupled with Rs.15 crores transactions the total amount of Rs.32.50 crores was received from Supreme Portfolio Pvt. Ltd. After the seventh occasion the assessee transferred Rs.2.5 crores to Aman Finance Pvt. Ltd. which was received back and this transaction is repeated 6 times. The assessee received Rs.15 crores from Aman Finance Pvt. Ltd. as share application money in this manner. Thereafter Aman Finvest Pvt. Ltd. and Supreme Portfolio Pvt. Ltd. circulated this money with each other on the same day so as to receive/invest in share application money within themselves until finally M/s Aman Finance Pvt. Ltd. paid Rs. 2.5 crores to the assessee. Thus, this Rs. 2.5 crores, coupled with the Rs.15 crores referred to earlier and another Rs.15 crores referred to herein above in the present para, the assessee received total amount Rs, 32.50 crores from Aman Finance Pvt. Ltd. as share application money in this manner. After these transactions, the amount was refunded to Globe Fincap Ltd.

17. Thus the facts are undisputed that the loan amount received from Globe Fincap Ltd. has been utilized by the assessee to make investments in sister concerns (herein after referred to as AFPL & SPPL) and they in turn have utilized these amounts to invest in the share capital of the assessee company. This is so because all the impugned transactions have taken place over a period of either one day (first loan tranche of Rs.5 crores) or over two days (second loan tranche of Rs.2.5 crores) and they are easily relatable through the bank statements. According to the CIT(A), the question that arises for consideration is whether the source of share capital received in the books of the assessee company can be said to be explained and whether the onus of proof laid down u/s 68 can be said to be discharged. He held that the assessee and the other two sister concerns have manipulated the loan amount in their books of accounts in order to credit the share capital and the share premium account.

18. According to the Id. CIT(A), the assessee has not been able to show the determination of the fair market value of its shares as per the existing provisions of Rule 11U and 11UA. He observed that the fair market value has been derived by the AO at Rs.35.76 per share and hence, premium of Rs.990/- per share is not at all justified.

19. So far as the argument regarding application of the peak credit theory is concerned which is the alternative argument of the assessee, he held that the facts of the present case do not mandate application as each and every amount

received has been shown in the books of the assessee as share capital, which are proved to be non genuine and there is neither any borrowed funds nor any repayment thereof. The amounts received by way of share capital, have in fact, been invested in the share capital of AFPL & SSPL. Hence this argument of the assessee is also not acceptable.

20. Rejecting the various arguments advanced by the assessee and distinguishing the various decisions cited before him, Id. CIT(A) held that the assessee has failed to show that the share capital and share premium is explained.

21. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal with the following grounds :-

"1. That on the facts and in law the orders passed by Assessing Officer {hereinafter referred to as the "AO"} and Commissioner of Income Tax (Appeals) {hereinafter referred to as the "CIT(A)} are void-ab-initio and bad in law.

2. That on facts and in law the CIT(A) erred in upholding addition of Rs 65,00,00,000/- made by the AO invoking provisions of section 68 of the Act.

3. That on facts and in law the CIT(A) erred in holding that appellant has not been able to establish creditworthiness of the share applicants i.e. M/s AmanFinvest (P) Limited (AFPL) and M/s Supreme Portfolio (P) Limited (SPPL).

3.1 That on facts and in law the CIT(A) after accepting that "the loan amount received from Globe Fincap Ltd (GFL) has been utilized by the appellant to make investments in sister concerns AFPL and SSPL and they in turn have utilized these amounts to invest in share capital of assessee company" has erred in concluding that loan received from GFL is not connected to the receipt of share capital by the appellant.

4. That on facts and in law the CIT(A) erred in relying upon and invoking provision of Finance Act 2012 which are specifically applicable w.e.f. 01st April 2013 (i.e. from AY 2013-14 onwards) to the facts of instant case.

5. Without Prejudice, that on facts and in law the CIT(A) erred in not restricting the addition by applying Peak Credit Theory.

The appellant craves leave to add, alter, modify, amend or withdraw any ground at any stage of the appeal."

22. Ld. counsel for the assessee strongly objected to the order of ld. CIT(A). He submitted that the provisions of section 68 were amended w.e.f. assessment year 2013-14 whereas the assessment year involved in the instant case is assessment year 2012-13. He submitted that the assessee has given the details of the source of source. Referring to provisions of section 56(2)(viib), he submitted that the same provision was inserted by Finance Act, 2012 w.e.f. 01.04.2013. Referring to the above two provisions i.e. provisions of section 68 and the provisions of section 56, he submitted that the specific provision regarding the additions on account of unexplained share capital or share premium is applicable from assessment year 2013-14 and not applicable for the impugned assessment year. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs Anshika Consultants (P.) Ltd. reported in (2015) 62 taxmann.com 192, copy of which is placed at page 246 – 251 of the Paper Book, he submitted that the Hon'ble High Court in the said decision has held that where the assessee company issued shares at premium and provided various details of share applicants and further investigation report, which was specifically called from concerned department, was available but not discussed by Assessing Officer, addition made by Assessing Officer u/s 68 was unjustified.

23. Referring to the decision of the Hon'ble Delhi High Court in the case of Pr.CIT vs. A.R. Leasing Pvt. Ltd. in ITA No.361/2017 order dated 03.07.2017,

copy of which is placed at page 252 – 254 of the Paper Book, he submitted that the Hon'ble High Court in the said decision has dismissed the appeal filed by the Revenue where the Tribunal had deleted the addition holding that the addition u/s 68 of the I.T. Act was not justified especially when the assessee had filed the details of Memorandum of Association, Articles of Association, Certificates of Incorporation, bank accounts indicating the source of payment, copy of confirmations, Income Tax particulars, audited balance sheets, Profit & Loss Account etc. The assessee are not genuine and, therefore, the Assessing Officer simply could not have disregarded the documents produced by the assessee.

24. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Gagandeep Infrastructure (P) Ltd. reported in (2017) 80 taxmann.com 272, copy of which is placed at page 197 – 201 of the Paper Book, he submitted that the Hon'ble High Court in the said decision has held that where the Revenue urged that assessee company received share application money from bogus shareholders, it was for revenue to proceed by reopening assessment of such shareholders and assessing them to tax and not to add same to assessee's income as unexplained cash credit.

25. Referring to the copy of assessment order passed by the Assessing Officer u/s 143(3) in the case of M/s Supreme Portfolio Private Limited for assessment year 2012-13, he submitted that the Assessing Officer in the body of

the assessment order has not made any addition on account of such purchase of shares in the assessee company at huge premium.

26. Referring to the copy of the assessment order passed by the Assessing Officer u/s 143(3) in the case of M/s Aman Finvest Pvt. Ltd. for assessment year 2012-13, he submitted that the Assessing Officer in the body of the assessment order has not made any addition on account of investment in the shares with premium in the assessee company.

27. Referring to the provisions of section 68, he submitted that as per the said section where a sum is found credited in the books of the assessee maintained for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. He submitted that the assessee in the instant case has explained not only the source but the source of the source thereof.

28. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sophia Finance Ltd. reported in 205 ITR 98, ld. counsel for the assessee drew the attention of the Bench to para 12 of the order of the Hon'ble High Court which reads as under :-

*"12. Section 68 of the Income-tax Act, 1961, reads as under :
"68. Where any sum is found credited in the books of an assessed maintained for any previous year, and the assessed offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of*

the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessed of that previous year."

Mr. Syali is right in contending that the aforesaid section merely codifies what was the state of law prior to its enactment. Even when the Indian Income-tax Act, 1922, was in force it had been held in all judicial pronouncements that if cash credits are found in the books of account of the assessed and no explanation about the nature and source thereof is given or the explanation is not found satisfactory then the same could be charged to income-tax as income from undisclosed sources. The only question which at times used to arise was as to in which year it could be said that the income had accrued, but that question can no longer arise because section 68 provides that the amount so credited is to be regarded as the income of the assessed for "that previous year", i.e., the previous year in which the same is found credited in the books of the assessed. It is unknown that in order to avoid payment of tax an amount may be credited in the books of account in such a manner which may not disclose its true nature or source thereof. For example, amount may be credited in the books of account as if they represented sums received from different persons. As we read section 68 it appears that whenever a sum is found credited in the books of account of the assessed them, irrespective of the colour or the nature of the sum received which is sought to be given by the assessed, the Income-tax Officer has the jurisdiction to enquire from the assessed the nature and source of the said amount. When an explanation in regard thereto is given by the assessed, then it for the Income-tax Officer to be satisfied whether the said explanation is correct or not. It is in this regard that enquiries are usually made in order to find out as to whether, firstly, the persons from whom money is alleged to have been received actually existed or not. Secondly, depending upon the facts of each case, the Income-tax Officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is mere name-lender or not. Be that as it may, it is clear that the Income-tax Officer has jurisdiction to make enquiries with regard to the nature and source of a sum credited in the books of account of an assessed and it would be immaterial as to whether the amount so credited is given the colour of a loan or sum representing the sale proceeds or even receipt of share application money. The use of the words "any sum found credited in the books" in section 68 indicates that the said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true and source thereof even if the same is credited as receipt of share application money."

29. He submitted that it is not a case of accommodation entry and the entire exercise is cash neutral. Therefore, the lower authorities are not justified in making the addition. In his alternate contention, he submitted that the peak credit theory may be applied and at least the amount of Rs.7,50,00,000/- which

has been received by the assessee company through cheques and the source whereof has been duly explained the same should be accepted.

30. Ld. DR on the other hand heavily relied on the order of the CIT(A). He submitted that the Id. CIT(A) has given elaborate reasons while sustaining the addition which is self-explanatory. Therefore, the order of the CIT(A) should be upheld and the grounds raised by the assessee should be dismissed.

31. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Id. CIT(A) and Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the assessee in the instant case has obtained loan of Rs.7.5 crore from M/s Globe Fincap Ltd on two different occasions. Out of the same an amount of Rs.5 crore was transferred to M/s Aman Finvest (P) Ltd. which, in turn, transferred it to M/s Supreme Portfolio (P) Ltd.. Thereafter, this company utilized the amount as share application money in the assessee company. This pattern followed a number of times and accordingly M/s Aman Finvest (P) Ltd. invested an amount of Rs.32.50 crores as share application money along with premium in the assessee company. By following similar pattern M/s Supreme Portfolio (P) Ltd. also invested an amount of Rs.32.50 crores in the assessee company. We find the Assessing Officer disbelieving the huge share premium obtained by the assessee on account of sale of shares treated the amount of Rs.65 crores as unexplained cash credit and made addition u/s 68 of the I.T.

Act, which has been upheld by the CIT(A). It is the submission of the Id. counsel for the assessee that he has explained the source of share application money invested in the assessee company by the two sister concerns and, therefore, the provisions of section 68 do not apply. It is also his submission that when the genuineness of the loan obtained from M/s Globe Fincap Ltd. has not been doubted and assessee has given money to the two sister concern who, in turn, have invested in the shares of the assessee company, it cannot be said that the purchase of share in the assessee company by the two sister concerns can be treated as unexplained cash credit. It is also his alternate argument that at least to the tune of Rs.7.5 crore the source of which has been explained by the assessee during the course of assessment proceedings as well as appellate proceedings before the CIT(A), credit to that extent should have been given which the lower authorities have failed to do.

32. It is settled principle of law that for explaining any cash credit in the books of accounts of an assessee, the assessee is required to explain the identity and creditworthiness of the creditor and the genuineness of the transactions. In the instant case, the assessee has given certain details which according to the lower authorities are not sufficient to explain the share capital and share premium of Rs.65 crores received by the assessee. In our opinion, the matter requires a re-visit to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction

regarding the capacity of the two companies to purchase such shares and the genuineness of the transactions. Further, the Assessing Officer has calculated the fair market value of the shares of the assessee company at Rs.35.76 per share and, therefore, he could not have rejected the entire share application money received by the assessee at the premium of Rs.990/- per share. In our opinion, the matter requires a re-visit to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate its case with evidence and the Assessing Officer is directed to decide the issue afresh as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

33. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on this 11th day of October, 2017.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 11-10-2017.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi