

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 54/DEL/2014(A.Y 2008-09)

ACIT Central Circle-3 New Delhi (APPELLANT)	Vs	Superb Developers (P) Ltd. WZ-183, F. F. Lance No. 4 Lajwanti Garden New Delhi AAICS4437L (RESPONDENT)
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ITA No. 55/DEL/2014(A.Y 2009-10)

ACIT Central Circle-3 New Delhi (APPELLANT)	Vs	Superb Developers (P) Ltd. WZ-183, F. F. Lance No. 4 Lajwanti Garden New Delhi AAICS4437L (RESPONDENT)
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ITA No. 56/DEL/2014(A.Y 2010-11)

ACIT Central Circle-3 New Delhi (APPELLANT)	Vs	Superb Developers (P) Ltd. WZ-183, F. F. Lance No. 4 Lajwanti Garden New Delhi AAICS4437L (RESPONDENT)
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ITA No. 403/DEL/2015(A.Y 2011-12)

Superb Developers (P) Ltd. WZ-183, F. F. Lance No. 4 Lajwanti Garden New Delhi AAICS4437L (APPELLANT)	Vs	DCIT Central Circle-3 New Delhi (RESPONDENT)
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Appellant by	Sh. S. S. Rana, CIT(DR)
Respondent by	Sh. Suresh Kumar Gupta, CA

Date of Hearing	29.05.2018
Date of Pronouncement	09.07.2018

ORDER**PER SUCHITRA KAMBLE, JM**

These appeals are filed by the Revenue against the orders dated 25/10/2013 for A.Y. 2008-09, 2009-10 and 2010-11 passed by CIT(A)-I, New Delhi and assessee filed appeal against the order dated 03/11/2014 passed by CIT(A)-II, New Delhi for A.Y. 2011-12.

2. The ground of appeal for ITA No. 54/DEL/2014 (2008-09) are as under:-

1. *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs.80,75,000/- u/s 68 of the Act w.r.t. procurement of accommodation entries through share application money from non-descript Companies.*

2. *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting an addition of Rs.40,375/- made by the AO w.r.t. commission paid @ 5% for procurement of accommodation entries through share application money from non-descrip companies.*

3. *The Commissioner of Income Tax (Appeal) erred in admitting additional evidence under Rule 46A.*

4. a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*

(b) The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of the hearing of the appeal."

3. A search and seizure operation was conducted against the Mahesh Mehta group of cases on 30/6/2009 u/s 132/133A of the Income Tax Act, 1961 and the premises of the assessee were also covered. Notice u/s 153A was issued on 13/4/2010. In response to the notice the Assessee filed reply and submitted that return declaring income of Rs.78,230/- filed originally on

9/2/2009 be treated as the return in response to the notice. Notices u/s 143(2) and 142(1) along with questionnaire were issued. The case was assessed at an income of Rs.81,93,610/- after making an additions.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee for statistical purpose by deleting all the additions thereby relying upon the order for Assessment Year 2006-07 passed by the CIT(A) therein. However, the CIT(A) dismissed the legal ground challenging the proceedings u/s 153A of the Income Tax Act, 1961.

5. The Ld. DR submitted that the assessee has failed to establish the genuineness of the transaction, identity and creditworthiness. Notices u/s 133 (6) were issued to the parties but the notices were not complied by the parties. Therefore, the Assessing Officer rightly passed the Assessment Order. The Ld. DR further submits as per the information gathered during the search and post search, accommodation entries were taken from the parties by the Assessee. The Ld. DR further pointed out that at the time of the assessment proceedings, some replies were received by the revenue through post. The Inspector was deputed to verify the addresses but the parties were found not to be existed at those addresses. The Ld. DR submitted that the assessee has not filed PAN Number as well as bank account details of the other parties.

6. The Ld. AR submits that the assessee accepted share capital from nine companies amounting to Rs.80,75,000/- through cheque for allotment of 80,750 shares of Rs. 10 each on share premium of Rs.90 per share. There was search operation on premises of the respondent assessee on 30.06.2009. The assessee is a group company of Mahesh Mehta group of cases. During search proceedings no incriminating material with regard to share capital accepted by the assessee company were found. During the Assessment Proceedings, various documents were filed to prove identity and creditworthiness of the

shareholders and also to prove genuineness of the transactions. During appeal proceedings, the assessee also submitted that the balance sheet of the share applicant companies and copy of ITR for latest A.Y. 2011-12 before the CIT(A) and also the mater data downloaded from MCA portal of government of India. All these evidences submitted during the appeal proceedings were routine documents which are public documents therefore there is no reason, the same may be treated as additional evidences. During Assessment Proceedings, the Assessing Officer issued summons u/s 131 notices u/s 133(6) to the new share holders on 13.12.2011 for compliance on 19.12.2011. The summons were not complied with the shareholders although there is no dispute about the service of summons. When the summons were not complied by the shareholders by making personal appearance but the shareholders responded by submitting information by Dak. The Assessing Officer required the assessee to provide the directors vide order sheet dated 14.12.2011. The assessee expressed his inability to produce the directors. The Assessing Officer deputed the inspector to verify the existence of four entities out of nine share applicants. The inspector reported that entities namely Chintpurni Builders P. Ltd., Multitech Semi Conductor P Ltd., Scient Informatics India P. Ltd. and Skylink Software P Ltd. don't exist at given addresses. Scient and Skylink having address at 301, Himalaya Palace, 65 Vijay Block, Laxmi Nagar, Delhi reported that no such company existed at the above address as the premises were occupied by M/s M.S. Jain and Associates. The said concern was dealing in finance and housing loan and who confirmed that they have not heard name of these companies before. The remaining two companies namely Chintpurni and Multitech both have the address Laxmi Nagar and Shakarpur addresses. The inspector has reported that Multitech address is a residential premises and the occupants have no heard the name of the above entities. There is no report of inspector with regard to Chintpurni. The Assessing Officer rejected the explanation/evidences furnished by the assessee to discharge initial onus u/s 68 of the Income Tax Act by lifting corporate veil. The CIT(A) admitted the additional evidences after forwarding the application of the assessee under

Rule 46A of the Income Tax Act to the Assessing Officer. In the application, the assessee had given the reason that adequate opportunity to file the evidences were not given by the Assessing Officer as Assessing Officer had himself issue summon u/s 131/notices u/s 133(6) on 13.12.2011 for compliance on 19.12.2011 to the share applicants to verify the transactions. The assessee therefore did not pursue the matter in view of direct enquiry from the shareholders. When there was non compliance of the summons and when this fact was intimated on 14.12.2011, the assessee was able to collect the documents partly. Since the documents to come from outside sources, the sufficient time was not available to make the collection of the documents. The Assessing Officer in the remand report did not dispute the factual position of lack of reasonable opportunity. In the rejoinder to the remand report, the assessee contended that in the remand report the Assessing Officer has not controverted the facts stated. The CIT(A) after giving opportunity to the Assessing Officer in appeal order for A.Y. 2006-07 which is base order for adjudicating appeal for A.Y. 2008-09 accepted the request of the assessee to admit fresh evidences as the assessment was completed by the Assessing Officer in hurried manner in period just 16 days and total time made available by the Assessing Officer to himself was last two months. The CIT(A) while adjudicating the admissibility of the additional evidences took into account the fact that inspector report was never confronted to the assessee during assessment proceedings nor during remand proceedings. The CIT(A) has made a special mention that the need for filing fresh evidences to highlight the existence of shareholders at the given address, arose because the inspector report was not confronted by the Assessing Officer during assessment proceedings also. The additional evidences therefore were accepted by the CIT(A). The CIT (A) for A.Y. 2006-07 has given a findings that there have been filing of returns for subsequent years by the share applicant companies and all the share applicant companies are active in the compliances under the Companies Act. All the companies had resources more than the share capital investment with the assessee company. There have been cases of Assessment

u/s 143(3) completed by the department for A.Y. 2007-08 in December 2009 in the case of Scient Informatics P Ltd. In other cases, returns of income were subsequent years have been filed to show that companies are in existence. There is an observation by the Assessing Officer in Assessment Order that in the instant case the undersigned is of knowledge which was gathered through post search and during the course of assessment proceedings, that entities are subject of accommodation entries. This observation of the Assessing Officer is based on no material and farfetched. Neither in the Assessment Order nor in the remand proceedings the Assessing Officer has substantiated the above allegation and this allegation is the basis for the Assessing Officer to reject the explanation of the assessee u/s 68. The above observation, since unsupported by any material on record need be ignored. On the inspector report, the CIT(A) held that since inspector report has not been confronted by the Assessing Officer, such evidences produced show that these companies are physically present as is evident from the service of the summons, filing of returns of income regularly and the status of the companies appear as active companies as per MCA records. The CIT(A) also took a view that during search proceedings on the appeal no incriminating documents were found with regard to the receipt of share application money. The CIT(A) relied upon case laws which are Dhingra Globa Credence P Ltd. (ITAT Del) and McDowell & Co. Ltd. vs. CTO 154 ITR 148 (SC).

7. The Ld. AR further submitted that the finding of the CIT(A) is that there is no basis for drawing inference that the assessee is accepted accommodation entries as there is no material to support that finding. There is no cash deposit in the bank accounts in the bank accounts in the share applicants and no incriminating material found in the course of search. All the evidences furnished during the assessment proceedings and the appeal proceedings discharge the initial onus lay upon the assessee u/s 68 of the Act. The credit worthiness has sought to be established as the parties were assessed to tax and they have sufficient sources available with them as per balance sheet to

finance investment in the share capital. To support the above view, the reliance was placed on CIT vs. Winstral Petrochemicals Ltd. 330 ITR 603 (Del). On the non compliance of the summons to the share applicant companies, it was submitted that the summons were issues by the AO himself on his own and in that situation non compliance of summons cannot lead to burden being placed on the assessee to produce those person. On the non compliance of the summons taken ground to take adverse view, the assessee relied on judgment of Anis Ahmed & Sons vs. CIT 297 ITR 441 (SC). Further reliance were also placed on CIT vs. WinstralPetrochemicals Ltd. (supra). The assessee dealt with the objection of the Assessing Officer that assessee failed to produce the directors of the share applicant companies. Special reference was made by the Assessing Officer that in case of private limited companies the onus to produce the directors is higher. To support the contention of the assessee reliance was placed in the case of Makhani & Tyagi Pvt. Ltd. 267 ITR 430 (Del) and CIT vs. Victor Electrodes Limited 329 ITR 271 (Del). The assessee has relied on various judgments which are mentioned in CIT(A)'s order and special reference is made in the decision of Nova Promoter & Finlease Pvt. Ltd. 342 ITR 169 (Del) extracted in order of the CIT(A). The crux of the judgment was that if the Assessing Officer has any material on the basis of the investigation carried out by the revenue authorities into the activities of the entry providers and the assessee has some accommodation entries from any such entry providers then in that case the paper evidences furnished by the assessee will not sufficient to discharge onus u/s 68. But in case no such material is the hands of the Assessing Officer, the Assessing Officer cannot sit with folded hands till assessee exhaust all material and evidences in his possession. As per this judgment, where there is no adverse material so as to characterized share holder entities as entry provider, no addition cannot be made in the hands of the assessee company u/s 68 and remedies open to the revenue to go after the share applicants in accordance with law. Further the CIT(A) relied on Orissa Corporation Private Limited 1986 AIR 1849: 1986 SCR (1) 979 and other authorities to hold that the evidences and material adduced by the assessee

cannot be thrown out without any enquiry but such a rule has limitation if there is a material to link the transaction with accommodation entry providers which is not a case here in the present appeal. The court held that even if there is material as a result of detailed enquiry by investigation wing even in that case non production of the directors, was not held to be a good ground to make addition as primary onus by the assessee is discharged. The Ld. AR submitted that it was case of no enquiry based on the evidences. The assessee relied on CIT vs. Goel Sons Golden Estate Pvt. Ltd. ITA No. 212/2012 (Del) to hold that in absence of any enquiry and non verification of the details submitted, the factual findings of the AO are incomplete and spars.

8. We have heard both the parties and perused the material available on record. As regards Ground No. 3 of the Revenue's appeal, the CIT(A) rightly taken into considerations the evidence filed by the assessee during the Assessment proceedings. There was no fresh evidence submitted by the Assessee. This fact was not denied by the Revenue. Therefore, Ground No. 3 of the Revenue's appeal is dismissed. On merit of the appeal filed by the Revenue, it is pertinent to take note about the order passed by the CIT(A) in Assessment Year 2006-07 which was handed over by the Ld. AR during the hearing. The CIT(A) for A.Y. 2006-07 held as under:-

"I have considered the assessment order, the submissions made and the documents filed. I have already held that the appellant was prevented from discharging its onus on account of insufficient opportunity and was also prejudiced and, accordingly, I have admitted the additional evidence filed by the appellant. At present, the appeals involved in respect of the appellant on the issue of share application / share capital are for AY 2006-07 (A.No.361/13-14), AY 2007-08 (A.No.360/13-14), AY 2008-09 (A.No.359/13-14), AY 2009-10 (A.No.358/13-14) and AY 2010-11 (A.No.357/13-14). The share capital raised from different companies in these years is summarized in the table given hereunder:

Sl No.	Applicant Companies ASSESSMENT YEAR s	2006-07	2007-08	2008-09	2009-10	1010-11
1	Oracle Cables Pvt. Ltd.	1000000			1500000	
2	Arsey Hosiery Pvt. Ltd.	1000000				
3	Twicne Traders Pvt. Ltd.	1000000				
4	Chardham Impex Pvt. Ltd.	1500000				
5	Vidur Builders Pvt. Ltd.	1500000				
6	Tejender Fabrication Pvt. Ltd.	1500000				
7	Kaiser Marketing Pvt. Ltd.	800000			800000	
8	Indolon Hosiery P Ltd.		1200000	425000	1000000	1500000
9	Brainsoft Info Consultannts Pvt. Ltd.			45000		500000
10	Chintapurni Builders Pvt. Ltd.			500000	2000000	1000000
11	Midas Touch Medica Pvt. Ltd.			1300000	1000000	1000000
12	Multitech Semicondsuctors Pvt. Ltd.			1900000	1000000	
13	Ribbel Manufactuerrs & Expoerters Pvt. Ltd.			1000000	2500000	
14	Scient Infoormatics India Pvt. Ltd.			500000		

15	Sevbro Domestic Appliances Pvt. Ltd.			500000		
16	Skylink Softwares Pvt. Ltd.			1500000		
17	APT Properties Pvt. Ltd.				2000000	
18	Dhanvridhi Financial Services Pvt. Ltd. CIT(A)				1000000	
19	Intelife Marketing Pvt. Ltd.				3500000	
20	Kay Buildwell Pvt. Ltd.				1500000	
21	Kela Devi Builders Pvt. Ltd.				2000000	2000000
22	Wiseman Marketing Pvt. Ltd.				3000000	1500000
23	Shweta Mehandi Products Pvt. Ltd.				2000000	
24	Vaishno Devi Land & Building Developers Pvt. Ltd.				1000000	
	TOTAL	8300000	1200000	8075000	25800000	7500000

5.3. I have examined the evidences filed and my observations / findings with regard to each case are as under:

Sl No.	Applicant Companies	OBSERVATIONS/FINDINGS
1	Oracle Cables Pvt. Ltd.	The case was assessed for AY 2007-08 u/s 143(3) by the Department itself on 29.12.2009. Therefore, the question of non-existence of this co. does not arise
2	Arsey Hosiery Pvt. Ltd	The case was assessed for AY 2007-08 u/s 143(3) by the Department itself on 01.12.2009. Therefore, the question of non-existence of this co. does not arise.
3	Twince Traders Pvt.	The IT return for AY 2011-12 was electronically filed on 08.03.2012 vide acknowledgment No.348672971080312. This information is available in the I T Department's own data base.

	<i>Ltd.</i>	Therefore, the question of non-existence of this co. does not arise.
4	<i>Chardham Impex Pvt. Ltd.</i>	The case was assessed for AY 1995-96 u/s 143(3) by the Department itself on 26.10.1998. The IT return for the AY 2010-11 was also filed electronically on 31.03.2011 vide acknowledgement no.211242421310311. Therefore, the question of non-existence of this co. does not arise.
5	<i>Vidur Builders Pvt. Ltd.</i>	Copy of audited balance sheet for the year ending 31.03.2006 has been filed. IT records could not be produced
6	<i>Tejender Fabrication Pvt. Ltd.</i>	The ITR for AY 2010-11 was electronically filed on 27.09.2010 vide acknowledgment No. 161381151270910. Therefore, the question of non-existence of this co. does not arise.
7	<i>Kaiser Marketing Pvt. Ltd.</i>	The case was assessed for AY 2006-07 u/s 143(3) by the Department itself on 26.12.2008. The ITR for AY 2010-11 was electronically filed on 25.09.2010 vide acknowledgment No. 159633301250910. Therefore, the question of non-existence of this co. does not arise.
8	<i>Indolon Hosiery P Ltd.</i>	ITR for AY 2011-12 was filed on 29.03.2012 vide acknowledgment No.370700291290312. Copies of MCA filings and confirmations from the Directors were also filed. Therefore, the question of non-existence of this co. does not arise.
9	<i>Brainsoft Info Consultants Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 31.03.2012 vide acknowledgment No.381694521310312. Copies of audited balance sheet and confirmations from the Directors were also filed. Therefore, the question of non-existence of this co. does not arise.
10	<i>Chintapurni Builders Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 26.09.2008 vide acknowledgment No.40183200260908 and ITR for AY 2011-12 was filed on 31.03.2012 vide acknowledgment No.380735971310312. Copies of audited balance sheet, share application and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.
11	<i>Midas Touch Media Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 22.03.2009 vide acknowledgment No.60418950220309. Copies of audited balance sheet, share application and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.
12	<i>Multitech Semiconductors Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 29.03.2009 vide acknowledgment No.64402491290309 and ITR for AY 2011-12 was filed on 29.03.2012 vide acknowledgment No.370520691290312. Copies of audited balance sheet and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.
13	<i>Ribbel Manufacturers & Exporters Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 22.03.2009 vide acknowledgment No.60418950220309. Copies of audited balance sheet, share application and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.

14	<i>Scient Informatics India Pvt. Ltd.</i>	The case was assessed for AY 2007-08 u/s 143(3) by the Department itself on 16.12.2009. Therefore, the question of non-existence of this co. does not arise.
15	<i>Sevbro Domestic Appliances Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 22.03.2009 vide acknowledgment No.60434730220309. Copies of audited balance sheet, share application and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.
16	<i>Skylink Softwares Pvt. Ltd.</i>	ITR for AY 2008-09 was filed on 22.03.2009 vide acknowledgment No.60411150220309 and ITR for AY 2011-12 was filed on 31.03.2012 vide acknowledgment No.381257601310312. Copies of audited balance sheet, share application and bank statement were also filed. Therefore, the question of non-existence of this co. does not arise.
17	<i>APT Properties Pvt. Ltd.</i>	Copy of audited balance sheet for the year ending 31.03.2009 has been filed. IT records could not be produced. However, MCA master data shows the co. active and having filed the balance sheet as on 31.03.2010. Thus, it cannot be said that the co. did not exist as on 31.03.2009. Co. appears to have the source for the investment.
18	<i>Dhanvridhi Financial Services Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 05.03.2012 vide acknowledgment No.346599241030312. Copy of the audited balance sheet as on 31.03.2009 was also filed. Therefore, the question of non-existence of this co. does not arise. Co. appears to have source for the investment
19	<i>Intelife Marketing Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 31.03.2012 vide acknowledgment No.382068051310312. Copy of the audited balance sheet as on 31.03.2009 was also filed. MCA master data shows the co. active and having filed the balance sheet as on 31.03.2010. Therefore, the question of non-existence of this co. does not arise.
20	<i>Kay Buildwell Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 30.03.2012 vide acknowledgment No.374037341300312. Copy of the audited balance sheet as on 31.03.2009 was also filed. Therefore, the question of non-existence of this co. does not arise. Co. appears to have the source for investment.
21	<i>Kela Devi Builders Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 20.03.2012 vide acknowledgment No.356042621200312. Copy of the audited balance sheet as on 31.03.2009 was also filed. Therefore, the question of non-existence of this co. does not arise. Co. appears to have the source for investment.
22	<i>Wiseman Marketing Pvt. Ltd.</i>	Copy of audited balance sheet for the year ending 31.03.2006 has been filed. IT records could not be produced.
23	<i>Shweta Mehendi</i>	The return was processed for AY 2009-10 u/s 143(1) by the Department (CPC) itself on 17.09.2010 and refund issued. ITR for AY was filed on 26.09.2010 vide acknowledgment No. 160329921260910. Copy of the audited balance

	<i>Products Pvt. Ltd.</i>	sheet as on 31.03.2009 was also filed. Therefore, the question of non-existence of this co. does not arise. Co. appears to have the source for investment.
24	<i>Vaishno Devi & Building Developers Pvt. Ltd.</i>	ITR for AY 2011-12 was filed on 20.03.2012 vide acknowledgment No.356036291200312. Copy of the audited balance sheet as on 31.03.2009 was also filed. Therefore, the question of non-existence of this co. does not arise. Co. appears to have the source for investment.

5.4. *It would be seen from the above table that it cannot be concluded that the share applicant companies did not exist or that the transactions were not established. Only in two case, viz. Vidur Builders Pvt. Ltd. and Wiseman Marketing Pvt. Ltd., copies of the ITRs could not be furnished by the appellant. Even in these cases, copies of the balance sheets filed indicate that the companies had the funds / sources to make investment in the share application towards the appellant company. The revenue cannot be taking two different stands. On the one hand the revenue is accepting and admitting compliance to its own laws and procedure by way of filing of ITR, payment of taxes, processing and issue of refunds, and also tax scrutiny of cases. On the other hand, the revenue cannot take the stand that the share applications are unexplained as some of the share applicant companies could not be physically located by the Inspector at the given address. For this there could be several reasons - the Inspector may not have done his job properly, or the applicant companies may have changed address. There is no comment by the revenue on the replies admittedly received from the applicant companies by post. There is no comment on the merit of the documents filed. When the appellant was not confronted with the Inspector's report, it cannot be alleged by the revenue that the appellant failed to establish the transactions. The appellant was even searched by the revenue but no such evidence was found. Public functionaries must act in a transparent and non-partisan manner. This does not appear to be the case.*

5.5. *In view of the above, the additions made in various years, i.e. Rs.83,00,000/- for AY 2006-07 (A.No.361/13-14), Rs. 12,00,000/- for AY*

2007-08 (A.No.360/13-14), Rs.80,75,000/- for AY 2008-09 (A.No.359/13-14), Rs,2,58,00,000/- for AY 2009-10 (A.No.358/13-14), and Rs.75,00,000/- for AY 2010-11 (A.No.357/13-14), on account of share applications / capital received cannot be held to be unexplained. The conclusion is not tenable in view of the evidence produced and must be deleted. I hold so accordingly for all these assessment years. The respective additions made for these AYs are deleted.”

In the present Assessment Year 2008-09, the facts are identical and the CIT(A) has rightly followed the order of A.Y. 2006-07 passed by the same CIT(A). There is no need to interfere with the findings of the CIT(A). Therefore, appeal filed by the Revenue is dismissed.

9. In result, ITA No. 54/Del/2014 filed by the Revenue is dismissed.

10. Grounds for ITA No. 55/DEL/2014 (2009-10) are as under:

1. The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs.2,58,00,000/- u/s 68 of the Act w.r.t. procurement of accommodation entries through share application money from nondescript companies.

2. The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting an addition of Rs. 1,29,000/- made by the AO w.r.t. commission paid @ 5% for procurement of accommodation entries through share application money from non-descript companies.

3. The Commissioner of Income Tax (Appeal) erred in admitting additional evidence under Rule 46A.

(a)The order of the CIT(A) is erroneous and not tenable in law and on facts.

(b)The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of the hearing of the appeal.”

11. The Ld. AR made submission that the Inspector report was not confronted to the assessee during the search and at the time of the search no

incriminating material was found. The Ld. AR further submitted that there was no investigation made on behalf of the Assessing Officer. Therefore, this case is squarely covered by the decision of the Hon'ble Supreme Court in case of Lovely Exports (P) Ltd. 216 CTR 195. The Ld. DR relied upon the Assessment Order.

12. We have heard both the parties and perused all the records. From the perusal of the records, it is found that there was no incriminating material found during the search proceedings and there was no investigation made by the Assessing Officer. Thus, the ratio laid down by the decision of the Hon'ble Apex Court in the case of Lovely Export (supra) will be applicable in the present case. Besides that the Ld. AR further made submission that the issue in Assessment Year 2009-10 is identical to that of A Y. 2008-09. Therefore, the appeal filed by the Revenue is dismissed.

13. In result, ITA No. 55/Del/2014 filed by the Revenue is dismissed.

14. Grounds of appeal for ITA No 56/DEL/2014 (2010-11) are as under:

1. *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting the addition of Rs.75,00,000/- u/s 68 of the Act w.r.t. procurement of accommodation entries through share application money from non-descript companies.*
2. *The Commissioner of Income Tax (Appeal) erred in law and on facts in deleting an addition of Rs.37,500/- made by the AO w.r.t. commission paid @ 5% for procurement of accommodation entries through share application money from non-descript companies.*
3. *The Commissioner of Income Tax (Appeal) erred in admitting additional evidence under Rule 46A.*
4. *(a)The order of the CIT(A) is erroneous and not tenable in law and on facts. (b)The appellant craves leave to add, alter or amend any/all the grounds of appeal before or during the course of the hearing of the appeal.”*

15. The Ld. DR submitted that the Companies were not existed as per the Inspector Report. The Ld. DR relied upon the Assessment Order for A.Y. 2010-11. The Ld. AR submitted that the issue is identical with the A.Y. 2008-09.

16. We have heard both the parties and perused all the relevant records. For Assessment Year 2010-11, the assessee has filed all the required documents before the Assessing Officer. Therefore, the submission of the Ld. DR that the Companies were not existed as per the Inspector Report is not proper. Therefore, the appeal filed by the Revenue for the Assessment Year 2010-11 is dismissed.

17. In result, ITA No. 56/Del/2014 filed by the Revenue is dismissed.

18. Grounds of Appeal for ITA No. 403/DEL/2015 (2011-12) are as under:

1. *The Ld. CIT (A) - II both on facts and in law and also in the circumstance of the case has erred in confirming the addition of Rs. 3,00,000/- u/s 68 of the IT Act on account of acceptance of share application money from M/s Indlon Hosiery Pvt. Ltd. based on the conjecture and surmises ignoring the fact that there was no adverse material before the AO to doubt the identity and creditworthiness of the above share applicant and also the genuineness of the transaction.*

2. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble Bench.*

19. The brief facts for A.Y. 2011-12 are that the assessee is engaged in the business of real estate providing loan and investments in shares and securities. The assessee company filed e-return of income for Assessment Year 2011-12 on 27/9/2011 declaring income of Rs.2,76,440/-. The case was selected for scrutiny and assessed u/s 143(3) of the Income Tax Act, 1961 were order dated 28/2/2014. The Assessing Officer computed the income of the assessee at Rs.5,76,440/- thereby making an addition of Rs.3 lacs u/s 68 of

the Income Tax Act on account of acceptance of share application money from M/s Indlon Hosiery Pvt. Ltd.

20. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee by holding that since the Assessing Officer made enquiries but only part details were provided by the parties and since the part bank statement of the party revealed typical accommodation entry transactions. Therefore, following the ratio in case of Globus Securities and Finance Pvt. Ltd. 41 Taxman.com 465 dismissed the appeal of the assessee by holding that the assessee failed to discharge its obligation in proving the genuineness of the summons credited its books of accounts.

21. The Ld. AR submitted the assessee accepted share capital from one M/s Indlon Hosiery Pvt. Ltd. by accepting through cheque amount of Rs. 3,00,000/- for allotment of 3,000 shares of Rs. 10 each on share premium of Rs. 90 per share. During Assessment Proceedings, all the evidences like ITR, Bank Statements, copy of PAN Card names and addresses of the directors and audited balance sheet of the share applicant were submitted by the share applicant directly in response to notice u/s 133(6). The Assessing Officer issued show cause notice on the ground that in normal days the share applicant company has nominal balance and it did not have own funds to make investment of Rs.3,00,000/-. In reply to show cause notice the assessee explained that the share applicant company was assessed u/s 143(3) for A.Y. 2007-08 vide order dated 10.12.2009. The applicant is a registered company under Companies Act with valid CIN number. The company has been operating bank account with nationalized bank with KYC documents and due compliance of banking regulations, the details of the said company was submitted before the Assessing Officer. To prove creditworthiness, the assessee submitted that the said company has net worth of Rs.300.69 lakhs on 31.03.2010 and Rs. 345.95 lakh on 31.03.2011. So said company has

sufficient funds accumulated out of past inflow of funds. The Assessing Officer rejected the explanation of the assessee by relying on CIT vs. Globus Securities and Finance P Ltd. to hold that criteria of identity, creditworthiness and genuineness of transaction has not been satisfied. The CIT(A) also confirmed the action of the Assessing Officer by relying on CIT vs. Focus Exports P Ltd., CIT vs. Onassis Axles P Ltd. and CIT vs. MAF Academy P Ltd., CIT vs. N Tarika Properties Investment P Ltd. and CIT vs. Globus Securities & Finance P Ltd. The CIT(A) put onus on the assessee to produce the director of the share applicant company on its own as according to her it was duty of the assessee to produce the director to discharge onus u/s 68. The CIT(A) analyzed the bank account of the share applicant company and observed that the party was merely engaged in providing accommodation entry.

22. The Ld. DR relied upon the order of the Assessing Officer and CIT(A).

23. We have heard both the parties and perused the material available on record. The CIT(A) put onus on the assessee to produce the director of the share applicant company on its own as according to her it was duty of the assessee to produce the director to discharge onus u/s 68. The CIT(A) analyzed the bank account of the share applicant company and observed that the party was merely engaged in providing accommodation entry. The CIT(A) dismissed the appeal of the assessee by holding that since the Assessing Officer made enquiries but only part details were provided by the parties and since the part bank statement of the party revealed typical accommodation entry transactions. During Assessment Proceedings, all the evidences like ITR, Bank Statements, copy of PAN Card, names and addresses of the directors and audited balance sheet of the share applicant were submitted by the share applicant directly in response to notice u/s 133(6). Thus, the Assessing Officer as well as the CIT (A) has not at all considered all the documents which was provided by the Assessing Officer as well as before the CIT(A). Therefore, it will be pertinent to remand back this matter to the file of the Assessing Officer to

take cognizance of the documents filed by the Assessee. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

24. In result, ITA No. 403/Del/2015 filed by the Assessee for Assessment Year 2011-12 is partly allowed for statistical purpose.

Order pronounced in the Open Court on 09th July, 2018.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Dated: 09/07/2018
R. Naheed

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	29.05.2018
Date on which the typed draft is placed before the dictating Member	29.05.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the S. PS/PS	09.07.2018
Date on which the final order is uploaded on the website of ITAT	09.07.2018
Date on which the file goes to the Bench Clerk	09.07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	