

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'B', New Delhi**

**Before: Shri Amit Shukla, Judicial Member
And
Shri L.P. Sahu, Accountant Member**

**ITA No. 2742/Del/2017
Assessment Year: 2010-11**

Conton Textiles Mills Pvt. Ltd., (Now known as VNG Packaging Pvt. Ltd.), 206, Vardhman Shrenik Plaza, LSP, Mayur Vihar, Phase-II, New Delhi. PAN: AACCC9563D (Appellant)	vs.	Principal C.I.T. – 9, New Delhi (Respondent)
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Appellant by	Sh Raj Kumar, C.A. and Sh Rajeev Ahuja, C.A.
Respondent by	Ms. Nidhi Srivastava, CIT/DR

Date of Hearing	27.03.2019
Date of Pronouncement	08.04.2019

ORDER

Per Amit Shukla, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order dated 29.03.2017, passed by Principal Commissioner of Income Tax -9, New Delhi in his revisionary jurisdiction u/s. 263 for the assessment year 2010-11. In various

grounds of appeal, the assessee has challenged the order of the Pr. CIT passed u/s. 263, canceling the assessment order dated 29.03.2015 passed u/s. 147/143(3), mainly on the issue of introduction of share capital amounting to Rs.12,10,13,000/-.

2. The brief facts and background of the case are that, in the case of assessee, notice u/s. 148 was issued on 20.03.2014 mainly to examine the source of introduction of share capital amounting to Rs.48,40,520/- and share premium amounting to Rs.11,61,72,480/- The 'reasons recorded' for reopening the case were as under :

"Scrutiny Assessment in the case of the assessee for AY-2011-12 u/s 143(2) was selected through CASS and notice was sent on 12-08-2013. The return for AY 2011-12 was filed on 12-12- 2012. The CASS reasons for selection of the case for AY-2011-12 was "Large Share Premium Received". However, form B/s for AY-2011-12, no such introduction of Share Capital, Share Premium (Reserve & Surplus), Unsecured Loans, Investments were seen. There were no changes in them in the AY 2011-12.

The assessee was asked to file B/s for AY 2010-11 wherein it could be seen that the introduction of new Share Capital amounting to Rs.48,40,520/-, Share Premium (Reserve & Surplus) amounting to Rs. 11,61,72,480/- and also Investments of Rs. 12,07,70,000/- had taken place. The assessee has not filed the ITR for AY 2010-11. Therefore the above mentioned new introductions in share capital, share premium with related investments are required to be scrutinized as it could not be done due to assessee's non- filing of ITR for AY-2010-11. Due to this reason the share capital, share premium and Investments are not scrutinized in the AY 2011-12; as it is required to be done in the AY 2010-11.

Therefore, for the reasons mentioned above, I have reason to believe that amounts to the tune of Rs.12,10,13,000/- altogether has escaped assessment within the meaning of section 147 of the I.T. Act, 1961 as this was willfully and purposely done on the part of the assessee by not filing the ITR for the relevant AY 2010-11.

I am satisfied for the reasons mentioned above that it is a fit case for issue of notice u/s 148 of the I.T. Act, 1961 for the AY 2010-11.”

2.1 In the course of the assessment proceedings u/s. 147/143(3), the Assessing Officer has raised various queries and issued notice to the assessee to examine the genuineness of introduction of share capital received by the assessee company from various entities. As culled out from the record, the Id. Assessing Officer had also issued notices u/s. 133(6) to all the parties and in response, these parties have provided all the details to the Assessing Officer. After examining the documents, the Assessing Officer accepted the introduction of share capital and share premium vide his order dated 29.03.2015 passed u/s. 147/143(3).

2.2. Thereafter, it appears from the documents submitted before us, the Assessing Officer after framing the assessment, sent a proposal vide letter dated 20.04.2015 to the Principal CIT to take action u/s. 263, stating that, *firstly*, there was non-cooperative attitude of the assessee; *secondly*, the details were provided at the fag-end of the proceedings; *thirdly*, thorough investigation could not

be made; and *lastly*, therefore, he decided that it would not be wise to pass a weak assessment order. On receipt of said proposal, the Id. Pr. CIT issued a show cause notice dated 20.02.2017 and 14.03.2017 u/s. 263 stating as under:

“On perusal of assessment record, it is found that the assessee company had credited an amount of Rs. 12,10,13,000/- on account of share premium and share capital from 15 different share applicant companies, however, these so called share subscribers got neither dividend nor share of profit against their huge investments from the assessee company. Further, the Assessing Officer had not examined the financial worth, genuineness and creditworthiness of these transactions. Therefore, the assessment order passed u/s 147/143(3) dated 29.03.2015 for the A.Y. 2010 11 is erroneous in so far as it is prejudicial to the interest of revenue and hence needs a review u/s 263 of the IT Act, 1961.”

3. Ld. Pr. CIT in his impugned order had incorporated exactly the same reasoning as was proposed by the Assessing Officer vide letter dated 20.04.2015 placed at paper book page 537 to 543, and held that the order framed by the Assessing Officer u/s. 147/143(3) is not only erroneous in law but also prejudicial to the interest of Revenue. Accordingly, he set aside the assessment with the direction to re-frame the assessment de novo. The main facts noted by the Id. Pr. CIT, can be summarised as under:-

(i). Prior to issuance of notice u/s. 148, the assessee had not filed its return of income for the assessment year 2010-11.

(ii). The balance sheet of the assessee as on 31.03.2010 reveals that the assessee has issued 4,94,052 equity shares at a face value of Rs.10/- and premium of Rs.240/- per share. The paid up capital was increased from Rs.1,00,000/- to Rs.49,40,520/- and the assessee had 'reserves & surplus share premium account' amounting to Rs.11,61,72,480/-, thereby increasing the share capital/ reserve & surplus to Rs.12,10,13,000/-. He has also noted the details of the companies who subscribed their shares.

(iii). The funds received by the assessee in the form of share capital/premium have been further invested in unquoted shares of various other companies and neither any activities have been shown by the assessee nor does it have any fixed assets.

(iv). The profit and loss account of the assessee company reveals that total gross receipts of the assessee company were merely Rs. 3,732/- and the assessee has shown a loss of Rs.57,277/.

(v). After analyzing the Income-tax particulars, balance sheet, Profit & loss accounts of these share subscriber companies, he deduced following points:

(i) It is seen that none of these companies were engaged in any business activity. Their only declared income was a small amount of other income.

(ii). Also the profit & loss account revealed that the gross annual revenue receipt of these companies as well as the annual profit declared by these companies was practically insignificant during the relevant period.

(iii) A perusal of Balance Sheet of these companies have shown substantial amount of receipts in their balance sheet in the form of share capital at high premium, which have been transferred as investments in some other correlated entities.

(iv). It is also worthwhile to note that though these aforesaid companies had made colossal amount of investments in other entities in forms of share capital and loans and advances, they have not received any dividend or profit from these investments, as is evident from perusal of their Balance Sheet and P&L a/c.

(v). It is very strange that despite having no financial worth of their own, these share applicant companies have managed to receive such huge share premium and the entire sum has further been transferred to some other entity, including the assessee rather than utilizing the same for business purposes.

Thus, he deduced that a company which neither had any business activity nor engaged in any profit generating apparatus, how it could

have received such a huge share capital from the companies, who themselves did not had any financial worth. Further, Form No. 2 and other documents filed with the ROC were only after a lapse of four years of share application money, i.e., on 25.02.2014. On these reasons, he set aside the assessment order.

4. Before us, the Id. counsel for the assessee, first of all raised legal objection that here in this case, the Assessing Officer has sent a proposal to the Pr. CIT to initiate proceedings u/s 263 and without any independent application of mind, the d. Pr. CIT has initiated the revisionary proceedings u/s. 263. There has to be independent application of mind after the Pr. CIT has examined the assessment records himself and then reach to a conclusion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue and he cannot acquire jurisdiction merely on the proposal of the Assessing Officer. In support, he relied upon following decisions:

- (i). Kishore Madnani vs. CIT (ITA No. 508/JP/2013- order dated 31.01.2014)
- (ii). Shri Dharmendra Kumar Bansal vs. CIT (ITA No. 350/JP/2013- order dated 28.02.2014.
- (iii) Shri Gaurav Bhatia vs. CIT (ITA No. 1730/Del/2013 – order dated 13.04.2017.

Thus, he submitted that on this ground alone, such an action of the Id. Pr. CIT should be struck down.

4.1 On merits, he submitted that, on perusal of reasons recorded itself, it can be seen that, precisely on the same issue, proceedings u/s. 147/148 were initiated, that is, for examining the share capital and share premium amount aggregating to Rs.12,10,13,000/- and during the course of assessment proceedings, the Assessing Officer had not only examined the said issue by raising various questionnaires and queries, but also conducted detailed inquiry directly from the parties. Before the Assessing Officer, the assessee had filed all the requisite documents and affidavits in all the 15 companies. Thereafter, the Assessing Officer had issued notices u/s. 133(6) to all the parties and all of them had responded and furnished all the relevant details as was asked by the Assessing Officer. In support, he drew our attention to various documents filed by the parties before the AO and also the documents which were furnished by the assessee in response to various queries raised by the Assessing Officer from time to time. Thus, he contended that it cannot be held that the Assessing Officer has not made any enquiry or has not examined the issue.

4.2 Ld. Counsel vehemently pointed out that, one very important fact peculiar to this case is that, the issue of shares was not against any money in form of cash or cheque, but against purchase of investments in equity shares already held by those 15 companies. There is no amount or payment of money which has been received by the assessee company against issue of these shares, albeit shares

have been received from the allottees which were already held by them, as purchase consideration of the shares subscribed by them. This vital fact has not been addressed by the Id. Pr. CIT which was specifically brought to his notice. Precisely, it was for this reason alone, the Id. Assessing Officer had accepted the entire evidence and documents filed by the assessee and also the response given by various parties in the course of enquiries conducted by the Assessing Officer. He further submitted that for invoking the deeming provisions of section 68, it is *sine qua non* that there has to be 'sum' in terms of money which has been found to be credited in the books of account of the assessee maintained for any previous year. Once, there is no money or amount received against the issue of shares, then where is the question of invoking the deeming provision of section 68. Hence, on this ground also, the impugned revisionary order deserves to be quashed.

5. On the other hand, the Id. DR strongly supported the order of Ld. PCIT and submitted that mere filing of all the documents by the assessee does not mean that the AO has examined the issue. The Assessing Officer has to conduct proper enquiry about the creditworthiness and genuineness of the transaction specifically when proceedings have been initiated u/s. 147. Even from the perusal of the documents furnished by these companies like, Income-tax returns, balance sheet, profit and loss account, it can be seen that the income of all the 15 companies did not commensurate

with the amount of share application money and share premium. This shows that there was no application of mind of the Assessing Officer on the details furnished by the assessee. He further submitted that the assessment order is very cryptic which finishes in few lines without adhering to the issue. Thus, in such situation and circumstances and in view of *Explanation-2* to section 263, said order is deemed to be erroneous in so far as prejudicial to the interest of Revenue. In support, she has relied upon the judgment of Hon'ble Supreme Court in the case of **Deniel Merchants P. Ltd. vs. ITO in SLP No. 23976/2017 – judgment and order dated 29.11.2017**. She also relied upon the judgment of Delhi High Court in the case of CIT vs. Nagesh Knitwears P. Ltd and CIT vs. Orient Crafts Ltd. reported in 345 ITR 135.

6. In rejoinder, the ld. counsel submitted that here it is not the case of no inquiry. In fact, the entire assessment proceedings revolve around the inquiry on this particular issue only. Therefore, it cannot be held that in terms of *Explanation-2*, it is a deemed case of canceling of assessment u/s. 263. Without prejudice, he submitted that, if it is held that there was some kind of inadequate enquiry by the Assessing Officer, then in such circumstances also it cannot be held that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of Revenue. He submitted that Legislature has not specifically provided as to what kind of inquiry is to be done by the Assessing Officer and only after that it can be said that the

Assessing Officer has not carried out investigation as per law. In support, he relied upon the judgment of Hon'ble Jurisdictional High Court in the case of **CIT vs. Sunbeam Auto Ltd.**, reported in **332 ITR 167; CIT vs. Vikas Polymers**, reported in **194 taxman 57** and catena of other judgments in his compilation. Further, even if assessment order is cryptic, it does not render the order erroneous and prejudicial to the interest of Revenue. What is required to be seen is, whether the Assessing Officer has conducted proper enquiry or not, which in this case has been done.

6.1 Further, without prejudice, he submitted that if Id. Pr. CIT was not satisfied with the inquiry made by the Assessing Officer, then he himself could have carried out some prima facie inquiry so as to come to the conclusion that the inquiry done by the Assessing Officer was not proper or sufficient. In absence of any self inquiry by the Pr. CIT and without reaching and recording his self independent satisfaction, the case cannot be set aside to the Assessing Officer for fresh assessment. In support of this proposition, he relied upon the judgment of **Pr. CIT vs. Delhi Air Port Express Pvt. Ltd. – ITA No. 705/2017 order dated 05.09.2017.**

7. We have heard the rival submissions, the judgments relied upon by the parties, findings given in the impugned order as well as various material and documents referred to before us at the time of hearing. In this case, action u/s. 147 was taken by the Assessing

Officer only to examine the introduction of share capital and share premium aggregating to Rs.12,10,13,000/-. From the records submitted before us, we find that the Assessing Officer in his notice u/s. 142(1) dated 17.07.2014 apart from asking various other details, had specifically asked for new share application money and share premium received during the financial year and to file confirmations along with all the details and also required the assessee to justify as to under what circumstances, shares were issued at such a high premium. In response, the assessee had filed detailed reply along with the documents as are available in the paper book. It was also informed to the Assessing Officer that the assessee company has allotted its equity shares not in consideration for any money, albeit the assessee has received investments held by allottee companies as reflected in their balance sheets. The detailed chart of investment received by the allottee company in Form No. 2 filed by the allottee companies was also enclosed. From the documents placed before us, as appearing from pages 8 to 536, in 2 volumes of paper book, it is seen that precisely on issue of share application money and share premium, the Assessing Officer had conducted detailed enquiry and has raised queries, in response to which these documents have been filed. Here in this case, the Assessing Officer had issued notices u/s. 133(6) to all the parties, who had duly confirmed that share application money and share premium has been subscribed other than the consideration of cash and have complied with such notices and filed the entire details. For the sake

of ready reference, the details of the documents filed by all the 15 parties before the Assessing Officer are as under:

M/S. Saffron Logistic (P) Ltd (Rs.94,20,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- ITR Ack. - A.Y. 10-11.
- Audited Financial statements of Saffron - A.Y. 10 - 11.
- Ledger A/c of assessee in books of Saffron - A.Y. 10-11
- Confirmation of A/c from Saffron
- Confirmation from Saffron for subscribing the shares of assessee
- Agreement for purchase of shares
- Share allotment letter from Upvan Leasing P Ltd. to Saffron
- --do— from Ganesh Ganga Investment P Ltd. to Saffron
- -do— from Royal Mirage Financial Consultant P Ltd. to Saffron
- Affidavit by director of Saffron
- Certificate of Incorporation of Saffron

M/S. Bankey Bihari Apparels (P) Ltd (Rs. 91,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- PAN Card
- ITR Ack. -A.Y. 11-12.
- Audited Financial statements
- Ledger A/c of assessee in the books of Bankey - A.Y. 10—11.
- Confirmation of A/c from Bankey
- Confirmation from Bankey for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Salasarji Infosoft Leasing P Ltd. to Bankey
- —do— from Maharathi Steel P Ltd. to Bankey
- —do— from Realframe Infrastructure P Ltd. to Bankey
- —do— from Flima Ispat P Ltd. to Bankey
- —do— from Subham Shoppers Khazana P Ltd. to Bankey
- —do— from Kanhaiya Impex Ltd. to Bankey
- Affidavit by director of Bankey
- Certificate of Incorporation of Bankey

M/S. Jaguar Softeeh (P) Ltd tRs.90,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 03.11.14 of notice U/s. 133(6)
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Jaguar - A.Y. 10-11.
- Confirmation of A/c from Jaguar
- Confirmation from Jaguar for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Pramhash Motor Finance Co P Ltd. to Jaguar
- —do— from Rewin Ceramics P Ltd. to Jaguar
- —do— from Sainger Capital & Securities P Ltd to Jaguar
- —do— from Ganesh Ganga Investment P Ltd. to Jaguar
- Affidavit by director of Jaguar
- Certificate of Incorporation of Jaguar

M/S. Millenium Agi o System (Rs.80,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- PAN Card
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Millenium - A.Y. 10 - 11.
- Confirmation of A/c from Millenium
- Confirmation from Millenium for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Citrus Technologies P Ltd. to Millenium
- —do— from Shiv Durga Marketing P Ltd. to Millenium
- —do— from Unipack Packaging P Ltd. to Millenium
- —do— from Jai Durgay Garments P Ltd. to Millenium
- —do— from G Williams (Fabrications) P Ltd. to Millenium
- —do— from Sainger Capital & Securities P Ltd. to Millenium
- Affidavit by director of Millenium
- Certificate of Incorporation of Millenium

M/S. Rhvthm Exim (P) Ltd (Rs.91,03,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 04.11.14 of notice U/s. 133(6)

- Pan Card
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Rhythm - A.Y. 10-11.
- Confirmation of A/c from Rhythm
- Confirmation from Rhythm for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Upvan Leasing P Ltd. to Rhythm
- -do— from Saffron Logistic (P) Ltd to Rhythm
- Affidavit by director of Rhythm
- Certificate of Incorporation of Rhythm

M/S. Roval Mirase Financial Consultants (P) Ltd (Rs 85,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 04.11.14 of notice U/s. 133(6)
- PAN Card
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Royal - A.Y. 10 - 11.
- Confirmation of A/c from Royal
- Confirmation from Royal for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Upvan Leasing P Ltd. to Royal
- Affidavit by director of Royal
- Certificate of Incorporation of Royal

M/S. Greenvision Construction (P) Ltd (Rs.70,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- PAN Card
- ITR Ack -A.Y. 10-11.
- Audited Financial Statement - A.Y. 10—11.
- Ledger A/c of assessee in the books of Greenvision - A.Y. 10 - 11.
- Confirmation of A/c from Greenvision
- Confirmation from Greenvision for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Upvan Leasing P Ltd. to Greenvision

- Confirmation of application by Ganesh Ganga Investment P Ltd.
- Affidavit by director of Greenvision
- Certificate of Incorporation of Greenvision

M/S. USK EXIM (P) Ltd (Rs.80.00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10 - 11.
- Ledger A/c of assessee in the books of USK Exim - A.Y. 10 - 11.
- Confirmation of A/c from USK Exim
- Confirmation from USK EXIM for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Anand Motor Product P Ltd. to USK Exim
- —do— from AMP Motor P Ltd. to USK Exim
- Affidavit by director of USK Exim
- Certificate of Incorporation of USK Exim

M/S. Star Delta Traders (P) Ltd (Rs.1,00,00.000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. NIL of notice U/s. 133(6)
- ITR Ack. -A.Y. 10 11
- Audited Financial statements - A.Y. 10 - 11.
- Ledger A/c of assessee in the books of Star Delta - A.Y. 10 - 11.
- Confirmation of A/c from Star Delta
- Confirmation from Star Delta for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Upvan Leasing P. Ltd. to Star Delta
- Confirmation of applying shares by Ganesh Ganga Investment P Ltd. to Star Delta
- Confirmation for applying shares by Royal Mirage Financial consultants P Ltd. to Star Delta
- Affidavit by director of Star
- Certificate of Incorporation of Star

M/S. Join Fashion (P) Ltd (Rs.80.00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 04.11.14 of notice U/s. 133(6)

- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10- 11.
- Ledger A/c of assessee in the books of Join Fashion - A.Y. 10 – 11
- Confirmation of A/c from Join Fashion
- Confirmation from **Join** Fashion for subscribing the shares of assessee
- Agreement for purchase of shares
- Confirmation for applying the shares by Bhoomi Earthmovers P Ltd. to Join Fashion
 - Allotment letter from Prabhash Motor Finance Co. P Ltd. to Join Fashion
 - —do— from Saral Communications P Ltd. to Join Fashion
 - Affidavit by director of Join Fashion
 - Certificate of Incorporation of Join Fashion

M/S. Accent Telecom Services (P) Ltd (Rs.89,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 03.11.14 of notice U/s 133(6)
- ITR Ack. -A.Y. 10-11.
- Ledger A/c of assessee in the books of Accent - A.Y. 10-11.
- Confirmation of A/c from Accent
- Confirmation from Accent for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Upvan Leasing P Ltd. to Accent
- —do— from Ganesh Ganga Investment P Ltd. to Accent
- -do- from Rhythm Exim P Ltd. to Accent
- Affidavit by director of Accent
- Certificate of Incorporation of Accent

M/S. Shubh Pronbuild (PJ Ltd (Rs. 85,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. NIL of notice U/s. 133(6)
- PAN Card
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Shubh - A.Y. 10-11.
- Confirmation of A/c from Shubh
- Confirmation from Shubh for subscribing the shares of assessee
- Agreement for purchase of shares

- Allotment letter from Rewin Ceramics P Ltd. to Shubh
- —do— from Saral Communications P Ltd. to Shubh
- —do— from Ganesh Ganga Investment P Ltd. to Shubh
- —do— from Prabhash Motor Finance Co. P Ltd. to Shubh
- Affidavit by director of Shubh
- Certificate of Incorporation of Shubh

M/S. Ranchor Electronics (P) Ltd (Rs. 86,50,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 07.11.14 of notice U/s. 133(6)
- PAN
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Ranchor - A.Y. 10-11.
- Confirmation of A/c from Ranchor
- Confirmation from Ranchor for subscribing the shares of assessee
- Agreement for purchase of shares
- Allotment letter from Bhavya Aluminium P Ltd. to Ranchor
- —do— from Nabkri Developers P Ltd. to Ranchor
- —do— from Realframe Infrastructure P Ltd. to Ranchor
- —do— from Jaybee Transformers P Ltd. to Ranchor
- —do— from Hima Ispat P Ltd. to Ranchor
- Affidavit by director of Ranchor
- Certificate of Incorporation of Ranchor

M/S. Transmission Mercandise (P) Ltd (Rs.45,00,000/-)

- Notice U/s. 133(6) dtd. 27.10.14.
- Reply of notice U/s. 133(6)
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10-11.
- Ledger A/c of assessee in the books of Transmission - A.Y. 10-11.
- Confirmation of A/c from Transmission
- Confirmation from Transmission for subscribing the shares of assessee
- Agreement for purchase of shares
- Confirmation for applying the shares by Ganesh Ganga Investment P Ltd. to Transmission
- Affidavit by director of Transmission
- Certificate of Incorporation of Transmission

M/S. White Collar Management Services (PI Ltd (Rs.43,40,000/-)

- PAN
- Notice U/s. 133(6) dtd. 27.10.14.
- Reply dtd. 03.11.14 of notice U/s. 133(6)
- ITR Ack. -A.Y. 10-11.
- Audited Financial statements - A.Y. 10 - 11.
- Ledger A/c of assessee in the books of White Collar - A.Y. 10 - 11.
- Confirmation of A/c from White Collar
- Confirmation from White Collar for subscribing the shares of assessee
- Agreement for purchase of shares
- Confirmation for applying the shares by Ganesh Ganga Investment P Ltd. to White Collar
- Allotment letter from Prabhash Motor Finance Co. P Ltd. to White Collar
- Affidavit by director of White Collar
- Certificate of Incorporation of White Collar

7.1 Thus, in the wake of the aforesaid evidences brought on record and inquiries conducted by the Assessing Officer directly from the parties in the course of assessment proceedings, it cannot be presumed that, the Assessing Officer had not carried out any enquiry or verification which he was required to do so, specifically when the jurisdiction to assess was acquired u/s. 147 on this reason alone, that is, to examine the genuineness of the share capital and share premium.

8 One more important fact which clinches the entire issue and separates the case of the assessee from all other cases of share capital and share premium is that, here it is not the case where the assessee has received any money in form of cash or cheque in lieu of share application or share premium; rather the assessee had

received investments in form of equity shares held by these companies in their balance sheet for a long time and duly disclosed in their income tax particulars. This fact is undisputed and is clearly borne out from various replies filed by the assessee before the Assessing Officer and also before the Ld. PCIT. The details of investments purchased by the assessee company in lieu of share allotment for the F.Y. 2009-10 is reproduced hereunder:

Details of Investments Purchased In lieu of share allotment for the FY 2009-10						
SL. No.	Name of allottee	Name of the script (Investments)	No of shares	Value per share	Value of Investment	Gross value of Investments
1	Bankey Bihari Apparels Ltd. (36400 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Salasarji Infosoft Pvt. Ltd Maharathi Steels Pvt. Ltd Real Frame Infrastructure Pvt. Ltd Welco Agencies Pvt. Ltd Kanahiya Impex Limited Shubham Shoppers Khazana (P)Ltd Hima Ispat Pvt	15000 23000 15000 1600 10000 2000 600	100 100 100 1250 100 100 1000	1500000 2300000 1500000 2000000 1000000 200000 600000	9100000
2	Saffron Logistics Pvt. Ltd. (37680 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Royal Mirage Financial Consultants (P)Ltd. Upvan Leasing Pvt. Ltd. Ganesh Ganga Investment Pvt. Ltd.	35360 2500 25000	125 1000 100	4420000 2500000 2500000	9420000
3	Jaguar Softech Pvt Ltd. (36000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Prabhas Motor Finance Co. Pvt. Ltd. Rewin Ceramics Pvt. Ltd. Sainger Capital & Securities Pvt. Ltd. Ganesh Ganga Investment Pvt. Ltd	7000 25000 25000 5000	500 100 100 100	3500000 2500000 2500000 500000	9000000
4	Millenium Agro System Pvt. Ltd. (32000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Citrus Technologies Pvt. Ltd. Shivdurga Marketing Pvt. Ltd. Unlpack Packaging Pvt. Ltd. Jay Durgey Garments Pvt. Ltd. G William (Fabrications) Ltd. Sainger Capital & Securities Pvt. Ltd.	5000 7500 20000 10000 6660 17500	100 100 100 100 300 100	500000 750000 2000000 1000000 2000000 1750000	8000000

5	Rhythm Exim Pvt. Ltd. (36412 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Upvan Leasing Pvt. Ltd. Saffron Logistics Pvt. Ltd.	4000 510300	1000 10	4000000 5103000	9103000
6	Royal Mirage Financial Consultants (P) Ltd. (34000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Upvan Leasing Pvt. Ltd. Sainger Capital & Securities Pvt. Ltd.	5000 35000	1000 100	5000000 3500000	8500000
7	Green Vision Construction Pvt. Ltd. (28000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Upvan Leasing Pvt. Ltd. Ganesh Ganga Investment Pvt. Ltd.	3000 40000	1000 100	3000000 4000000	7000000
8	USKExlm Pvt. Ltd. (32000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Anand Motor ProductsjM. Ltd. AMP Motor Pvt. Ltd.	25000 30000	200 100	5000000 3000000	8000000
9	Star Delta Traders Pvt. Ltd. (40000 Eq shares of Rs. 10 each at-a premium of Rs. 240 per share)	Upvan Leasing Pvt. Ltd. Ganesh Ganga Investment Pvt. Ltd. Royal Mirage Financial Consultants (P)Ltd.	3000 25000 36000	1000 100 125	3000000 2500000 4500000	10000000
10	Join Fashion Pvt. Ltd. (32000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Bhoomi Earthmovers Pvt. Ltd. Prabhas Motor Finance Co. Pvt. Ltd. Saral Communications Pvt. Ltd.	30000 5000 12500	100 500 200	3000000 2500000 2500000	8000000
11	At a premium of Rs. 240 per share)	Ganesh Ganga Investment Pvt. Ltd. Rhythm Exim Pvt. Ltd.	45000 190000	100 10	4500000 1900000	8900000
12	Subh Propbuild Pvt. Ltd. (34000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Rewin Ceramics Pvt. Ltd. Saral Communications Pvt. Ltd. Ganesh Ganga Investment Pvt. Ltd. Prabhas Motor Finance Co. Pvt. Ltd.	20000 12500 5000 7000	100 200 100 500	2000000 2500000 500000 3500000	8500000
13	Ranchor Electronics Pvt. Ltd. (34600 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Bhavya Aluminium Pvt. Ltd. Nabkri Developers Pvt. Ltd. Real Frame Infrastructure Pvt. Ltd. Jaybee Transformers Pvt. Ltd. Flima Ispat Pvt. Ltd.	9000 20000 15000 20000 4250	100 50 100 50 1000	900000 1000000 1500000 1000000 4250000	8650000
14	Transmission Mercandise Pvt. Ltd. (18000 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Ganesh Ganga Investment Pvt. Ltd.	45000	100	4500000	4500000

15	White Collar Management Services(P) Ltd. (17360 Eq shares of Rs. 10 each at a premium of Rs. 240 per share)	Ganesh Ganga Investment Pvt. Ltd. Prabhas Motor Finance Co. Pvt. Ltd.	23400 4000	100 500	2340000 2000000	4340000
TOTAL						121013000

9. Apart from assessee filing various documents to discharge its onus, all these companies in response to the inquiries conducted by the Assessing Officer had duly given details of investments held by them which duly disclosed in their respective balance sheets which has been transferred or sold to the assessee in lieu of which the assessee has allotted shares to these companies. For instance, one of the company, Saffron Logistics Pvt. Ltd. in response to notice u/s. 133(6), vide letter dated 07.11.2014 had stated as under:

07th November, 2014

*To,
Income Tax Officer, Ward 3(2),
385A, CR Building, ITO,
New Delhi*

Respected Sir,

Ref : Your notice dated 22/10/2014 for information required as per section 133 (B) in case of CANTON TEXTILE MILLS P. LTD. for A.Y. 2010-11 req.-

In above reference our submission is stated as following :

That copy of ledger account for transactions with concerned company for F.Y. 2003-10 as per books of our company is attached for your kind reference.

That we have not made any payment or received any amount by cash or bank from the said company during F.Y. 2003-10.

That our company has subscribed 37680 equity shares of face value Rs. 10/- each of M/s. Canton Textile Mills Private Limited at a premium of Rs. 240/- per share aggregating to value Rs. 34,20,000/- during F.Y. 2009-10 only. Certified true photocopy of allotment letter/ agreement executed in this regard is enclosed.

The aforesaid shares have been allotted to us towards agreed consideration of otherwise than cash of Rs 34,20,000/- against sale of our pre-existing investment in 35360 equity shares of M/s. Royal Mirage Financial Consultants(P)Ltd., 2500 equity shares of M/s Upvan Leasing (P)Ltd. and 25000 equity shares of M/s Canesh Ganga Investment Pvt. Ltd. duly sold and transferred to M/s. Canton Textile Mills Private Limited at the same time during F.Y. 2003-10. Therefore we have not made any payment for the same in cash or by any mode through bank.

Aforesaid transactions are duly recorded in our books of accounts for the year ended 31.03,2010 and the shares so subscribed were taken to our investment account in financial statement.

Further we confirm that our Company is regular Income Tax Assessee having PAN AANCS7339J. Copy of our audited balance sheet and ITR for F.Y. 2009-10 is enclosed as required by your good office.”

9.1 Along with that, it has also filed its balance sheets with the annexure and copy of ledger account wherein investment in shares have been given. Thus, the shares have been allotted to these companies towards agreed consideration otherwise than cash and against the sale of their pre-existing investments. Precisely, similar

replies and letters along with documents have been given by all other parties.

10. Ergo, when assessee in lieu of allotment of shares including face value of shares as well as premium amount, has received investments in the form of equity shares of various companies, then whether these companies had availability of cash or not may not be very relevant factor. The creditworthiness which is required to be examined u/s. 68 can be with regard to the transaction in form of any money either in cash or cheque. To invoke the deeming provisions of section 68, it is axiomatic that the credit appearing in the books of account maintained by the assessee should be with reference to any sum received by the assessee. If the assessee has not received any sum in terms of any money, i.e., in cash or cheque, then deeming provision of section 68 will not apply.

11. Here in this case, what the Id. Pr. CIT in the impugned revisionary order has noted is that, all these companies have declared very meager amount of income and also these companies have substantial amount of investment in their balance sheet in the form of shares and share premium and nothing has been received in dividend and profit from these investments. What is required to be seen in such cases, where the issue of creditworthiness of the sum invested is at focal point is, whether these companies had financial worth or capital or investment or income to make such huge investments in a company. If the entities making investments are

unable to offer explanation about the nature and source of investment in the form of share application money, then deeming provision of section 68 can be invoked for taxing the said amount in the hands of the assessee. Here in this case, once there is no transaction in terms of any money, then there could be no question of seeing the creditworthiness by way of their annual revenue or income. The reason being, all these companies were holding investments right from the earlier years in the form of equity shares of various companies and the shares held as investment by them has been transferred to the assessee in consideration for allotment of equity shares. Thus, the source of shares received by the assessee is flowing from investments held by them in their balance sheet which have been part of their assessment records. Under the peculiar facts and circumstances of the case, we do not find any reason that there was any lack of enquiry done by the AO or non-application of mind qua the creditworthiness or genuineness of the transaction. Once, the Assessing Officer has found that a transaction is not in terms of any money after the detailed inquiry and getting the entire records from these 15 companies, then we are unable to appreciate as to how the Id. Pr. CIT had reached to a conclusion that the Assessing Officer has failed to investigate the genuineness and creditworthiness of source of funds credited in the books of account of the assessee company. Here in this case, *firstly*, identity of the parties cannot be in dispute; *secondly*, the genuineness of the transaction is fully proven by the fact that these companies have given shares to the

assessee in lieu of shares allotted to them; and *lastly*, there is no requirement to examine the creditworthiness of any sum advanced or invested by these companies because there is no transaction in terms of cash/money. The source of investment which has been transferred to the assessee company is flowing from their balance sheets as these shares were held by these companies as investment duly reflected in their balance sheets in earlier years. In view of the aforesaid discussion, we do not find it a fit case wherein the Revisionary jurisdiction u/s. 263 could have been exercised in the light of the fact that the Assessing Officer had carried out detailed inquiry and examination directly from the parties in the course of assessment proceedings.

12 Otherwise also, it is trite law that, if the Id. Pr. CIT was not satisfied with the inquiry conducted by the Assessing Officer, then at least he should have carried out some prima facie enquiry himself so as to reach to a conclusion that the inquiry conducted by the Assessing Officer was deficient or lacking. Without conducting any inquiry, Ld. PCIT cannot hold that the either the inquiry conducted by the Assessing Officer was insufficient or there is no verification of the evidences. This proposition is fully supported by the judgments of Hon'ble Jurisdictional High Court as relied by the Id. Counsel. *Explanation 2* contemplates a situation where Assessing Officer has passed the order without making any inquiry or verification. The said *Explanation* cannot be invoked where Assessing Officer has called for

the evidences and sought assessee's explanation and has verified the evidences and then carried out inquiry u/s 133(6) from the parties from where he gathered that no money in form of cash or cheque has been received in lieu of share subscription and share premium. Under these facts and circumstances the assessment order cannot be set aside on the ground that no inquiry has been made or such an order is erroneous and prejudicial to the interest of revenue. Accordingly, we quash the impugned revisionary order u/s. 263 and restore the assessment order.

13. In the result, the appeal is allowed.

Order pronounced in the open court on 4th April, 2019

Sd/-

(L.P. Sahu)
Accountant Member

Sd/-

(Amit Shukla)
Judicial member

Dated: 8th April, 2019

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Copy of order forwarded to:

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|---------------------------------|--------------------|
| (1) The appellant | (2) The respondent |
| (3) Commissioner | (4) CIT(A) |
| (5) Departmental Representative | (6) Guard File |

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi