

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'B', KOLKATA
(Before Shri A.T. Varkey, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 1811/Kol/2017 : Asstt. Year : 2013-14

M/s. C.P Re-Rollers Ltd PAN: AABCC 8496Q (Appellant)	Vs	D.C.I.T, Cir-1, Durgapur (Respondent)
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Appellant by : Shri J.P. Khaitan, Sr. Counsel &
Shri V.N Purohit, Id.AR
Respondent by : Shri A.K. Singh, CIT, Id. DR

Date of Hearing : 06-03-2019	Date of Pronouncement:03-04-2019
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Assessee, pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income-tax (Appeals)-, in Appeal No.58/CIT(A)/DGP/2016-17, dated 06.07.2017, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income-Tax Act, 1961 (in short, the Act), dated 30.03.20 5.

2. The solitary grievance of the assessee in this appeal is that Id CIT(A) has erred in confirming the addition of Rs.17,49,95,000/- made by the assessing officer under section 68 of the Income Tax Act, 1961, on account of fresh issue of share capital and share premium.

3. The facts of the case which can be stated quite shortly are as follows: The assessee company has filed its return of income on 26.09.2013 declaring total income of Rs.15,99,640/-. The assessee's case was selected for scrutiny under section 143(3) of the Income Tax Act. During the course of assessment proceedings, on verification of the

Balance Sheet of the Assessee Company, it was noticed by the assessing officer that the Assessee company has received share application money to the tune of 8,74,97,500/- against which shares were allotted in the assessment year 2013-14, consisting of 87,49,750 shares of face value Rs.10/- issued at a premium of Rs. 10/- per share. That is, share premium amounting to Rs. 8,74,97,500/- was also received during the assessment year 2013-14. During the assessment proceedings, the assessee furnished before the assessing officer the copies of final accounts including Balance Sheet and profit and loss account, Income Tax return acknowledgement and bank statement for the relevant period evidencing the amount received from share applicants on account of Share capital and premium.

The assessing officer verified the details furnished by the assessee company and noted that the assessee has claimed to have received share application money and share premium from the following share applicants:

Name & Full Postal Address of Applicants	PAN of Applicants	No. of Shares Applied & Allotted	Share Application Money Received	Premium Received	Total Amount	Date of Allotment
Gannet Vintrade Pvt. Ltd AE-183, Rabindra Pally Bazar, Kestopur, Kolkata- 700 101.	AADCG4706H	4925000 & 2462500	24625000	24625000	49250000	30.3.2013
Haven Vincorn Pvt. Ltd. 52, Western Street Kolkata- 700012.	AACCH2225F	6530000 & 3265000	32650000	32650000	65300000	30.3.2013
Prism Vintrade Pvt. Ltd AE-183, Rabindra Pally Bazar, Kestopur, Kolkata- 700 101.	AAFPC0762J	5960000 & 2980000	29800000	29800000	59600000	30.3.2013
Sushma Chawla		84500 & 42250	422500	422500	845000	30.3.2013
Total		17499500 & 8749750			174995000	

In order to verify the identity of the shareholder, genuineness of transaction and the creditworthiness of the shareholder, notice under section 131 was issued by assessing officer through registered post, to Sri Mohan Chawla, the Directors of the Companies at the Companies given address. In response to the summon, Sri Kumar Chand Chawla another Director of the aforesaid three companies appear and his deposition was recorded on 9.3.2016.

4. Relevant portion of depositions of Sri Kumar Chand Chawla one of the directors of all three share applicant companies are reproduced below:

“In respect of Gannet Vintrade Private Limited:

1. Please provide details of your company M/s Gannet Vintrade Pvt. Ltd.

Ans: Gannet Vintrade Pvt. Ltd. is a Private Limited company incorporated on 9th June, 2009 under the company Act, 1956. The registered office of the company is at Bhiringi, GT- Road, Durgapur-713213. Our PAN is AADCG4706H and we are assess to Tax by ITO- Ward 2(2) Durgapur. The company regularly files its return including Income Tax return and Return before the registrar of company at Kolkata pertaining to the F.Y. 2014-15.

2. What kind of business relationship you have with M/s C. P Re-Rollers Ltd.?

Ans: I am one of the directors of M/s. C P Re-Rollers Ltd. Further, my company M/s Gannet Vintrade Pvt. Ltd. has invested its funds in shares of M/s C.P. Re-Rollers Ltd., apart from that both of the companies belongs to our Group Companies manage by our families members and I am shareholders of both the companies.

3. Please produce List of Directors of M/s. C.P. Re Rollers Ltd.

Ans :

<i>S.No.</i>	<i>Name</i>	<i>Address</i>	<i>PAN</i>
<i>1</i>	<i>KUMAR CHAND CHAWLA</i>	<i>AC-43, ABINDRANATH BITHI, CITI CENTRE, DURGAPUR 713216</i>	<i>ACTPC 5780A</i>
<i>2</i>	<i>DILIP CHAWLA</i>	<i>AC-26, ABINDRANATH BITHI, CITI CENTRE, DURGAPUR 713216</i>	<i>ACTPC 577F</i>
<i>3</i>	<i>AMIT CHAWLA</i>	<i>AC-26, ABINDRANATH BITHI, CITI CENTRE, DURGAPUR 713216</i>	<i>ACCPC6493P</i>
<i>4</i>	<i>SHANKAR CHAWLA</i>	<i>AC-43, ABINDRANATH BITHI, CITI CENTRE, DURGAPUR 713216</i>	<i>AIAPC0624L</i>

4. Please state about your family's members in details.

Ans: My families consist of myself and Elder Brother Shri Mohan Chawla, Nephew Mr. Dilip Chawla and Mr. Amit Chawla ,Son- Shri Shankar Chawla.

5. Please state the name of companies in which your family members are associated with.

Ans: Our family business are.

- *M/s C P Re- Rollers Ltd.*
- *M/s TarakNath Sales Agencies Pvt. Ltd.*
- *M/s Gourav Enterprises Pvt. Ltd.*
- *M/s C P Steel Pvt. Ltd.*
- *M/s Gannet Vintrade Pvt. Ltd.*
- *M/s HavenVimcom Pvt. Ltd.*
- *M/s Prism Vintrade Pvt.Lt.d.*

6. Please produces audited account of M/s Gannet Vintrade Pvt. Ltd.

Ans: The same are furnish to you.

7. Please state in details about investment of M/s Gannet Vintrade Pvt Ltd. in shares of M/s C P. Re-Rollers Ltd.

Ans. During the year ended on 31-03-2013 M/s Gannet Vintrade Pvt. Ltd. paid Rs. 4,92,50,000/- for 24,62,500 Equity Shares of C P Re-Rollers Ltd. at Rs. 10/- per share face value and Rs. 10/- per share as share premium.

8. Please explain why M/s Gannet Vintrade Pvt. Ltd. invested in shares of M/s C P Re-Rollers Ltd.?

Ans: As the M/s C. P. RE-Rollers Ltd. is our group and family companies and we decided to invest in Group Company where money will be in safe condition within our own monitoring system.

9. Please explain the source of such investments?

Ans: The Company had assets in the form of shares of various companies which it sold at cost price during FY 12-13 and the funds were invested in C P Re-Rollers Ltd. A detailed statement on the source of investment shall be furn shed to you within 3 days. The nature of these transactions are the realisation of Share Holding as per 31-03-2012 in during the year 2012-13 and same invested in M/s C. P. Re-Rollers Ltd.

10. Please explain why the shares were sold at cost price and also why the companies which are not belonging to the same group purchased such uncoated shares at huge price instead of blue chip shares?

Ans: I shall submit my reply tomorrow.

11. How do you contact with them and what kind of relationship you have with those buyer companies?

Ans: These companies are within our friend circle.

12. Please state number of parties to whom shares were sold during this year?

Ans: Shares were sold to 13 Parties, 2013-14 during the period Dec. 2011 to March 2013."

This way the assessing officer also took the same depositions of Shri Kumar Chand Chawala in respect of M/s Prism Vintrade Private Limited and M/s Haven Vincom Private Limited, which are common and identical hence the same is not being repeated for the sake of brevity.

5. The assessing officer on perusal of aforesaid depositions of Shri Kumar Chand Chawala, in respect of these three share applicant companies, viz: gannet Vintrade Pvt Ltd, Haven Vincorn Pvt Ltd and Prism Vintrade Pvt Ltd, noted that both the Directors, Sri Mohan Chawla and Sri Kumar Chand Chawla admitted in three share applicant companies on following dates:

M/s PRISM VINTRADE PRIVATE LIMITED	Date of admission on 20 November 2012
M/s GANNET VINTRADE PRIVATE LIMITED	Date of admission on 19 November 2012
M/s HAVEN VINCOM PRIVATE LIMITED	Date of admission on 21 November 2012

All the share application money and share premium money were received by the assessee company from the aforesaid three share applicant companies during the period December, 2012 to March, 2013 i.e. after admission of Sri Mohan Chawla and Sri Kumar Chand Chawla in the three share applicant companies. The AO was of the view that all the three share applicant companies invested in shares of paper companies after raising capital through share application money and share premium money from other paper companies during the F.Y. 2009-10. Share application money and share premium money raised from paper companies were disallowed u/s 263/147/143(3) in the A.Y. 2010-11 by the respective assessing officer, ITO, Ward-2(3) and 2(2), Durgapur, the details of which are given below:

Names of share applicant companies	Particulars for the A.Y 2010-11	Investment in unquoted shares at cost price in the A.Y 2010-11
M/s. Prism Vintrade Private Limited	Issued, subscribed & paid up equity share:Rs.12,55,000/-. Share Premium: Rs.6,27,50,000/-. Treated as Income from other source by the AO.	Rs.6,27,50,000/- (including b/f amount of the A.Y 2009-10 as break up of two years not furnished)

M/s. Gannet-Vintrade Private Limited	Issued, subscribed & paid up equity share:Rs.12,29,000/-. Share Premium: Rs.6,14,50,000/-. Treated as Income from other source by the AO.	Rs.6,04,50,000/- (including b/f amount of the A.Y 2009-10 as break up of two years not furnished)
M/s. Haven Vincom Pvt. Ltd	Issued, subscribed & paid up equity share:Rs.14,31,000/-. Share Premium: Rs.6,52,19,000/-.	Rs.6,32,20,000/-(including b/f amount of the A.Y 2009-10 as break up of two years not furnished)

In the case of M/s Haven Vincom Pvt. Ltd, assessment of this company pertaining to the AY. 2010-11, was completed under section 147/143(3) of the Act and no adverse view about share capital and share premium was taken by AO, that is, there is no any addition U/s 68 of the Act

6. The assessing officer noted that Sri Mohan Chawla and Sri Kumar Chand Chawla are also common Directors of the assessee company. Sri Kumar Chand Chawla was categorically asked in course of deposition u/s 131 of the Act, to explain source of fund for share application and share premium money invested in assessee company.

In reply, he stated that Company had assets in the form of shares of various companies which it sold during FY 12-13 and the funds were invested in M/s C P Re-Rollers Ltd.

7. Sri Kumar Chand Chawla was asked to explain why shares were sold at cost price to different companies and companies not belonging to the same group will invest in such unquoted shares at huge price instead of blue chip shares?

In response, he submitted that Board of Directors decided to sale their all investment in shares of three share applicant companies to known reliable business houses and friend circles. And we were spread our requirement to closest friends and known business house, and any how after so many exercise, we got various companies/ persons are ready to buy our shares at cost price only. After this big exercise we were sold our existing share to

companies in F.Y. 2012-13 and after that the company management again decided to invest all collected money (of sold share) to our group of company in same year, because it will be much safer and reliable to monitor our invested amount in tune of purchase M/s C.P. Re-Rollers Ltd, shares with premium.

8. However, the assessing officer rejected the contention of the assessee company and observed the followings:

(a) Three share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), are raising money through share application and share premium and in case of two share applicant companies viz: M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, such share application money and share premium received were treated as its own money and disallowed u/s 68 resulting in huge demand (as already discussed). This had been used to purchase unquoted shares of paper companies at huge price which again sold to paper companies and sale proceeds invested in assessee company.

(b). i) No agreement of such sales of unquoted shares, ii) No contract note/ no other corroborative evidence for such sale of unquoted share at cost price to companies which have no business relation either with the assessee company or with the three share applicant companies could be produced by Sri Kumar Chand Chawla, common Director of aforesaid three share applicant companies and assessee company. Therefore, creditworthiness of the three share applicant companies in which, Sri Mohan Chawla and Sri Kumar Chand Chawla (Directors of assessee company) are common directors, could not be substantiated.

(c). These three share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), do not have business activities, no Fixed assets as evident from the Audited Statement of accounts of these companies, which are enumerated below:

Name of the Share applicant Share capital/Share Premium of the Company	Nature of business	Return income for A.Y 13-14	Immediate Source	Remarks
M/s. Prism Vintrade Private Limited Share Application Rs. 2,98,00,000/- Share Premium Rs. 2,98,00,000/-	Investment Company	Loss of Rs. 13,164/-	From sale proceeds of unquoted shares (paper companies at cost price)	No business activity value of Fixed Asset shown is Nil. Bank balance is nominal. Unquoted shares were purchased from Share Application & Share Premium raised in the A.Y 2010-11.
M/s. Gannet Vintrade Private Limited Share Application: Rs. 2,46,25,000/- Share Premium : Rs. 2,46,25,000/-	Investment Company	Loss of Rs.13,162/-	From sale proceeds of unquoted shares (paper companies at cost price)	No business activity value of Fixed Asset shown is Nil. Bank balance is nominal. Unquoted shares were purchased from Share Application & Share Premium raised in the A.Y 2010-11.
M/s. Haven Vincom Private Limited Share Application Rs.3,26,50,000/- Share Premium Rs.3,26,50,000/-	Investment Company	Profit of Rs.85 431	From sale proceeds of unquoted shares (paper companies at cost price)	No business activity value of Fixed Asset shown is Nil. Bank balance is nominal. Unquoted shares were purchased from Share Application & Share Premium raised in the A.Y 2010-11.

9. Therefore, the AO noted that these three companies Viz: (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), do not have business activities, value of Fixed Asset shown is Nil and Bank balance is nominal therefore these three share applicant companies did not have creditworthiness.

The AO also noted that for remaining shareholder of Sushma Chawala for share application of Rs.4,22,500/- and share premium of Rs.4,22,500/-, the assessee has not furnished required details. Therefore, the assessing officer concluded that assessee company has failed to prove, identity of share applicants, genuineness of transaction and creditworthiness of share applicants as per the provisions of section 68 of the Act, and noted that the amount of Rs.17,49,95,000/- claimed to have been received as share application money and share premium is treated as Assessee's own unaccounted income introduced in its business in the

disguise of share application and share premium money, hence he made addition to the tune of Rs.17,49,95,000/-.

10. Aggrieved by the addition made by the assessing officer, the assessee carried the matter in appeal before the Id CIT(A), who has confirmed the addition made by the assessing officer. Aggrieved, the assessee is in appeal before us.

11. Ld Counsel, Shri J.P.khaitan, begins by pointing out that assessee furnished before the assessing officer the copy of Balance Sheet, profit and loss account, final accounts, Copy of Income Tax return acknowledgement and bank statement for the relevant period evidencing the amount received from share applicants on account of Share capital and share premium through banking channel. In order to verify the identity of the shareholder, the genuineness of transaction and the creditworthiness of the shareholder, notice under section 131 was issued by assessing officer through registered post, to Sri Mohan Chawla, the Directors of the Companies at the Companies given address. In response, to the summon, Sri Kumar Chand Chawla another Director of the afo esaid three share subscribing companies appeared and his deposition was recorded on 9.3.2016 by assessing officer, therefore, the assessee company made the compliance of notice under section 131 of the Act.

12. The Ld Counsel, Shri J.P.khaitan further pointed out that all the share application money and share premium money which were received by the assessee company from the two share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited,), during the period December, 2012 to March, 2013 had already been suffered disallowance under section 68 of the Act. As these two share applicant companies invested the same money in the assessee company, therefore, no further disallowance is warranted in the hands of the assessee company. To make it more clear, that is, the said share application money and share premium money raised from these companies were disallowed u/s 263/147/143(3) in the A.Y. 2010-11 by the respective assessing officer, ITO, Ward-2(3) and 2(2), Durgapur in case of M/s. Prism Vintrade Private Limited, M/s. Gannet-

Vintrade Private Limited, therefore, addition under section 68 of the Act had been already made in the hands of the Share Applicant Companies, and the amount which had been suffered disallowance under section 68 of the Act, had been subsequently invested in the assessee company under consideration, therefore no disallowance should be made in the hands of the assessee company under section 68 of the Act, as it would tantamount to double addition.

In case of M/s. Haven Vincom Pvt. Ltd, the assessment was carried out under section 147/143(3) of the Act and no any addition was made by assessing officer under section 68 of the Act. This company also invested the same money in assessee company therefore no disallowance is required in this case also as the department accepted the share capital and share premium as genuine. Therefore, addition made in the hands of assessee company should be deleted.

Shri J.P.khaitan also submitted before the Bench that assessee company's shares are not listed in any stock exchange therefore it is not necessary to issue contract notes at the time of issue of shares. The concept of contract notes do not apply in case of these three share applicant companies also, that is M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd. Therefore, the argument of the AO during the assessment stage that assessee company failed to furnish the contract notes is baseless.

13. On the other hand, Ld DR for the Revenue submitted before us that it is well settled principal of law as declared by the Hon'ble Supreme Court in the case of Sumati Dayal Vs CIT, (214 ITR 801) that the true nature of transactions have to be ascertained in the light of the Surroundings circumstances. The findings emanating from the investigation carried out reveal that the circumstances surrounding the transaction of alleged share capital proves the transactions as not genuine. Undisputedly, the onus of proving of credits in its books of accounts lies with the assessee and the settled position of law is that the assessee is required to prove all the three criteria, that is identity, genuineness and creditworthiness. But in the instant case, the assessee company failed to discharge this onus. The Assessing Officer was

justified in adding share subscription money to assessee's taxable income as unexplained cash credit. The Ld DR pointed out that no agreement of such sales of unquoted shares, and no contract note/ no other corroborative evidence for such sale of unquoted share at cost price to companies which have no business relation either with the assessee company or with the three share applicant companies could be produced by Sri Kumar Chand Chawla, common Director of aforesaid three share applicant companies and assessee company. Therefore, creditworthiness of the three share applicant companies in which, Sri Mohan Chawla and Sri Kumar Chand Chawla (Directors of assessee company) are common directors, could not be substantiated.

The Ld DR further pointed out that these three share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), do not have business activities, no Fixed assets as evident from the Audited Statement of accounts. The DR also pointed out that the credit worthiness of share subscribers is not at all proved because there was no credit balance in the account of the subscriber. The income of the subscriber as per profit & loss account is Nil or a very small amount. Therefore, the credit worthiness is not at all proved.

14. We have heard both the parties, perused the material available on record, we note that according to section 68 of the Income Tax Act, where any sum is found credited in the books of an 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 satisfactory in the opinion of the assessing officer, the sum so credited may be charged to income tax as the income of the assessee of that assessment year. The assessing officer may consider such sum as cash credit due to lack of sufficient explanation. It is well known that provisions of section 68 have been introduced into the taxing enactments step by step in order to plug loopholes. Even long prior to the introduction of section 68 of the Act, in the statute book, courts had held that where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the assessing officer, is not

satisfactory, the sums so credited could be charged to income-tax as income of the assessee of the relevant assessment year.

We note that with effect from assessment year 2013-14, section 68 of the Income Tax Act has been amended to provide that if a closely held company fails to explain the source of share capital, share premium or share application money received by it to the satisfaction of the assessing officer, the same shall be deemed to be the income of the company under section 68 of the Act.

With this background, now we shall proceed to examine in the assessee's case under consideration, whether assessee has discharged his onus to prove, prima facie, the identity, creditworthiness and genuineness of the share capital and share premium received by it from three share subscribers companies viz: M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd.

15. We note that these three share applicant companies Viz: M/s. Prism Vintrade Private Limited, M/s. Gannet Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd, raised share capital and share premium by issuing their own shares to other companies. Out of the money so received, these three companies purchased share capital and share premium of other companies as part of '**Investments**'. Subsequently, these three companies sold their '**Investments**' in assessment year 2013-14 and invested in the assessee company (M/s C.P. Re Rollers Ltd) by way of purchasing share capital and share premium in M/s C.P. Re Rollers Ltd. The assessee company (M/s C.P. Re Rollers Ltd) is in appeal before us.

We note that the assessee company (M/s C.P. Re Rollers Ltd) has received share application money to the tune of 8,74,97,500/- (from these three share applicant companies, mentioned above), against which shares were allotted in the assessment year 2013-14, consisting of 87,49,750 shares of face value Rs.10/- issued at a premium of Rs. 10/- per share. That is, share premium amounting to Rs. 8,74,97,500/- was also received from these three share applicant companies, mentioned above during the assessment year 2013-14. The assessing

officer made disallowance of Rs. 17,49,95,000/- (Share capital Rs. 8,74,97,500 + Share premium Rs.8,74,97,500) in the hands of assessee (M/s C.P. Re Rollers Ltd) stating that assessee company has failed to prove the identity, creditworthiness and genuineness of these three share applicants viz: M/s. Prism Vintrade Private Limited, M/s. Gannet Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd.

16. We note that to prove the creditworthiness, genuineness and identity of the share applicants, the assessee company had produced before the assessing officer, at the time of scrutiny proceeding, for all three share applicants (Viz: M/s. Prism Vintrade Private Limited, M/s. Gannet Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), the followings documents:

- 1) Return of ROC, that is, form No. 2 submitted before R.O.C.
- 2) PAN Number copies of each share subscriber
- 3) Copy of Balance Sheet, Profit and loss account of all share applicant companies.
- 4) Details of investments sold by all share applicant companies.
- 5). Transaction with the assessee was duly highlighted in the bank statement
- 6). Explanation along with evidence of source of source of the funds of the share applicant Companies.
- 7). Audited Accounts of the share holders.
- 8) Relevant address proofs / Form filed by the share applicants with ROC.
- 9). Income Tax Return of share applicant companies.
- 10) Copy of the Bank Statement of Share applicant companies where from the amount was debited.
- 11) Copies of Bank statement of the assessee company where the share application money and premium were credited.
- 12). Cheque Number, the amounts subscribed by shareholders along with the name of bank its branch address and the number of shares allotted to them with face value on the date of allotment.

13) Common Director of these three share applicant companies (who is director in assessee company as well as director in share applicant companies) appeared before the assessing officer in response to notice u/s 131 of the Income Tax Act and submitted documents and evidences before the AO.

With help of these plethora documents, evidences and personal appearance before the AO in response to notice U/s 131, during the assessment proceedings, the Id Counsel claimed that the assessee company has proved the identity, genuineness and creditworthiness of all these three share applicant companies in the following manner.

Identity of all the share applicants have been proved by the assessee with help of PAN Number, ROC details and bank statements. We note that before issuing PAN, the Income Tax Department requires address proof. Similarly, R.O.C requires the address proof of the Registered office of the share applicant companies. Moreover, bank account requires the address proof before opening of Account. Therefore, **identity** of these three share applicants have been proved by the assessee with help of PAN, ROC details and Bank Statements.

Creditworthiness of these three share applicants have been proved by the assessee by submitting, Copy of Balance Sheet, Profit and loss account, Details of investments sold, Bank statement , Explanation along with evidence of source of source of the funds of the share applicant Companies.

Genuineness of these three share applicants have been proved by the assessee by submitting, Audited Accounts of the share applicant companies, Income Tax Return of share applicant companies, Copy of the Bank Statement of Share applicant companies where from the amount was debited, Copies of Bank statement of the assessee company where the share application money and premium were credited.

17. Now we deal with main grievance of the assessing officer. We note that assessing officer made the addition under section 68 of the Act to the tune of Rs.17,49,95,000/-, based on the following reasons which are given in para 5 of the assessment order, and the same are being reproduced below for ready reference:

(1) Three share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), are raising money through share application and share premium and in case of two share applicant companies viz: M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, such share application money and share premium received were treated as its own money and dis allowed u/s 68 resulting in huge demand (as already discussed). This had been used to purchase unquoted shares of paper companies at huge price which again sold to paper companies and sale proceeds invested in assessee company.

(2). No agreement of such sales of unquoted shares, ii) No contract note/ no other corroborative evidence for such sale of unquoted share at cost price to companies which have no business relation either with the assessee company or with the three share applicant companies could be produced by Sri Kumar Chand Chawla, common Director of aforesaid three share applicant companies and assessee company. Therefore, creditworthiness of the three share applicant companies in which, Sri Mohan Chawla and Sri Kumar Chand Chawla (Directors of assessee company) are common directors, could not be substantiated.

(3). These three share applicant companies (M/s. Prism Vintrade Private Limited, M/s. Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd), do not have business activities, no Fixed assets as evident from the Audited Statement of accounts of these companies.

18. Sr. Counsel Mr. J.P. Khaitan, submitted before us about the first reason of assessing officer for making the disallowance under section 68 of the Act. He stated that the share applicant company, **M/s Gannet Vintrade Private Limited** has share capital and reserve and surplus to the tune of Rs.6,15,24,186/-. Out of these share capital and free reserve, M/s

Gannet Vintrade Private Limited, purchased shares of other companies at Rs.6,09,00,000/- (vide pb-7). During the assessment year 2013-14, M/s Gannet Vintrade Private Limited, sold its investment and purchased share capital with premium at Rs.4,92,50,000/- in assessee company (M/s C.P.Re Rollers Ltd). The share capital and share premium at Rs.6,27,79,000/- (Rs.13,29,000 +Rs.6,14,50,000) was disallowed by the assessing officer under section 68 of the Act in the hands of M/s Gannet Vintrade Private Limited. Since, M/s Gannet Vintrade Private Limited purchased the shares with premium at Rs. 4,92,50,000/- in assessee company (M/s C.P.Re Rollers Ltd) out of the investment sold by it which were acquired by it out of the disallowed amount under section 68 at Rs.6,27,79,000/. Therefore, Id Counsel submitted that share capital with premium at Rs. 4,92,50,000/- had been treated as explained and identity, creditworthiness and genuineness of this amount has been proved by the assessee company.

19. **For M/s Prism Vintrade Pvt. Ltd**, Sr Counsel Mr. J.P. Khaitan, submitted before us that the share applicant company, M/s Prism Vintrade Pvt. Ltd has share capital and reserve and surplus to the tune of Rs.6,14,69,424/. Out of these share capital and free reserve, M/s Prism Vintrade Pvt. Ltd, purchased shares of other companies at Rs.5,95,00,000/-. During the assessment year 2013-14, M/s Prism Vintrade Pvt. Ltd, sold its investment and purchased share capital with premium at Rs.5,96,00,000/- in assessee company (M/s C.P.Re Rollers Ltd). The share capital and share premium at Rs.6,40,05,000/- (Rs.12,55,000 +Rs.6,27,50,000) was disallowed by the assessing officer under section 68 of the Act in the hands of M/s Prism Vintrade Pvt. Ltd. Since, M/s Prism Vintrade Pvt. Ltd purchased the shares with premium at Rs. 5,96,00,000/- in assessee company (M/s C.P.Re Rollers Ltd) out of the investment sold by it which were acquired by it out of the disallowed amount under section 68 at Rs.6,40,05,000/-. Therefore, Id Counsel submitted that share capital with premium at Rs. 5,96,00,000/- had been treated as explained and identity, creditworthiness and genuineness of this amount has been proved by the assessee company.

Hence, Id Counsel submitted that Rs. 4,92,50,000/-, belongs to share applicant of M/s Gannet Vintrade Private Limited and Rs. 5,96,00,000/- belongs to share applicant M/s Prism

Vintrade Pvt, both aggregating Rs.10,88,50,000/- (Rs. 4,92,50,000+ Rs. 5,96,00,000) should be treated as explained in terms of identity, creditworthiness and genuineness. For that Id Counsel relied on the Judgment of Coordinate Bench of ITAT in the case of M/s Maa Amba Towers, ITA No.1381/Kol/2015, for A.Y.2012-13, order dated 12.10.2018, wherein it was held as follows:

“3.Mr. Choudhury vehemently contends during the course of hearing that the Assessing Officer had rightly made the impugned addition since the taxpayer had failed to prove identity, genuineness and creditworthiness of the share premium money. He terms the impugned share subscription premium ₹690/- per share having face value of ₹10/- each as highly exorbitant. Case laws Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) and CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) is further quoted during the course of hearing that the relevant evidence submitted during the course of assessment has to be considered as per the human probabilities by removing all blinkers. Our attention is thereafter invited to the relevant nuances of such share subscription routing involving multiple layers to plough back unaccounted monies back to the books. We find no merit in the Revenue’s instant grievance in the light of relevant facts on record. There is no dispute about the assessee’s having declared its share subscription premium from M/s Agrani Credit & Finvest Pvt. Ltd., Crown Mansion Pvt. Ltd., Liberal Infrastructure Pvt Ltd., Darshan Enclave Pvt. Ltd., Snow Fall Impex Pvt. Ltd. involving corresponding sums of ₹27,60,000/-, ₹55,20,000/-, ₹82,80,000/- in case of third and fourth and ₹48,30,000/- in last entity’s case; respectively totalling to ₹3,01,00,000/-. Case file suggests that the assessee has placed on record their income tax acknowledgement of the impugned assessment year 2012-13, directors’ report alongwith audited financial statements, explanation regarding source of investments, bank statements, share application forms and board’s resolution(s) followed by their respective regular assessment orders pertaining to very assessment year u/s. 143(3) of the Act. Their Assessing Officer(s) made u/s 68 unexplained cash credits additions of share premium amounting to ₹67,03,00,000, ₹44,85,00,000/-, ₹24,42,00,000/- & ₹21,70,00,000/- in case of first four entities and accepted similar credits of ₹20,45,00,000/- to be genuine satisfying all parameters of identity, genuineness and creditworthiness. It can therefore be safely assumed that all these additions sums forming subject-matter of the impugned additions to be accepted as genuine in respective investors entities’ end as the source of the amount(s) in issue totalling to ₹3,01,00,000/-. Learned Departmental Representative fails to dispute that the same very amount cannot be added twice in payees and recipients’ hands u/s 68 of the Act. We therefore see no reason to accept Revenue’s instant former substantive ground. We affirm CIT(A)’s findings under challenge qua the instant former issue.”

Hence, Id Counsel submitted that Rs. 4,92,50,000/-, belongs to share applicant of M/s Gannet Vintrade Private Limited and Rs. 5,96,00,000/- belongs to share applicant M/s Prism

Vintrade Pvt, both aggregating Rs.10,88,50,000/- (Rs. 4,92,50,000+ Rs. 5,96,00,000) has been treated as explained in terms of identity, creditworthiness and genuineness.

20. In the case of third company, M/s Haven Vincom Pvt. Ltd, the assessment, pertaining to the AY. 2010-11 was not revised by the Department. That is, M/s Haven Vincom Pvt. Ltd has raised share capital and share premium which has not been treated by the Department as cash credit under section 68 of the Act and has not been disallowed by the assessing officer in the assessment of M/s Haven Vincom Pvt. Ltd (vide assessment order-paper book pg.173) . We note that M/s Haven Vincom Pvt. Ltd has utilized the same money (which it received by raising share capital/premium and not disallowed by AO U/s 68) to purchase the share capital and share premium in the assessee company (M/s C.P. RE Rollers Ltd) therefore it should not be disallowed under section 68 of the Act, in the hands of the assessee company, as the Department itself accepted genuine money. Hence, in the case of M/s Haven Vincom Pvt. Ltd, the identity, creditworthiness and genuineness have been proved beyond doubt about Rs.6,53,00,000/-.

21. In case of Sushma Chawala for share application of Rs.4,22,500/- and share premium of Rs. Rs.4,22,500/-, the Id Counsel explained the identity, creditworthiness and genuineness therefore no disallowance can be made.

Therefore, we are of the view that based on the factual position narrated above and the fact that in case of two companies, Viz Gannet Vintrade Pvt Ltd and Prism Vintrade Pvt Ltd, the amount of their share capital and share premium have already been disallowed by assessing officer under section 263/147/143(3) of the Act, therefore no further disallowance is warranted. In the case of third company, M/s Haven Vincom Pvt. Ltd, the assessment, pertaining to the AY. 2010-11 was not revised by the Department and no addition was made by AO under section 68 in the hands of this company, therefore, share capital with premium should be treated genuine.

22. **Now we would like to analyze the Balance Sheet of these three share applicant companies.** We note that in case of M/s Prism Vintrade Pvt. Ltd. the share capital reserves and surplus remained same and there is no moment in the current assets and current liabilities also. Therefore, the money which was disallowed u/s 68 of the Act has been utilized to purchase shares in other companies as an investments, and after selling these investments, the share applicant company(M/s Prism Vintrade Pvt. Ltd) invested the money in the assessee company (C.P. Re Rollers Ltd.). The balance sheet of M/s Prism Vintrade Pvt. Ltd. is given below for ready reference:

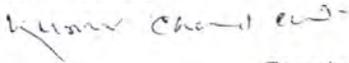
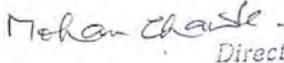
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M/S. PRISM VINTRADE PRIVATE LIMITED
BALANCE SHEET AS AT 31ST MARCH, 2013

	Notes	As at 31.03.2013 ₹	As at 31.03.2012 ₹
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
(a) Share Capital	1	1,355,000	1,355,000
(b) Reserves & Surplus	2	61,469,424	61,482,588
(2) Current Liabilities			
(a) Trade Payables	3	7,000	7,000
(b) Short-Term Provisions	4	-	952
		62,831,424	62,845,540
II. ASSETS			
(1) Non-Current Assets			
(a) Fixed Assets			
(i) Tangible assets - Net Block		-	-
(b) Non-Current Investments	5	60,980,000	59,500,000
(c) Other Non-Current Assets		-	-
(2) Current Assets			
(a) Cash and Cash Equivalents	6	1,847,540	797,185
(b) Short Term Loans & Advances	7	3,884	2,548,355
		62,831,424	62,845,540
See Accompanying Notes forming part of the Financial Statements	13		
As per our attached Report of even date			

For M.C. Das & Company
Chartered Accountants
FRN: 301110E

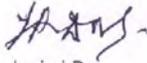
Jogiraj Das
Partner
M.No.: 066812
Kolkata
03rd September 2013

Directors
PRISM VINTRADE PRIVATE LIMITED

Director
PRISM VINTRADE PRIVATE LIMITED

Director

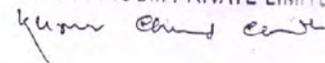
Likewise, the balance sheet of M/s Haven Vintrade Pvt. Ltd. is reproduced below for ready reference:

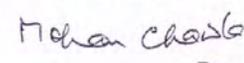
HAVEN VINCOM PRIVATE LIMITED
BALANCE SHEET AS AT 31ST MARCH, 2013

	Notes	As at 31.03.2013 ₹	As at 31.03.2012 ₹
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
(a) Share Capital	1	1,431,000	1,431,000
(b) Reserves & Surplus	2	65,301,861	65,216,430
(2) Current Liabilities			
(a) Trade Payables	3	23,750	7,000
(b) Short-Term Provisions	4	38,203	827
		66,794,814	66,655,257
II. ASSETS			
(1) Non-Current Assets			
(a) Fixed Assets			
(i) Tangible assets - Net Block		-	-
(b) Non-Current Investments	5	66,642,000	62,950,000
(c) Other Non-Current Assets		-	-
(2) Current Assets			
(a) Cash and Cash Equivalents	6	25,084	222,928
(b) Short Term Loans & Advances	7	127,730	3,482,329
		66,794,814	66,655,257
See Accompanying Notes forming part of the Financial Statements As per our attached Report of even date	13		

For M.C. Das & Company
Chartered Accountants
FRN: 301110E

Jogiraj Das
Partner
M.No.: 066812
Kolkata
03rd September 2013



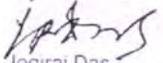
Directors
HAVEN VINCOM PRIVATE LIMITED

Director

HAVEN VINCOM PRIVATE LIMITED

Director

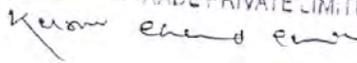
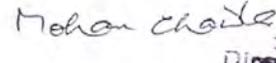
Likewise the balance sheet of M/s Gannet Vintrade Pvt. Ltd. is reproduced below for ready reference:

GANNET VINTRADE PRIVATE LIMITED
 BALANCE SHEET AS AT 31ST MARCH, 2013

	Notes	As at 31.03.2013 ₹	As at 31.03.2012 ₹
<u>EQUITY AND LIABILITIES</u>			
(1) Shareholder's Funds			
(a) Share Capital	1	1,329,000	1,329,000
(b) Reserves & Surplus	2	60,195,186	60,208,348
(2) Current Liabilities			
(a) Trade Payables	3	7,000	7,000
(b) Short-Term Provisions	4	-	503
		61,531,186	61,544,851
<u>II.ASSETS</u>			
(1) Non-Current Assets			
(a) Fixed Assets			
(i) Tangible assets - Net Block		-	-
(b) Non-Current Investments	5	61,400,000	60,900,000
(c) Other Non-Current Assets		-	-
(2) Current Assets			
(a) Cash and Cash Equivalents	6	129,908	127,041
(b) Short Term Loans & Advances	7	1,278	517,810
		61,531,186	61,544,851
See Accompanying Notes forming part of the Financial Statements	13		
As per our attached Report of even date			

For M.C. Das & Company
 Chartered Accountants
 FRN: 301110E

 Jogiraj Das
 Partner
 M.No.: 066812
 Kolkata
 03rd September 2013



Directors
 GANNET VINTRADE PRIVATE LIMITED

 Director
 GANNET VINTRADE PRIVATE LIMITED

 Director

After having examined the above audited Balance Sheet of these three share applicant companies, we observe that they invested their own entire share capital and share premium in other companies shares capital and share premium as an investments, which is clearly getting reflected in their Balance Sheets. Therefore, there is no any fresh injection of capital in balance sheets of these three companies. Therefore, it is abundantly clear that these three share applicant companies purchased shares of assessee company (C.P. Re Rollers Ltd) out of the sale proceeds of investments which they had in their respective balance sheets.

In the case of M/s Prism Vintrade Pvt Ltd, and M/s Gannet Vintrade Pvt Ltd, the assessing officer disallowed the share capital and share premium U/s 68 of the Act in the assessment order dated 15.03.2015, under section 263/147/143(3) of the Act, therefore their share capital and share premium have been already suffered tax. Thus, the share capital and share premium of the investor companies have been treated as its money/income. Since these companies subsequently invested their own money by selling their investments in the assessee company (C.P.Re-Rollers Ltd) therefore, in the hands of assessee company (C.P.Re-Rollers Ltd), the genuineness, identity and creditworthiness of the amount should be treated to be explained.

We also note that these companies did not have any source to invest the money in the assessee company C.P. Re Rollers Ltd, except, the money which had been disallowed by the Assessing Officer u/s 68 of the Act. Therefore, since the money has been disallowed u/s 68 and the Assessing Officer has imposed the tax, hence it becomes the investors money.

In the case of M/s Haven Vintrade Pvt. Ltd., we note that the Assessing Officer has not disallowed the amount u/s 68 of the Act, it is accepted by the Department as a genuine and hence the identity, creditworthiness and genuineness has been proved beyond doubt. Hence, once taxed money should not be taxed again, considering the fact that there is no movement in the cash flow in the assessee company except the amount disallowed u/s 68 of the Act therefore, considering this aspect, we delete the addition made in the hands of the assessee (C.P.Re-Rollers Ltd).

23. Now we deal with other grievances of the assessing officer. The AO noted that no agreement of sales of unquoted shares is available with assessee and no contract notes are available with the assessee. Besides, all the share applicant companies were earning very small profit and there are no fixed assets in the balance sheet of these companies.

Shri J.P.khaitan, Counsel for the assessee, submitted before the Bench that assessee company's shares are not listed in any stock exchange therefore it is not necessary to issue contract notes at the time of issue of shares. The concept of contract notes, do not apply in case of these three share applicant companies, that is, M/s. Prism Vintrade Private Limited, M/s.

Gannet-Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd. Therefore, the argument of the AO during the assessment stage that assessee company failed to furnish the contract notes is baseless.

We note that assessing officer has never asked during the assessment proceedings from the assessee about contract notes therefore AO cannot take adverse view on the basis of contract notes. Therefore, this cannot be the ground to draw the adverse inference against the said three share subscribing companies and to make the addition. Transactions have been done through banking channel and by account payee cheques therefore, there is no necessity to make an agreement between assessee company and share applicant companies.

We note that earning of very small profit and no fixed assets in the balance sheet of these companies, is not a necessary condition to made the disallowance under section 68 of the Act. We note that these three share applicant companies are investment companies and they have Investments assets in their balance sheet hence disallowance on this ground can not be made under section 68 of the Act.

24. Before we address the legal issue involved in this case, we would like to bring on record the various documents relating to share applicant companies namely : M/s. Gannet-Vintrade Private Limited, M/s. Prism Vintrade Private Limited, and M/s. Haven Vincom Pvt. Ltd which are available in the paper book of the assessee.

i)Gannet Vintrade Pvt. Ltd. : This company invested a sum of Rs. 4,92,50,000/- in the assessee company (vide PB-4). This company duly filed its return of income before Assessing Officer having PAN no. AADCG 4706 H. The share application was made by account payee cheque. This company was having paid up capital with free reserve to the tune of Rs. 6,15,24,186/- (Rs.13,29,000 + Rs. 6,01,95,186). The copy of the bank statement of the company is duly available in the paper book. On examination of the bank statement it will be seen that there is no deposit of cash prior to issue of cheque to the assessee company (C.P. Re-Rollers Pvt. Ltd.). The copy of the assessment order u/s 263 / 147 / 143(3) of the

Act, for assessment year 2010-11 is available in the paper book page 134. The assessing officer made disallowance U/s 68 at Rs.6,01,21,000/-. The details of source of funds from which this company had made the share application are also available in the paper book. One of the common directors of the assessee company himself presented before the Assessing Officer in response to the summons u/s 131 of the Act. (vide PB-107) and the director has submitted the required documents before the Assessing Officer through letter dated 11.03.2016 which is being reproduced below:

“11th March, 2016

*To
Mr. S K Roy
Deputy Commissioner of Income Tax
Circle-I, Durgapur
City Centre Durgapur - 713216*

Subject: Submission of Documents required during course of Statement of Record on 9th March, 2015 against Notice: u/s 131 of the I.T. Act. 1961

Dear Sir,

Please find the following documents and statement which are remain unexplained details required during course of hearing on 9th March, 2016, U/s 133 of Income Tax Act, 1961

- 1. Statement of Investment in Equity Shares Sales and Purchase during F.Y. 2012-13.*
- 2. Statement of Fund realised to investment in purchase of M/s C P Re-Rollers Ltd., after sold of existing invested share.*
- 3. Copy of Ledger of Share Purchase Details.*
- 4. Copy of Bank Book showing realised the Fund and Paid to M/s C P Re-Rollers Ltd. regarding purchase of Shares.*
- 5. All Books of Accounts with showing details transaction for the F.Y. 2012-13.*

We hope the above statements and documents are fulfil the required fund realisation and utilization for investing towards purchase of M/s C.P. Re-Rollers Ltd. Shares during the F.Y, 2012- 13.

*Thanking you,
Yours truly's
For Gannet Vintrade Pvt. Ltd.
Kumar Chand Chawla
Director”*

Note: The assessee company submitted the same documents and evidences for other share applicant companies also.

The assessee submitted the details of shares purchased and sale of shares vide paper book page nos. 108 to 109. The assessee company also submitted before AO, the source of investment (vide paper book-110).

We note that by submitting all the documents and evidences mentioned above, the assessee has discharged his obligation to prove identity, creditworthiness and genuineness of share applicant, M/s. Gannet-Vintrade Private Limited.

ii).M/s Prism Vintrade Pvt. Ltd. : This company invested a sum of Rs. 5,96,00,000/- in the assessee company. The share application was made by account payee cheque. This company duly filed its return of income before Assessing Officer, ITO, Ward -2(3), Durgapur/ Kolkata having PAN No. AAFCP 0762J. This company was having paid up share capital and free reserve of Rs. 6,28,24,424/- (Rs. 13,55,000 + 6,14,69,424). The copy of the bank statement of the company is duly available in the paper book. On examination of the bank statement it will be seen that there is no deposit of cash prior to issue of cheques to the assessee company. The copy of the assessment order u/s 263/143(3) for assessment year 2010-11 is available in the paper book page 149. The details of source of funds from which this company had made the share application are also available in the paper book. The deposition dated 09.03 2016 of Shri Kumar chand Chawla, director is available in the paper book (PB-137 to 139). Reasons for investment sold vide letter dated 11.03.2016 as required by the Assessing Officer is available in the paper book (vide PB-140) which is given below:

“11th March, 2016

*To
Mr. S K Roy
Deputy Commissioner of Income Tax
Circle-I, Durgapur
City Centre Durgapur - 713216*

*Subject: Brief of details towards share sold on Cost Price during F.Y. 2012-13
Against Notice: U/s 131 of the IT Act 1961.*

Dear Sir,

As per proceeding of notice u/s 131 of the Income Tax Act, 1961, you had required to know why we are sold our current assets share at cost price to unknown or out of Group Company.

So we hereby confirm you that our management and board director decided to sale our all investment in share of Rs.6,14,03,750 for 5,28,600 shares to our known reliable business houses and friends circles. And we were spared our requirement to closest friends and knows business house, and any how after so many exercise we got various companies/persons are ready to buy our existing invested share at cost price only.

After this big exercise we were sold our existing share to (list en losed) in F.Y. 2012-13, and after that the company management again decide to invest all collected money (of sold share) to our group of company in same year, because it will be much safer and reliable to monitor our invested amount in tune of purchase M/s C.P. Re-Rollers Ltd. Share with premium of Rs. 5,96 00,000/

And, Sir the doing of all above exercise our moto was instead of invest here and there will be much good and safe at our risk free company.

So, we hope you will understand our moto and look forward as positive way.

*Thanking you,
Yours truly's
For Prism Vintrade Pvt. Ltd.
Kumar Chand Chawla
Director”*

The assessee submitted the details of share sold (PB-142) the details of parties to whom shares were sold is available in the paper book (vide PB-143). The bank details of investment made in M/s C.P. Re Rollers Ltd. also available in paper book, vide Paper book page 144.

Note: The assessee company submitted the same explanation for other share applicant companies also.

We note that by submitting all the documents and evidences mentioned above the assessee has discharged his obligation to prove identity, creditworthiness and genuineness of share applicant, M/s. Prism-Vintrade Private Limited.

iii).M/s Haven Vincom Pvt. Ltd.: This company invested sum of Rs. 6,53,00,000/- in the assessee company. The share application was made by account payee cheque. This company has duly filed its return of income before ITO, Ward-1(1), Kolkata and was having PAN No. AACCH 2225 F. This company was having paid up capital and free reserves of Rs. 6,67,32,861/- (14,31,000 + 6,53,01,861). The copy of the bank statement of the company is duly available in the paper book. On examination of the bank statement it will be seen that there is no deposit of cash prior to issue of cheques to the assessee company. The copy of the assessment order u/s 147 / 143(3) of the Act, dated 22.03 2013 is available in the paper book. The details of source of funds from which this company has made the share applications are also available in the paper book (vide PB-181 and 182). The reasons for sale of investment as asked by the Assessing Officer is available in the paper book (vide PB-172) which is given below :

11th March, 2016

*To
Mr. S KRoy
Deputy Commissioner of Income Tax
Circle-I, Durgapur
City Centre Durgapur - 713216*

*Subject: Brief of details towards share sold on Cost Price during F.Y. 2012-13
Against Notice: U/s 131 of the IT Act. 1961.*

Dear Sir,

As per proceeding of notice u/s 131 of the Income Tax Act, 1961, you had required to know why we are sold our current assets share at cost price to unknown or out of Group Company.

So we hereby confirm you that our management and board director decided to sale our all investment in share of Rs. 6,39,96,000 for 10,91,541 shares to our known reliable business houses and friends circles. And we were spared our requirement to closest friends and knows business house, and any how after so many exercise we got various companies/persons are ready to buy our existing invested share at cost price only.

After this big exercise we were sold our existing share to (List enclosed) in F.Y. 2012-13, and after that the company management again decide to invest all collected money (of sold share) to our group of company in same year, because it will be much safer and reliable to monitor our invested amount in tune of purchase M/s C.P. Re-Rollers Ltd. Share with premium of Rs. 6, 53, 00,000/-.

And, Sir the doing of all above exercise our moto was instead of invest here and there will be much good and safe at our risk free company.

So, we hope you will understand our moto and look forward as positive way.

*Thanking you,
Yours truly's
For Haven Vincom Pvt. Ltd.
Kumar Chand Chawla
Director*

Statement of investment of sale in the assessment year 2013-14 is available in the paper book (vide PB-181 and 182). Sources of funds and details thereof is available in paper book page 183. Details of bank account in Oriental Bank of Commerce is also available in the paper book (PB-184).

We note that by submitting all the documents and evidences mentioned above, the assessee has discharged his obligation to prove identity, creditworthiness and genuineness of share applicant of M/s. Haven Vintrade Private Limited.

25. We note that the share application money and share premium money which were received by the assessee company from the two share applicant companies viz: M/s. Prism Vintrade Private Limited, and M/s. Gannet-Vintrade Private Limited, during the period December, 2012 to March, 2013 had already been suffered disallowance under section 68 of the Act. As these two share applicant companies invested the same money in the assessee company, therefore, no further addition u/s 68 of Act, is warranted in the hands of the assessee company. To make it more clear, that is, the said share application money and share premium money raised from these two companies (Viz:M/s. Prism Vintrade Private Limited and M/s. Gannet Vintrade Private Limited) were added as the investor's income in the

assessment order passed u/s 263/147/143(3) in the A.Y. 2010-11 by the respective assessing officer, ITO, Ward-2(3) and 2(2), Durgapur, therefore, addition under section 68 of the Act had been already made in the hands of the these two Share Applicant Companies, and the amount which had been suffered addition under section 68 of the Act, had been subsequently invested in the assessee company (M/s C.P.RE Rollers Ltd), therefore no addition should be made in the hands of the assessee company under section 68 of the Act, in respect of these two share applicant companies, as it would tantamount to double addition. And even otherwise the source of the investor stands proved to be their income by their Assessing Officer (A.O)

26. To make it more clear, it can be said that the money of these two companies Viz: M/s. Prism Vintrade Private Limited, M/s. Gannet Vintrade Private Limited, had already been taxed as an accounted money under section 68 of the Act in their respective income tax assessments under section 263/147/143(3) of the Act. The assessing officer has himself admitted, this fact, in his assessment order. Thus, we note that all the share application money and share premium money which were received by the assessee company from the aforesaid two share applicant companies (Viz: M/s. Prism Vintrade Private Limited, M/s. Gannet Vintrade Private Limited,), during the period December, 2012 to March, 2013 had already been taxed by the Department in hands of two companies in assessment under section 68 of the Act, treating as cash credit. The said money which was taxed under section 68 of the Act in the hands of these two companies were utilized by these two companies to purchase share capital and share premium of the assessee company (M/s C.P.Re Rollers Ltd), therefore, in our opinion, the same money should not be taxed in the hands of the assessee company under section 68 of the Act. The scheme of section 68 of the Act, nowhere talks about the double taxation of the same amount where the same money was utilized by these two share applicant companies. We note that Government wants its legitimate share of tax by taxing the income once as per the provisions of the Income Tax Act. These two companies share capital and share premium have already been taxed under section 68 of the Act and these companies are using the already taxed money under section 68 for purchasing share capital and share

premium in assessee company, hence in our opinion the said money should not be taxed in the hands of the assessee company (M/s C.P.Re Rollers Ltd) under consideration. That is, it should be treated as an explained money in the hands of the assessee company, since it had already suffered the disallowance under section 68 of the Act. For that we rely on the judgment of the Coordinate Bench of ITAT Kolkata in the case of DCIT Vs. M/s Maa Amba Towers, ITA No.1381/Kol/2015, for A.Y.2012-13, (supra).

27. The Ld. DR appearing on behalf of the Revenue stated before us that the order of the Ld. CIT(A) is based on logical conclusion reached by him therefore his order should be confirmed. The Ld. DR argued that mere documentary evidences were not sufficient to discharge the genuineness of the transactions and that the personal appearance of Directors of share applicants was indeed a pre-requisite to ascertain whether the three ingredients prescribed in Section 68 stood satisfied. We do not agree with ld DR about his belief that none of the directors of share applicant companies appeared before the AO. We have already noted in para No. 16 of this order that one of the common director of assessee company and share applicant companies, Mr.Kumar Chand Chawla, appeared before the AO and submitted all the required documents, evidences and details and not only that he explained the reasons to sale the investments in share applicant companies.

The Ld. DR thereafter took us through the relevant documents furnished by the assessee company in their Paper book. With regard to the identity of the share subscribers, he submitted that all the share applicants were paper companies and the fact that only one of the Directors of these three share applicant companies attended would not prove the identity.

We do not agree with ld DR for the Revenue that all the share applicants were paper companies.

We find that stand of the ld DR is contrary to the assessment order of the Investor companies. We already noted in this order that the AO of these Investor companies have, in fact, assessed the share capital and share premium as their income under section 68 of the Act. Therefore, once taxed money can not be taxed again in the hands of assessee company. If this is so, how could these Investor companies be said to be paper companies.

28. On the other hand the Ld Counsel first drew our attention to the grounds raised by the assessee in the appeal. The evidences which were filed before the AO, included the following details.

- 1) *Return of ROC, that is, form No. 2 submitted before R.O.C.*
- 2) *PAN Number copies of each share subscriber.*
- 3) *Copy of Balance Sheet, Profit and loss account of all share applicant companies.*
- 4) *Details of investments sold by all share applicant companies.*
- 5) *Transaction with the assessee was duly highlighted in the bank statement*
- 6) *Explanation along with evidence of source of source of the funds of the share applicant Companies.*
- 7) *Audited Accounts of the share holders.*
- 8) *Relevant address proofs / Form filed by the share applicants with ROC.*
- 9) *Income Tax Return of share applicant companies.*
- 10) *Copy of the Bank Statement of Share applicant companies where from the amount was debited.*
- 11) *Copies of Bank statement of the assessee company where the share application money and premium were credited.*
- 12) *Cheque Number, the amounts subscribed by shareholders along with the name of bank its branch address and the number of shares allotted to them with face value on the date of allotment.*
- 13) *Common Director of the share applicant companies (who is director in assessee company as well as share applicant companies) appeared before the assessing officer in response to notice u/s 131 of the Income Tax Act and submitted documents and evidences before the AO.*

The Ld Counsel submitted that the details of PAN, IT Acknowledgment, and the Form 18 furnished by the share applicants with the ROC duly proved the identity of the share subscribers. He further pointed out that in all cases the notices issued by the AO were duly served upon the share applicants through the postal authorities, which further fortified the existence of share applicants at their given addresses. In fact, in response to notice under section 131 of the Act, one of the directors, Mr. Kumar Chand, attended the assessing officer during the assessment proceedings. The Ld Counsel thereafter invited our attention to the respective balance sheets of the share applicants to show that each of them had sufficient funds available at their disposal to make investment in

the assessee company. Referring to the respective bank statements, it was further pointed out that the transactions were conducted through proper banking channel and that there were no cash deposits in any of the bank account of the share applicants. He also invited our attention to the explanation furnished by each of the share applicants regarding their source of funds. It was thus submitted that the fund flow position of the share applicants and not the profitability was the decisive criteria to examine the creditworthiness of the share applicants. With regard to the genuineness of the transaction, the Ld Counsel pointed out that it was never the AO's case that the assessee did not substantiate the justification for high share premium.

29. Before we adjudicate as to whether the Ld. CIT(A)'s action is right or erroneous, let us look at section 68 of the Act and the judicial precedents on the issue at hand. Section 68 under which, the addition has been made by the AO reads as under:

"68. Where any sum is found credited in the books of an 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."

The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus, the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as also held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.

The main plank on which the AO made the addition was because all the directors of the share subscribers did not turn up before him, only one of the directors was present before the AO. In our view, this approach of the AO is not correct. Any one director appearing before the AO

will suffice for the purpose of compliance of notice under section 131 of the Income Tax Act, 1961. We note that a Common Director (Shri Kumar Chand Chawla) of these three share applicant companies (who is director in assessee company as well as director in share applicant companies) appeared before the assessing officer in response to notice u/s 131 of the Income Tax Act and submitted documents and evidences before the AO. Hence, notice under section 131 of the Act has been duly complied with.

It is noted that the all the documents were furnished before the AO which substantiated the transaction between the assessee company and the share applicants. It is therefore not a case where the documents sought from the applicants to examine the transaction were not available before the AO. As regards the issue of non-appearance of the share applicants, we note that in such a case the Hon'ble Apex Court in the case of Orissa Corpn. (P Ltd. (supra) 159 ITR 78 and the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523, has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

30. We note that AO added back the entire share application money raised from the share applicants during the year under consideration primarily on the premise that directors of the shareholder companies failed to appear before him. The Ld. DR appearing on behalf of the Revenue stated that the order of the Ld. CIT(A) is based on logical conclusion reached by him therefore his order should be confirmed. The Ld. DR argued that mere documentary evidences were not sufficient to discharge the genuineness of the transactions and that the personal appearance of Directors of share applicants was indeed a pre-requisite to ascertain whether the three ingredients prescribed in Section 68 stood satisfied. The Ld. DR thereafter took us through the relevant documents furnished by the assessee company in their Paper book. With regard to the identity of the share subscribers, he submitted that all the share applicants were paper companies and the fact that only one of the Directors of these three share applicant companies attended would not prove the identity.

31. Undisputedly the Share Applicants in this case are the bank account holder in their respective banks in their own name and are sole owner of the credits appearing in their bank account from where they issued cheques to the assessee company. For the proposition that a Bank Account holder himself is the 'owner' of 'credits' appearing in his account (with the result that he himself is accountable to explain the source of such credits in whatever way and form, the same have emerged) support can be derived from section 4 of Bankers Book Evidence Act 1891 which reads as under:-

"4. Mode of proof of entries in bankers' books Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received

as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every cases where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."

27. Following the said provisions, the co-ordinate bench of Allahabad Tribunal in the case of Anand Prakash Agarwal reported in 6 DTR (All-Trib) 191 held as under:-

“The question that remains to be decided now is whether the subject matter of transfer was the asset belonging to the transferor/donors themselves. There is enough material on record which goes to show that there were various credits in the bank accounts of the donors, prior to the transaction of gifts, which undisputedly belonging to the respective donors themselves, in their own rights. No part of the credits in the said bank' accounts was generated from the appellant and/or from its associates, in any manner. The certificates issued by the banks are construable as evidence about the ownership of the transferors or their respective bank accounts, as per s.4 of the Bankers' Books evidence Act 1891, which read as under:

"4. Where an extract of account was duly signed by the agent of the bank and implicit in its was a certificate that it was a true copy of an entry contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book was in the custody of the bank, it was held admissible in evidence. Radheshyam v. Safiyabai Ibrahim AIR 1988 Bom.361 : 1987 Mah. 725: 1987 Bank J 552."

In view of the position of law as discussed above, it is always open for a borrower to contend, that even the "creditworthiness" of the lender stands proved to the extent of credits appearing in his Bank Account and he should be held to be successful in this contention."

32. In the case of Nemi Chand Kothari 136 Taxman 213, (supra), the Hon'ble Guahati High Court has thrown light on another aspect touching the issue of *onus* on assessee under section 68, by holding that the same should be decided by taking into consideration the provision of section 106 of the Evidence Act which says that a person can be required to prove only such facts which are in his knowledge. The Hon'ble Court in the said case held that, once it is found that an assessee has actually taken money from depositor/lender who has been fully identified, the assessee/borrower cannot be called upon to explain, much less prove the affairs of such third party, which he is not even supposed to know or about which he cannot be held to be accredited with any knowledge. In this view, the Hon'ble Court has laid down that section 68 of Income-tax Act, should be read along with section 106 of Evidence Act. The relevant observations at page 260 to 262, 264 and 265 of the report are reproduced herein below:-

"While interpreting the meaning and scope of section 68, one has to bear in mind that normally, interpretation of a statute shall be general, in nature, subject only to such exceptions as may be logically permitted by the statute itself or by some other law connected therewith or relevant thereto. Keeping in view these fundamentals of interpretation of statutes, when we read carefully the provisions of section 68, we notice nothing in section 68 to show that the scope of the inquiry under section 68 by the Revenue Department shall remain confined to the transactions, which have taken place between the assessee and the creditor nor does the wording of section 68 indicate that section 68 does not authorize the Revenue Department to make inquiry into the source(s) of the credit and/or sub-creditor. The language employed by section 68 cannot be read to impose such limitations on the powers of the Assessing Officer. The logical conclusion, therefore, has to be, and we hold that an inquiry under section 68 need not necessarily be kept confined by the Assessing Officer within the transactions, which

took place between the assessee and his creditor, but that the same may be extended to the transactions, which have taken place between the creditor and his sub-creditor. Thus, while the Assessing Officer is under section 68, free to look into the source(s) of the creditor and/or of the sub-creditor, the burden on the assessee under section 68 is definitely limited. This limit has been imposed by section 106 of the Evidence Act which reads as follows:

"Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. "

What, thus, transpires from the above discussion is that while section 106 of the Evidence Act limits the onus of the assessee to the extent of his proving the source from which he has received the cash credit, section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the assessee himself. In other words, while section 68 gives the liberty to the Assessing Officer to enquire into the source/source from where the creditor has received the money, section 106 makes the assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the assessee to prove the creditworthiness of the source(s) of the sub-creditors. If section 106 and section 68 are to stand together, which they must, then, the interpretation of section 68 are to stand together, which they must, then the interpretation of section 68 has to be in such a way that it does not make section 106 redundant. Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income- tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub- creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been eventually received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub- creditors, for, these aspects may not be within the special knowledge of the assessee. "

" ... If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep the same in the bank, the said amount cannot be treated as income of the assessee from undisclosed source. In other words, the genuineness as well as the creditworthiness of a creditor have to be adjudged vis-a-vis the transactions, which he has with the assessee. The reason why we have formed the opinion that it is not the business of the assessee to find out the actual source or sources from where the creditor has accumulated the amount, which he advances, as loan, to the assessee is that so far as an assessee is concerned, he has to prove the genuineness of the transaction and the creditworthiness of the creditor

vis-a-vis the transactions which had taken place between the assessee and the creditor and not between the creditor and the sub-creditors, for, it is not even required under the law for the assessee to try to find out as to what sources from where the creditor had received the amount, his special knowledge under section 106 of the Evidence Act may very well remain confined only to the transactions, which he had' with the creditor and he may not know what transaction(s) had taken place between his creditor and the sub-creditor... "

"In other words, though under section 68 an Assessing Officer is free to show, with the help of the inquiry conducted by him into the transactions, which have taken place between the creditor and the sub-creditor, that the transaction between the two were not genuine and that the sub-creditor had no creditworthiness, it will not necessarily mean that the loan advanced by the sub-creditor to the creditor was income of the assessee from undisclosed source unless there is evidence, direct or circumstantial, to show that the amount which has been advanced by the sub-creditor to the creditor, had actually been received by the sub-creditor from the assessee"

"Keeping in view the above position of law, when we turn to the factual matrix of the present case, we find that so far as the appellant is concerned, he has established the identity of the creditors, namely, NemichandNahata and Sons (HUF) and Pawan Kumar Agarwalla. The appellant had also shown, in accordance with the burden, which rested on him under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the Assessing Officer to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. Viewed from this angle, we have no hesitation in holding that in the case at hand, the Assessing Officer had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the Assessing Officer could not have treated the said amounts as income derived by the appellant from undisclosed sources. The learned Tribunal seriously fell into error in treating the said amounts as income derived by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness."

33. In the case of CIT Vs. Jalan Hard Coke Ltd (95 taxmann.com 330), the Hon'ble Rajasthan High Court noted that the assessee had furnished the details of the share applicants but expressed its inability to produce the share applicants before the AO for examination. The Hon'ble High Court held that mere non-appearance of share applicants could not be reason enough to assess the share application monies received by way of unexplained cash credit. The

SLP filed by the Revenue against this judgment has been dismissed by the Hon'ble Supreme Court. The relevant extracts of the judgment are as follows:

"6.2 Taking into consideration the aforesaid decision we are of the considered opinion that company cannot be assessed for the income tax to find out the person who has applied as share holder. The view of taken by the Tribunal is just and proper, therefore, the issue is answered in favour of the assessee and against the department."

34. Further, in the case of CIT v. Orchid Industries (P.) Ltd. [2017] 88 taxmann.com 502/397 ITR 136, the Hon'ble Bombay High Court on the issue of non-appearance of share applicants had held as under:

"[5] The Assessing Officer added Rs.95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

[6] The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares i.e. allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P.) Ltd. (supra) would be applicable in the facts and circumstances of the present case"

35. Further, in the case of CIT v. S. Kamaljeet Singh [2005] 147 Taxman 18(All.) their lordships, on the issue of discharge of assessee's onus in relation to a cash credit appearing in his books of account, has observed and held as under:-

"4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in question. The assessee discharged the onus by placing (i) confirmation letters of the cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers. It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credit was called for. In view of this finding, we find that the Tribunal was right in reversing the order of the AA C, setting aside the assessment order."

36. Further the jurisdictional Calcutta High Court in the case of S.K. Bothra & Sons, HUF v. Income-tax Officer, Ward- 46(3), Kolkata (347 ITR 347) also held as follows:

“15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee.

16. In the case before us, the appellant by producing the loan-confirmation-certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the loan was taken by account payee cheques, no doubt, prima facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements.”

37. Further, the Hon'ble High Court at Calcutta in the case of Crystal Networks (P.) Ltd. v. Commissioner of Income-tax (353 ITR 171), on the issue of unexplained cash credits, held that when the basic evidences are on record the mere failure of the creditor to appear cannot be basis to make addition. The court held as follows:

8. Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that Income-tax Officer did not consider the material evidence showing the creditworthiness and also other documents, viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidis. These evidence were duly considered by the Commissioner of Income-tax (Appeals). Therefore, the failure of the person to turn up pursuant to the summons issued to any witness is immaterial when the material documents made available, should have been accepted and indeed in subsequent year the same explanation was accepted by the Income-tax Officer. He further contended that when the Tribunal has relied on the entire judgment of the Commissioner of Income-tax (Appeals), therefore, it was not proper to take up some portion of the judgment of the Commissioner of Income-tax (Appeals) and to ignore the other portion of the same. The judicial propriety and fairness demands that the entire judgment both favourable and unfavourable should have been considered. By not doing so the Tribunal committed grave error in law in upsetting the judgment in the order of the Commissioner of Income-tax (Appeals).

9. In this connection he has drawn our attention to a decision of the Supreme Court in the case of UdhavdasKewalram v. CIT [1967] 66 ITR 462. In this judgment it is noticed that the Supreme Court as proposition of law held that the Tribunal must In deciding an appeal, consider with due care, all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law.

10. We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore, it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter the creditworthiness. As rightly pointed out by the learned counsel that the Commissioner of Income-tax (Appeals) has taken the trouble of examining of all other materials and documents, viz., confirmatory statements, invoices, challans and vouchers showing supply of bidis as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued, in our view, is not important. The important is to prove as to whether the said cash

credit was received as against the future sale of the product of the assessee or not. When it was found by the Commissioner of Income- tax (Appeals) on facts having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this -fact finding. Indeed the Tribunal did not really touch the aforesaid fact finding of the Commissioner of Income-tax (Appeals) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 464, the Supreme Court has observed as follows:

"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act; it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. "

11. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

12. Taking inspiration from the Supreme Court observations we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Commissioner of Income-tax (Appeals). We also found no single word has been spared to upset the fact finding of the Commissioner of Income-tax (Appeals) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

13. Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Commissioner of Income-tax (Appeals). The appeal is allowed.

38. When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regard our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the CIT Vs Data ware Pvt Ltd (ITAT No. 263 of 2011) dated 21.09.2011 wherein the Court held as follows:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity

of the creditor and the genuineness" of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

39. Our attention was also drawn to the decision of the Hon'ble Supreme Court while dismissing SLP in the case of Lovely Exports as has been reported as judgment delivered by the CTR at 216 CTR 295:

"Can the amount of share money be regarded as undisclosed income under section 68 of the Income tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee- company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

40. Our attention was also drawn to the decision of the Hon'ble Calcutta High Court in the appeal of Commissioner of Income tax, Kolkata IVVs Roseberry Mercantile (P) Ltd., ITAT no. 241 of 2010 dated 10-01-2011, wherein it was held as below:

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT (A) ought to have held that the assessee had not established the genuineness of the transaction. "

It appears from the record that in the assessment proceedings it was noticed that the assessee company during the year under consideration had brought Rs. 4,00,000/- and Rs.20,00,000/- towards share capital and share premium respectively amounting to Rs.24,00,000/- from four shareholders being private limited companies. The Assessing Officer on his part called for the details from the assessee and also from the share applicants and analyzed the facts and ultimately observed certain abnormal features, which were mentioned in the assessment order. The Assessing Officer, therefore, concluded that nature and source of such money was questionable and evidence produced was unsatisfactory. Consequently, the Assessing Officer invoked the provisions under Section 68/69 of the Income Tax Act and made addition of Rs.24,00,000/-.

On appeal the Learned CIT (A) by following the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd., reported in (2008) 216 CTR 195 allowed the appeal by holding -that share capital/premium of Rs. 24,00,000/- received from the investors was not liable to be treated under Section 68 as unexplained credits and it should not be taxed in the hands of the appellant company.

As indicated earlier, the Tribunal below dismissed the appeal filed by the Revenue.

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal

below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

41. Our attention was also drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner Of Income Tax vs M/s. Nishan Indo Commerce Ltd in ITA No. 52 of 2011 dated 2 December, 2013 wherein the Court held as follows:

“The Assessing Officer was of the view that the increase in share capital by RS.52,03,500/- was nothing but the introduction of the assessee's own undisclosed funds/income into the books of accounts of the assessee company. The Assessing Officer accordingly treated the investment as unexplained credit under Section 68 of the Income Tax Act and added the same to the income of the assessee.

Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) being the First Appellate Authority and contended that the Assessing Officer had no material to show that the share capital was the income of the assessee company and as such the addition made by the Assessing Officer under Section 68 of the Act was wrong.

The learned Commissioner of Income Tax (Appeals) after hearing the department and the Assessee Company deleted the addition of Rs. 52, 03,500/- to the income of the assessee company during the Assessment Year in question. The learned Commissioner of Income Tax Appeals found that there were as many as 2155 allottees, whose names, addresses and respective shares allocation had been disclosed.

The Commissioner of Income Tax Appeals, further found that the Assessee Company received the applications through bankers to the issue, who had been appointed under the guidelines of the Stock Exchange and the Assessee Company had been allotted shares on the basis of allotment approved by the Stock Exchange. The Assessee Company had duly filed the return of allotment with the Registrar of Companies, giving complete particulars of the allottees.

The Commissioner of Income Tax (Appeals) found that inquirers had confirmed the existence of most of the shareholders at the addresses intimated to the Assessing Officer, but the Assessing Officer took the view that their investment in the Assessee Company was not genuine, on the basis of some extraneous reasons. The Commissioner of Income Tax (Appeals) took note of the observation of the Assessing Officer that enquiry conducted by the Income Tax Inspector had revealed that nine persons making applications for 900 shares were not available at the given address and rightly concluded that the total share capital issued by the Assessee Company could not be added as unexplained cash credit under Section 68 of the Income Tax Act. Moreover, if the nature and source of investment by any shareholder, in shares of the Assessee Company remained unexplained, liability could not be foisted on the company. The concerned shareholders would have to explain the source of their fund.

The learned Commissioner on considering the submissions of the, respective parties and considering the materials, found that the Assessing Officer had applied the provisions of Section 68 of the Income Tax Act arbitrarily and illegally and in any case without giving the assessee adequate opportunity of representation and/or hearing.

Learned Tribunal agreed with the factual findings of the learned Commissioner and accordingly the learned Tribunal dismissed the appeal of the Revenue and affirmed the decision of the learned Commissioner.

Mr. Dutta appearing on behalf of the petitioners cited judgment of the Division Bench of this Court in Commissioner of Income Tax Vs. Ruby Traders and Exporters Limited reported in 236 (2003) ITR 3000 where a Division Bench of this Court held that when Section 68 is resorted to, it is incumbent on the assessee company to prove and establish the identity of the subscribers, their credit worthiness and the genuineness of the transaction.

The aforesaid judgment was rendered in the context of the factual background of the aforesaid case where, despite several opportunities being given to the assessee, nothing was disclosed about the identity of the shareholders. In the instant case, the assessee disclosed the identity and address and particulars of share allocation of the shareholders. It was also found on the facts that all the shareholders were in existence. Only nine shareholders subscribing to about 900 shares out of 6, 12,000 shares were not found available at their addresses, and that too, in course of assessment proceedings in the year 1994, i.e., almost 3 years after the allotment.

By an order dated 2nd May, 2001, this Court admitted the appeal on three questions which essentially centre around the question of whether the Appellate Commissioner erred in law in deleting the addition of Rs. 52, 03, 500/- to the income of the assessee as made by the Assessing Officer. We are of the view that there is no question of law involved in this appeal far less any substantial question of law.

The learned Tribunal has concurred with the learned Commissioner on facts and found that there were materials to show that the assessee had disclosed the particulars of the shareholders. The factual findings cannot be interfered with, in appeal. We are of the view that once the identity and other relevant particulars of shareholders are disclosed it is for those shareholders to explain the source of their funds and not for the assessee company to show wherefrom these shareholders obtained funds.”

42. Further, our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner of Income Tax vs M/s. Leonard Commercial (P) Ltd in ITAT No. 114 of 2011 dated 13th June, 2011 wherein the Court held as follows:

“The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs.8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the Assessing Officer on account of share capital, share application money and investment in HTCCL respectively.

After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed. It further appears that all the payments were made by the applicants by account payee cheques.

It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund.

In our opinion, both the Commissioner of Income-tax (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars.

The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants.

In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged.

We, thus, find that both the authorities below, on consideration of the materials on record, rightly applied the correct law which are required to be applied in the facts of the present case and, thus, we do not find any reason to interfere with the concurrent findings of fact based on materials on record.

The appeal is, thus, devoid of any substance and is dismissed summarily as it does not involve any substantial question of law.

43. Further, in the case of Pr.CIT Vs. Hi-Tech Residency (P) Ltd (96 taxmann.com 402), the grievance of the Revenue before the Hon'ble Delhi High Court was that the none of the investors in the share capital of the assessee had personally appeared before the AO and for that reason the addition made by the AO u/s 68 was justified. While dismissing the appeal of the Revenue, the High Court held as follows:

“4. The Court finds that the exercise for determining the identity, genuineness and creditworthiness of the investors of the share capital of the Assessee as well as lenders was undertaken in an elaborate manner by the CIT (A). Comments from the AO were sought. Detailed reasons have been given by the CIT (A) to come to the conclusion that the Assessee had discharged its onus of establishing the identity, genuineness and creditworthiness of both the investors as well as the lenders. This has been concurred with by the ITAT in the impugned order which is again an extremely detailed one.

5. The concurrent factual findings of both the CIT (A) and ITAT have not been shown to be perverse by the Appellant. This is virtually the fourth stage of the litigation.

6. Question (1) is accordingly answered in the negative, i.e., in favour of the Assessee.”

It is noted that the SLP filed by the Revenue against this judgment has been dismissed by the Hon'ble Supreme Court.

44. From the details as aforesaid which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) regular

income tax assesseees, (ii) they are filing their return of income, (iii) the board resolutions approving the investment in the assessee company is available on record, (iv) the share application money was made by account payee cheques, (v) the details of the bank accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions the AO found deposit in cash before issuing cheques to the assessee company, (vii) the share applicants have furnished declaration explaining the source of funds out of which the cheques were issued to the assessee company, (viii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above.

45. As noted from the judicial precedents cited above, where any sum is found credited in the books of an assessee then there is a duty casted upon the assessee to explain the nature and source of credit found in his books. In the instant case, the credit is in the form of receipt of share capital with premium from share applicants. The nature of receipt towards share capital is seen from the entries passed in the respective balance sheets of the companies as share capital and investments. In respect of source of credit, the assessee has to prove the three necessary ingredients i.e. identity of share applicants, genuineness of transactions and creditworthiness of share applicants. For proving the identity of share applicants, the assessee furnished the name, address, PAN of share applicants together with the copies of balance sheets and Income Tax Returns. With regard to the creditworthiness of share applicants, as we noted supra, these Companies are having capital in several crores of rupees and the investment made in the assessee company is only a small part of their capital. These transactions are also duly reflected in the balance sheets of the share applicants, so creditworthiness is proved. Even if there was any doubt if any regarding the creditworthiness of the share applicants was still subsisting, then AO should have made enquiries from the AO of the share subscribers as held in the several judgments cited above, which has not been done, so no adverse view could have been drawn. The third ingredient is genuineness of the transactions, for which we note that the monies have been directly paid to the assessee company by account payee cheques out of sufficient bank balances available in the bank accounts of the share applicants. It will be evident from the paper book that the assessee has even demonstrated the source of money deposited into their bank accounts, which in turn has been used by them to subscribe to the assessee company as share application. Hence the source of source is proved by the assessee in

the instant case. The share applicants have confirmed the share application as well as the payments made to the assessee company, which are duly corroborated with their respective bank statements and all the payments are by account payee cheques.

46. We find that the Hon'ble Supreme Court in the case of M/s Earth Metal Electricals P Ltd vs CIT &Anr. reported in 2010 (7) TMI 1137 in Civil Appeal No. 21073 / 2009 dated 30.7.2010 arising from the order of Hon'ble Bombay High Court had held as under:-

ORDER

Delay condoned.

Leave granted.

Heard learned counsel on both sides.

We have examined the position. We find that the shareholders are genuine parties. They are not bogus and fictitious. Therefore, the impugned order is set aside

The appeal is allowed accordingly. No order as to costs.

47. In the instant case before us, we also note that the share subscribing companies are duly assessed to income tax. The Ld AR had placed on record the copies of the assessment orders framed in the cases of the share subscribing companies, as noted above. It therefore cannot be disputed that the share subscribing companies are not in existence. From the assessment orders, it is noted that the share subscribing companies are duly assessed to income tax and their income tax particulars together with the copies of respective income tax returns with their balance sheets are already on record. We also find that the Ld. CIT(A) had categorically stated that the scrutiny assessments were framed on the share subscribing companies for the Asst Year 2010-11 which shows their existence is genuine and transactions carried out by them were the subject matter of examination by the income tax department in scrutiny proceedings. This fact has not been controverted by the Revenue before us.

48. We may gainfully refer to the judgment in the case of Pr. CIT Vs Paradise Inland Shipping (P) Ltd (84 taxmann.com 58) wherein the Bombay High Court had deleted similar addition on similar set of facts made on account of unexplained cash credits and the SLP filed

by the Revenue against the judgment has been dismissed by the Hon'ble Supreme Court. The relevant extracts of the judgment is as follows:

"5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not. In this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus :

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows :

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-

Date of Registration 09/05/1995

6. On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.

7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.

49. We also find that the Hon'ble Apex Court recently in the case of Principal CIT vs Vaishnodevi Refoils & Solvex reported in (2018) 96 taxmann.com 469 (SC) wherein the SLP of the Revenue has been dismissed by the Hon'ble Apex Court. The brief facts of that case were that the addition u/s 68 of the Act was made by the Assessing Officer in respect of capital contributed by the partner of the firm. The Hon'ble Gujarat High Court noted that when the concerned partner had confirmed before the Assessing Officer about his fact of making capital contribution in the firm and that the said investment is also reflected in his individual books of accounts, then no addition could be made u/s 68 of the Act. The decision

of Hon'ble Gujarat High Court is reported in (2018) 89 taxmann.com 80 (Guj HC) . The SLP of the revenue against this judgment was dismissed by the Hon'ble Supreme Court.

50. We may gainfully refer to the following decisions of the Hon'ble High Court in the cases as under :

(a) In the case of Pr. CIT Vs Chain House International (P) Ltd [2018] (98 taxmann.com 47)the AO had added the share application by way of unexplained cash credits was that the assessee was unable to give any justifiable reason for issuing shares at a premium. The Hon'ble Madhya Pradesh High Court did not agree with this reasoning given by the AO for making addition u/s 68, holding as under:

“Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned. [Para 52]

Once the genuineness, creditworthiness and identity of investors are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case. [Para 53]

There is no dispute about the receipt of funds through banking channel nor there is any dispute about the identity, creditworthiness and genuineness of the investors and, therefore, the same has been established beyond any doubt and there should not have been any question or dispute about premium paid by the investors; therefore, unless there is a limitation put by the law on the amount of premium, the transaction should not be questioned merely because the assessing authority thinks that the investor could have managed by paying a lesser amount as Share Premium as a prudent businessman. The test of prudence by substituting its own view in place of the businessman's has not been approved by the Supreme Court. [Para 54]”

(b) In the case of CIT v. Gagandeep Infrastructure (P.) Ltd. [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 the Revenue contended that the fact that the shares were issued at high premium raised suspicion on the genuineness of the transactions. While dismissing this plea raised by the Revenue, the Hon'ble Bombay High Court held as under:

(e) We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as

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

(f) In the above circumstances and particularly in view of the concurrent finding of fact arrived at by the CIT(A) and the Tribunal, the proposed question of law does not give rise to any substantial question of law. Thus not entertained.

(c) In *CIT Vs Anshika Consultants Pvt Ltd* (62 taxmann.com 192), the AO had added the share application monies treating it to be their unaccounted monies routed through accommodation entries since the shares were issued at a high premium. The Hon'ble Delhi High Court did not agree with this contention put forth by the Revenue, by observing as under:

"Whether the assessee-company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed, the investigation report which was specifically called from the concerned department was available but not discussed by the Assessing Officer. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the Assessing Officer in the form of balance sheets income-tax returns, PAN details etc. While arriving at the conclusion that he did, the Assessing Officer did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the Commissioner (Appeals) and the Tribunal, these conclusions were clearly baseless and false. This Court is constrained to observe that the Assessing Officer utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents."

51. We also rely on the following judgments of the Coordinate Bench of ITAT Kolkata, where based on same facts, and identical and common grounds and coordinate Bench deleted the addition:

(1) M/s Jagannath Banwarilal Texofabs Pvt Ltd, in ITA No. 1762/Kol/2016, For A.Y. 2012-13, order dated 26.10.2018.

(2) M/s Wiz-Tech Solutions Pvt Ltd, in ITA No.1162/kol/2015,for A.Y. 2012-13, order dated 14.06.2018.

52. To conclude, Section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. We note that the share application money and share premium money which were received by the assessee company from the two share applicant companies viz: M/s. Prism Vintrade Private Limited, and M/s. Gannet-Vintrade Private Limited, during the period December, 2012 to March, 2013 had already been suffered disallowance under section 68 of the Act. As these two share applicant companies invested the same money in the assessee company, therefore, no further disallowance is warranted in the hands of the assessee company. Once taxed income cannot be taxed again.

In the case of third company, M/s Haven Vincom Pvt. Ltd, the assessment, pertaining to the AY. 2010-11 was not revised by the Department. That is, M/s Haven Vincom Pvt. Ltd has raised share capital and share premium which has not been treated by the Department as cash credit under section 68 of the Act and has not been disallowed by the assessing officer in the assessment of M/s Haven Vincom Pvt. Ltd (vide assessment order-paper book pg.173) . We note that M/s Haven Vincom Pvt. Ltd has utilized the same money (which it received by raising share capital/premium and not disallowed by AO, u/s 68) to purchase the share capital and share premium in the

assessee company (M/s C.P. RE Rollers Ltd) therefore it should not be disallowed under section 68 of the Act, in the hands of the assessee company, as the Department itself accepted genuine money in the hands of M/s Haven Vincom Pvt. Ltd. Hence, in the case of M/s Haven Vincom Pvt. Ltd, the identity, creditworthiness and genuineness have been proved beyond doubt. In case of Sushma Chawala for share application of Rs.4,22,500/- and share premium of Rs. Rs.4,22,500/-, the Id Counsel explained the identity, creditworthiness and genuineness therefore no disallowance can be made. Besides, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the these three share applicants by submitting the following documents and evidences:

- 1) Return of ROC, that is, form No. 2 submitted before R.O.C.
- 2) PAN Number copies of each share subscriber.
- 3) Copy of Balance Sheet, Profit and loss account of all share applicant companies.
- 4) Details of investments sold by all share applicant companies.
- 5). Transaction with the assessee was duly highlighted in the bank statement
- 6). Explanation along with evidence of source of source of the funds of the share applicant Companies.
- 7). Audited Accounts of the share holders.
- 8) Relevant address proofs / Form filed by the share applicants with ROC.
- 9). Income Tax Return of share applicant companies.
- 10) Copy of the Bank Statement of Share applicant companies where from the amount was debited.
- 11) Copies of Bank statement of the assessee company where the share application money and premium were credited.
- 12). Cheque Number, the amounts subscribed by shareholders along with the name of bank its branch address and the number of shares allotted to them with face value on the date of allotment.

13) Common Director of the share applicant companies (who is director in assessee company as well as share applicant companies) appeared before the assessing officer in response to notice u/s 131 of the Income Tax Act and submitted documents and evidences before the AO.

Thus, all above documents that is, the PAN details, bank account statements, audited financial statements, balance sheet, profit and loss account, Income Tax acknowledgments, and ROC statements etc were placed on AO's record. One of the directors of share applicant companies appeared before the AO in response to summon u/s131 of the Act and explained the genuineness of three share applicants. Therefore, considering this factual position and precedents relied on the subject, as noted above, we delete the addition made by the assessing officer U/s 68 of the Act to the tune of Rs.17,49,95,000/-

53. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03-04-2019

Sd/-
(A.T Varkey)
Judicial Member

Sd/-
(Dr. A.L.Saini)
Accountant Member

Dated:03-04-2019

*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Appellant/Assessee: M/s. C.P Re-Rollers Ltd Angadpur Industrial Area, Raturia, Durgapur (WB), Pin 713215.
2. The Respondent/Department : Deputy Commissioner of Income Tax Officer, Cir-1, Aaykar Bhawan, Aaykar Bhawan, Aaykar Bithi, Durgapur-713216.
3. The CIT-,
4. The CIT(A)-,
5. DR, Kolkata Benches, Kolkata

True Copy, By order,

Asst. Registrar
ITAT, Kolkata Benches