IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

	I.T.A. No. 1873/DEL/2012	
	A.Y. : 2003-04	
Income Tax Officer, Ward 11(3), Room No. 374A, CR Building, New Delhi	VS.	IME International Pvt. Ltd., 211, New Delhi House, 27, Barakhamba Road, New Delhi – 110 001 (PAN: AAAC18126Q)
(APPELLANT)		**(RESPONDENT)**

Department by : Sh. T. Vasanthan, Sr. DR
Assessee by : Sh. Kapil Goel, Adv.

Date of Hearing : 09-12-2015
Date of Order : 08-01-2016

ORDER

PER H.S. SIDHU : JM

Revenue has filed this Appeal against the impugned Order dated 06.2.2012 passed by the Ld. CIT(A)-XIII, New Delhi relevant to assessment year 2003-04 on the following grounds:-

1. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 46,50,000/- made under section 68 of the I.T. Act on account of unexplained cash credits being share application money.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) has erred while ignoring the findings of the AO in the assessment order with respect to the identity, creditworthiness of creditors and genuineness of transactions.

3. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in ignoring the decision of Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters and Finlease Pvt. Ltd. in ITA No. 342/2011.

4. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.

2. The brief facts of the case are that the assessee has filed its return on 28.10.2003 declaring a loss of Rs. 49,953/- and return was processed u/s. 143(1) of the I.T. Act. Thereafter, information was received from Director of Investigation, New Delhi that assessee has received accommodation entries of Rs. 46,50,000/- from various parties. The AO reopened the case of the Assessee u/s. 147 of the I.T. Act after taking prior approval of the Addl. CIT vide his letter dated 16.3.2010 by issuing a notice u/s. 148 of the I.T. Act on 17.3.2010. In response to said notice assessee vide its letter dated 11.6.2010 submitted that return filed u/s. 139 of the I.T. Act may be treated as filed in response u/s. 148 of the I.T. Act. In the assessment order the AO treated the said share application money as accommodation entry and the amount of Rs. 46,50,000/- was treated as unexplained income of the assessee and the same was added u/s. 68 of the I.T. Act vide order dated 29.12.2010 passed u/s. 143(3) r.w.s. 147 of the I.T. Act, 1961.

3. Against the said order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 06.2.2012 has partly

allowed the appeal of the assessee thereby deleting the addition in dispute and upholding the reopening in the case of Assessee.

4. Aggrieved with the aforesaid order of the Ld. CIT(A), Revenue is in appeal before us the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. He stated that the case was selected for scrutiny u/s. 148 on the basis of information received from DIT(Investigation) that the assessee company has provided / received accommodation entries to/from other parties amounting to Rs. 46,50,000/-. He further stated that modus operandi involved in bogus accommodation transactions is that cash generated out of undisclosed sources of income is given to the entry operator who in turn issues cheques which are given the colour of share application money / share capital/ unsecured loans etc. In support of his contention, he filed the copies of the following orders of the various Courts and stated that the present case is squarely covered by that decisions and therefore, the Appeal of the Revenue should be allowed.

- Hon'ble Delhi High Court judgment dated 17.1.2000 reported in 2000 IV AD Delhi 145/AIR 2000 Delhi 208 in the case of MTNL v Telecom Regulatory Authority of India.
- Hon'ble Supreme Court of India judgment dated 11.7.2008 in Civil Appeal Nos. 4327-29 of 2008 (Arising out of SLP (C) Nos. 17346-47 of 2005) in the case of M/s Deepak Agro Foods vs. State of Rajasthan & Ors.

- Hon'ble Delhi High Court Decision dated 25.8.2014 in ITA No. 320/2012 in the case of CIT vs. M/s Navodaya Castles Pvt. Ltd.

- Hon'ble Supreme Court of India judgment dated 16.1.2015 in SLP(C) No. 374 of 2015 in the case of Navodaya Castle (P) Ltd. vs. CIT [in favour of Revenue)

- Hon'ble High Court of Delhi judgment dated 11.3.2015 in ITA No. 525 of 2014 in the case of CIT vs Jansampark Advertising & Marketing (P) Ltd.

6. On the contrary, Ld. Counsel of the Assessee moved an Application under Rule 27 of the ITAT Rules, 1963 and stated that the Assessee can support the order of the Ld. CIT(A), though it may not have appealed, against on any of the grounds decided against the assessee. He stated that Ld. CIT(A) has decided the legal issue against the assessee and deleted the addition made by the AO. But assessee has not filed the Appeal or Cross Objection against the impugned order passed by the Ld. CIT(A), but now assessee is invoking Rule 27 of the ITAT Rules, 1963 and raising the legal issue by challenging the action of the AO for issuing the notice u/s. 148 of the I.T. Act. In support of his contention relating to invoking of Rule 27 is concerned, he referred the decision of ITAT, Delhi Benches I:2, New Delhi passed in ITA No. 1313/Del/2015 (AY 2011-12) on 2.12.2015 in the case of SIS Live vs. ACIT wherein, the similar issue was dealt with and request of the Department of invoking the Rule 27 was accepted. As regards the legal issue relating to reopening is concerned, he stated that this issue is also squarely covered by the various decisions of the Hon'ble Jurisdictional High Court which includes Pr. CIT vs. G&G Pharma India Ltd. in ITA No. 545/2015

dated 8.102.2015 and Signatures Hotels (P) Ltd. vs. ITO & Anr. 338 ITR 51 (Del.). Ld. Counsel of the Assessee also filed the Written Submissions to support his argument on the issue of Rule 27 of the ITAT Rules as well as on merits. Accordingly, he requested that the Appeal of the Revenue may be dismissed.

6.1 On the contrary, Ld. DR opposed the Application made under Rule 27 of the ITAT Rules, 1963 as well as the arguments advanced by the Ld. AR on merits also.

7. We have heard both the parties and perused the records available with us especially the Rule 27 of the ITAT Rules, 1963 and the impugned order alongwith the Written Submissions filed by the assessee alongwith case laws cited by both the parties, we are of the view that first we have to deal with the applicability of Rule 27 of the I.T.A.T. Rules, 1963 raised by the Assessee. Before deciding the issue in dispute, we can gainfully refer here the provisions of Rule 27 of the ITAT Rules, 1963 which reads as under:-

> *"The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."*

7.1 A bare reading of the Rule 27 manifests that the assessee, without having filed any cross appeal or cross objection can support the impugned order on any of the grounds decided against him. Two essential elements of the Rule 27 come to the fore on its bare reading. First is the condition precedent for invoking this Rule and the second is scope of interference. Insofar as the first element is concerned, we find that this Rule has been enshrined with a view to dispense justice to a assessee who is otherwise entitled to assail the correctness of the impugned order by filing appeal or cross objection, whether or not

actually filed. This is borne out from the expression `*though he may not have appealed'* used in the context of a assessee. This amply indicates the existence of a pre-right of the respondent to appeal, which may have remained un-availed. This Rule cannot help the respondent in a situation where he is otherwise debarred from filing cross appeal or cross objection. If no right to file a cross appeal or cross objection statutorily vests in the respondent, then it cannot be inferred indirectly by taking recourse to Rule 27. We have found out *supra* that, in the given facts, the Assessee has a right to file cross appeal or cross objection against the adverse direction given by the Ld. CIT(A) as contained in his appellate order. Thus, the first element, namely, the condition precedent for invoking rule 27, stands satisfied.

7.2 The next element is the scope of interference by the respondent. This is contained in the later part of the rule, which provides that the respondent `may *support* the order appealed against *on any of the grounds decided against him*'. A cursory reading of this part divulges that the respondent can *support* the impugned order on any of the grounds which were decided against him. It can be understood with the help of a simple example in which the AO initiates reassessment and makes an addition by disallowing some expenses. The assessee challenges the assessment order before the CIT(A) on both the counts, that is, the initiation of reassessment and also the addition made by AO. The CIT(A) upholds the initiation of reassessment but deleted the addition on merits. In an appeal by the Revenue before the tribunal against the deletion of addition. The assessee under Rule 27 argued that the initiation of reassessment may be declared as invalid. This is a situation in which the assessee is supporting the impugned order (that are, the deletion of additions made by AO) under rule 27 on the ground

decided against it (that is, upholding of the initiation of reassessment). Crux of the matter is that the order appealed against can be challenged by the Assessee only *qua* the aspects of the issue decided against him in deciding such overall issue against the appellant, which has been assailed in the appeal. It means that there is an inherent limitation on the power of the Assessee in not challenging the order appealed against under rule 27 *de hors* the ground decided against the appellant. This shows that if a particular independent issue has been decided against the assessee in the order appealed by the appellant on another independent issue decided against him, then the assessee under rule 27 has no power to challenge the correctness of such independent issue decided against him before the tribunal, while arguing for upholding the order on the issue decided against the appellant. Coming to the facts of the instant case, we find that the ld. Counsel for the assessee has invoked rule 27 by challenging the decision of the Ld. CIT(A) on the legal issue, as aforesaid.

7.3 In view of the above, the Assessee can invoke Rule 27 of the ITAT Rules which permits the respondent to support the order appealed against on the ground decided against it. We have noticed above that both the essential elements of rule 27, namely, the condition precedent for invoking this rule and the scope of interference stand fulfilled in the facts and circumstances of the instant case. Therefore, the contention of the ld. DR that the ld. AR may not be allowed to argue, the legal ground of challenging the reassessment, is devoid of merits and consequently rejected. Our aforesaid view is supported by the ITAT, I-2, Delhi Benches decision dated 02.12.2015 passed in ITA No. 1313/Del/2015 (AY 2011-12) in the case of SIS Live vs. ACIT, as referred by the Ld. Counsel of the Assessee.

8. Now let us examine the legal issue raised by the Ld. Counsel for the assessee challenging the issuance of notice u/s. 148 of the I.T. Act issued by the Assessing Officer.

9. Ld. Counsel for the assessee has stated that in the reasons recorded in instant case the AO has not referred to any specific adversarial material (statement etc.) and also has not described exact nature of transaction in the reasons and has used share application / share capital / unsecured loans etc. in the reasons and has miserably failed to bring during entire reopening proceedings any specific tangible material which established assessee is beneficiary of accommodation entries, which all are sufficient to nullify the extant reopening action. Even there is no annexure/enclosure to reasons to corroborate the same. No reference and details of investigation wing information is available. There is no live nexus / rational connection between Investigation Wing information and belief that assessee's certain income has escaped assessment. Mere banking transactions will not justify reopening action to suspect the transactions. In order to support his contention, he referred the following case laws:-

- Hon'ble Delhi High Court Order dated 8.10.2015 passed in ITA No. 545/2015 in the case of Pr. CIT vs. G&G Pharma India Ltd., upholding the decision of the ITAT in assessee's favour in assessee's case in ITA No. 3149/Del/2013 (AY 2003-04) dt. 9.1.2015.

- Hon'ble Delhi High Court decision dated 4.8.2015 in the case of Govind Kripa Builders Pvt. Ltd. in ITA No. 486/2015

- ITAT 'G' Delhi Bench decision dated 10.9.2015 in ITA No. 3475/Del/2009 (AY 2001-02) ITO vs. M/s Shakti

Securities Pvt. Ltd. & 3129/Del/2010 (AY 2002-03) M/s Shakti Securities Pvt. Ltd. vs. ITO has allowed the legal issue in favour of the assessee by following the Hon'ble High Court decision dated 4.8.2015 in the case of Govind Kripa Builders Pvt Ltd. in ITA No. 486/2015 (Supra).

10. Ld. DR relied upon the order of the Ld. CIT(A) on the legal issue and stated that AO has rightly reopened the assessment proceedings on the basis of material which AO has mentioned in the assessment order and Ld. CIT(A) has rightly upheld the same by following various decisions rendered by the Hon'ble High Courts. He requested that on legal issues, the order of the Ld. CIT(A) may be upheld and arguments of the Ld. AR be rejected.

11. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities and the case laws cited by the assessee's counsel on the issue in dispute. For the sake of clarity, we would like to discuss the reasons for issuing Notice u/s. 148 in the case of the IME International Pvt. Ltd. AY 2003-04 as under:-

"Investigations/ enquiries were conducted by the Office of the Directorate of Income Tax (Investigation), New Delhi upon the entry providers. The Investigations/ Enquiries carried out and the data of such beneficiaries as compiled by the DIT(Investigation) was examined. It has been gathered that the assessee is amongst the beneficiaries of bogus accommodation entries. The assessee company has received bogus accommodation entries worth of Rs. 46,50,000/-, detailed below:-

Beneficiary's bank name	*Beneficiary's bank Branch*	*Value of entry taken*	*Instrument no. by which entry taken*	*Date on which entry taken*	*Name of account holder of entry giving account*	*Bank from which entry given*	*Branch of entry giving bank*	*A/c no. entry giving account*
Karur Vysya Bank	*Karol Bagh New Delhi*	*600000*	*8488*	*27.3.03*	*Dignity Finvest (P) Ltd.*	*SBH*	*Karol Bagh*	*50042*
Karur Vysya Bank	*Karol Bagh New Delhi*	*400000*	*To CLG: 00951823*	*7.2.03*	*KR Fincap P Ltd.*	*SBP*	*DG*	*50072*
Karur Vysya Bank	*Karol Bagh New Delhi*	*400000*	*To CLG - 00987545*	*7.2.03*	*Technoco M Associates Pvt Ltd.*	*SBP*	*DG*	*50060*
Karur Vysya Bank	*Karol Bagh New Delhi*	*500000*	*490660*	*5.3.02*	*Jar Metails Industries P Ltd.*	*PNB*	*GT Road*	*2538*
Karur Vysya Bank	*Karol Bagh New Delhi*	*250000*	*5515*	*19.3.02*	*Labh-tronics Overseas P Ltd.*	*Ratnakar*	*Karol Bagh*	*54*
Karur Vysya Bank	*Poonam Chamber, S. Karol Bagh New Delhi*	*500000*	*To CLG: 00967916*	*31.3.03*	*MK Dal Milling P Ltd.*	*SBP*	*DG*	*7384*
Karur Vysya Bank	*Poonam Chamber, S. Karol Bagh New Delhi*	*500000*	*To CLG: 00967852*	*31.3.03*	*Rizzer Exim P Ltd.*	*SBP*	*DG*	*7385*
Karur Vysya Bank	*Karol Bagh New Delhi*	*500000*	*To CLG: 00968452*	*25.3.03*	*VR Traders P Ltd.*	*SBP*	*DG*	*7379*
Karur Vysya Bank	*Karol Bagh New Delhi*	*1000000*	*182406*	*27.3.03*	*Shilpa Holdings Ltd.*	*UCO Bank*	*Model Town*	*10015*
		46,50,000						

The modus operandi involved in such bogus accommodation transactions is that cash generated out of undisclosed sources of income is given to the entry operator who in turn issues cheques which are given the colour of share application money/ share capital/ unsecured loans etc. I have therefore, reason to believe that the undisclosed

income of the assessee during the year under consideration to the extent of Rs. 46,50,000/- has escaped assessment."

11.1 On going through the above reasons recorded by the AO, we are of the view that AO has not applied his mind so as to come to an independent conclusion that he has reason to believe that income has escaped during the year. In our view the reasons are vague and are not based on any tangible material as well as are not acceptable in the eyes of law. The AO has mechanically issued notices u/s. 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation), New Delhi. Keeping in view of the facts and circumstances of the present case and the law applicable in the case of the assessee, we are of the considered view that the reopening in the case of the assessee for the Asstt. Year in dispute is bad in law and deserves to be quashed. Our view is supported by the following judgments/decisions:-

(a) Pr. CIT vs. G&G Pharma India Ltd. in ITA No. 545/2015 dated 8.10.2015 of the Delhi High Court wherein the Hon'ble Court has adjudicated the issue as under:-

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not

describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case.

13. Mr. Sawhney took the Court through the order of the CIT(A) to show how the CIT (A) discussed the materials produced during the hearing of the appeal. The Court would like to observe that this is in the nature of a post mortem exercise after the event of reopening of the assessment has taken place. While the CIT may have proceeded on the basis that the reopening of the assessment was valid, this does not satisfy the requirement of law that prior to the reopening of the assessment, the AO has to, applying his mind to the materials, conclude that he has reason to believe that income of the Assessee has escaped assessment. Unless that basic jurisdictional requirement is satisfied a post mortem exercise of analysing materials produced subsequent to the reopening will not rescue an inherently defective reopening order from invalidity .

14. In the circumstances, the conclusion reached by the ITAT cannot be said to be erroneous. No substantial question of law arises.

15. The appeal is dismissed."

(b) Signature Hotels (P)_ Ltd. vs. ITO and another reported in 338 ITR 51 (Del) has under similar circumstances as follows:-

"For the A.Y. 2003-04, the return of income of the assessee company was accepted u/s.143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently, the Assessing Officer issued notice u/s.148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.

The Delhi High Court allowed the writ petition and held as under:

"(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The Assessing Officer must have 'reason to believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.

(ii) A notice u/s.148 can be quashed if the 'belief' is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer, when he recorded the reasons. There should be a link between the reasons and the evidence/material available with the Assessing Officer.

(iii) The reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during F.Y. 2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income.

(iv) Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, had a paid up capital of Rs.90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to the quashed."

12. In view of above, we are of the considered view that the above issue is exactly the similar and identical to the issue involved in the present appeal and is squarely covered by the aforesaid decisions of the Hon'ble High Court of Delhi. Hence, respectfully following the above precedents, we decide the legal issue in dispute in favor of the Assessee and against the Revenue.

13. Now we are dealing with the Revenue's Appeal on the merits of the case relating to deletion of addition of Rs. 46,50,000/- made u/s. 68 of the I.T. Act on account of unexplained cash credits being share application money. After hearing both the parties and perusing the orders passed by the Revenue Authorities, we find that the Ld. CIT(A) has elaborately discussed the issue in dispute as under vide para no. 6.3 at Pages 19 to 25 of his impugned order dated 6.2.2012:-

> "I have considered the observation of the AO as contained in the assessment order, submissions of the appellant and judicial pronouncements on the issue.
>
> *The appellant company, during the year under consideration had received share application money of Rs. 46,50,000/- from following parties.*

Name of Company who provided entry	*Amount*	*Date*	*Name of Bank & A/c No.*
Dignity Finvest (P) Ltd.	*600000*	*27.3.03*	*SBH 50042*
KR Fincap P Ltd.	*400000*	*7.2.03*	*SBP 50072*
Technoco M Associates Pvt Ltd.	*400000*	*7.2.03*	*SBP 50060*
Jar Metails Industries P Ltd.	*500000*	*5.3.02*	*PNB 2538*
Labh- tronics Overseas P Ltd.	*250000*	*19.3.02*	*Ratnakar 54*
MK Dal Milling P Ltd.	*500000*	*31.3.03*	*SBP 7384*
Rizzer Exim P Ltd.	*500000*	*31.3.03*	*SBP 7385*
VR Traders P Ltd.	*500000*	*25.3.03*	*SBP 7379*
Shilpa Holdings Ltd.	*1000000*	*27.3.03*	*UCO Bank 10015*

> *The AO has made an addition of the said Share capital in the hands of the appellant company based on the information*

received and on the basis of statements made by the promoters or Directors of such companies before the Investigation Wing of the Department. The Assessing Officer issued summons on 16.12.2010 uls 131 of the IT Act to the parties who had given share application money to the appellant on the addresses given in the conformations of share applications for personal deposition. However none of the share applicants attended before the Assessing Officer. Vide order sheet entry dated 24.12.2010 the AR of the appellant company was asked to produce share applicants before him on 27.12.2010 which remain uncomplied. The appellant submitted various documentary evidence like confirmation, bank statements, copies of ITR, Copies of share application, copies of certificates of incorporation, copies of share certificate issued, copies of balance sheet and profit and loss account and copies of PAN to substantiate the genuineness of the transactions, but appellant could not produce the above mentioned parties for examination.

During the course of assessment proceedings, the Assessing Officer has received various documentary evidence, like Confirmation from the investor companies, their acknowledgement of return, PAN, Certificates of Incorporation, ROC data generated from the ROC website, which supported the identity of the investor companies and also established genuineness of the share capital money transaction.

However, the above evidences were disregarded by the A.O. and it was held that identity and creditworthiness of the said parties and genuineness of the transactions was not proved. In view of the above, the amount of Rs.46,50,000/- received as share

application money from the above mentioned parties was not treated as-genuine and it was held as an accommodation entry.

It is seen that summons issued by the AO were served upon the investor companies however the same remained uncomplied with. It is also seen that no further action was taken by the A.O. to enforce their attendance. The A.O. did not initiate any action against the said investor companies for non compliance of the summons issued by him.

There are enough powers given to the AOs I Investigating Officers to deal with such delinquent persons, but nothing of that sort has been done in the instant case. Moreover, if the said investor is not complying the summons of the Department, then how the appellant, who has no authority or legal power to compel the said parties, can enforce their attendance before the Assessing Officer.

In this regard reliance is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs Orissa Corporation (P) Ltd., 159 ITR 78, wherein it has been held that in case the creditor does not appear in response to summon issued under Section 131, no adverse inference can be drawn in the case of the appellant.

It is observed that subscription of share application' money was received from above mentioned companies by the appellant, through a/c payee cheques and the said companies are duly registered with ROC and same were active as per the website of the Ministry of Corporate Affairs. It has also submitted by the appellant that the said companies are having PAN number and are regularly filing their return of income.

With regard to the various evidences submitted by the appellant, during the course of assessment proceedings, AO disregarded the said evidences and has emphasized that identity and creditworthiness were not proved and held that the amount of Rs.46,50,000/- received as share application money from the above mentioned investor companies cannot be treated as genuine and are only accommodation entries.

The AO in his Assessment Order has not brought any material on records to show that confirmation filed by the directors of the said investor companies were not genuine. It is also seen that no enquiry was conducted to examine the contents of the confirmations filed by the investor companies. During the course of appellate proceedings, the appellant took specific objection with regard to the findings of the AO and stated that the AO has not considered the confirmation filed by the investor companies.

Further, the AO has issued summons to the said parties on 16.12.2010 which were served upon the directors of the said companies and it is stated by the AO that no one attended in response to the said summons. This shows that the parties were present. at the given addresses. It is also seen that no action has been taken against the said parties for non-compliance of summon. It n be also mention here that along with conformation, the appellant company has filed copies of the return of income, copies of PAN card, certificates of the incorporation of the said companies which are sufficient to treat the conformation as evidence.

During the course of assessment proceedings, the AO has not brought any material on record which can prove that this money

was appellant's own undisclosed income. He has simply relied upon the information received from the Investigation Wing of the Department without making any concrete effort to verify the facts stated therein. It has also been held by the various courts that AO must bring on record some positive material or evidence to indicate that the share holders were benamidars, fictitious persons or that any part of the share capital money represented the company's own income from undisclosed sources.

The appellant has relied upon the judgment of Hon'ble Apex Court in the case of Steller Investment Ltd. (2001) 251 ITR 263 (SC), wherein it has been held that even if the subscribers to the increased share capital of assessee company were not genuine, the amount could not be regarded as undisclosed income of the assessee company.

Hon'ble Delhi High Court in CIT V. Sophia Finance Ltd (1994) 205 ITR -0098 - (Del.) has held that: "If the shareholders exist then, possibly, no further enquiry need be made. But if the Income-tax Officer finds that the alleged shareholders do not exist, then in effect, it would mean that there is no valid issuance of share capital. "

In CIT V. Makhni and Tyagi (P.) Ltd. (2004) 267 ITR 433 -(Del.), the Court held:

"This court is of the opinion that when documentary evidence was placed on record to prove the identity of all the shareholders including their P AN/GIR numbers and filing of other documentary evidence in the form of ration card, etc., which had neither been controverted nor disproved by the Assessing Officer, then no interference is called for."

The appellant has cited various other case laws also in its submissions wherein it has been held that the Share Capital issued cannot be treated- as undisclosed income of the appellant and cannot be added u/s 68 of the Income Tax Act. The facts of the cases cited by the appellant are identical with that of the instant case. Further, the reliance is also placed on following decisions of Apex Court:-

1 CIT Vs. Orissa Corporation 159 ITR 78 9SC); `

2 Divine Leasing and Finance Ltd. 299 ITR 268.

The appellant in its submission has also relied upon the latest judgment of the Apex Court in the case of CIT Vs. Lovely Export 299 ITR 268 (SC) which has confirmed the order of the Delhi High Court. It has been held by the Hon'ble Court that once the identify of the share holders have been established, even if there is a case of bogus share capital, it cannot be added in the hands of the company unless any adverse evidence is not on record. In the instant case, the appellant has provided evidence in the form of PAN, ROC details, copies of IT return filed and copies of confirmation to establish the genuineness of the transaction.

There are plethora of judgments of various judicial authorities, including Hon'ble Apex Court and also the jurisdictional High Court wherein it has been held that in case of money received towards share capital, only the identity of the shareholders needs to be proved. Once identity of the shareholders is established and it is proved that the money did in fact come from them, it is not for the assessee to prove as to how the shareholders came to be in possession of the money.

In a recent judgment dated 3010112009 Hon'ble Delhi High Court in the case of CIT vs. Gangour Investment Ltd. (ITA No. 34/2007) has he11 that Revenue can make addition under section 68 of the Act only if the assessee is unable to explain the credits appearing in its books of accounts.

In the said case the appellant has duly explained the said credit entries in the form of various documentary evidence. The said documentary evidence contained details, which set out not only the identity of the subscribers, but also gave information, with respect to their address, as well as, PAN, Assessment particulars etc. Based on these facts, the Hon'ble Delhi Court dismissed the appeal of revenue.

In yet another decision as to the correctness of treating share application money on par with cash credit, the Hou'ble Delhi High Court in CIT vs. Value Capital Services P. Ltd. (2008) 307 ITR 334 (Delhi) found after referring to the two of the decisions of the Delhi High Court on the subject that in respect of share capital amounts, they cannot be assessed in the hands of the company, unless the Department is able to show that the amount received towards share capital actually emanated from the coffers of the assessee company.

Hon'ble Delhi High Court in the case of CIT vs. Pradeep Gupta 207 CTR 115, which has also been relied upon by the Delhi ITA T in the recent judgement in the case of Babita Gupta ITA No. 2897/06, wherein it is held that in the facts of the case before us it may be seen that from the very beginning Ld A.O. had shifted entire burden upon the assessee and no material was brought by him to prove his allegation that the impugned amount represented

assessee company's undisclosed income. Therefore, on this ground alone the entire addition deserves to be deleted and may kindly be held so.

The Hon 'ble Delhi High Court in the case of Kamdhenu Steel '& Alloys Ltd. ITA No. 972/2009 has again retreated the same position and held that once identity is proved the share capital cannot be added in the hands of the recipient company.

In view of the factual position as well as the judicial pronouncement on the subject, discussed above, I am of the considered view that the appellant has discharged the initial onus of establishing the bona-fides of the transactions and the AO was not justified in ignoring various evidences provided to him by the appellant. Nothing adverse has been brought on record by the AO to establish that the amount of share application money of Rs.46,50,000/- received by the appellant from the said parties represents its own undisclosed income.

If there was doubt about the source of investment of the said companies, then additions should have been made in the cases of investor companies and not in the hands of the appellant company. The appellant has relied upon the decision of Hon'ble Supreme Court in CIT Vs DIVINE LEASING & FINANCE LTD. (CC 375/2008) dated 2110112008 wherein it was held-

"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 A 0, then the Department, is free to proceed to re-open their individual assessments in accordance with law. "

Reliance in this regard is also placed on the decision of Hon'ble Delhi High Court in the case of Cl'T vs. Mis Pondy Metal and Rolling Mill Pvt Ltd, (Delhi) (ITA No. 788/2006) dated 19.02.2007, wherein the Hon'ble Court concurred with the findings of the Appellate Tribunal, Delhi Bench 'F' that once the identity of the investor has been manifest and is proved, the investment cannot be said to be the undisclosed income of the assessee. At best, the amount could be added in the hands of the investor but it certainly could not be treated as undisclosed income of the Assessee. The appeal filed against the said decision, was dismissed by the Hon'ble Supreme Court in C.C. 12860/2007 dated 08/11/2008.

In the light of the above discussion, I am inclined to agree with the arguments and evidences provided by the appellant to substantiate that the transaction regarding Share Application Money received by' the appellant were genuine transactions and the same were not accommodation entries. I also do not find any evidence collected by the A.O. which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the appellant as its undisclosed income.

In view of the aforesaid discussion, I delete the addition of 46,50,000/-, made by the AO U/S 68 of the I.T. Act, 1961."

14. We also find that the case law as cited by the Ld. DR i.e. CIT vs. Nova Promoters & Finlease (P) Ltd. 342 ITR 169 (Del) is distinguishable on the facts of the present case. There inquiries were made by the AO on the basis of the information supplied by the assessee whereas in the present case no such attempt appears to

have been made. Similarly, the other judgments/decisions cited by the Ld. DR also on different facts and circumstances of the case, hence, not applicable in the present case.

15. In the background of the detailed discussions, we are in agreement with the finding of the Ld. CIT(A) that arguments and evidences provided by the assessee to substantiate that the transaction regarding Share Application Money received by' the assessee were genuine transactions and the same were not accommodation entries. We also do not find any evidence collected by the A.O. which could prove otherwise. Accordingly, the AO was not justified in treating the amount of share application money received by the assessee as its undisclosed income. Therefore, Ld. CIT(A) has rightly deleted the addition of Rs. 46,50,000/- made by the AO u/s. 68 of the I.T. Act, 1961 and has passed a well reasoned order on the issue in dispute.

16. In the result, the Appeal filed by the Revenue stand dismissed.

Order pronounced in the Open Court on 08/01/2016.

Sd/- **Sd/-**

[O.P. KANT] **[H.S. SIDHU]**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Date 08/01/2016

"SRBHATNAGAR"
Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches