M/S Karan Kothari Jewellers Pvt.Ltd, ... vs Dy . Commissioner Of Income Tax Central ... on 3 December, 2018

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

Before Shri Sandeep Gosain (JUDICIAL MEMBER)

AND
Shri G Manjunatha (ACCOUNTANT MEMBER}
LT.A No,.140/Nag/2018 2 AY 2009-10
L.T.A No.141/Nag/2018 - AY 2010-11
L.A No.229/Nag/2018 - AY 2011-12
1.T.A No. 230/Nag/2016 - AY 2012-13
LT.A No, 231/Nag/2018 - AY 2013-14
LT.A No,232/Nag/2018 - AY 2014-15
1.7.A No.233/Nag/2018 -_AY 2015-16

i Dy. CIT, Cent.Cir.2({2), | vs M/s Karan Kothari Jewellers Pvt Ltd
| Nagpur Sarafa Bazar, Nikalas Mandir, Itwari
| Nagpur 440 002
i. a AACCK3221C .
= APPELLANT RESPONDEDNT |

1.T.A No.227/Nag/2018 - AY 2014-15

LT.A No.228/Nag/2018 2 AY 2015-16

LTA No.234/Nag/2018 - AY 2012-13

s Karan Kothari Jewellers | vs
Pyt Ltd

Sarafa Bazar, Nikalas
Mandir, Itwar!

Nagpur 440 002

Dy.cIT, Cent.Cir.2(2}, Nagpur

AACCK3221C
APPELLANT RESPONDEDNT

Assessee by Shri Hitesh Shah :

Revenue by ShriR.kK. Baral _
"Date of hearing "23-10-2018 ~ |
_Date of pronouncement 62-12-2018

ORDER

Per G Manjunatha, AM:

These seven appeals filed by the revenue and three appeals filed by the assessee aré directed against the independent orders of the Commissioner of Income-tax (Appeals}-3, Nagpur, all dated 11-07-2018, passed against the orders passed by the Assessing Officer u/s 153A r.w.s. 143(3) of the income Tax Act, 1961 for assessment years 9009-10 to 2015-16. Since all the appeals pertain to same. assessee, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2, The Revenue has raised more or less Common grounds, but for figures for all seven years. The Grounds of appeals of the department are as under:

> Appeal No.t40/Naq/2018 For Assessment Year 7009-10 L, On the facts and circumstances of the case and in Jaw, the learned CIT(A) erred in deteting the addition of Rs.83,94,421/- made by the AQ being gross profit on bogus aurchases, without going into the merits of the On the facts and circumstances of the case and in law, the learned ATA) errad in holding that during assessment u/s.153A r.w.s. 143{3), was not open to the AO to make additions without existences of any incriminating documents found and seized during the search u/s.132(1) overlooking the crucial fact that the original return Filed by the assessee was only processed u/s.143(1) and no scrutiny assessment was made earlier.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the scope of section 153(A) is limited assessing only search related income, thereby denying revenue the oppartunity of taxing other escaped income that comes to the notice of the AO.

4. On the facts and circumstances of the case and in law, the learned CIT(A) erred in limiting the scope of section 153A only to undisclosed income when as per the section, the AO has to assess or reassess the total income of the six assessment years.

ut bleak 5, On the facts and circumstances of the case and in law, the iearned CIT{A) failed to appreciate that the word incriminating is neither used in section 153A nor defined in the statute and therefore, the deletion of addition on this account is not in consonance of law.

Appeal No,141 /Nag/2018 For Assessment Year 2010-11

1. On the facts and circumstances of the case and in law, the learned CIT{A) erred in deleting the addition of Rs.83,94,421/- made by the AO' being gross profit on bogus purchases, without going into the merits of the case.

2. On the facts and circumstances of the case and in law, the fearned.CIT{A) erred. in deieting the addition of Rs.7,70,00,000/- made by the AO treating the share capital and the sharé premium received by the assessee as unexplained cash credit u/s.68 of the I.T. Act a without ~\ r z| , / On the facts and circumstances of the case and in law, the going into the merits of the case, 7 learned CIT{A) erred in deleting the addition of Rs.7,70,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the LT. Act without appreciating the fact that incriminating documents were found from the residence of the directors with regard to transaction with Taranya Merchandise P. Ltd., a Kolkata based company.

4. On the facts and circumstances of the case and in law, the learned CIT{A) erred in halding that during assessment w/s.153A r.w.s. 143(3}, if was not open to the AO to make additions without existences of any incriminating documents found and seized during the search u/s.132(1) overlooking the cructal fact that the original return filed by the assessee was oniy processed

u/s.143(1}) and no serutiny _ assessment was. made earlier.

5. On the facts and circumstances of the case and in law, the® learned CIT{A) erred in holding that the scope of section 153(A} is limited assessing only search related income, thereby denying revenue the opportunity of taxing other escaped income that comes to the notice of the AQ.

6. On the facts and circumstances of the case and in law, the learned CIT{A) erred in limiting the scope of section 153A only to undisclosed income when as per the section, the AO has to aSSess or reassess the totai income of the six assessment years,

7. On the facts and circumstances of the case and in law, the (earned CIT(A) failed to appreciate that the word incriminating is a ¥ either used in section 153A nor defined in the statute and therefore, fi é é deletion of addition on this account is notin consonance cf law.

ai e

8. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.7,70,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the I.T. Act without appreciating the fact that the assessee has failed to establish the creditworthiness of the creditors and the genuineness of the transactions to the satisfaction of the AO.

9, On the facts and circumstances of the case and in jaw, the learned CIT(A) failed to appreciate that the company from wham the share capital along with share premium was received did not have the creditworthiness to fund the share capital and Premium and as such a ae ee neither the creditworthiness nor the genuineness of the transaction is proved.

%

10. On the facts and circumstances of the case and in jaw, the learned CIT(A) failed to appreciate the ground realities that the documents in the case of shell companies are always in order so that they can act as a conduit in aiding tax evasion.

Appeal No,229/Naq/2018 For Assessment Year 2011-12 i. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.4,15,83,500/- and Rs.50,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the I.T. Act without going inte the merits of the case.

2. On the facts and circumstances of the case and in law, the learned CIT(A} erred in deleting the addition of As.4,15,83,500/- and Rs.50,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the 1,1, Act without appreciating the fact that incriminating documents were found from the residence of the directors with regard te transaction with Taranya Merchandise P. Ltd., a Kolkata based company,

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that during assessment u/s.153A r.w.s. 143(3), it was not open to the AO to make additions without existences of any incriminating documents found and seized during the search u/s.132 overlooking the crucial fact that the original return filed by the assessée was only processed u/s.143(1} and no scrutiny assessment was made earlier.

% 4, On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the scope of section 153{A} is limited assessing only search related income, thereby denying revenue the opportunity of taxing other escaped income that comes to the notice af the AQ.

5. On the facts and circumstances of the case and in law, the learned CIT(A) erred in limiting the scope of section 153A only to undisclosed income when as per the section, the AO has to assess or reassess the total income of the six assessment years.

6. On the facts and circumstances of the case and in jaw, the arned CIT(A) failed to appreciate that the word incriminating is Bither used in section 153A nor defined in the statute and therefore, , i a fre deletion of addition on this account is not in consonance of law.

* f. On the facts and circumstances of the case and in jaw, the learned CIT(A) erred in deleting the addition of Rs.4,15,83,500/- and Rs.50,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the L.T. Act without appreciating the fact that the assessee has failed to establish the creditworthiness of the creditors and the genuineness of the transactions to the satisfaction of the AQ.

B. On the facts and circumstances of the case and in law, the learned CIT(A} failed to appreciate that the company frorn whom the share capital along with share premium was received did not have the creditworthiness to fund the share capital and premium and as such neither the creditworthiness nor the genuineness of the transaction Is proved.

He.

gq, On the facts and circumstances of the case and in law, the learned CIT{A) failed to appreciate the ground realities that the documents in the case of shell companies are always in order so that they can act as a conduit in aiding tax evasion.

10. On the facts and circumstances of the case and in law, the learned CIT(A) erred in relying on the judgment of Hon'ble Bombay High Court ITA No.1613 of 2014 (CIT Vs. Gagandeep Infrastructure Pyt. Ltd.) holding it to be concluded on 20/03/2017, overlooking the fact that the said judgment not admitting the question of law on the retrospectivity hag been modified by the Hon'ble SC on 02/04/2018 {SLP Ne. 5759/2018) reinstating the said question of law to be considered in the appeal u/s.260A before the Hon'ble High Court.

11. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.16,02,64,572/- made by the AO being unexplained investment in closing stock,

without going into the merits of the case.

12. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding the findings of the AQ that the <salyaiue> column in the Jilaba software represent purchase. price of the assessee is misplaced and erroneous and without giving cogent reasons.

13. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of steck as arrived by the AO which forms the basis of addition u/s.69 is not based on any evidence and is merely based on presumption of the AO overlooking the fact that the <salvalue> column in Jilaba software Is. purchase price to the assessee. = i4. On the facts and circumstances of the case and in law, the learned CIT{A)} erred In holding that the action cf the AO has resulted in cherry picking ignoring the fact that the AO has culled from the Data recorded in Jilaba software found in External Hard Disc Drive seized during the course of action u/s.132.

Appeal No.230/Naq/2018 For Assessment Year 2012-13

1. On the facts and circumstances of the case and in law, the learned CIT{A} erred in deleting the addition of Rs,11,50,00,00G/-

made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the 1.7. ct without going into the merits of the case.

} On the facts and circumstances of the case and in law, the 'Aearned CIT(A) erred in deleting the addition of Rs.11,50,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the 1.T. Act without appreciating the fact that incriminating docurnents were found from the residence of the directors with regard to transaction with Taranya Merchandise P. Ltd., a Kolkata based company.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.11,50,00,000/- made by the AO treating the share capital and the share premium received by the assessee as unexplained cash credit u/s.68 of the I.T. Act without appreciating the fact that the assessee has failed to a A e = establish the creditworthiness of the creditors and the genuineness of the transactions to the satisfaction of the AO.

€ 4, On the facts and circumstances of the case and in law, the learned CIT{A) failed to appreciate that the company from whom the share capital along with share premium was received did not have the creditworthiness to fund the share capital and premium and as such ~ neither the creditworthiness nor the genuineness of the transaction fs proved.

5. On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate the ground realities that the documents in the case of shell companies are always in order so that they can act as a conduit in aiding tax evasion.

6. On the facts and circumstances of the case and in law, the learned CIT{A) erred in deleting the addition of Rs.2,00,06,000/- made by the AO being unexplained cash credit from companies operated by one Kolkata based operator, without going into the merits of the case.

7. On the facts and circumstances of the case and in law, the learned CIT(A) erred in relying on the judgment of Hon'ble Bombay High Court ITA No.1613 of 2014 (CIT Vs. Gagandeep Infrastructure Pvt, Ltd.) hoiding it ta be concluded on 20/03/2017, overlooking the fact that the said judgment not admitting the question of law on the retrospectivity has been modified by the Hon'ble SC on 02/04/2018 (SLP No, 5759/2018) reinstating the said question of law to be considered in the appeal u/s.260A before the Hon'ble High Court.

8, On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.2,00,00,000/- being g unexplained credit overlooking the crucial fact that the operator has accepted that companies were used for providing accommedation | entries in the form of bogus share capital to various beneficiaries. e

9. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.2,00,00,000/- being unexplained credit overlooking the deposition made by the operator who has accepted during the investigation made by investigation wing, Kolkata, that these beneficiaries companies were paper companies and acted as conduit for routing unaccounted fund.

10. On the facts and circumstances of the case and in law, the learned CIT(A) erred in ignoring the fact that Hon'ble SC in tne case of Navodaya castle Pvt. Ltd. Vs. CIT(230 Taxman 268) held that certificate of incorporation, PAN, return of income etc. were not «sufficient for purpose of identification of subscriber is a paper company a a hd not genuine investor.

Va ej ad. On the facts and circumstances of the case and in law, the learned CIT{A} erred in deleting the addition of Rs. 22,44,26,139/- made by the AO being unexplained investment in closing stock, without going into the merits of the case.

12. On the facts and circumstances of the case and in law, the learned ClI(A) erred in holding the findings of the AO thal the <salvatue> column in the Jilaba software represent purchase price of the assessee is misplaced and erroneous and without giving cogent reasons.

13. On the facts and circumstances of the case and [n law, the learned CIT(A) erred in hoiding that the valuation of stock as arrived by the AO which forms the basis of addition u/s.69 is not based on any evidence and is merely based con presumption of the AO overlooking the fact that the <salvalue> column in JjJilaba software is purchase® price to the assessee,

14. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the AO has disregarded the vaivation done by the approved valuer overlooking crucial fact that no such valuation was done by the approved valuer during the relevant previous year for the AY, 2012-13.

15. On the facts and circumstances of the case and in law, the . learned CIT{A} erred in holding that the action of the AO has resulted <a 'in cherry picking ignoring the fact that the AG has culled from the Data \eéicorded in Jilaba software found in External Hard Disc Drive seized Lp ring the course of action u/s.132.

No,.231/Nag/2018 For Assessment Year 2013-14

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.18,87,66,428/- made hy the AO being unexplained investment in closing stock, without going into the merits of the case,

2. In the facts and circumstances of the case and in law, the learned CIT(A} erred in holding the findings of the AO that the <salvalue> column in the Jilaba software represent purchase price of the assessee is misplaced and erroneous and without giving cogent reasons.

3. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of stock as arrived t by the AO which forms the basis of addition u/s.69 is not based on any evidence and is merely based on presumption of the AO overlooking the fact that the <salvalue> column in Jilaba software is purchase.

price to the assessee.

4, On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the action of the AO has resulted in cherry picking ignoring the fact that the AO has culled from the Data recorded in Jilaba software found in Externa} Hard Disc Drive seized during the course of action u/s.132.

Appeal No.232/Naq/2018 For Assessment Year 2014-15 'On the facts and circumstances of the case and in law, the arned CIT(A) erred in deleting the addition of Rs.44,71,09,717/- ade by the AO being unexplained investment in closing stock, without going into the merits of the case.

2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding the findings of the AO that the <salvalue> column in the Jiiaba software represent purchase price of the assessee is misplaced and erroneous and without giving cogent reasons.

3, On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of stock as arrived by the AO which forms the basis of addition u/s.69 is not based on any evidence and is merely based on presumption of the AQ overlooking the fact that the <salvalue> column in Jilaba software is purchase price to the assessee.

4. On the facts and circumstances of the case and in law, the learned CIT{A) erred in holding that the action of the AO has resulted in cherry picking ignoring the fact that the AO has culled from the Data* recorded in Jilaba software found in External Hard Disc Drive seized during the course of action u/s.132.

A | No.233/Naq/2018 For Assessment Year 2015-16

1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.5,14,29,709/- made by the AO being unexplained investment in closing stock, without going into the merits of the case,

2. On the facts and circumstances of the case and in law, the learned CITfA) erred in holding the findings of the AO that the " <salvalue> column in the Jilaba software represent purchase price of 'g e assessee is misplaced and erroneous and without giving cogent ze aeasons.

3, On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that the valuation of stock as arrived by the AO which forms the basis of addition u/s.69 is not based on any evidence and is merely based on presumption of the AQ overlooking the fact that the <salvalue> column in Jilaba software is purchase price fo the assessee.

4, Qn the facts and circumstances of the case and in law, the learned CIT{A} erred in holding that the action of the AO has resulted in cherry picking ignoring the fact that the AO has culled from the Data recorded in Jilaba software found in External Hard Disc Drive seized during the course of action u/s.132.

3. Assessee's Appeal Appeal No. 234/Naq/2018 For Assessment Year 2012-13

1. The Hon. CIT{A) erred in confirming the Gross Profit addition of « Rs.2,93,633/- made by Ld. AO without appreciating the facts and circumstances of the case.

Appeal No. 227/Naq/2018 For Assessment Year 2014-15

1. The Hon. CIT{A} erred in confirming the addition U/S 68 of the

1.T. Act of Rs.1,32,00,000/- made by the Ld. A.Q. in utter disregard of the evidences proving the genuineness of the loan submitted during assessment and appellate proceedings.

The Hon. CIT(A) was not justified in confirming the addition er First Proviso to Section 68 without appreciating the facts and umstances of the case, oe Spbpeal No. 228/Nag/2018 For Assessment Year 2015-16 1, The hon. CIT{A) erred in confirming the addition U/S.68 of the I. T. Act of Rs.55,00,000/- made by the Ld. A.O. in utter disregard of the evidences proving the genuineness of the during the assessment and appellate proceedings.

2, The Hon. CITfA) was not justified in confirming the addition under the First proviso to section 68 without appreciating the facts and circumsetances of the case.

3. The Hon.CIT(A) failed te appreciate the fact that the Ld.A.O. had not brought on record any cogent or clinching evidence to prove that the said loan was not genuine, The brief facts of the case are that the Assessee is private limited company engaged in the business of trading geld and silver

jewellery and i4 bullion. A search action u/s 132 of the LT. Act, 1961, was carried out at the business premises of the assessee and residential premises of the directors on 10/09/2014. During the course of search, certain documents for purchases of immovable property and ledgers of Taranya Merchandise Pvt. Ltd., were found and impounded. No other unaccounted assets, jewellery or cash were found during the course of search. But, one pen drive was seized from the business premise which was inventorised as annexure B-3/3, The pen drive. was found hidden ina calculator at the sales counter of showroom, Printout of data contained in pen drive was extracted and was seized and inventorised as annexure B-3 which contains certain excel sheets named as reconciliation of cash. In search, six such cash reconciliation statements were seized, During search, statement of Shri Hemant Ohakate, Accountant was recorded in which he stated that each day he prepares cash reconciliation statement and hand over to director of the company. During Consequent to search notices u/s 153A has been issued for six assessment years immediately preceding the year in which search took place calling for return of income. In response to the notice, the assessee has fied its return of income: for assessment years 2009-10 to 2014-15 on 22.11.2016. For A.Y. 2015-16 the assessee has filed return of income under Section 139{1} on 06-10-2016. The cases were selected for scrutiny and accordingly, notice u/s 143(2) and 142(1) of the Act, were issued. In 'response to notices, the authorized representative of the assessee appeared and filed various details, as called for,

5. The AO, on the basis of the statement recorded by the sales tax authorities as regards the bogus purchases and certain investigation carried aut by the investigation wing #5 regards the share application money and loans received by the assessee, came to the conclusion that the purchases were bogus and the transaction of the share application money were not. genuine and satisfactorily proved. The AO has added the Gross profit out of the bogus purchases on the ground. that the assessee failed to prove purchases to the satisfaction of the 40 with necessary materials in the backdrop of clear findings of MVAT on certain parties and their modus operandi of doing hawala/suspicious transactions without any business activity. In so far as share application money and loans, the entire share application money received with premium as well as loans received in the ATE pective years has been added to the income of the assessee on the ah that the assessee has failed to prove identity, genuineness of i Pactions and credit worthiness of parties which Is prerequisite in order to 2¢cehe fram the provisions of section 68 of the Income tax act, 1961. The % has aiso worked out the value of the closing stock on the basis of difference in the value as shown in the Jilaba software and the books of accounts and has added the same to the income of the assessee u/s. 69 of the Income tax Act, 1961.

6. Aggrieved by the assessment orders, the assessee had filed appeals before the CIT(A). Before, the CIT(A}, the assessee had filed elaborate written submission on the issues of addition towards gross profit on alleged bagus purchase, share capital and loans and advances. The assessee also fled detailed submission on addition towards difference in stock between ' jilaba software and books of accounts maintained in tally software. During course. of appellate proceedings, the said submissions were sent to the AO and he was asked to give the remand report for all the years. The AO had submitted his remand report, the same was supplied to the assessee for their remarks and after considering the submissions, the remand report and assessee's response to the remand .repart, the CIT(A} has partly allowed appeals filed by the assessee for all assessment years. In respect of

assessment year 2009-10 to 2012-13, the Id. CIT{A) deleted additions made by the AO towards gross profit on bogus purchases, unproved share capital,"

loans and advances and also unexplained investments in stack by holding - that when assessment is unabated/c2ncluded as on date of search no addition could be made without any facriminating materials. In so far as assessment years where assessments is abated as on date search, the CIT(A} deleted additions made by the AO towards unproved share capital and loans by holding that the assessee has discharged identity, genuineness of transactions and creditworthiness of parties. The CIT(A) also had deleted unexplained investments in stock by holding that all doubts raised by the AO has been adequately explained by the assessee to prove. that amount mentioned in column "sale value" of the stock item is not purchase pricefeost of assessee. The CIT(A) further observed that the software ". developer clarified the position by addressing a letter as per which the stand cat by the assessee has been confirmed. Moreover, the AQ has not ac out any difference in quantity, therefore in absence of any eérepanicies is quantity merely on the basis of price variation in jilaba ania software, that too when assessee explained such difference, addition cannot be made for unexplained investments in stock. In so far as unproved foans for assessment year 2014-15 and 2015-16, the Id. CIT(A} confirmed additions for the reason that the assessee did not satisfactorily proved identity, genuineness of transaction and credit worthiness of parties. The Id. CITA} also confirmed gross profit addition on alleged bogus purchases for A.Y. 2012-13. Aggrieved by the CIT(A) orders, the revenue as well as the assesseé are in appeal before us.

Z. The revenue and the assessee have taken several grounds for allt assessment years. From these grounds of appeal, primarily three issues are i?

IF arises for our consideration. Therefore, we shall deal with the appeais of revenue and assessee on the basis of issues covered.

§, | The first issue that came up for our consideration is gross profit addition on bogus purchases for AY. 2009-10, 2010-11 and 2012-13. The AO has made addition of Rs. 83,94,421/-, Rs. 6,06,880/-, and Rs. 2,93,633/- in respective three years as indicated above being gross profit on bogus purchases on the basis of the statements recorded by the sales tax authorities wherein the said parties had admitted in the proceedings of sales tax assessment that they had issued bogus bills after charging commission. The AQ had asked the assessee to prove the genuineness of the said purchases by praducing the parties. During the assessment and appeliate proceedings, the assessee had produced copies of ledger account of parties, _ purchase bills, copies of relevant portion of purchase account wherein the a purchases were duly entered and recorded, copy of stock book evidencing the entry of such purchases in the stock, copies of bank account sey ed ing payment tnade through account payee cheque, communication from supplier stating that they had given statement to sales tax authorities under extreme coercion, wherever available,

The copies cf plane -tickets were also submitted showing transportation of such purchases. But, the AO added the said amounts in respective years only on the basis of statement of MVAT, ignoring all evidences filed by the assessee.

9. The Id. D.R. submitted that the Id. CIT(A) was erred in deleted addition made towards gross profit on alleged bogus purchases on technical grounds without discussing issue on merits as to how the issue is not subject matter of 153A assessments when there is mo such reference of incriminating materials in the statue. The D.R. further submitted that the moment, search is taken place, assessments for six assessment years gets reopened and the AO shall have jurisdiction to assess total income including undisclosed income on the basis of materials seized during search and on the basis of books of accounts. The Id. D R further submitted that the Id. CIT(A} overlooked the fact that in few years the assessments have been completed u/s 143(1) and the AO never had an accession to consider books of account, therefore the ratio laid dawn by the jurisdictional High court in case of CIT vs. Continental Warehousing Corporation (Nava Sheva) Ltd. (2015) 374 ITR 645 and Division Bench judgement of the Hon'ble Bombay High Court in the case of CIT vs. Murli Agro Products Ltd. (2014) 49 taxmann.com 172 has no application. The Ld. CIT(A) also relied upon the decision of the ITAT Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. vs. DCIT (2012) 137 ITD 287, The Id. CIT{A} without appreciating these fact deleted addition on the ground that the assessments have been unabated and no addition could be made in absence of incriminating materials, been unabated/concluded on the date of search. The A.R., with reference to the search, submitted that in this case the search took place on 10-09-2014 and by the time the assessments for A.¥. 2009-10 fo AY. 2012-13 have been unabated and the time limit for issue of notice under Section 143(2) has been expired, thercfore, in absence of any incriminating material found as a result of search no addition can be made in the assessment framed under Section 153A of the Act. In this regard he relied upon the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nava Sheva) Ltd, (2015) 374 TTR 645 and Division Bench judgement of the Hon'ble Bombay High Court in the case of CIT vs. Murli Agro Products Ltd, (2014) 49 taxmann.com 172. The assessee i9 also relied upon the decision of the ITAT Mumbai Special Bench in the case of All Cargo Global Logistics itd. vs. DCIT (2012) 137 ITD 287. The Id. AR relied upon the decision of Hon'ble Delhi High Court in case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del),

11. The Ld. AR further has vehemently argued that except the said statements before the salés tax authorities, the AO had not brought on record any cogent or clinching evidence to prove said purchases as non --

genuine. Further, the copies of the said statements were not provided to the assessee nor any cross axamination of those parties were allowed. Jt was also pointed out by the Ld. AR that when the department ts relying the statement of third parties, the prima facie of producing the said parties for cross examination is that of the department and not the assessee.

We have heard both the parties, perused the material available on and gone through the orders of the Authorities below. We have also aliy considered case laws relied upon by both counsels. In this case, the ¢h and seizure action under Section 132 of the Act, was conducted on 10-09-2014, The facts born aut fromm the record reveals that during the course of search certain documents for. purchase of immovable property and jedgers of Taranya Merchandise Pyt. Ltd., were found and impounded. No other unaccounted assets, jewellery or cash were found during the course of search. But, one pen drive was esized fram the business premise which was inventorised as annexure B-3/3, The pen drive was found hidden in a calculator at the sales counter of showroom. Printout of data contained in pen drive was extracted and was seized and inventorised as annexure B-3 which contains certain excel sheets named as reconciliation of cash. In search, six such cash reconciliation statements were seized. During search, statement of Shri Hemant Dhakate, Accountant was recorded in which he stated that each day he prepares cash reconciliation statement and hand over to director of the company. During the course of search, statement of shri. Pradeep Kothari, Managing Director was also recorded on 14-9-2014 in which, he admitted that the pen drive contains sales details and cash collections from customers. The AO has made various additions towards gross profit on alleged bogus purchakes, unproved share capital including share premium, unproved loans and advances and unexplained investments in stock. if you go through additions made by the AO, the AO has not referred to any incriminating material found as a result of search in respect of additions made towards gross profit on alleged bogus purchases and share capital. In respect of unexplained investment in stock, he had relied upon documents recovered from hidden pen drive which contains 3 to 4 days sales report generated in Jilaba software which pertains to A.Y. 2015-16. The AO on the basis of said statement estimated unexplained investments in stock by extrapolating the figures. From the above facts, it is very clear that _ additions made by the AO towards gross profit on alleged bogus purchases, ' "unsecured toans, are based on the return of income filed by the assessee withnut there being any incriminating material found as a result of search. It S (50 an admitted fact that in the assessment framed under Section 1534, is not empowered to make any addition in the absence of seized material in respect of assessments that have been unabated or already completed as on the date of search.

13. Under these facts, if examined additions made by the AO we find that the issue of addition to returned income in assessment framed u/s 153A for assessments that have been unabated. as on date of search, in absence of incriminating materials is mo longer a res-integra The jurisdictional High court of Bombay in in the case of Continental Warehousing Corporation (Nava Sheva) Ltd. (supra) has held that in the absence of any seized material found during the search no addition can be made in respect of unabated assessments which have become final as on the date of search.

This legal proposition Is further supported by the decision of the Division Bench of the Hon'ble Bombay High Court, in the case of Murli Agro Products Ltd. (supra) wherein it was held that no additions can be made in respect of unabated assessments which have become final, if no incriminating materia! is found during the search. The ITAT, Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. vs. ACTT (supra) has taken similar view wherein it was categorically observed that the AO is not empowered to make any addition In the absence of any seized material in respect of assessments that have unabated/concluded as on the d ate of search. In this case, search took place on 10-09-2014 and by the time the assessments for A.Y. 2009-10 to AY. 2012-13

have been unabated and the time limit for issue of notice under Section 143(2) has been expired, therefore, in absence of any incriminating material found as a result of search no addition could be made

- pe assessment frarned under Section 153A of the Act.

: A perusal of the assessment order also shows that no incriminating . fs ferial was found in the case of assessee during the course of search : *roceedings showing that the purchases made from the three parties was bogus. The appellant accordingly submitted that the assessment in the appellant's cas¢ was unabated/completed assessment and therefore any addition in the appellant's case could be made only on the basis of incriminating material found during the course of search. The appellant relied on various judicial pronouncements including one in the case of CIT vs. Kabui Chawla (2016) 380. ITR 573 (Del}, in which it has been held that:

> "37 On a conspectus of Section I52A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that-emerges s as under:
>
> i Onee a search takes place under Section 132 of the Act, notice under Section 153.4 (1) will Aave to be mandatorily issued to the person searched requiring him 2?

ta file returns for six AYs immediately preceding the previous vear relevani to the AY in which the search takes place.

ii, Assessments and reassessments pending an the date of the search shalt abate. the total incame for such A¥s will have to be computed hy the AOs as a fresh exercise, 4 tt, The AQ will exercise normal axsessment Powers in respect af the six years Previous fo the relevant AY in which the search takes place. The AO hes the pawer to assess and reassess the 'total incame' of the aforementioned six -vears in separate assessment orders jor each of the six years. in other words there will he only one assessment arder in respect of each of the six AYs "in which both the disclosed and the undisclosed incume would be brought to tax".

iv. Although Section 133 A does not say that additions should be strictly made on the basis af evidence found in the course of the search, or other post-search material or information available with the AQ which can be related to the ey ayvidence found, ir does not mean that the assessment. "can he arbitrary or made = ithout any relevance or nexus with the seized materigt. Obviously an assessment iS as to be made under this Section only on the basis of seized material "

> * w dn absence of any incriminating material, she completed assessment can he reilerated and the abated assessment or reassessment can be made. The word 'assess" in Section 153 A is relatable to abated proceedings (ie. those pending on the date of search) and the word 'reaxsess' to completed assessment proceedings, vi. Insofar as pending assessments are concerned. the Jurisdiction to make the original assessment and the assessment under Section f 234 merges inte one.

Only one assessment shall be made separiely jor each AY on the basiy of the findings of the search and any other material existing or brought on the record of fhe AQ.

vit. Completed assessments can be interfered with by the AO while making the assessment under Section 153 4 only on the basis of same incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were noi produced or nat already disclosed or made Inown in the course of original assessment.

Conclusion

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07.0n the date of the search the said assessments already stood campleted. Since no incriminating material was unearthed during the search, no additions could have heen made to the income already assessed."

15. The AR of the assessee also submitted that against the decision of the Hon. Delhi High Court in CIT vs. Kabul Chawla (2016)380 ITR 573 (Dei), the revenue preferred Special Leave Petition before the Hon. Supreme court and the same was dismissed by the apex court which is reported in 380 ITR (St. } 4 (Sc). Hence ft couid be safely concluded that the decision of Hon. Delhi HC in the case of Kabul Chawla supra would have to be considered on the =,(mpugned issue, a 165} The DR has drawn our attention to the Kerala High Court judgement in Uigibase of E.N. Gopakumar wherein the Hon. High Court has held that "The wey is Ute nowhere makes it conditienal that the department has to unearth some incriminating material to conclude some method against the assessee in events where the assessment is trigcered by a natice under Section 153A(1}fa) of the Act. This means that even when such notice is irigeered following a search, the assessment proceedings can be concluded in any manner known to law, including under Section 143(3) or even Section 144 of the Act. if need be, Therefore, the assessment proceedings generated by the issuance of a notice under Section 153A (Ufa) of the Act can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in ihe search under Section 132 of the Act on the Basix of whieh the notice was issued under Section £5 Afi ia) of the Act. We answer this issue accordingly."

17. The Id. AR on the other hand relied heavily on the Judgements of Kabul Chawla and Jurisdictional High Court's judgement in the case of Continental: Warehousing (Nav sheva). The AR also brought to our notice the judgements of Gujarath High Court in the case of Pr. CIT vs. Saumya Construction Pvt. Ltd. 2016 Tax Pub (DT) 3466 (Guj- HC) wherein it was held that "very purpese of the provisions of the Sec. [534 was io make assessment in case of search or requisition and thereby it goes without saying that ihe assessment should be connected with something found during the search or requisition, viz. incriminating material, which reveals undisclosed income. in present case as the addition was nol based on incrintinating: documents jound during the course of search, AO was nat justified in making addition".

18. On analysis of judgments discussed hereinabove, we find that aithough divergent views had come from different high courts on the issue, yet majority of High courts including jurisdictional High court of Bombay division bench in case of CIT vs. Murali Agro Ltd(Supra) has ruled in favour of the assesses. It is a settled law that when there are contradicting Judgments of different High Courts, view in favour of assessee should be upheld. Further, judicial discipline demands that the lower court in the jurisdiction of High > yt is bound to follow the jurisdictional high court decision. Accordingly aWrelying on the Jurisdictional High courts as well as Delhi High Court } Bgement, wherein the SLP of the department has been dismissed, we are 3 # the view that the Id. CIT(A) was right in deleting gross profit addition made on alleged bogus purchases for Assessment years 2009-10 and 2010- Li. Hence, we are inclined to uphold the Id. CIT(A) order and reject ground taken by the revenue.

19. As regards confirmation of Addition of Rs.2,93,633/- on account of gross profit in the assessment year 2012-13, the CIT{A} has confirmed the addition merely on the ground that the assessee could not produce, evidence regarding transportation of goods from Mumbai to Nagpur and for further sale of the purchased goods. The appellant during the course of assessment proceedings had submitted copy of bills which contains complete name, address and TIN number of the parties, ledger account of parties, proof of payment through banking channel and entries in books of accounts and stock register which proves that the purchase are genuine. The AO has not pointed out any defect in the purchase bills and other evidences produced by the appellant nor has he given any findings that the nayment made by appellant to the aforesaid parties through banking channel fs not genuine hor the AQ has brought any evidence. on record to prove that the appellant nas received back cash from the aforesaid parties in lieu of payment made through banking channel. The Ld. AO has not rejected appellant's books of accounts. The AO has simply relied on information supplied by sales tax authority that the so-called sellers have provided bogus bills on commission. The addition is completely based on conjecture and surmise. Further when evidence clearly proves purchases as genuine, merely because the evidence tax authorities were brought on record by the AO and that the said addition amounted to double addition as the said goods were already recorded in the regular books of accounts and were included in the closing steck which was considered for arriving at the gross profit offered for taxation. The AQ, failed ta Sring on record any other evidences, except statements before the sales tax authorities to prove that the said purchases are non-genuine and accordingly we delete the addition towards gross profit on alleged bogus purchases for AY. 2012-13, 20, The next issue that came up for our consideration is additions towards share caital and share premium u/s 68 of the Act, for A.¥Y. 2010-11, 2011-12 and 2012-13. The AO has added Rs.?7,70,00,000/-, Rs.4,15,83,500/- +Rs.50,00,000/- and Rs.11,50,00,000/- for Assessment Years 2010-11, 2011-12 and 2012-13. The A.O. has made said addition by invoking 1st proviso to section 68 holding the share capital received from TMPL as accommodation entries and for that purpose he has relied on foilowing statements recorded by the Investigation Wing:

> Sr. Particulars Referance to No. para ona. of assessment order where if was used i Statement of Shri Anurag Bordia | Para i2,13, Director of TMPL recorded oan|id4.i and I4.3 |_| 44.10.2014 & 2,10.2014 i Statement of Shri Shivshankar Banka | Para 13, 14 and lif | Statement of Mr. Jivendra Mishra Para 14.i(1} Iv | Statement of Mr. Pankaj Agrawal Para 14,6 if Statement of Mr. Chandan Das &Putul | Para 14.6 Das Vi

| Statement of Mr. Yogendranath Roy & | Para 14.6 Subrata Ghosh' \| Vii | Statement of Mr. Gaurav Maheshwari | Para 14.6 & Mr. Ashish Kumar Agarwal .

or During the relevant previous years, the appellant has issued share capital to a company named Taranya Merchandise Pvt. Ltd; (TMPL, in short), The appellant in its written submissions has stated that the appeilant had filed, various documents befere the AO during the course of assessment proceedings, including ledger a/c of TMPL in books of the Appellant, Bank staternent of appellant as well as TMPL, JTR and computation of income of TMPL, Audited financial statements of TMPL, Confirmation from TMPL, Copy of Income Tax return and Bank Statement of mr.Ajit Kumar menon for Assessment Year 2010-11 and 2011-12. The AO disregarded all evidences filed by the assessee and made addition for the reason that the said share transaction with TMPL is accommodation entry and hence could not pass the test cf genuineness of transaction even though the identity of the creditor is established.

RF

397. The DR submitted that the Id. CIT(A) was erred in deleted addition made towards share capital and share premium on technical grounds without discussing issue on merits as to how the issue is not subject matter of 1534 assessments, when there 'is no such reference of incriminating materials in the statue. The D.R. further submitted that the moment, search is taken place, assessments for six assessment years gets reopened and the AQ shall have jurisdiction to assess total incame including undisclosed income on the basis of materials seized during search and on the basis of books of accounts. The ld. D R_ further submitted that the Id. CIT(A) overlooked the fact that in few years the assessrnents have been completed u/s 143(1) and the AO never had an accession to consider books of account, therefore the ratio laid down by the jurisdictional High court in case of CIT _ Continental Warehousing Corporation (Nava Sheva) Ltd. (2015). 374 ITR and Division Bench judgement of the Hon'ble Bombay High Court in the e of CIT vs. Murti Agro Products Ltd. (2014) 49 taxmann.com 172 has no AG plication. The DR further submitted that the AO has brought out clear facts to the effect that the purported share capital transactions with TMPL is @ accommodation entry which is proved from the statements of persons involved in said transactions. He, further submitted that mere furnishing of certain documents to prove identity is not sufficient to explain the credit when genuineness of transaction is doubtful, 23, The AR on the other hand has forcefully arqued that the assessee had submitted all the evidences not only of source but source of source by providing the details fram which TMPL had received funds alongwith evidence and hence the said amount should not have been considered as unexplained cash credit. As regards the query raised by the bench regarding justification of the share premium charged, our attention was drawn to the para 1.2.7 of the CIT(A)'s order for Assessment year 7012-13, wherein the proviso to section 68 holding the share capital received from TMPL as accommodation entries and for that purpose he has relied on following statements recorded by the Investigation Wing:

Sr. Particulars Reference to | Ma. para no. of assessment order where it . was used i Statement of Shri Anurag BSordia | Para 2,13, Director of TMPL recorded on| 14.1 and 14.3 1.10.2014 & 2.10.2014 ti Statement of Shri Shivshankar Banka | Para 13, i4 and ii Statement of Mr. Jivendra Mishra Para 14.1(i) iv | Statement of Mr. Pankaj Agrawal Para 14.6 Vv Statement of Mr. Chandan Das &Putul | Para 14.6 Das vi | Statement of Mr. Yogendranath Roy & | Para 14.6 Subrata_Ghosh-

Vii | Statement of Mr. Gaurav Maheshwari | Para 14.6 & Mr. Ashish Kumar Agarwal ; _ During the relevant previous years, the appellant has issued share capital to @ company named Taranya Merchandise Pvt. Ltd; (TMPL, in short). The appellant in its written submissions has stated that the appellant had filed, various documents before the AO during the course of assessment proceedings, including ledger a/c of TMPL in books of the Appellant, Bank staternent of appellant as well as TMPL, ITR and computation of income of TMPL, Audited financial statements of TMPL, Confirmation from TMPL, Copy of Income Tax return and Bank Statement of mr.Ajit Kumar menon for Assessment Year 2010-11 and 2011-12. The AO disregarded all evidences filed by the assessee and made addition for the reason that the said share transaction with TMPL is accommodation entry and hence could not pass the test of genuineness of transaction even though the identity of the creditor is established.

Zf ah assessee has given justification for the premium charged alongwith the working. Qur attention was also drawn to the fact that the appellant company had specifically requested the Ld. AO to furnish the statements and the information, documents, records and evidences intended to be used by the department in relation to share capital received by the appellant company during the year under consideration vide written submission filed before the AQ on 24/11/2016, Inspite of specific request, the Ld. A.O. did not furnish aforementioned statement, information, documents etc. so as to enable the assessee to explain the same properly.The appellant further submits that by not providing the documents and the evidences gathered by the department from third parties behind the back of the assessee and at the same time using it against the assessee violates the principle of natural justice. He pointed out to the finding of the CIT(A) in para 4.1.14 for Assessment Year 2011-12, wherein the CIT(A) has held "the facts of this case do not apply as the AO has not been able to bring out that the transaction was sham and bogus transaction. Inspite of search proceedings yal the Appellant's premises, no Positive evidence to this effect has been . pught in the assessment order. Accordingly, the cases laws relied upon iy yi 0 AO are distinguishable.

i The lq. AR further submitted that the assessment for Assessment years 2010-11 and 2011-12 are unabated assessments and that any additions can be made only on the basis of any incriminating document. The A.R., with reference to the search, submitted that in this case the search took place on 16-09-2014 and by the time the assessments for A.¥, 2009-10 to A.Y. 2012-13 have been unabated and the time limit for issue of notice under Section 143(2) has been expired, therefore, in absence of any incriminating material found as a result of search no addition can be made in the assessment framed under Section 153A of the Act. In this regard relied upon the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nava Sheva) Ltd. (2015) 374 ITR 645 and Division Bench judgement of the Hon'ble Bombay High Court in the case of CIT vs. Murli Agro Products Ltd. (2014) 49 taxmann.com 172, The assessee also relied

upon the decision of the ITAT Mumbai Special Bench in the case of All Cargo Global Logistics Ltd. vs. DCIT (2012) 137 ITD 287, The Id. AR relied upon the decision of Hon'bie Delh! High Court in case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Del).

25. We have heard both the parties, perused the material available on record and gone through the orders of the Authorities below. We have also carefully considered case laws relied upon by both counsels. In this case, the search and seizure action under Section 132 of the Act, was conducted on 10-09-2014, In search, certain documents for purchase of immovable property and ledgers of Taranya Merchandise Pvt. Ltd., were found and ' ppoundes. The CIT(A) at para 4.1.18 of Appetite Order for Assessment suggest that the funds introduced by TMPEL in Share Capitat of the Appellant company has flowr from the Appellant himself. ft is also a matter of record thai the return of income filed on 29/09/2011 was duly accepted by the Department by issue of intimation wis. 143(1) dated 07/01/2012. On the date of initiation of search on 10/09/2014, no proceedings were pending and therefore the assessment remains unabated. Various high courts have also held that no. addition can he made in respect of unbated assessment if no incriminating material is found during the course of search, In absence of incriminating material, ihe enquiries conducted during the course of search or thereafter to establish that TMPL has provided accommodation entries cannot be treated as incriminating material found during ihe course of search so as to determine the total income USS.153A rew.s. 143(3), on ihe basis of those inguiries.

ao

26. The CIT(A) has deleted the said addition by relying on the judgement in the case of Kabul Chawla and Continental warehousing (Nava seva) supra, where it was held that in the absence of any seized material found during the search no addition can be made in respect of unabated assessments which have become final as on the date of search. This legal proposition is further supported by the decision of the Division Bench of the Hon'ble Bombay High Court, in the case of Murli Agro Products Ltd. (supra) wherein It was held that no additions can be made in respect of unabated assessments which have become final, if no incriminating material is found during the search. The ITAT, Mumbai Special Bench in the case of All Cargo

- Global Logistics Ltd. vs. ACIT (supra} has taken similar view wherein it was categorically observed that the AO is not empowered to make any addition in the absence of any seized material in respect of assessments that have Unabated/concluded as on the date of search. This legal position is further Po fo of Pr. CIT vs. Saumya Construction Pvt. Ltd. 2016 Tax Pub (DT) 3466 6h HC}. In this case, search teok place on 16-09-2014 and by the time "the assessments for A.¥, 2009-10 to A.Y. 2011-12 have been unabated and the time limit for issue of notice under Section 143(2) has been expired, therefore, in absence of any incriminating material found as a result of search no addition can be made in the assessment framed under Section 153A of the Act.

27. & perusal of the assessment order also shows that no incriminating material was found in the case of assessee during the course of search proceedings which shows share transaction with TMPL was a accommodation entry. Since, addition made by the AO was not based on any incriminating material unearthed as a result of serach and also jurisdictional high court has held the said issue in

favour of assessee and the Hon. Supreme Court ai wl has dismissed the SLP against the Delhi High Court's Judgement in the case of Kabul Chawla, we uphold the deletion of the addition made for the Assessment Years 2010-11 and 2011-12, as the Assessment of which stands unabated and aiso no incriminating document were found during the course of search.

28, As regards the deletion of addition for Assessment Year 2012-13, our attention was drawn te the facts that said amount was added in the hands of TMPL and the copy of Assessment order was also submitted during the Assessment proceedings. The AR has argued that the said addition once again in the hands of appellant amounts to double addition and hence has been rightly deleted by the CIT(A). We find that even on merits the assessee has flied enormous documents to prove identity, genuineness of transaction and credit worthiness of parties. The assessee has filed complete details of Having heard both sides, we find that the AQ has made addition towards share capital as unexplained cash credit u/s 68 of the Act, on the ground that the assessee has established identity of subscriber to the share capital but failed to prove genuineness of transaction and creditworthiness of the parties. The AO has brought out various reasons to come to the conclusion that the alleged subscriber to the share capital are paper companies and they did not have any business activity to substantiate subscription of huge share capital to the assessee company. The AO further observed that these companies did not have any capacity to establish creditworthiness to prove subscription of share capital. The AQ further observed that the assessee [s also not justified in issuing share capital at a huge premium for shares having face value of Rs.1Q., According to the AO, all these sequence of events proves an undoubted fact that these companies are paper companies and the assessee is not able to prove the genuineness of transaction and creditworthiness of the parties and hence, he opined that the alleged share capital and share premium received from TMPL is unexplained cash credit.

30. the AO made addition towards share capital u/s 68 of the Act, on the ground that the assessee has failed to offer any explanation with regard to the credits found in the nature of share capital and share premium. The provisions of section 68, deals with a case, where any sum found credited in the books of account of the assessee in the financial year in which the assessee, offers na explanation or explanation offered by the assessee, in the opinion of the AO is not satisfactory, then sum found credited may be treated as income of the assessee of that previous year, A plain reading of section 68, makes it very clear that to fix any credit within ihe ambit of section 68 of the Act, the AQ has to examine 3 ingredients, 4 identity, genuineness of transaction and creditworthiness of the myties. If the assessee proves all 3 ingredients, then the anus shifts to She AO to prove otherwise. Similarly, the Proviso inserted by the Finance) Act, 2012 w.e.f. 01-04-2013 deals with the case where the sum so credited consists of share application money, share capital, share premium, by whatever name called and explanation offered by such assessee shall be deemed to be not satisfactory unless such person being a recipient in whose name such credit is recorded in the books of such company alse offers an explanation about the nature and source of such sum so credited. As per the Proviso, if the assessee fails to explain the source of source of share capital or share applicatian money, then the addition can be made towards share capital, and share application money in the hands of the assessee u/s 68 of the Income-tax Act, 1961. Whether Proviso inserted by the Finance Act. w.e.f. 01-04-2013 is applicable a3 SF prospectively or retrospectively, has been decided by various courts. According to the ratio laid down by the Hon'ble Bombay High Court in the case of CIT vs Gagandeep

Infrastructure Ltd (2017) 394 ITR 680 (Bor) the Hon'ble Court observed that Proviso inserted to section 68 w.e. Ff. 01-04-2013 is considered to be prospective in nature and applicable from A.Y.2013-14 onwards. Therefore, we are of the view that no addition can be made u/s 68 of the Income-tax Act, 1961 in respect of share capital and share application money OF share premium before insertion of Proviso to section 68, if the source of source is not explained by the assessee.

31. Having said so, let us examine whether the assessee has discharged the burden tast iipon it under section 68 of the Income-tax Act, 1961 in respect of share capital received from subscribers. The AO never disputed the fact that the assessee has furnished various evidences [to prove tt dMetity of the subscribers. The AO categorically admitted in his assessment that the assessee has filed various details including PAN, CIN master . IT acknowledgement receipt of subscribers to prove the identity. The ceH6 has. disputed genuineness of transactions and creditworthiness of the _ parties. According to the AO, the subscribers to the share capital are not having capacity to prove creditworthiness and also the transaction with the assessee company are not genuine. The AO has various reasons Co come to the canclusion that the assessee has failed to discharge genuineness of transaction and creditworthiness of the parties. Accarding to the AO, mere furnishing of income-tax returns and balance- sheets of subscribers would not be sufficient compliance of discharging genuineness of transactions, that too, in a case where the parties to the transaction in their statement given before Investigation wing admitted that the said transaction ig accommodation entry. The AO also brought out some other reasons including statements given by directors of certain companies and a4 Chartered Accountant, who has issued audit report in respect of these companies. The AO also doubted confirmation filed by the assessee and also share application forms. The AO has doubted application form for issue of share and audit reports to come to the conclusion that the share application form issued by the assessee are stereotyped.

32, Having considered arguments of both the sides and materials available on record, we do not find any merit in the reasons given by the AO to come to the conclusion that the assessee has failed to prove the genuineness of transaction and creditworthiness of the parties on the ground that the assessee has filed enormous details including their PAN details, CIN master data, reply to the notices issued u/s 133(6).. The assessee also filed copies of assessment order passed u/s 143{3) by the department in respect of TMPL where the addition has been made for similar arnount, The assessee also filed a certificate from a Chartered Accountant: certifying the active status of the company in the website of PNinistry of Corporate Affairs. On going through various detailed filed by the icessee, we find that there is no reason for the AO to doubt the All ygnuineness of transactions and creditworthiness of the parties. f ese evidences go to prove an undoubted fact that these companies are nat paper companies and recognized with business activity, We further notice that the assessee has furnished bank statement of subscribers wherein we do not find any instance of cash deposits or transfer from other companies prior to the date of transfer to the assessee company. Even the assessee has proved source of source by filing various details, Therefore, we are of the view that the AO was incorrect in treating share capital alongwith share premium as unexplained cash credit u/s 68 of the Income-tax Act, 1961.

33, Coming to the observation of the AO with regard to the issue of shares at a premium, The AO has questioned the issue of shares at a huge premium Bi on the ground that the assessee fc not able to

justify issue of shares ata premium. We do not find any merit in the findings of the AO fer the reason that the issue of shares at a premium and subscription to such shares is within the knowledge cf the company and the subscribers to the share capita! and the AO does not have any role to play as long as the assessee has prove the genuineness of transactions. We further notice that the AO cannot question the issue of shares at a premium and also cannot bring to tax such share premium within the provisions of section 68 of the Act, before insertion of Proviso to section 68 by the Finance Act, 2012 wef 01-04-2013 which evident from the fact that the Hon''ble Bombay High Court in CIT vs. Gagan Deep Infrastructure (P) itd (2017) 394 ITR 680 (Bom) has held that Proviso inserted to section 68 is prospective in nature. Therefore, we are of the considered view that the AO has treated share capital and share premium as unexplained credit u/s 68 of iT

- "Act, on flimsy grounds ignoring all evidences filed by the assessee.

z.

we Coming to the case laws relied upon by the assessee. The assessee oH g//retied upon plethora of judgements including the decision of SeHon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd (2008} 216 CTR 195 (SC). Inthe case laws relied upon by the assessee, the igsue has been dealt as under:-

> Cif vs. Goa Sponge and Power Lid (1 3/02/2012) Tax Appeal No. 16. af 2tle (High Court-Bombay} "Once the authorities have got all the details, inc iuding the name and addresses of the shareholders, their PAN/GIR number, so also the name of ihe Bank from which the alleged investors received money 4s share application, then, it canna é be termed as "bogus. The contraversy fs covered by the ° judgements rendered 6 y fhe Ifon'ble Supreme Cort in the case of Lovelp Experts Put Lid. vs. CIT, (2008) 216 CTR (SC) £95, as also by this Court in CHP vs. Creative World Tele films Ltd, (20) 1) 333 IT8 {00 (Bom}. in such circumstmees, we are of theview that the Tribunal's finding that there is no fustification in the eadition made under Section 68 of the Income Tax Act, i986) neither suffers from aay perversity ner gives rise io any substantial questian of faw."
>
> Cif vs. Creative World Tele films Ltd (2011) 333 I7TR [00 (Born-High Court) "The question sought to be raised in the appeal was also raised before the Tribunal and the Tribunal was pleased to follow the judgment of the apex Court in the case of Cif vs. Lovely Exporis (P) Lid. (2008) 276 CTR (SC) 195, wherela the apex Court observed that if the share application money is rec eived by the assessee-company from atlezed bocus shareholders, w hose names are given to the AO, then fhe Depariment can always proceed against them and if necessary reopen their individual assessments, in the case in hand, it is. not disputed. that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank, Ht was expected onthe part of the AQ te make proper investivation and reach the shareholders. The AO did nathing except issuing summons which were uliimately returned back wiih an endorsement "not traceable

fm our considered view, the AO oushi fo have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since ail the relevant material detals and particulars were given by the assessee ta the AQ. fa the above circumstances, the view taken by the Tribunal cannot be faulied."

CiT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC) "Uf the share application money is received by the assessee company from alleged bugus shareholders, whose names are given io the AQ, then the Depariment ig free to proceed io reapen their individual assessments. in accordance with faw, but it cannot be regarded as undisclosed income of ussessee company."

CYT vs. Steller frrvestment Lid (2001) 251 FTR 263 (SC) (civil appeal) "That the increase in subscribed capital of the respandenicompany cauld nat be a device of converting Slack money into white with the hetp of formation of an Investment company, on the round that, even if Hf be assumed that ite Subscribers to the increased capital were wot senting, tinder ra circumstances could the amount of share capital de regarded as un disclased incame, an appeal was taken by the Department to te Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal hed come to a conclusion on facts and na interference was called for."

Ci? vs, Nav Bharat Duolex Lid (2013) 35 Taxmann.com2s9 (All-High Court) "We have considered the arguments of the counsel jor the parties. CIT{A) found that five companies subscribing the equity shares amounting io Rs, 25,00.000+ were identified and they had submitted their bank siaiements, cash extracis and. returns filing receipts. As such identity of the share applicant ¢ SF ampanies and purchase of share had been proved by the assessee. Supreme Court ia the cases of CIT v. Steller investments Lid. {2001} 251) IPR 263 and Lovely Exports case {supra}, has held that the identity af the shareholder alone is required to be proved, in case of the cupital contributed by the shareholders. Accordingly CIT(A) and ihe Tribunal has not commited any iNegality in allowing the appeal of the assessee. We do not find any iNegality in the judgment of the CIT(A) and the Tribunal."

CIT vs: JayDee Securities & Finance Ltd (2013) 32 Taxmann.com9! (All-High Couré) "The Tribunal recorded findings that the assessee had produced the return of income filed by the relevant shareholders who had paid share application money. The assessee had alsa produced the confirmation of share holders indicating the details of addresses, PAN and particulars of cheques through which the amount was paid towards the share application money. The Tribunal thereafter relied upon the judgment of the Supreme Court in CIT ¥. Lovely Exports (P.) Lid wherein it was held thai ifthe assessee produces the names, addresses, PAN details of the share holders then the onus on the assessee to prove the source of share application money stands discharged. if the Assessing Authority was not satisfied with the creditworthiness of the shareholders, it was open to the Assessing Authority to verify the same in the

hands of the shareholders concerned, The Tribunal has retied upon an order . of the Supreme Court in case af CIT v. Divine Leasing & Finance Ltd. in welbiew of the decision 'of the Supreme Court, we dismiss the appeals with P4observations that the department is free to proceed fo reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."

ACIT vs. Venkateshwarispat Put Ltd (2009) 319 FTR 393 {(Chhatisgarh-High Court "if the share applications are received by the assessee from alleged bogus shareholders, whose names are given fo the Assessing Officer, then the Department is free to proceed ta reopen their individual assessments in wceordance with law, bul it cannot be regarded as the undisclosed income af the asressee,"

Mod Creations Pvt Ltd vs, 'TO (2013) 354 ITR 282 (Del-High Court} "Held allowing the appeal, {i) that fhe assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt wifft regard to fhe genuineness of the transactions in issue or as regards the creditworthiness af the creditors, it would have had to discharge the onus which had shifted on to it_A bold assertion by the Assessing Officer that the credits were 4 circular route adapted by the assessee to plough back its own undisclosed income into its accounts, could be of nv avail. The Revenue was required to prove this allegation. An allegation by itseif which is based on assumption will not pass muster inlaw. The Revenue would be required te dridge the gap herween the suspicions und proaf in order to bring home this allegation. The Tribunal without adverting to the principle laid stress on the fact that despile opportunities, the assessee andfar the creditors had not proved the genuineness of the transaction. Based on this it construed the intentions of the assessee as being mala fide. The Tribunal ought to have analysed the material rather than be burdened by the fact that some oof the creditors had chosen not to make a personal appearance before the Assessing Ojficer. if the Assessing Officer had any doubt about the matertal placed on record, which was largely bank statements of the cr editors and their income-tax returns, it could gather the neces sary information from the sources to which the information was atiributable....1f it had any doubts with regard to their creditworthiness, the Revenue could always bring the sunt In question fo tax in the hands of the creditors or sub- credizors,"

CHT vs, Al Anam Agro Foods (P.) Lid (2013) 38 Taxmann.corn 375 (All-High Court) Tribunal however, held that since identity ofsharehoiders stood proved on recerd, amount of shar e application money could not be added to income of a ssessee, According to Tribunal, in such a cose amount could be taxed in hands of persons who had invested"

"T vs, Qwarkadhish Investment (P) Ltd (2011) 330 77R 298 (Del-High Court) re ust because the creditors/share applicants could net be found at the ddress given, if would not give the Revenue the right to invoke s. 0-- Revenue has all the powe r and wherewithal ta trace any persan-- Moreover, it is settled jaw that ihe assessee need not io prove the 'source of source's in ihe fustant case, the Tribunal has confirmed the

> or der of the CIT(A) deleting the impugned addition holding that the assessee has been able toa prove the identity of ihe share applicants and the share applicatian money has beenreceived by way of account payee cheques,"

CIT vs. Namastey Chemicals Pwt Lid (2013) 33 Taxmann.cum27/ (Guj-High Court} "in the present case also, the respondent assessee hay received share application money from different sub scribers, ft was found that large manber of subseribers had responded to the letters issued by the Assessing Officer or summons issued by him and submitted their affidavits, In so nie cases such replies were not received through posts. Rs. 9 lacs represented those assessees who denied having made any investment altogether. The issue thus 'would fall sq uarely within the anbil of the judgment of the Supreme court (nt the TF % ie pe case nf Lovely Exports (supra). No errur of law can be stated ta have been committed by the Tribunal. Tax Appeal is therefore dismissed"

> CIT vs. Peoples General Hospital Lid (2013) 356 ITR 65 (MP-High Court) "Held. dismissing the appeals, that it the assessee hadre ce ived subscriptions to the. public or rights issue throuch banking channels and furnished compteie det ails of the sharcholders, no addition could be made iinder section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence fo indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's awn Incame fram undisclosed sources. ft was nobody's case that the nonresident Indian company was a bogus or non-existentcompany or that ihe amount subscribed by the compan y by way of share subscription was in fact the money of the assessee. The assessec Aad established the identity of the investor who had provided the share subscription an d that ihe transaction was genuine, Though the ussessee's cont ention was that the creditworthiness of the creditor was a tso established, in Ais case, the establishment of theidentity of the investor alone was to he seen. Thus, the addition was rightly deleted."

CiT vs. Shree Rama Multi Tech Lid (2013) 34 Taxmann. comi?? fGw-AC) "is nated that Commissioner (Appeals) as well as the Tribunal have duly 'onsidered issue and having found complete details of the receipts of share pplication money, aion gwith the jorm names and addresses, PAN and ther requisite details, they found complete absence of the grounds noted for invoking ihe provision of section 68, Moreover, both rightly had applied the decision of CIT vs. Lovely Exports (P) Ltd to the case of the assessee. Therefore, no reason was found in absence of any illegality much fess any perversity fov to interfere with the order of the beth these authorities, who had concurrently held the due details having been proved. The ussessee company uted presented the necessary worth proof before both the authorities and Ho was not expected by the assesseecampany to further prove the source of the deceased,"

> CTT vs. Nikunj Eximp Enterprises (P.) Lid (2013) 33 Taxrnann. com384 (Bom) "Wheiher merely Because suppliers had not appeared before Assessing Officer or Commissioner fAppéals}, it cou fd mot be conchited that purchases were not made by assessee - Held. Yes... Further, there were confirmation jeiters filed by the suppliers,

copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were in fact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CITfAL one cannot conclude that the purchases were not made hy the respon dent- ass essee"

CiT vs. Samir Bio- Tech Put Lid (2010) 325 [TR 294 (Petl-High Casrt) "Identities of the subscribers. are not in doubt, The transactions have also heen undertaken through banking channels inasmuch as the application money for the shares was given through account payee cheques. The creditworthiness has also been established, as indicated By the Tribunal. The subscribers have given their complete details with regard to their fax returns and assessments. in these circumstances, the Depariment could not dr aw an adverse inference against the assessee only because the subscribers did not initially respond io the summons, The subseribers, however, subsequently gave their confirmation letters as would be apparent from the impugned order, The identity of the subseribers stands established and it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the iT authorities. The decision of the Tribunal deleting the addition cannot bejaulted."

35. Coming to the case laws relied upon by the Ld.DR. The Ld.DR relied upon the decision of Hon'ble Calcutta High Court in the case of Raj Mandir Katee Pvt Ltd vs Pr.CIT (2016) 386 ITR 162 (Cal). We have gone through t gase law relied upon by the Ld.DR in the tight of facts of the present case 5 d that the case law relied upon by the Ld.DR is not applicable as in ia case, the subscribers to the share capital did not establish their financial capacity to subscribe share capital in the. assessee company. The bank account of all the applicants have been found credited from other sources immediately before transfer of funds to the assessee company. The companies did not have any business activity to establish their financial capacity. Under those facts and circumstances, the Hon'ble Calcutta High Court came to the conclusion that the assessee has failed to establish genuineness of transactions and creditworthiness of the parties and hence confirmed addition made by the AO u/s 68 of the Income-tax Act, 1961. Insofar as the Hon'ble Bombay High Court in the case o M/s Major Metals vs CIT (supra), the facts of the case are entirely different wherein the issue before the Hon'ble High Court was whether the assessee was able to establish genuineness of transaction in the light of the A} clear finding recorded by Settlement Commission wherein it was observed that all the subscribers of share capital were not even assessed to income- tax and they did not have any source of income to explain financial capacity. Under these circumstances, the Hon'ble Court came to the conclusion that the assessee was unable to expiain the issue of share at a huge premium and hence confirmed addition made by the AO u/s 68 of the Act.

36. In this case, on perusal of the facts available on record, we find that the assessee has filed enormous details in respect of subscribers to the share capital and the evidences filed by the assessee categorically proves that subscribers to the share capital are companies having financial position to establish creditworthiness. Therefore, considering the facts and circumstances of the case and also relying upon the case laws discussed above, we are of the view that the AO was erred in making addition towards share capital and share premium u/s 68 of the Act. The Stee IT(A), after considering relevant submissions has rightiy deieted the ne Btion made by the AO towards share capital and share premium. We do gr) ind any error or infirmity in the order of the CIT{A); hence,

we Afef inclined to uphold the findings of the CIT(A) and dismiss the wat ground taken by the revenue.

37. The next issue that came up for our consideration is addition on account of closing stock u/s 69 of the Act, on the basis of difference price of gold and jewellery as per Jilaba Software and boeks of accounts maintained in tally software. The AO has added Rs.16,02,64,572/-, Rs.22,44,26,139/-, Rs.18,87,66,428/-, Rs.44,71,09,717/-, Rs.5,14,21,709/- in the respective years, totaling to Rs.107,19,96,565/- on account of un-explained closing stock' on the basis that the <salvalue> column in the Jilaba Software represent Purchase Price. The AO has based nis theory of treating the Jitaba data <salvalue> column as purchase cost to the appellant mainly for the following two reasons :

> eae VE ous om sar e ¢ nf 38, Whenever an item from inventory is solid, its sale price is more than the value assigned to it in Jilaba<salevalue> column therefore it is purchase price to the assessee. The relevant observation of the AG in para 38 on page 28 of the assessment order is as under:
>
> On verification it was found that the moment the Inventory tiem uf closing stuck thaving ''Null' minus date) is suld, ihe price peis changed to a value which is mere than the value assigned to the inventory item. From this if is crystal clear thai the value assipned to the inventory item of closing stock {having 'Null' minus date) is 'nothing but the purchase cost.
>
> ii} The sale value of unsold product brought forward from earlier year remains same in the subsequent years therefore it is purchase price to the assessee, The relevant observation of the AO in page 32 of assessment order forming. part of para 42 is as under :
>
> For proper appreciation, the valuation vf a few top items of closing stock (Minus date 'Null on the basis of value in Jilaba data was examined. The valuation of the clasing stock is as per the sale value column and from the verifications made out of the product tables of earlier years, using the Tagkey No., li was jound thal said sale value remains the same for the unsold product and actually it is the purchase cost fa the assessee."
>
> The AO has given various workings on the basis of the seized hard-
>
> disk, which according to him revealed the valuation of stock in trade was more than the beok position of the stock. [he AO extensively discussed the issue in his assessment order so as come to the conclusion that there is difference in price of purchases as per Jilaba software and books and accordingly worked out difference in closing stock of gold and jewellery for A.Y. 2011-12 to AY 2015-16. The AO never disputed quantity of stock. In fact, there is no difference in stock maintained in Jilaba software and stock found in tally software.

HS

39. itis the contention of the assessee that, when there is no differene in quantity of closing stock as per two softwares, merely there is difference in price of certain items in Jilaba software, addition cannot be made towards unexplained investrnents in stock, more particularly, when assessee has explained such difference in price. The assessee also had given the brief note on the said Jilaba software and ils futures.

The Jilaba Software {s created and owned by M/s Jilaba Software « Services Private Limited, Chennai.

* The said software was put to use from July 2010.

« The main objective of purchasing the software was to track the Inventory movement from and to the counter staff to contral pilferage/theft.

Assessee had maintained its Books of Accounts in the existing myAccounting Software j.e. Tally ERP Package.

tN der Jilaba, every product was allotted a barcoded "Tag Key" which fAptures details of products, viz. its weight, category, labels, location of i sgthe stock etc. * On generation of a Sale Invoice, the copy of Invoice from Jilaba is made available to the Accounts Department for recording the Sates In books of accounts i.e. in Tally ERP.

*« Asa result of this, data beyond the Tag-keys and Sales Bills from. Jilaba software, were never monitored or reconciled by the Assessee company.

2 There is an Internal Control system, in place, to track - fraud, errors or omissions in the system.

e Tag Key generation is a manual activity and it is therefore subject to errors, omissions.

40. When product tag key require defect fixing or minor modification or remaking, the tags are deleted from the system, to avoid any fraud or Further Errors, The assessee has, further expiained draw backs of the Software :

Sales Value entered In jilaba software is an approximately inflated selling rate, which is subject to discounts to be given to Customers to their satisfaction and to make them feet privileged.

AS a part of trade practice, sometimes discount on negotiations and/or discount during festive seasons, are required to be given to customers. Therefore selling rates for each category of metals, stones and labor charges are Editable in the software.

Further, the sale values also get changed on day to day basis as the prices of Gold, Silver and Diamonds change on daily basis.

As per Jilaba software, aggregate of sales value for F.¥. 2011-12 was Rs. 136 te 142 crore, whereas the sales recorded in Tally ERP is Rs.191.08 crore, which is much higher sales than shown in Jilaba.

This leads to conclusion and inference that the Jifaba figures are not reliable, either for sales or for purchases, for computation of gross profit, The seftware is in evolving stage and hence has been subject to various bugs. Some of the said bugs were corrected but some still remained or resurfaced on occasions.

Therefore, the accounting was continued to be done in Tally ERP only as the Jilaba -soft-ware gave only limited Information about the product without the financial aspects.

During the Search action, the department had found Shortage of Stock to the tune of Rs.5,82,84,494/- and the Ld, 4.0. had also asked specific question as regards this shortage. Accordingly, the Assessee had filed HS Reconciliation with the Assessing Officer during the Search and Assessment Proceedings.

* Jilaba Software Company in its reply has clearly specified as under :

"Thirdly, if <salvaiue>coloumn is used to find the value of stock, then it may be wrong as the <salvalue> is only an appreximate value calculated based on the gold rate, Wastage/ making charges given at the time of tagging. While selling it, there may be a discount on wastage/making charges and also, the gold rate may change. So we cannot consider the <salyalue>coloum for the calculation of stock value. Apart fram that, it is not calculated based on the purchase cost.

So, we cannet consider it-as stock value,"

41. We have heard both parties, perused materials on record and gone through orders of authorities below. The AO has made addition towards

- unexplained investments in stock on the basis of difference in prices of "eSatain items of stock as per Jilaba software and as per books of accounts eA = shaihtained in tally ERP software. Admittedly, there is ao difference in me * guightity of stack as per Jilaba software and Tally ERP software. In fact it is Unit a case of the AO. On the other hand, the assessee had filed enough materiats to prove that there is no difference in stock and also the arnount mentioned in Salevalue column in Jilaba software is not purchase price of the assessee. It is also warth noting that the final resuit or trial balance taken out from jilaba system shows very poor trading results ie. it shows purchases/sales much lower than actual purchases/sales shown in Tally ERP, It is pertinent to note that the assessee has maintained regular books of accounts in Tally ERP, but Assessing Officer could not found any

defects. The books of accounts are audited and quantitative details have been given. Theré has been no rejection of books of accounts u/s 145 by the Assessing Officer and as such books results are accepted. Thus, Assessing Officer cannot resort to some other accounting method and cherry-pick certain data points from one source, another set of data from another source. Assessee's stock has been subject to verification and valuation by the bank, who has given loan and has appointed independent auditors for the said purpose. On one side the Ld, A.O. asks assessee to clarify the shortage of stock on the date of search and on other side he is making addition of Rs.107,25,96,565/- in respect of stock in trade without the stock in such huge quantity being found during the exhaustive search operation. In absence of any defects pointed in books, and also when the search operation could not establish any unaccounted stock, merely for the reason of difference in price of stock items in one software which is used for monitoring stock movement, such a huge addition cannot be made towards unexplained investments in stock, that too. when assessee has clarified the said difference and afso the software developer clarified that the data in Jilaba software cannot be considered as true. Therefore, we are of the considered view that the AQ was erred in making addition towards unexplained stock.

}. We further notice that the AO has made addition for the sole reason 16 ie the valuation of few top items of clasing stock (Minus date 'Null"}) on the J is of value in Jilaba data was examined. The valuation of the closing Parock is as per the sale value column and from the verifications made out of the product tables of earlier years, using the tag-key no, it was found that said sale value remains the same for the unsold product and actually it is the purchase cost to the assessee. In our considered view, the AO has misconstrued the column sale value so as to arrive at purchase cost of stock, as the assessee had explained the same as per which the name <salvaiue> itself suggest that it is not a purchase cost, The Assessing Officer's opinion that "the sale value shown is constant and hence it is purchase cost in case of closing stock" and accordingly assessing officer made addition on the basis of total of <saivalue> Column of all items, gets contradicted by the 4A?

actual data as reproduced below, i.e. there are many Cases where value of the Tag Key is changing and hence cannot be construed as purchase cost.

aan aia cose, ee a ery eel ee ae . g. No.29 of 34. Pg. net EP of 38 "

> Tag tame ae eect ;
>
> A1206 17, 88, 447 " 26,25,237 A1163 15,10,539 17 ,62,959 | A854 14,61,748 16,00,033 A1l140 11,62,642 13,78,317
>
> 43. Similar to above, there are numerous cases (other than instances appearing in assessment order) where value of an item 1s changing in different A.Y, aS per the report provided by the Assessing Officer. In fact, the meu IT(A), in para 4.4.29 on Page 122 of his appellate Order for Assessment Lae re te, : pret, A af 2012-13 has mentioned "Ady attention was also invited to detailed workings on P20) to 248 of the paper book considering various sample sizes of data including data fe gr the AO in his assessment order proving that the value in "salvalue> columns are ' ee fixing from

year to year and are not consian! as has been misteadingly held by ihe AO"

Our attention was drawn to the fact that the submission of the assessee alongwith the detailed working of all these figures were sent Co the AO for remand report. However, the AO has refrained from making any comment on it in the remand report. The Jilaba data which was generated by the AO was Called by the CIT(A) in pen drive and was test checked by him with the valuation as per the valuation report, detailed comparison of which were at Pages 249 to 275 of the paper book. On verification of the same on a test check basis, the CIT(A) found that the contention of the appeilant was correct and it was clear that the value of items appearing in the Jilaba software were not the purchase values as the same were much lesser than the valuation of the same iterns as per the valuation report, which value the items at cost. It was also pointed out by the AR that the AO has not pointed out any quantitative discrepancies in the stock found nor has pointed out any large scale purchases or sales that were found to be entered-in the Jiaba data but were not entered in the regular book of accounts, which were maintained in the tally software.

44. We further noticed that the CIT{A} in his order for assessment year 2012-13 has given @ categorical finding that all the showrooms of the appellant were subjected to search and ail the stock in various showrooms were valued by the Departmental Valuer and hence all the stock on the date of search was fn the possession of the Department and was subjected to valuation by the Departmental Valuer. Any discrepancy found as a result of this exercise was offered as additional income in his return of income for AY. 2015-16 oy the appeflant. The appellant has also submitted a letter from ',Jilaba' which clarifies that the value of purchases/stock cannot be obtained from the Jilaba data as purchases were not entered in the Jilaba system. The ld. CIT(A) further observed that the Jilaba software was column "saie value of the stock items is not the purchase price/cost of the appellant. All the doubts raised by the AO in the assessment order have been adequately answered by the appellant during the course of appellate proceedings. The capy of seized data on basis of which the AO has made these additions, the assessment records and the remand report sent by the AQ has been considered along with various submissions of the appellant. The Assessee has given a detailed reply and working, which has been test checked by the CIT(A} and found to be correct. The CIT{A), has apprised the facts in right perspective before coming to the conciusion that the AO was erred in making addition towards difference stock u/s 69 of the Act. The DR has not been able to point out any discrepancy during the hearing of the above appeal nor has been able to contradict the fetter submitted by the Assessee from the jilaba software company, Clearly stating that the <salevalue> in the Jilaba software, cannot be considered as purchase price as contended by the AQ.

45. We also uphold the deletion of the addition made for the Assessment Year 2011-12, as the Assessment of which stands unabated as on date of search and no incriminating decument were found during the course of search on the basis of plethora of judgmients including jurisdictional High court judgment in case of CIT vs. Continental Warehousing Corporation {Nava Sheva} Ltd. (2015)-374 ITR 645 and Division Bench judgement of the Hon'ble Bombay High Court in the case of CIT vs. Murli Agro Products Ltd.

014) 49 taxmann.com 172. This legal position is further strengthened by ecision of Hon'ble Delhi HC in case of CIT vs. Kabul Chawla (2016) 380 73 {Del} and the Hon'ble Gujarath High Court in the

case of Pr. CIT vs. mya Construction Pvt. Ltd. 2016 Tax Pub (DT) 3466 (Guj- HC). In this tase, search took place on 10-09-2014 and by the time the assessments for A.Y. 2009-10 to A.Y. 2011-12 have been unabated and the time limit for issue of notice under Section 143{2) has been expired, therefore, in absence of any incriminating material found as a result of search no addition could be made in the assessment framed under Section 153A of the Act.

46, In this view of the matter and considering the case laws discussed herein above, we are of the view that the AO was erred in making additions towards unexplained stock u/s 69 of the Act. The Ld. CIT(A) after considering relevant facts has rightly deleted additions made by the AO for all assessment years. Hence, we are inclined to uphold the. Id. -CIT(A) findings and reject grounds taken by the revenue for all assessment years.

47. The next issue that came up for our consideration is addition on account of loans u/s 68 of the Act, for 4.Y¥. 2012-13, 2013-14 and 2014-15. The AQ has added Rs.2,00,00,000/- for assessmént year 2012-13, Rs.55,00,000/- and Rs.1,32,00,000/- for Assessment Years 2014-15 and 2015-16 respectively, During the Assessment year 2012-13, the appeliant had taken unsecured loans totaling to Rs.2,06,00,000/- from 4 companies as under :

Name of Company * | Amount of foan accepted and repaid . (R5.) _.

Rocket Infrastructure Pvt 50,00,000/-

Ltd Garret Vintrade Pvt Ltd 50,00,000/ -

Preview Infrastructure 50,00,000/ -

Pvt Ltd Magnet Foundry 50,00,000/ -

Suppliers Pvt Ltd |

48. The assessee submitted before the AO that said loans were taken by > GS/account payee cheques and were repaid during the same financial br alongwith interest after deduction of tax at source (TDS). During the syerse of assessment proceedings, the Appellant had produced various S45 cuments to substantiate ingredients of s. 68 of the Act, including Complete name, address and PAN of creditors, confirmation of loan from creditors and copy of ITR and Audited financial accounts of the creditors. However, the 40 was not satisfied with the above documents for the reason that the companies are Kolkata based, they have shown minimal income in their return of income and out of the four companies, three are controlled by ene Shri Rajendra Bubna who has stated in his statement before investigation Wing of the department at Kolkata that he manages and controls many companies that functions as conduit for unaccounted funds in the garb of share capital etc. Therefore, the AO has providing | treated these loans as bogus and made addition of Rs. 2 crore u/s 68 of the Act.

49. We have heard both the parties, perused materials on record and gone through orders of authorities below. We have also carefully considered case jaws relied upon by either party. The AO has made addition towards. loans u/s 68 of the Act, on the ground that the assessee has failed Lo offer any explanation with regard to the credits found to discharge its burden cast upon u/s 68, te. identity, genuineness and credit worthiness of parties. The provisions of section 68, deals with a-case, where any sum found credited in the books of account of the assessee in the financial year in) which the assessee, offers no explanation or explanation offered by the assessee, in the opinion of the AO is not satisfactory, then sum found credited may be eePated as income of the assessee of that previcus year. A plain reading of pn 68 of the Act, the AO has to examine 3 ingredients, i.e. identity, otherwise. Having said so, let us examine whether the assessee has discharged the burden cast upon it under section 68 of the Income-tax Act, 1961 in respect of loans received from parties. The AO never disputed the fact that the assessee has furnished various evidences to prove identity of the subscribers. The AO categorically admitted in his assessment order that the assessee has filed various details including PAN, CIN master data, and IT acknowledgement. receipt of subscribers tc prove the identity. The AQ has disputed genuineness of transactions and creditworthiness of the parties. The assessee had submitted a detailed written submission along with supporting documents. The appellant has filed audited balance sheet and profit and loss account of all creditors, confirmation of loans and copy of income tax return of creditors. The explanation/documents submitted before AO reveais that the creditors are companies registered under Indian Companies Act, 1956. Those creditors are regularly assessed to tax and regularly filing return of income tax and that each creditor has given loan of Rs. 50 lakh to the appellant and as per Audited Balance Sheet of the creditor companies their net worth is much more than the amount lent by them. The loan transaction (receipt and payment) is through RTGS and duly reflected in bank statements.

50. The ld. CIT(A) after considering relevant facts has observed as under:

> 4.3.2 J find force in the arguments of the appellant. | find that the creditor companies are registered under Indian Companies Act, having PAN and assessed io tax. Therefore, identity of creditor stands established. Neat requirement under provision of section 68 is to prove genuineness of the transaction, 1 find that the joan has been taken via banking channel and duly reflected in bank account af beth the parties viz the Appellant and the creditor company. Mureover, the foans : have been repaid during the same Financial year through banking channel 2 alongwith interest after deduction of TDS%, The transaction of repayment of loan oy ix also appearing in bank statement of both the parties. Thercfore, genuineness of transaction stands established. Next requirement under provision of section 6& is io prove the creditworthiness of the Appellant. The Appellant submitted that Bank account of creditor clearly establishes ihe source of investment. The Appetlant submitted that the creditor companies have sufficient share capital and reserves fo give toan, Even the AO in the assessment order has acknowledged that lending companies have adequate share premium, Thus, the Appellant has proved the eredit worthiness af the creditor. In view of above, f find that the Appellant has discharged the primary burden cast upon it to prove the identity, genuineness and creditworthiness of the creditor company.

> 43.3 The AG has observed. that the crediior companies had shown meagre income during the year, The AO further observed that the creditor companies had issued shares with huge premium raised from various Koikaia based companies and one Shri Rajendra. Bubna, in his statement before Jnvestigation Wing ai Kolkata, has stated that he is associated with few companies which are engaged in providing accommodation entries I do not find merit in the contentions af the AO. The appellant has explained ihe immediate source of unsecured loan wilt documentary evidences thereby discharging the onus cast upon him ander the provision of section 68 of the Act. The legal position has been setiled im so_far as the appellant is not required to prove the 'source of source' ag fas deen contented by the AQ. The AO did not find if any cash have been depasifed in the accounts of the creditor companies before providing loan to the Appellant. The appellant had produced sufficient evidence before A.O. lo discharge the initial onus cast upon if te prove the identity, creditworthiness and genuineness of the ay, transaction, I find that no adverse material was found during the course of search Ye prove that loan received by appellant was bogus or was an ar ranged affair of fre appellant. Therefore, the AO was not justified in making the addition under Peection 68 of the LT. Act against the appellant.

51. The CIT{A), while deleting addition towards foan u/s 68 of the Act, has relied upon the following judgments. The Hon. Delhi High Court in the case of CIT Vs. Dwarakadhish Investment P. Ltd. (ITA Nos. 911 of 2010) wherein it was held as under-

> "In any matter, the onus of proof is not a static one, Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assessees yet once he proves the identity of the creditors! share applicants by either furnishing their PAN number ar income-tax assessment number and shows the genuineness of transaction by shawing money in his books either by account! payee cheque or By draft or by anv other mode, then the onus of proof would shift to the Kevenue. Hust because the creditors! share applicant's could not be found at the address giver, ft would not give the Revenue the right to invoke section 68. One must nol lose sight | of ihe fact that it is the Revenue which has all the power and wherewithal to trace anv person. Moreover, it is settled law that the assessea need nal fo prave the "vauree of source", The assessee-company was engaged in the dusttess of financing ane trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,73,000/- in ihe share capital af the assessee, The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the ussessee failed to explain the addition of share application money from five of fis subscribers, Accordingly, the Assessing Officer made an addition of Rx.35,50,000/- with the aid af section 68 of the Aet, 196! an account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner af income-tax (Appeals) deleted the addition an the ground that ihe assessee had proved the existence of ihe shareholders and the genuineness of the

transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner af income-tax (Appeais} as it was also of the opinion that the assessee had been able - to prove the identity of the share applicants and the share application money had been received by way af account payee cheques. On appeal to the High Court:

Held. dismissing the appeals, that the deletion, of additian was justified."

ii} Decision of the Hon'ble Supreme Court. CIT vs Lovely Exports P. Ltd.

[2008] 216 CTR 0195, in which ft was held as under:

"if the share application money is received by the assessee company from alleged ogus shareholders, whose names are given to the AQ, then the Department is é fo proceed to reopen iheir individual assessments in uccordance with law, uf it cannot be regarded as undisclosed income of assessee company."

Decision of Delhi High Court in the case of CIT vs Karndhenu Steel & Alloys Ltd. &Ors.361 ITR 0220 (Delhi}, in which it was held as under:

"Once adequate evidence! material is giver, which would prima facie discharge ihe burden of the assessee in praving the identity of shareholders, genuineness of the transaction and creditwarthiness of the shareholders, thereafter tn case such evidence is. to be discarded or it is proved that i has "created" evidence, the | Revenue is supposed to make thorough, probe before it could nail the assessee and fasten the assessee with such a liability under 5.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s. 68 was not sustainable. "

iv} Decision of Bombay High Court in the case of CIT v. Goa Sponge and power Ltd (Tax. Appeal 1.6 of 2012), in which it was held as under:

"Once the authorities have got all the detaily, including the names ana addresses of the shareholders, their PAN / GIR number, so alive the name of the Bank from which the alleged investors received maney as share application, then it cannot be termed as 'bogus" The controversy.is covered by the judgments rendered by the Hon'ble Supreme Court in the case of Lovely Exporis Pvt. Ltd, vs CI? (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Tetefilms Lted., (2071) 333 iTR 106 (Bom.). in such circunistances, we are of the view that the Tribunal's finding that there is no justification in the additian made under Sectiort ~ ar 68 of the fncome Tax Act, 196] neither suffers from any perversity nor gives rise WP to any substantial question of law.

Jy Pe) ie) he Hon'bie ITAT, Mumbai in the case cf Royal Rich Developers Pvt. Ltd.

"and the Hon'ble [TAT, Kolkata in the case of SubhalakshmiVanijya (P) Ltd. had held that the operation of proviso as inserted in Section 68 of the LT. Act by Finance Act, 2012 shail be rétrospective. However, | find that in a recently concluded judgment of the Hon'ble Bombay High Court it was held that the operation of proviso to. Section 68 is to be prospective and not retrospective. The Hon'ble High Court of Bombay in Income Tax Appeal. No. 1613 of 2014 (CIT vs. Gagandeep Infrastructure Pvt. Ltd.) decided on 20/03/2017 has held the fotlowing:

"fe) We find thai the provisa to Sectian 68 of the Act has deen introduced by the Finance Act 2012 with effeet from IstApril, 2013. Thus it would be effective anly from the Assessment Year 2613-14 onwards and net for the subject Assessment Year. in fact, befare the Tribunal, if was not even ihe case of the Revenue that Section 68 of the Act as in force during the subject years has ta be read/ understood as theuch the proviso added subsequently effective only front isi April, 2013 was its normal meaning. The Parliament did not produce to proviso io Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "far removal af doubts" or that if is declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso ta Section 68 af the Act is immaterial and does not change the interpretation af Section 68 of the Act both before and afier 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 clown by the Courts namely the genuineness of the transaction, identity and the capacity af 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 thar such large amount of share premiun gives rise to suspicion on the genuineness (identity) af the shareholders ie. they are bogus. The Apex court in Lovely Exports (2) Lid. fsupra) in the context to the pre-amended Section 68 of the Act has heid that where ihe Revenue urges that the amount of share appheation money has been received from bogus shareholders then it is for the income Tax Officer ta proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. it does net entitle tha Revemie fo add the same to the assessee's income as unexplained cash credit."

'. Considering ihe totality af facts of the case and in the light af material on record, His clear that. the appellant produced sufficient documentary evidences before AC te prove the genuineness of loan transaction. The AQ did nut find any defect in the documentary evidences but merely suspected the loan taken by ihe appellant from the creditor companies to be "deemed" income of the appellant. the AO did not bring any evidence on record that the loan provided by the creditor companies were actually emanated fram the coffers of the appellant so as fo enable if to be treated as undisclosed income of the appellant. The jurisdictional High Court in case of Més Gagundeep Infrastructure Pvt. Lid has held ihat the operation af provisa to Section 68 is operative fram AY. 2013-14 onwards. The Hon'ble Dethi High Court in case of M's Dwarkacdhish Divestment Put. Lid. has heid that the assessee need not prove source af source of income.

of SF Moreaver the AQ in the assessment order has himself held that the lending companies had enough share capital and share premium to lend the amount, Further, ihe loan has been returned during the year through banking channel ¢ with interest and that the interest has been subjected to Tax Deducted at Source. Therefore, considering the facts, circumstances and binding judicial precedents, 1 am of the considered view that the appellant has discharged initial omus ta prove identity, genuineness and creditworthiness of the loan transaction. Therefore, the AO was not justified in making an addition of Rs. 2,00,00,000/ and hence, the AG is directed to defete the same. Ground No.4 is accordingly allowed,

52. We find that the Id. CIT(A} thoroughly examined the issue in the light of facts brought out by the assessee and also various case laws brought to his knowledge before coming to the conclusion that the assessee has produced oa! the required evidences, has paid interest, deducted TDS and repaid the ' ait during the same financial years and as the AO has not brought on any dance except the said statement. Therefore, we are of the considered gw that, the AO was erred in making addition towards unsecured loan u/s € of the Act, when all three ingredients provided in said section has been proved with necessary evidences. The Id. DR failed to bring on record any evidences to controvert the findings of Id. CIT(A). Hence, considering overall facts and by following the ratios of case laws discussed above, we uphold the deletion of said addition towards loan u/s 68 of the Act.

53. As regards the Loan taken from M/s. Haldaur Leasing Finance Private Limited {HLFPL}, the assessee had submitted various details and explanations during the assessment and appellate proceedings as per which, the Company was incorporated in year 1990 in Binor, Uttar Pradesh. Its business was of financing, leasing of vehicle & sale of vehicfe, Hire Purchase& commission income. This business was continued till 31.3,.2009. The company changed its registered office from Bijnor to Kolkata on 12.06.2010. The Company is Non-Banking Financial Corporation registered 3G with Reserve Bank of India under Certificate of Registration No. 8.05.06956, The company M/s HLFCPL being a NBFC has to comply with very strict norms under RBI Rules and Regulations. M/s HLFCPL has duly complied with the RBI rules and regulation during its entire existence from the date of securing the NBFC Status. Further sometime in June 2009 M/s HLFCPL initiated the process: of shifting its registered Office from Bijnor in Uttar Pradesh to Kolkata in West Bengal. The company had to comply with very stringent requirement when it was time and again called to establish its business existence, genuinely of its operations, Ousiness working and génuinity of its management. Apart from above, the Company was required vide RBI letter dated 29/04/2013 (Copy enclosed) to explain the authenticity and veracity of the raising of share capital and share premium during FY 2009-

10. The. company management complied with all the requirements of information and evidences and finally secured the order from RBI for shifting of the registered office from Uttar Pradesh to West Bengal. This order of RBI dated 26/02/2014 confirms it registration by the RBI which by no means . is any lesser in terms of compliance and due -diligence with income Tax artment. M/s HLFCPL had been assessed under sec 143{3) rw.s 147 : order Date 30-12-2010 for A.Y. 2009-10, wherein the issue of share Abi fal raised by M/s HLFCPL is dealt with to examine the Identity, iYshuineness and credit worthiness of the company M/s HLFCPL as well the subscribers to the Share capital . The AO had accepted the raising of share capital at a premium by conducting detailed

enquiries that is whyno adverse findings, observations were recorded by the AO. (Copy Enclosed}. The ITO scrutinized process of issue of 18440 equity shares of Rs.100/- each at a premium of Rs.9900/- per share.ITO sent notice u/s 133(6) ta majorshare applicants on test check basis. The ITO placed records of all repliesreceived from applicant companies.The income of the company for Asst. Year2009-10 was assessed u/s 143(3)/147 of the Income Tax Act,1961 and demand 5g raised u/s 156 for Rs.16790/-, The company had also been assessed u/s 143(3) for A.Y. 2010-11 vided ordered dated 31-03-2013 where no adverse - facts as to the business model , business/ operational existence and head of income has been observed and recorded. This Assessment order in 'Subsequent years after assessment u/s 147 cements the factual position of company being operational and functioning. {Copy Enclosed} The said company was introduced by a friend Shri Prihar during March 2012, he informed that company has facing problems to comply with the norms of RBI, applicable for NBFC and struggling to get its investments liquidated which are blocked since Jong. He also informed us about required investment and efforts to make.

54. As regards the issue of notices to 18 Share Applicants, the AO has erved that the statement of Shri Pradéep Kothari, Directer, HLFCPL, SMe recorded under Sec.131 of the Act on 08/12/2016 and it was found raithe information supplied that afl the original investor-companies were Heike based. Natices u/s S886) were issued to them as per the awh.

regarding the source of their funds, Out of these in 16 cases, the Notices u/s 133(6) of the Act were not delivered and returned back dnd in 2 cases, though the Notices were received but no reply was furnished by the creditor.(Para No. 10, Page No. 7 of A.Y. 2013-14}, The assesses was confronted and also asked to furnish tne latest address of the creditors, which was not given Neither by the assessee nor the above said company i.e. HLFCPL have preduced the investor companies to substantiate their identity and the creditworthiness and genuineness of the transactions. But, fact remains that letter was submitted to Department on Date 99/10/2017 seeking information regarding all the 18 parties te whom summons u/s 133(6) have been issued, out of which 16 were not delivered and returned back in 2 cases notice was.received but no reply was furnished.

BQ Therefore, we are of the view that when addition is made on the basis of third party statements, the AO ought to have furnished such statements for the assessee for its rebuttal. In this case, the AC had made additions without confronting such statements in victations of principles of natural justice, In a recent judgement of Hon'ble Bombay High court, in the case of CIT vs Harish D. Mehta, the High court has dealt with this issue. In the ahove case, transportation charges were paid by the assessee by crossed cheques. 4.0. doubted the transactions and issued notices u/s 133{6), which were unserved, A.O. treated the amounts paid as bogus entries and made the additions in this regard. [t is held by the jurisdiction High court that non- attendance or non-service of notices without anything more- could not be reason enough to sustain the addition.

55. We further noticed that the company has declared sufficient income in its return of income right from A.Y. 2003-04 to A.Y. 2015-16 as per which it had declared income ranging between Rs. 7.43 jacs to Rs. 86.57 lacs. The pussessee has established credit worthiness of the parties by filing details of Napbirce of source. The assessee has furnished complete details and said information is genuine (i.e. PAN CARD, ITR, Confirmation, Bank statement) | and no efforts was made by A.O to determine

the same. That Jewel India Pvt Ltd (Total 92 Lacs out of 132.87 Lacs) is a well know Kolkata based company invelved in Jewellery business and it was lack of effort on the AQ to enquire the same from the party through 133(6). The Identity of all the Company, was proved beyond doubt by the Evidence of the PAN card Copy, Copies of their Income Tax Returns and Copy of Order of RBI. The Genuineness of the Transaction was established from the Confirmation Letter and the Bank Statements of the Company that were filed. This established the fact that the loan was received by Cheque/RTGS from the Bank Account of the said Company. The Full set of Audited Financial Statements of the said Company was submitted on the record of Ld. A.O, This alongwith the §1 balance sheet clearly established the loan given by the said Company to Assessee Company and their year-wise Income Track record proved the Capacity of the said Company. The assessee has also Proved the Source of source, by bringing on record the source of amount received by the said company along with the nature of transaction. The AR has vehemently argued that proviso to Section 68 is not applicable to assessee's case as the applicability of proviso to Section 68 is for any such amount in the nature of Share Application Money, Share Premium and does not envisage the Loan Amount. Further, we find that just because the bank statement of M/s.

bwas a NBFC company and would not like to keep its funds blocked in the 'ee as account, when it could easily utilize its funds for earning income as * ir 4 2 . . a E azcompanies are compulsorily required to keep funds in current account on which no interest is received. We further noted that just because the said company was taken over at much reduced price it cannot be said that the said company lacked credit worthiness especially when the company not only had proved the source of its fund but source of source also. There may be several reasons due to which the directors are forced to saie the companies and adhering to strict RBI guidelines in case of NBFC companies is-one of them.

56. Considering facls and circumstances of this case and by following ratios of case laws discussed above, we are of the considered view that the said loan amount could not be added under the first proviso to Section 68 as aiso that the identity, creditworthiness and genuineness of the transactions are proved, Hence, we direct the AO to delete the addition on account of loan recelved from M/s. HLFPL in bath the years.

be és

57. In the result, all appeals filed by the Revenue for A.¥. 2010-11 to 2015-16 are dismissed and appeals filed by the assessee for A-¥. 2012-13, 2014-15 and 2015-16 are allowed.

Order pronounced in the open court on 03 December, 2018.

ON | Sd/- sd/- | ;

eo (Sandeep Gosain) __ (G Manjunatha) é JUDICIAL MEMBER ACCOUNTANT MEMBER | we "Mumbai, Dt: 037 December, 2018 Pk/-

Copy to:

Appellant Respondent CIT(A) CIT ne me TB GN