

Ito 8(3)(2), Mumbai vs Sringeri Technologies P.Ltd, Mumbai on 29 December, 2017

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Sringeri Technologies Pvt Ltd

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

Before Shri Mahavir Singh (JUDICIAL MEMBER)
AND
Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.3924/Mum/2014)
(Assessment year: 2010-11)

ITO, 8(3)(2), Mumbai

vs

M/s Sringeri Technologies Pvt Ltd
Flat No.21, Bldg No18, Off Mahakali
Caves Road, Andheri (E), Mumbai-93
PAN : AANCS9470J

APPELLANT

RESPONDEDNT

Appellant by
Respondent by

Shri Manjunath Swami
Shri Prakash Jhunhunwala

Date of hearing
Date of pronouncement

10-11 -2017
29-12-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the revenue is directed against order of the CIT(A)-18, Mumbai dated 21-03-2014 and it pertains to AY 2010-11. The revenue has raised the following grounds of appeal:-

"i. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.12,00,00,000/- made on account of share application money received treating it as unexplained income of the assessee u/s.68 of the I.T.Act, 1961."

ii. On the facts and in the circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the assessee had failed to discharge the onus of substantiating the genuineness of these transactions and creditworthiness of the said investors." iii. On the facts and in the circumstances of the case and in law, the Sringeri Technologies Pvt Ltd CIT(A) erred in not appreciating the fact that neither the financial position of the said investors is strong enough to substantiate the investment of such huge amounts in the assessee-company nor the financial position of the assessee-company justifies charging of premium of Rs.90/- per share having face value of Rs.10/-

iv. On the facts and in the circumstances of the case and in law, the CIT(A) erred in placing reliance on the judgement of Supreme Court in the case of Lovely Exports Pvt. Ltd. (216 CTP. 195) (SC) since facts involved in that case are distinguishable from the facts of the assessee's case."

V. On the facts and in the circumstances of the case and in law, the CIT(A) erred in ignoring the ratio laid down by the jurisdictional Bombay High Court dated February 22, 2012 in the case of Major Metals Ltd. Vs. UOI (Writ Petition No. 397 of 2011), wherein judgements in cases of M/s. Lovely Export Pvt. Ltd. (216 CTR 195) (SC), CIT V/s. Creative World Telefilms Ltd (2011) (333 ITP. 100) (Born) etc. relied upon by the assessee have been discussed and distinguished while holding that that amounts shown to have been received as share application money has to be taxed as income of income of the assessee company from undisclosed sources in accordance with the provisions of section 68 of the Income-Tax Act, 1961."

vi. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in ignoring the ratio laid down by the Hon'ble Delhi High Court in the case of (i) CIT Vs. Nova Promoters & Finance (Pvt.) Ltd. (2012) (342 ITP. 169) and (ii) CIT Vs. NR Portfolio (Pvt.) Ltd. (2014) (42taxmann.com339), wherein after discussing the judgement in the case of Lovely Exports it was held that amounts shown to have been received as share application money has to be taxed as undisclosed income of the assessee within the meaning of section 68 if the assessee fails to establish the genuineness of the transactions and financial capacity of the said investors."

Sringeri Technologies Pvt Ltd

2. The brief facts of the case are that the assessee company was incorporated on 05-03-2010, filed its return of income for the assessment year 2010-11 on 06-10-2010 declaring total income at Nil. The assessee has subscribed share capital of Rs.3,86,540,500 and share premium of Rs.12,60,00,000. During the year under consideration, the assessee company has issued shares with a face value of Rs.10 at a premium of Rs.90 per share for all outside parties, however, issued shares to its directors at a face value of Rs.10/-. Out of the total share capital received of Rs.16,46,50,500 the assessee company has received share capital of Rs.12 crores from 9 companies, out of which 3 companies are registered with Registrar of Companies (ROC), Mumbai having address at Mumbai and remaining 6 companies are registered in Registrar of Companies, Kolkata. During the course of assessment proceedings, the AO issued show cause notice and asked the assessee to prove the identity, genuineness of transactions and creditworthiness of the parties, who subscribed to the share capital. The AO also asked the assessee to justify issue of shares at a premium of Rs.90 per share. In response to show cause notice the assessee has furnished various details including share application forms, share certificates, return of allotment filed with ROC, confirmation of account from parties, Board Resolution for issue of shares at premium, PAN of subscribers, CIN master data (ROC), I.T. acknowledgement receipt of companies alongwith their financial statements and bank statements. The AO, after considering relevant submissions of the assessee and also on perusing various details filed by the Sringeri Technologies Pvt Ltd subscriber, issued notices to all subscribers u/s 133(6) to the addresses given. Out of those 10 companies, notices issued to 3 parties, viz. M/s V.D.R. Consultants P Ltd, M/s Heena Textiles Ltd and M/s Katrina Trading Pvt Ltd were not served. Remaining parties had filed their replies to notice u/s 133(6) and submitted various details called

for by the AO. Later, the 3 companies, on whom notices u/s 133(6) could not be served have filed their replies to the AO alongwith various details. The AO also issued summons u/s 131 to directors of the company. In response to summons, the directors of certain companies have appeared before the AO and given their deposition wherein they have admitted subscription of share capital of assessee company. The AO also recorded statement of Shr Ritesh Burhad, CA u/s 131 of the Act. Based on the evidences filed by the assessee, information received from subscribers, notices issued u/s 133(6) and statements recorded from directors of certain companies, the AO came to the conclusion that although the assessee has proved identity of subscribers, but failed to prove genuineness of transactions and creditworthiness of the parties as all the companies are paper companies and do not have any capacity to prove subscription of huge share capital to the assessee company. The AO also has taken into account report received from DDIT(Inv), Kolkata, in response to a commission issued to verify genuineness of claim in respect of Kolkata parties wherein the Inspector attached to the DDIT(Inv), Kolkata submitted the report that the parties were not available at the given address. The AO has given his own reasons to come to the conclusion that the alleged Sringeri Technologies Pvt Ltd share capital received from 9 companies is not genuine and such findings has been given in has assessment order on page 3 to 27. The AO has relied upon various decisions and also distinguished case laws relied upon by the assessee to come to the conclusion that the assessee has failed to establish genuineness of transaction and creditworthiness of the parties and accordingly made addition of Rs.12 crores u/s 68 as unexplained credit.

3. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A) . Before the CIT(A), the assessee has filed elaborate written submissions which are reproduced in CIT(A)'s order on pages 14-18. The assessee also relied upon plethora of judgements including decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd & Hon'ble Bombay High Court in the case of CIT vs Goa Sponge & Power Ltd. The sum and substance of the assessee's submission is that it has filed various details to prove identity of subscribers and also filed enormous documents to prove genuineness of transactions and creditworthiness of parties. The assessee further submitted that the AO has ignored all evidences filed by the assessee merely on suspicion and surmises only on the ground that the notices issued to those companies were returned unserved despite furnishing of document alongwith affidavit before completion of assessment. The assessee further submitted that subscribers to the share capital have filed their affidavits and confirmed transaction of share application money with the assessee company along with all documents. The AO has ignored all evidences filed by the Sringeri Technologies Pvt Ltd assessee to make addition towards share application money u/s 68 of the Act.

4. The CIT(A), after considering submissions of the assessee and also relying upon various case laws relied by the assessee observed that the assessee has filed complete documentary evidences to prove identity of subscribers and also filed enormous documents to prove genuineness of transaction and creditworthiness of the parties. The CIT(A) further observed that the AO has ignored all evidences filed by the assessee on flimsy grounds ignoring the fact that the subscriber to the share capital has capacity to prove subscription of share capital to assessee company. The AO also ignored affidavit filed by the subscribers wherein they have deposed before the magistrate alongwith all evidences. The CIT(A) further referring to the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports (2008) 216 CTR 195(SC) observed that when the assessee has

furnished details of subscription including their PAN, it is incumbent upon the AO to proceed further in accordance with law to reopen assessment of subscribers, if at all he is having doubt about the genuineness of transaction and creditworthiness of the parties, but cannot make addition u/s 68 of the Act to share capital in the hands of the assessee. The CIT(A) also discussed the proviso provided to section 68 by the Finance act, 2012 wef 01-04-2013 and observed that there is no reason for the AO to make addition towards share capital and share application money in the hands of the assessee as the said proviso inserted by the Finance Act, 2012 is applicable from AY 2013-14 onwards. With these observation, the CIT(A) deleted the addition Sringeri Technologies Pvt Ltd made by the AO towards share capital u/s 68 of the Income-tax Ac6, 1961. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

5. The Ld.DR submitted that the Ld.CIT(A) erred in deleting the addition of Rs.12 crores made on account of share application money received treating it as unexplained income of the assessee u/s 68 of the Act. The Ld.DR further submitted that the Ld.CIT(A) erred in not appreciating the fact that neither the financial position of the said investors is strong enough to substantiate the investment of enormous sums, nor the financial position of the assessee company justifies charging of premium of Rs.90 per share having face value of Rs.10 per share. The Ld.DR further submitted that the assessee was incorporated in the financial year relevant to AY 2009-10 and without there being any business activity charging huge premium of Rs.90 per share and subscription of share capital with a huge premium of Rs.90 per share of unknown companies appears to be sham transaction. Though the assessee has filed various details to prove identity of the subscribers, the shell companies formed by hawala operators always keep documents to prove identity. But the fact is that mere filing evidences for proving identity will not discharge the onus cast upon the assessee to prove the requirements of section 68, i.e. genuineness of transaction and creditworthiness of the parties. The AO has brought out various reasons to come to the conclusion that the transaction the assessee company had with those 9 companies is not genuine transactions and hence the CIT(A) was erred in deleting addition made by the AO towards share Sringeri Technologies Pvt Ltd application money u/s 68 of the Act. In support of his argument, he relied upon the decision of Hon'ble Bombay High Court in the case of Major Metals Ltd vs UOI Writ Petition No.397 of 2011 and Hon'ble Delhi High Court in the case of CIT vs Nova Promoters & Finlease Pvt Ltd (2012 342 ITR 169 & Hon'ble Calcutta High Court in the case of Subbalaxmi Vanijya Pvt Ltd vs CIT 155 ITD 171 (Cal) and Raj Mandir Estate Pvt Ltd vs Pr.CIT 386 ITR 162.

6. On the other hand, the Ld.AR for the assessee strongly supporting the order of the CIT(A) submitted that the assessee has proved identity, genuineness of transaction and creditworthiness of the parties by filing various documents including, PAN, CIN master data, share application form, Board Resolution, share certificate, confirmation of account, I.T. Acknowledgement receipt of subscribers, balancesheets, bank statements, reply to the notice issued u/s 133(6) of shareholders, affidavit filed by the directors of shareholder companies, sales-tax returns and share capital and reserves of shareholders. The AO has ignored all evidences to come to the conclusion that all those companies are paper companies without any business activity. The Ld.AR further submitted that the assessee has filed all details to prove the existence of companies and their business activities which is evident from the fact that all these companies are having huge turnover and net profit and also reserves and surplus to justify subscription of share capital to the assessee company. The assessee

also furnished other details including bank statements of subscribers to prove that there is no instance of any cash deposit before the date of issue of Sringeri Technologies Pvt Ltd cheques and also sales-tax returns to prove the business activity of the assessee. The Ld.AR further submitted that out of the 9 companies, 3 companies were assessed in Mumbai, in which the scrutiny assessment orders have been passed for the assessment years 2011-12 and 2012-13, where this issue was not found place in assessment order. The Ld.AR further submitted that merely because notices issued u/s 133(6) were returned unserved, addition cannot be made towards genuine transactions despite furnishing of all evidences before the AO at the time of completion of assessment. The Ld.AR further submitted that it is incorrect on the part of the AO to come to the conclusion that the assessee has routed its own funds in the form of share capital from those companies without appreciating the fact that the assessee company was incorporated on 05-03-2010 and not even carried out business activity for one month during the relevant financial year. On the other hand, the assessee has furnished enormous documents to prove the transaction as genuine subscription of share capital but the AO has ignored all evidences only on flimsy grounds by considering the facts which were favourable to the revenue ignoring the fact that the transactions with assessee company are genuine transactions. The Ld.AR further referring to the certificate issued by the Chartered Accountant, M/s Poojan Mehta & Co dated 10-11-2017 submitted that all these companies are active in the website of MCA and none of the companies has been delisted in the list prepared by the MCA as shell companies. The Ld.AR also furnished the master data generated from the website of MCA as per which all the companies Sringeri Technologies Pvt Ltd were active and filed their balance-sheet upto 31-03-2016 and in some cases, upto 2017.

7. The Ld.AR referring to the observation of the AO with regard to the affidavits filed by the directors of subscribers, submitted that there is no reason for the AO to ignore affidavits which are supported by valid documents and also deposed before a Magistrate Court. The AO, during the course of remand proceedings also reiterated his stand taken in the assessment proceedings despite the assessee has furnished further evidence to prove the genuineness of transaction. The mere fact that the assessee has issued share capital with a premium is not a reason for doubting the genuineness of the transaction. The issue of shares at a premium and subscription of such shares by the subscribers is within the knowledge of the assessee company and subscribers and the AO cannot doubt the genuine transactions merely on suspicion and surmises without there being any adverse evidence in his possession. In this case, the AO has treated genuine share transaction with assessee company as unexplained cash credit on flimsy grounds ignoring evidence filed by the assessee. The Ld.AR referring to the paper book filed which contains 16 pages wherein he has furnished assessment order copies of 4 companies passed for the AYs 2008-09 to 2012-13. The Ld.AR further submitted that the AO has passed scrutiny assessment order in respect of these 4 companies wherein he has examined the issue of investment in assessee company without there being any adverse comments. Therefore, there is no reason for the AO to doubt the genuineness of Sringeri Technologies Pvt Ltd transactions. As regards creditworthiness of the parties, these companies are having regular business activities which is evident from the fact that they have filed regular income-tax returns wherein they have declared huge share capital and reserves and surplus of Rs.336.67 crores, in aggregate whereas investment in assessee company is only Rs.12 crores. In support of his arguments, he relied upon the following judgements:-

1 CIT vs. Orchid Industries Pvt Ltd (2017) 397 ITR 136 (Bombay High Court) 2 CIT vs Gagandeep Infrastructure Pvt Ltd ITA No. 1613 of 2014 (Bombay High Court) dated 20/03/2017 3 CIT vs Creative World Telefilms Ltd 333 ITR 100 (Bom-High Court) 4 CIT vs Goa Sponge and Power Ltd ITA No.16 of 2012 (Bombay High Court) 5 CIT vs Green Infra Ltd ITA No. 1162 of 2014 6 CIT vs Lovely Exports (P) Ltd 216 CTR 195 (SC) 7 CIT vs Steller Investment Ltd 251 ITR 263 (SC) 8 Jaya Securities Ltd vs CIT (2008) 166 Taxman 7 (All) (SLP of dept dismissed) 9 CIT vs Jay Dee Securities & Finance Ltd 27-28 32 Taxmanncom 91(All-High_Court) 10 CIT vs Expo Globe India Ltd 361 LTR 0147 (Del-High Court) 11 CIT vs Gangeshwari Metal Pvt Ltd (2014) 361 ITR 10 (Del-High Court) 12 CIT vs Dwarkadhish Investment (P) Ltd 6 (2011) 330 ITR298 (Del High Court) 13 CIT vs Vrindavan Farms (P) Ltd ITA 71/2015 (HC-Del) 14 CIT vs Nay Bharat Duplex Ltd (2013) 35 Taxmann.com 289 (All High Court) 15 Mod Creations Pvt Ltd vs ITO (2011) 62 DTR 25 (Del-High Court)

8. We have heard both the parties, perused materials available on record Sringeri Technologies Pvt Ltd and gone through the orders of authorities below. The only issue that needs to be resolved is whether, on the facts and in the circumstances of the case, share capital received from 9 companies is unexplained cash credit u/s 68 of the Income-tax Act, 1961. The AO has made addition of Rs.12 crores towards share capital from 9 companies 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. According to the AO, all these companies are paper companies, did not have any actual business activity. The AO further observed that these companies did not have any capacity to establish creditworthiness to prove subscription of share capital. The AO further observed that the assessee is also not justified in issuing share capital at a premium of Rs.90 per share for shares having face value of Rs.10 in the first year of its incorporation. 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 received from 9 companies is unexplained cash credit.

9. The AO made addition towards share capital u/s 68 of the Act, on the Sringeri Technologies Pvt Ltd 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 no 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 the ambit of section 68 of the Act, the AO has to examine 3 ingredients, i.e. identity, genuineness of transaction and creditworthiness of the parties. If the assessee proves all 3 ingredients, then the onus shifts to the AO to prove otherwise. Similarly, the Proviso inserted by the Finance Act, 2012 wef 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 also 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 application 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 prospectively or retrospectively, Sringeri Technologies Pvt Ltd 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 (Bom) the Hon'ble Court observed that Proviso inserted to section 68 w.e.f. 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 or share premium before insertion of Proviso to section 68 if the source of source is not explained by the assessee.

10. 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 share capital received from subscribers. The AO has not 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, affidavits of shareholders and IT acknowledgement receipt of subscribers to prove the identity. The AO 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 to come to the conclusion that the assessee has failed to discharge genuineness of transaction and creditworthiness of the parties. According to Sringeri Technologies Pvt Ltd 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 notice issued u/s 133(6) to the subscribers to their given addresses were remain unserved. The AO also brought out some other reasons including statements given by directors of certain companies and 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. The AO also ignored statement given by the directors wherein they have categorically accepted that they have subscribed to the share capital of the assessee company. The AO also ignored affidavit filed by the subscribers on the ground that the report received from DDIT(Inv), Kolkata proves a fact that these companies are not identified at their addresses.

11. 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 in respect of 9 companies including their PAN details, CIN master data, affidavits sworn before Executive Magistrate, reply to the notices issued u/s 133(6). The assessee also filed copies of assessment Sringeri Technologies Pvt Ltd order passed u/s 143(3)

by the department in respect of 4 companies. The assessee also filed a certificate from a Chartered Accountant certifying the active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed filed by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions of creditworthiness of the parties. We further notice that all 9 companies are active in the website of ROC and also they have filed their balance-sheet upto 31-03-2016 and in some cases upto 31-03-2017. We further notice that the AO has furnished a report accepting the fact that all these companies are active in the website of MCA and none of the companies' name is struck off from the list published by the MCA as shell company. We further notice that the assessee has filed balance-sheet of all 9 subscribers wherein they have huge share capital and reserves and surplus to establish creditworthiness of the parties. On perusal of the balance-sheet filed by the assessee, we find that the aggregate of share capital and reserves of 9 companies is at Rs.333.67 crores, whereas investment in assessee company is only Rs.12 crores. We further notice that all companies are having regular business ranging from 2 to 3 crores. The assessee also furnished copies of sales-tax returns filed with Commercial Tax Department to prove the business activity of the assessee. All these evidences go to prove an undoubted fact that these companies are not paper companies and recognized with business activity. We further observe that the assessee also filed affidavit from the directors of subscriber Sringeri Technologies Pvt Ltd companies, wherein they have explained the reasons for not receiving communication sent by the AO u/s 133(6) of the Act. They further stated in the affidavit that they have subscribed to the share capital of the company and also furnished supporting evidences to justify investment in share capital of the company. 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. Therefore, we are of the view that the AO was incorrect in treating share capital alongwith share application money as unexplained cash credit u/s 68 of the Income-tax Act, 1961.

12. 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 premium of Rs.90 per share with a face value of Rs.10 per share on the ground that the assessee is new company without any business, not able to justify issue of shares at a premium of Rs.90 per share. We do not find any merit in the findings of the AO for the reason that the issue of shares at a premium and subscription to such shares is within the knowledge of the company and the subscribers to the share capital and the AO cannot 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 Sringeri Technologies Pvt Ltd which evident from the fact that the Hon'ble Bombay High Court has held that Proviso inserted to section 68 is retrospective 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 the Act, on flimsy grounds ignoring all evidences filed by the assessee.

13. Coming to the case laws relied upon by the assessee. The assessee has relied upon plethora of judgements including the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd (2008) 216 CTR 195 (SC). In the case laws relied upon by the assessee, the issue has been dealt as under:-

CIT vs. Goa Sponge and Power Ltd (13/02/2012) Tax Appeal No. 16 of 2012 (High Court-Bombay) "Once the authorities have got all the details, including the name and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd, vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Tele films Ltd, (2011) 333 ITR 100 (Bom). In such circumstances, we are of the view that the Tribunal's finding that there is no justification in the addition made under Section 68 of the Income Tax Act, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."

CIT vs. Creative World Tele films Ltd (2011) 333 ITR 100 (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 Sringeri Technologies Pvt Ltd judgment of the apex Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195. wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AO, then the Department 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. It was expected on the part of the AO to make proper investigation and reach the shareholders.

The AO did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable In our considered view, the AO ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the AO. In the above circumstances, the view taken by the Tribunal cannot be faulted."

CIT vs. Lovely Exports (P) Ltd (2008) 216 CTR 195 (SC) "If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

CIT vs. Steller Investment Ltd (2001) 251 ITR 263 (SC) (civil appeal) "That the increase in subscribed capital of the respondent- company could not be a device of converting black money into white with the help of formation of an investment company, on the round that, even if it be assumed that the subscribers to the increased capital were not genuine, tinder no circumstances could the amount of share capital be regarded as undisclosed Sringeri Technologies Pvt Ltd income, an appeal was taken by the Department to the Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal had come to a conclusion on facts and no interference was called for."

CIT vs. Nav Bharat Duolex Ltd (2013) 35 Taxmann.com 289 (All-High Court) "We have considered the arguments of the counsel for the parties. CIT(A) found that five companies subscribing the equity shares amounting to Rs. 25,00,000/- were identified and they had submitted their bank statements, cash extracts and returns filing receipts. As such identity of the share applicant companies and purchase of share had been proved by the assessee. Supreme Court in the cases of CIT v. Steller Investments Ltd. [2001] 251 ITR 263 and Lovely Exports case (supra), has held that the identity of the shareholder alone is required to be proved, in case of the capital contributed by the shareholders. Accordingly CIT(A) and the Tribunal has not committed any illegality in allowing the appeal of the assessee. We do not find any illegality in the judgment of the CIT(A) and the Tribunal." CIT vs. Jay Dee Securities & Finance Ltd (2013) 32 Taxmann.com 91 (All-High Court) "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 also 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 V. Lovely Exports (P.) Ltd wherein it was held that if the 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 relied upon an order of the Supreme Court in case of CIT v.

Sringeri Technologies Pvt Ltd Divine Leasing & Finance Ltd. In view of the decision 'of the Supreme Court, we dismiss the appeals with observations that the department is free to proceed to reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."

ACIT vs. Venkateshwarlspat Pvt Ltd (2009) 319 ITR 393 (Chhatisgarh-High Court) "If the share applications are received by the assessee from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as the undisclosed income of the assessee."

Mod Creations Pvt Ltd vs. /TO (2013) 354 ITR 282 (Del-High Court) "Held, allowing the appeal, (i) that the assessee had discharged the initial onus placed on it. In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, could be of no avail. The Revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The Revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The Tribunal without advertng to the principle laid stress on the fact that despite opportunities, the assessee and/or 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 of the creditors had chosen not to make a personal appearance before the Assessing Officer. If the

Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and Sringeri Technologies Pvt Ltd their income-tax returns, it could gather the necessary information from the sources to which the information was attributable.....If it had any doubts with regard to their creditworthiness, the Revenue could always bring the sum in question to tax in the hands of the creditors or sub-creditors." CIT vs. Al Anam Agro Foods (P.) Ltd (2013) 38 Taxmann.com 375 (All-High Court) Tribunal, however, held that since identity of shareholders stood proved on record, amount of share application money could not be added to income of assessee. According to Tribunal, in such a case amount could be taxed in hands of persons who had invested"

CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court) "Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke s. 68-- Revenue has all the power and wherewithal to trace any person--Moreover, it is settled law that the assessee need not to prove the 'source of source'-- In the instant case, the Tribunal has confirmed the order of the CIT(A) deleting the impugned addition holding that the assessee has been able to prove the identity of the share applicants and the share application money has been received by way of account payee cheques."

CIT vs. Namastey Chemicals Pvt Ltd (2013) 33 Taxmann.com 271 (Guj-High Court) "In the present case also, the respondent assessee has received share application money from different subscribers. It was found that large number of subscribers had responded to the letters issued by the Assessing Officer or summons issued by him and submitted their affidavits. In some 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 squarely within the ambit of the judgment of the Supreme court in the case of Lovely Exports (supra). No error of law can be stated Sringeri Technologies Pvt Ltd to have been committed by the Tribunal. Tax Appeal is therefore dismissed."

CIT vs. Peoples General Hospital Ltd (2013) 356 ITR 65 (MP-High Court) "Held, dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted."

CIT vs. Shree Rama Multi Tech Ltd (2013) 34 Taxmann.com 177 (Guj-HC) "It is noted that Commissioner (Appeals) as well as the Tribunal have duly considered issue and having found complete details of the receipts of share application money, along with the form names and

addresses, PAN and other requisite details, they found complete absence of the grounds noted for invoking the 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 less any perversity too to interfere with the order of the both these authorities, who had concurrently held the due details having been proved. The assessee company had presented the necessary worth proof before both the authorities and it was not expected by the assessee- company to further prove the source of the deceased."

Sringeri Technologies Pvt Ltd CIT vs. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 Taxmann.com 384 (Bom) "Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee - Held, Yes.... Further, there were confirmation letters 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 CIT(A), one cannot conclude that the purchases were not made by the respondent- assessee"

CIT vs. Samir Bio- Tech Pvt Ltd (2010) 325 ITR 294 (Del-High Court) "Identities of the subscribers are not in doubt. The transactions have also been 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 tax returns and assessments.

In these circumstances, the Department could not draw an adverse inference against the assessee only because the subscribers did not initially respond to the summons. The subscribers, however, subsequently gave their confirmation letters as would be apparent from the impugned order. The identity of the subscribers 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 be faulted."

14. 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 Estate Pvt Ltd vs Pr.CIT (2016) 386 ITR 162 (Cal). We have gone through the case law relied upon by the Ld.DR in the light of facts of the present case and Sringeri Technologies Pvt Ltd find that the case law relied upon by the Ld.DR is not applicable as in this 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 of 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 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 explain the issue of share at a huge premium and hence confirmed addition made by the AO u/s 68 of the Act.

15. In this case, on perusal of the facts available on record we find that the assessee has filed enormous details in respect of all 9 subscribers to the share Sringeri Technologies Pvt Ltd 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 CIT(A), after considering relevant submissions has rightly deleted the addition made by the AO towards share capital and share premium. We do not find any error or infirmity in the order of the CIT(A); hence, we are inclined to uphold the findings of the CIT(A) and dismiss the appeal filed by the revenue.

16. In the result, appeal filed by the revenue is dismissed. Order pronounced in the open court on 29th December, 2017.

Sd/-

(Mahavir Singh)

JUDICIAL MEMBER

Mumbai, Dt : 29th December, 2017

Pk/-

Copy to :

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

/True copy/

sd/-

(G Manjunatha)

ACCOUNTANT MEMBER

By order

Asstt. Registrar, ITAT, Mumbai