

**आयकर अपीलीय अधिकरण “एफ ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री पवन कुमार गडाले, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI PAVAN KUMAR GADALE, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No. 103/Mum/2020  
**(निर्धारण वर्ष / Assessment Year: 2012-13)**

<b>DCIT-(6)(3)(2)</b> Aaykar Bhavan, R. No. 576 M.K. Road, Mumbai-400 020.	<b>बनाम/</b> Vs.	<b>M/s Jostar Orgotech Pvt. Ltd.</b> A-501, Innova Marathon Next Gen. Off. Ganpatrao Kadam Marg Lower Parel(W), Mumbai-400 008
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AABCJ-2496-H</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Ms. Usha Gaikwad– Ld. Sr. DR
<b>Assessee by</b>	:	Shri J. P. Bairagra– Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30/08/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/09/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income-Tax (Appeals)-12, Mumbai [CIT(A)], dated 02/09/2019 in the matter of assessment framed by Ld. Assessing Officer u/s 143(3) on 28/03/2015.

The sole ground by the revenue read as under: -

On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.5,68,60,000/- made by the AO on account of share application money/share capital and share premium which is held as unexplained

and unsubstantiated as to the genuineness/nature thereof and brought to tax u/s 68 of the Act.

As evident, the revenue is aggrieved by deletion of addition u/s 68 as made by Ld. AO while framing the assessment. The assessee being resident corporate assessee is stated to be engaged in textile chemical, colors, food activities, etc.

2. The Ld. Sr. DR, drawing attention to the financial statements of the investor entities, submitted that these entities did not have sufficient income and the investments were sourced out of reserves & surplus. Hence, Ld. CIT(A) erred in deleting the additions. Reliance has been placed on the decision of Hon'ble Delhi High Court in the case of **CIT V/s Independent Media Pvt. Ltd. (210 Taxman 14)** as well as the decision of Hon'ble Apex Court in **Durga Prasad More (82 ITR 540 26/08/1971)**. The Ld. AR, on the other hand, submitted that the assessee furnished all the requisite documents and demonstrated fulfillment of primary ingredients of Sec.68 and therefore, the impugned additions were rightly deleted in the appellate order.

3. Having heard rival submissions and after due consideration of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

### **Appellate Proceedings**

4.1 During assessment proceedings, it transpired that the assessee issued 35250 number of shares of face value of Rs.10/- each to as many as 14 corporate entities, as detailed in para 5.1 of the assessment order. Out of this, major shares (22000 in number) were issued at premium of Rs.1370/- per share to an entity namely M/s Rossari India Biotech Pvt. Ltd. whereas the assessee fetched premium of Rs.1990/- per share from

all the other remaining entities. The shares to M/s Rossari India Biotech Pvt. Ltd. were issued during September, 2011 whereas the shares to remaining entities were issued during February, 2012.

4.2 In the course of assessment proceedings, the assessee was asked to justify the share premium and file supporting documents of all the investor entities to substantiate these transactions. The assessee submitted that the assessee had immovable property / office premises at prime location of Lower Parel, the estimated value of which was more than Rs.2000 Lacs. Based on the market value, the value per share as on 31/03/2011 would be Rs.1418.49 per share. Further, the assessee's overall sales and net profit reflected stable growth and therefore, the same would justify the premium. However, Ld. AO opined that the assessee did not provide any sound basis of valuation. Notices issued u/s 133(6) to investor entities to confirm the transactions did not elicit satisfactory response. On the basis of the same, it was concluded by Ld. AO that the assessee miserably failed to establish the genuineness of the transactions and also failed to justify high premium on issue of shares. Finally, in the light of various judicial pronouncements, the aforesaid receipts were added to assessee's income as unexplained cash credit u/s 68.

### **Appellate Proceedings**

5.1 During appellate proceedings, the assessee justified the share premium in the light of its financial growth. It was further submitted that it was decided to raise additional funds at premium based on market value of the assets as well as based on the goodwill which assessee earned over a period of more than 32 years. The management first approached its major supplier namely M/s Rossari India Biotech Pvt. Ltd. and offered

them to join the assessee as business partners. The said entity was existing shareholder and was one of major suppliers for the assessee. By investing in the assessee company, the said entity was immediately benefitted by steep rise in their supply of raw material to the assessee from Rs.2.5 Crores in FY 2009-10 to around Rs.8 Crores in FY 2010-11. Thus the investment in Assessee Company was win-win situation for both the entities. Since the assessee required more funds, it approached various other persons and negotiated with them for issue of further shares. All such negotiations were well evidenced by exchange of letters as well as emails, the copies of which were furnished during appellate proceedings. Based on these negotiations, the assessee was able to fetch higher premium. The investments ultimately resulted into increase in assessee's turnover as well as Gross profits which were tabulated during appellate proceedings. In the said background, the assessee assailed the findings of Ld. AO. Regarding premium on shares, it was submitted that it was open for assessee to collect premium on issue of shares based on its market value of assets and goodwill.

5.2 The assessee also pointed out that Ld. AO failed to consider various documents filed by the assessee during assessment proceedings to establish the identity of the investor entities, their creditworthiness as well as genuineness of the transactions. These documents would, inter-alia include PAN of investor entities, their respective Income Tax Returns, financial statements, copies of share application form, confirmations from investor entities, bank statements in support of receipt of funds through banking channels and justification of premium collected. Since the assessee furnished all relevant documentary evidences to discharge the primary onus as required u/s 68

and Ld. AO could not find any defect in the same, the additions would be unsustainable in law. Regarding non-response to notices u/s 133(6), it was submitted that the notices were sent on 17/03/2015 requiring the investors to furnish the reply on or before 25/03/2015. The assessee was asked to produce the directors of investor entities within a span of 2 days, which was not possible. The issue of confirmation was taken up by Ld. AO only at the fag-end of assessment proceedings which resulted into non-compliance of notices. In fact, M/s Rossari India Biotech Pvt. Ltd. furnished all the requisite information on 24/03/2015 itself. The assessment was completed on 28/03/2015 whereas the other entities had complied with notices u/s 133(6) during the month of April, 2015. There was failure on the part of Ld. AO to consider these documents.

5.3 Keeping in view the submissions made by the assessee and in view of the fact that replies received in response to notice u/s 133(6) were not considered by Ld. AO during assessment proceedings, a remand report was called from Ld. AO to consider all the replies received in response to notice u/s 133(6). The Ld. AO, in the remand report, inter-alia, confirmed that the assessee furnished required documents in case of M/s Rossari India Biotech Pvt. Ltd. and the director of that entity attended the proceedings also. However, the assessee was not able to substantiate the fairness of determination of value of shares which would put into doubt the genuineness of these transactions. However, it was admitted fact that the assessee had filed all the requisite documentary evidences and all the investor entities had confirmed the transactions along with their respective documents. The same has also been tabulated by Ld. CIT(A) by way of Annexure-1 (referred to in para 4.2 of the impugned order). Upon perusal of the same, it could be gathered that

all the investor entities were active as per MCA website and the transactions were duly confirmed by all these entities. The source out of which the investments were made in the assessee company, has also been mentioned in this Annexure.

5.4 The assessee assailed the remand report on the quantum of premium and relied on the decision of Hon'ble Supreme Court in **CIT v/s. Lovely Exports (P) Ltd. (317 ITR 218)** as well as the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**. The assessee also submitted that Ld. AO had no power to determine the quantum of premium or the method of computing the premium since it was the assessee's own prerogative to charge premium on issue of shares and determine the same as per business negotiations.

5.5 The Ld. CIT(A), after due consideration of material on record, observed that Ld. AO merely doubted the genuineness of transactions because of the reason that the assessee charged different premium on shares. However, considering the market value of the property held by the assessee, the value per share would work out to Rs.1418.49 per share. The assessee used his strength and goodwill to negotiate with the investor entities including an entity which had business dealing with the assessee. The matter of charging of premium and quantum thereof would be matter of discussion, discretion of the assessee and the shareholders. The provisions of Sec.56(2)(viib) requiring assessee to justify quantum of premium would be applicable only from AY 2013-14 and could not apply to this year. The Tribunal in **ITO V/s Chiripal Poly films Ltd. (104 Taxmann.com 172)**, relying upon the decision of Hon'ble Bombay High Court in the case of **CIT V/s Green Infra Ltd.**

**(2017; 392 ITR 7)** held that valuation of shares would not be relevant for determining genuineness of the transaction for the purpose of Section 68 of the Act. It was held by Hon'ble Bombay High Court that the genuineness of the transaction is proved since the entire transaction has taken place through banking channels. Further, it would be a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a heavy premium. The Revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land. The Tribunal after examining the ingredients of Section 68 of the Act held that the addition of share premium u/s 68 of the Act cannot be sustained in the eyes of law.

5.6 Based on these decisions, it was held by Ld. CIT(A) that the legislature does not envisage any sort of valuation for the purpose of Sec. 68 and the addition made because of the fact that high premium was received, was liable to be deleted. Therefore, the concern raised by Ld. AO could not be upheld.

5.7 So far the fulfillment of primary requirements of Sec.68 was concerned, the Ld. CIT(A) observed as under: -

4.10 *It is seen from the concluding paragraph 5.1.16 of the assessment order that the AO made the addition of Rs.5,68,60,000 being the share application money/share capital and share premium u/s 68 of the Act. The definition of income does not include within its scope capital receipts arising out of capital account transaction unless so specified in Section 2(24) of the Act as income. The legal position that share premium is not income is well-settled by the jurisdictional High Court in the case of Vodafone India Services Ltd. vs Union of India, 368 ITR 1 at pg.30. However, share capital, which is otherwise a capital receipt, can be added as income only by a deeming provision of section 68 of the Act subject to the conditions laid down in the said section. Therefore, it is important to understand the position of law u/s 68 of the Act which has evolved from a catena of judgments delivered by the Courts and Tribunals on this issue. The Hon'ble ITAT Mumbai in the case of ITO vs Anant Shelters Pvt. Ltd. (2012) 20 Taxmann.com 153 has enumerated certain principles which would be extremely useful in understanding the issue in hand. It*

has been stated in the said judgment that over the years, law regarding cash credits has evolved and taken a definite shape. A few aspects of law u/s 68 can be enumerated.

1. Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of such credits or the explanation given by the assessee in the opinion of the AO is not satisfactory.
2. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be formed objectively with reference to the material on record.
3. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner.
4. The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of transaction.
5. The identity of creditors can be established by furnishing their PANs or assessment orders. The genuineness of the transaction can be proved if it was shown that the money was received through banking channels by A/c payee cheque/ online/ digital transfer. Creditworthiness of the lender can be established by attending circumstances by firing the documents.

4.11 It is seen that during the course of assessment proceedings, the following documents were filed by the assessee before the AO as well as before this office.

A. Rossari Biotech (India) Pvt Ltd :-

1. Income Tax acknowledgement.
2. Bank Statement.
3. Balance sheet for Net worth
4. ROC Master Data-Active
5. 133 (6) replied by party -proof of registered A.D.
6. Again submitted documents vide letter Dtd. 14/08/2017
7. E-mails between Appellant and Rossari Group regarding share application.

B. CALCUTTA PARTIES:-

I. Aryadeep Commotrade Pvt Ltd:-

1. Share Application.
2. Income Tax acknowledgement.
3. Bank Statement.
4. Parties confirmation for Investment.
5. Balance sheet for Net worth
6. ROC Master Data-Active
7. 133 (6) replied by party -proof of registered A.D.

II. Anmolik Tracon Pvt Ltd:-

- 1 Share Application.
- 2 Income Tax acknowledgement.
- 3 Parties confirmation for Investment.
- 4 Bank Statement.
- 5 Balance sheet for Networth
- 6 ROC Master Data-Active
- 7 133(6) replied by party -proof of registered A.D.

III. Radiant Equity MgmtPvt Ltd:-

- 1 Share Application.



- 2 Income Tax acknowledgement.
  - 3 Bank Statement
  - 4 Parties confirmation for Investment.
  - 5 Balance sheet for Net worth.
  - 6 ROC Master Data- Active
  - 7 133 (6) replied by party -proof of registered A.D.
- IV. Rosemount Vanijya Pvt Ltd:-
- 1 Parties Confirmation for Investment.
  2. Bank Statement.
  3. Income Tax acknowledgement
  4. Balance sheet for Net worth.
  5. ROC Master Data- Active
  6. 133 (6) replied by party -proof of registered A.D.
- V. Delta Deal TradeFvt Ltd:-
- 1 Parties confirmation for Investment.
  - 2 Bank Statement.
  - 3 Income Tax acknowledgement.
  - 4 Balance sheet for Net worth.
  - 5 ROC Master Data- Active
  - 6 133 (6) replied by party -proof of registered A.D.
- VI. Metrol Industries Pvt Ltd:-
1. Share Application.
  2. Parties confirmation for Investment.
  3. Bank Statement
  4. Income Tax acknowledgement.
  5. Balance sheet for Net worth.
  6. ROC Master Data- Active
  7. 133 (6) replied by party -proof of registered A.D.
- VII. Blockdeal Suppliers Fvt Ltd:-
1. Share Application.
  2. Income Tax acknowledgement.
  3. Bank Statement.
  4. Parties confirmation for Investment.
  5. Balance sheet for Network.
  6. ROC Master Data-Active
  7. 133 (6) replied by party -proof of registered A.D.
- VIII. Fastspeed Agencies Pvt Ltd:-
1. Parties confirmation for Investment
  2. Bank Statement.
  3. Income Tax acknowledgement.
  4. Balance sheet for Network.
  5. ROC Master Data-Active
  6. 133 (6) replied by party -proof of registered A.D.
- IX. Capable Marcom Pvt Ltd:-
1. Parties confirmation for Investment.
  2. Bank Statement.
  3. Income Tax acknowledgement.
  4. Balance sheet for Network.
  5. ROC Master Data-Active
  6. 133 (6) replied by party -proof of registered A.D.

X. Luv KushVincom Pvt Ltd:-

1. Parties confirmation for Investment.
2. Income Tax acknowledgement.
3. Bank Statement.
4. Balance sheet for Networth.
5. ROC Master Data-Active
6. 133 (6) replied by party -proof of registered A.D.

XI. KherapatiVmtrade Pvt Ltd:-

1. Income Tax acknowledgement.
2. Balance sheet for Networth.
3. ROC Master Data-Active

XII Venketeshwar Equipment Parts Pvt Ltd :-

1. IncomeTax acknowledgement.
2. Balance sheet for Networth.
3. ROC Master Data-Active

XIII. Hitech Cloths Pvt Ltd :-

1. Income Tax acknowledgement.
2. Balance sheet for Net worth.
3. ROC Master Data-Active

## XIV. Correspondence and E-mails between appellant and following persons who are directors of the investing companies

Mr. Harish Ram

Mr. Parasnath Jaiswal

Mr. Bharat Goenka

Mr. Amit Kumar

Mr. Kamal Kumar

4.12 If the above referred principles are applied to the facts of the case under consideration it can be seen that the identity of the creditors/ creditworthiness of the investors and genuineness of the transactions are established as under.

Identity

- a) Permanent Account Number,
- b) Registration number issued by the Registrar of the Companies,
- c) Income tax returns filed by the Companies,
- d) Financial statements signed by the directors and the statutory auditors of the companies,
- e) Company Information such as history, formation, annual returns, share capital, various e-forms filed by the companies available in the public domain ([www.mca.gov.in](http://www.mca.gov.in))

Creditworthiness

The chart enclosed as Annexure-I to this order clearly indicates the financial position of the share applicants and proves their creditworthiness. Further, the copies of bank statements clearly show availability of funds in their respective bank accounts, out of which share application money was invested in the appellant company. Thus, there can be no question regarding the creditworthiness of the share applicants.

Genuineness

- a) Appellant has received the share application through account payee cheques
- b) Bank statements of the share applicant depicting availability of funds

c) Confirmation letter from the share applicant companies duly confirming the amount of share application money invested by them in the appellant company clearly proves the genuineness of the transaction.

d) Form 2 i.e. allotment of shares filed with Registrar of Companies

4.13 In these circumstances, it can be said that the appellant had discharged the initial onus cast upon it to establish the identity and creditworthiness of the creditors as well as genuineness of the transactions. Therefore, the onus shifted to the AO. Further, in the remand report A.O. after enquiry reported *"with regard to payment received from M/s. Rossari Biotech India Pvt. Ltd, during 'the course of remand proceedings, the assessee has submitted the financials, bank statement and copy of ITR of M/s. Rossari Biotech India Pvt. Ltd. Further, the director of M/s. Rossari Biotech India Pvt, Ltd, Shri Sunil Srinavas Chari also attended before the undersigned office and confirmed the transaction with the assessee company.* Further, the A.O. has not brought any evidence on record in order to controvert the claims of the appellant. There is no finding by the AO that the evidences produced by the appellant were untrustworthy or lacked credibility. The nominal enquiry by issue of notices u/s. 133(6) to the parties on 17.03.2015 calling for reply by 25.03.2015 and completion of assessment on 28.03.2015 is insufficient and half hearted enquiry. It is also seen from the remand report that the investors replied, which was not considered by the AO in a hurry to complete the assessment. In other words, the AO did not make any attempt to discharge his burden of proof to rebut the evidences produced by the appellant or to bring any contrary material on record. Thus, the appellants contention that it had charged onus of establishing the identity and creditworthiness of the investor companies and genuineness of the transactions with the help of relevant supporting evidences which could not be disproved by the AO appears to be correct. It is seen that the Assessing Officer did not bring specific or incriminating evidence to show that appellant had given cash to the investors in lieu of alleged entry for share capital and share premium. When the investor company is filing regular Income tax returns of income and there are transactions through banking channel, no addition can be made by making surmises without having any contrary or cogent evidences in possession.

4.14 The Hon'ble Supreme Court in the case of CIT V/s Lovely Exports 6 DTR 308 has held *"If the share application money is received by the assessee company from alleged bogus share holders who's name 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 undisclosed income of assessee company"*. The Hon'ble Bombay High Court in the case of CIT v/s Creative World Telefilms Ltd 333 ITR 100 has held *"If the share application money is received by the assessee company from alleged bogus shareholders whose name are given to the Assessing Officer then the department can always proceed against them and if necessary reopen their individual assessments.* The Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd (Bombay):

*"During the previous relevant to the subject Assessment Year the assessee had increased its share capital from Rs,2,50,000/- Rs.83.75 lakhs. During the assessment proceedings, the Assessing Officer noticed that the respondent had collected share premium to the extent of Rs.6.69 crores. Consequently he called upon the respondent to justify the charging of share premium at Rs.190/per share. The respondent furnished the list of its shareholders, copy of the share-*

application form, copy of share certificate and Form no.2 filed with the Registrar of Companies. The justification for charging share premium was on the basis of the future prospects of the business of the assessee. The Assessing Officer did not accept the explanation/justification of the respondent and invoked Section 68 of the Act to treat the amount of Rs.7.53 crores i.e. the aggregate of the issue price and the premium on the shares issued as unexplained cash credit within the meaning of Section 68 of the Act. This addition was deleted by the CIT(A) and the Tribunal. Before the High Court, the department contended that the proviso to Section 68 of the Act which was introduced with effect from 1st April, 2013 would apply in the facts of the present case even for AY. 2008-09. The basis of the above submission was that the de hors the proviso also the requirements as set out therein would have to be satisfied. HELD by the High Court dismissing the appeal:

(i) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1<sup>st</sup> April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied.

(ii) Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in CIT v/s. Lovely Exports (P)Ltd. 317 ITR 218 in the context to the preamended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."

4.15 Hon'ble ITAT, Mumbai in the case of Arceli Realty Ltd, ITA No. 6492/Mum/2016 dated 21/04/2017 has decided a similar issue. The operative portion of the decision is as under:-

"If the totality of facts and the judicial pronouncements, discussed hereinabove, are analyzed, we are of the considered opinion that the onus casted upon the assessee, as provided u/s 68 of the Act, has been duly discharged by the assessee as the identity of the share subscribers, creditworthiness and genuineness of the transaction is not in doubt or it can be said that the same has been proved/explained by the assessee. Now, The onus has reverted back upon the Revenue to prove otherwise. The Ld. Assessing Officer merely relied upon the information received from the investigation wing and did not made any

*independent enquiry. The Assessing Officer was expected to disprove the claim of the assessee with the help of evidence, if any, received from the investigation wing, as has been claimed by the Revenue. The Revenue has nowhere proved that any malafide is done by the assessee. Failure to do so, vitiate the addition made under the set of facts. Reference can be made to the decision in CIT vs Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC) and the ratio laid down in Khandelwal Construction vs CIT 227 ITR 900(Guw.). The satisfaction has to be derived from the relevant facts and that to on the basis of proper enquiry by the Assessing Officer and such enquiry must be ( i reasonable and just. In the present case, the Assessing Officer has not brought any evidence on record that the amounts received from M/s Alka Diamond Industries Ltd. and M/s Yash-V-Jewels Ltd. are merely accommodation entries. As mentioned earlier, the Ld. Assessing Officer has acted merely on the basis of information received from the Investigation wing. The ratio laid down by Hon'ble Delhi High Court in CIT vs Vrindaban Farms Pvt. Ltd. squarely gives shelter to the assessee, wherein, it was held that if the identity and other details of share applicant are available, the share application money cannot be treated as undisclosed income in the hands of the company. In the present case, the assessee even has proved the source of source, therefore, the creditworthiness was also proved, consequently, no addition made u/s 68 of the Act can be said to be justified. The ratio laid down in Creative World Telefilms Ltd. (spra) by Hon'ble jurisdiction.il High Court squarely comes to the rescue of the assessee. The assessee duly furnished the proof of identity like PAN, bank account details from the bank, other relevant material, genuineness of the transaction, payment through banking channel and even the source of source, therefore, the assessee has proved the conditions laid down u/s 68 of the Act. It is also noted that in spite of repeated request, the Ld. Assessing Officer did not provide opportunity to cross examine the concerned persons and even the relevant information and allegation, if any, made therein, which has been used against 'the assessee, was not provided to the assessee. At this stage, we add here that mere information is not enough rather it has to be substantiated with facts. The information may and may not be correct. For fastening the liability upon anybody, the Department has to provide the authenticity of the information to the person against whom such information is used. The principle of natural justice, demands that without confronting the assessee of such evidence, if any, or the information, no addition can be made. Even otherwise, as per Article-265 of the Constitution of India, only legitimate taxes have to be levied and collected. In our humble opinion, the assessee has duly discharged the onus caste upon it, therefore, respectfully following the decisions from Hon'ble Apex Court, Hon'ble High Courts and Hon'ble jurisdictional High Court, we reverse the order of the Ld. Commissioner of Income Tax (Appeal), resultantly, this ground of the assessee is allowed.*

4.16 In view the above factual and legal position when details of share application money and share holders are provided during the course of assessment proceedings and the same have been brought on record, the amount received as share capital and share premium cannot be treated as unexplained cash credit in the hands of receiver of such share application money. Respectfully following the order of the jurisdictional ITAT and High Court which are squarely applicable to the facts of the appellant's case, the addition of Rs.5,68,60,000 made by the AO u/s 68 is directed to be deleted. Ground No. 2 is accordingly **allowed**.

Finally, the impugned additions were deleted. Aggrieved as aforesaid, the revenue is in further appeal before us.

**Our findings and Adjudication**

6. Upon careful consideration of material fact, it could be gathered that the assessee has issued shares to various corporate entities at two different point of time. The initial allotment has been made to one of the suppliers of the assessee who happens to be the largest shareholder. The assessee has commanded a premium of Rs.1370/- per share from this entity. Subsequently, the assessee has issued another set of shares to as many as 13 corporate entities at higher premium. At the outset, it could be noted that in terms of requirement of Sec.68, the assessee was required to prove the identity of the investor entities, their respective creditworthiness and genuineness of the transactions. After going through assessment order and appellate order, it could be observed that the assessee has filed all the requisite documents as well as confirmations from the investor entities to substantiate these transactions. The notices u/s 133(6) has duly been responded by investor entity. The director of M/s Rossari India Biotech Pvt. Ltd. appeared before Ld. AO and confirmed the transactions. The findings, in this regard, have already been tabulated in Annexure-1 of impugned order and the same is not in dispute. Under these circumstances, it could very well be said that the assessee had duly discharged the onus in terms of requirement of Sec.68. The onus was on revenue to dislodge assessee's documentary evidences and rebut the same by bringing on record any cogent material to demonstrate that assessee's own money flew back in the shape of share application / share premium. However,

nothing of that sort has been brought on record by Ld. AO. It is trite law that no additions could be made merely on the basis of suspicion, conjectures or surmises.

7. Proceeding further, we find that the only reason to treat the share application money as unexplained cash credit is the quantum of premium charged by the assessee. However, as rightly observed by Ld. CIT(A), the provisions of Sec.56(2)(viib) were not applicable to the year under consideration since these provisions would be applicable only from AY 2013-14. Therefore, Ld. AO had no power to question the wisdom of the assessee to command differential premium from investor entities. The Ld. DR has relied upon the decision of Hon'ble Supreme Court in **Sumati Dayal Vs CIT (80 Taxman 89) & Durga Prasad More (82 ITR 540 26/08/1971)**. There is no doubt that the revenue authorities were not required to put blinkers while looking at the documents produced before them and they were entitled to look into the surrounding circumstances to find out the reality of the documents produced before them. However, we find that no such inquiries have been made by Ld.AO except for the allegations that the share application was bogus in nature only because the quantum of premium was high. However, there is nothing on record to substantiate the allegation that the assessee's own unaccounted money was routed in the books in the garb of share capital. In the absence of such findings, the impugned additions could not be sustained in law. So far as the decision of Hon'ble Delhi High Court in the case of **CIT V/s Independent Media Pvt. Ltd. (210 Taxman 14)** is concerned, the same is distinguishable on facts. In that case, the assessee did not file any confirmations or evidences to establish the genuineness of the transaction or creditworthiness of investor entities. Further, these entities

had given statements before the Investigation wing that they were entry providers giving accommodation entries after receiving cash and after charging their commission. The same is not the case here. Therefore, this case law does not apply to the facts of the case.

8. Finally, on the given facts and circumstances of the case, we are of the considered opinion that Ld. CIT(A) has clinched the issue in right perspective and the same would not require any interference on our part. We order so.

9. In the result, the appeal stands dismissed.

*Order pronounced on 3<sup>rd</sup> September, 2021.*

**Sd/-**

**(Pavan Kumar Gadale)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03.09.2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**