

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

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI C.N. PRASAD, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No.7308/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2009-10)  
&
2. आयकरअपील सं./ I.T.A. No.7309/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)  
&
3. आयकरअपील सं./ I.T.A. No.7310/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)  
&
4. आयकरअपील सं./ I.T.A. No.7311/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Adhoi Vyapar Pvt. Ltd.</b> A-502, 234, Manish Garden CHS, 4 Bungalow, Andheri(W), Mumbai-400 058	<b>बनाम/ Vs.</b>	<b>ITO-9(1)(1),</b> R.No. 205, 2 <sup>nd</sup> floor, Aaykar Bhavan, M.K.Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAHCA-6296-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Ajay Singh, Ld. AR
<b>Revenue by</b>	:	Shri Brajendra Kumar– Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03/09/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	01/10/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2009-10 to 2012-13 contest separate orders of learned first appellate authority

on certain common grounds of appeal. Facts as well as issues are substantially the same and it is admitted position that adjudication in any one year shall equally apply to the other years also. The appeal for AY 2009-10 is taken as the lead year which arises out of the order of Ld. Commissioner of Income-Tax (Appeals)-16, Mumbai [CIT(A)], dated 30/08/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s 147 on 23/3/2016. The grounds raised by the assessee read as under: -

**UNEXPLAINED CASH CREDIT U/S. 68 :**

1. The Ld CIT(A) erred in upholding the order of Assessing officer in confirming the addition of Rs.3,47,18,000/- as unexplained cash credit u/s. 68 in respect of amount received during the year as share capital and premium without appreciating that the assessee had discharge its onus in terms of section 68 of the Act by furnishing necessary evidence and explanation to substantiate the genuineness of the transaction, identity and creditworthiness of the shareholders.
2. The Ld CIT(A) failed to appreciate there is no question of treating premium as income. There is no charging provision to tax a capital account transaction in respect of issue of share at a premium therefore the addition of Rs.3,47,18,000/- on account of unexplained cash credit u/s. 68 being unwarranted, illegal, bad in law be deleted.
3. The Ld CIT(A) erred in confirming the addition of Rs.1,00,000/- as unexplained cash credit u/s. 68 on the presumption that assessee must have paid commission @ 2% on Rs.50,00,000/-, without appreciating that nothing incriminating was found against the assessee.

As evident, the assessee is aggrieved by confirmation of certain addition u/s 68 as unexplained cash credit and another estimated addition u/s 69C. The assessee being resident corporate assessee is stated to be engaged in the business of trading, marketing, supplying etc. of dress material, garments etc.

2. The Ld. AR for assessee, drawing our attention to the factual position as well as documentary evidences submitted by the assessee before lower authorities, assailed the additions made by Ld. AO and as confirmed by Ld. CIT(A) in the impugned order. Reliance has been

placed on various judicial pronouncements, the copies of which have been placed on record. The Ld. AR also referred to recent decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt. Ltd. (ITA No.1231 of 2017; 29/01/2020)** for the submissions that the assessee was not required to prove the source of source in this year. The Ld. DR, on the other hand, submitted that the assessee could not prove the creditworthiness of the share applicants and therefore, the additions were rightly confirmed by Ld. CIT(A). Reliance has similarly been placed on certain judicial pronouncements, the copies of which have been placed on record.

3. We have carefully heard the rival submissions and perused relevant material on record. We have also deliberated upon various judicial pronouncements as cited during the course of hearing. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

### **Assessment Proceedings**

4.1 The assessee's case for this year was reopened on the allegation that the assessee issued 69436 shares of face value of Rs.10/- per share at a premium of Rs.490/- per share. The total application money received from 32 share applicants aggregated to Rs.347.18 Lacs, as detailed on page no.2 of the assessment order. These applicants include 29 non-corporate entities (individual share applicants) and 3 corporate entities viz. (i) M/s Priority Exports Pvt. Ltd.; (ii) M/s Safford Mercantile Pvt. Ltd.; (iii) M/s Jagdamba Complex Pvt. Ltd.

During the course of assessment proceedings for AY 2012-13, the assessee submitted bank statements and Income Tax Returns of various share-applicants and notices were also issued u/s 133(6). Most of the

share-applicants were found to be having bank account in the same bank and branch and the bank accounts were introduced by the directors, employees etc. of the assessee company. Upon perusal of these documents, it was concluded that these applicants lacked creditworthiness and on the basis of said belief, the case was reopened.

4.2 During the course of re-assessment proceedings, notice u/s 142(1) was issued to the assessee calling for requisite details of the share-applicants along with documentary evidences. The assessee, vide reply dated 23/12/2015, provided the details of share-applicants along with their respective addresses and the amount received from each of them during the year. It was also submitted that this was the first year of the assessee company. Vide another reply dated 18/01/2016, the assessee furnished documentary evidences in the form of Share Application Form, PAN Card, confirmation from share applicants regarding investment, relevant pages of bank passbook / statement, Income Tax Acknowledgement for the year, Statement of Income, Profit & Loss A/c & Balance Sheet as on 31/03/2009 and letter of allotment with respect to non-corporate share applicants whereas in case of corporate share applicants, in addition, the copies of Board Resolution, Memorandum and Articles of Association was also furnished. These documents were submitted for all the share applicants except for 6 non-corporate share applicants. The details and documentary evidences with respect to these remaining share applicants have subsequently been furnished vide replies dated 25/01/2016 & 14/03/2016.

4.3 However, vide notice dated 03/03/2016, the assessee was put to notice that summons issued u/s 131 to 18 share-applicants remained un-responded and none attended on given dates. Further, there was no

business activity in corporate share-applicants and they merely reflected receipts by way of share capital and share premium. Further, notices issued u/s 133(6) to 10 share applicants were returned back un-served by postal authorities. Accordingly, the assessee was directed to produce the said parties failing which the amount received by way of share application money was to be treated as unexplained cash credit liable to be added to assessee's income.

4.4 The assessee, vide reply dated 15/03/2016, refuted the allegations by drawing attention to the documentary evidences filed by the assessee to substantiate the transactions. It was submitted that the assessee did not have legal power to enforce attendance of the applicants. Upon perusal of these documents, it could be seen that investments were made by non-corporate share applicants from their own capital only and there was no outside borrowings. The shareholders were filing return of income since last 5 to 25 years and therefore, their respective creditworthiness could not be doubted at all. Similarly, in case of corporate shareholders, the net-worth of each of the applicant was way more than the investment made in Assessee Company which was apparent from their audited financial statements as placed on record. Regarding non-response to notices u/s 133(6), the assessee furnished addresses of the 8 parties belonging to same family along with copy of society maintenance bill and Gas connection details. The addresses of remaining two parties were also provided. Reliance was placed on various judicial decisions to submit that the creditworthiness of the share applicants was proved beyond doubt and therefore, no such addition could be made in the hands of the assessee. Along with the reply, the assessee furnished the opening and closing own capital /net-worth of all

the share applicants along with amount of investment made by them in support of the fact that their net-worth was sufficient enough to make the investment in the assessee company. The assessee's various replies, documentary evidences as well as net-worth statements of each of the share applicants has been placed on page nos.49 to 468 of the paper-book. We have perused all these documents.

4.5 However, rejecting all these submissions, Ld. AO after going through various documentary evidences as well as bank statement of each of the share applicants, alleged that the receipts shown by the assessee were accommodation entry in the garb of share capital and share premium and the share applicants did not have capacity to make the investment. It was also alleged that the assessee itself was managing the bank account of the share applicants and after depositing cash, the cheques were issued by the assessee in its own name. The investor did not have financial capacity to make the investment and it could be inferred that the assessee's own unaccounted money was routed through banking channels in the name of share applicants. These findings have been rendered for each of the non-corporate share applicants on page nos. 7 to 89 of the assessment order. With respect to one corporate entity namely M/s Priority Exports Pvt. Ltd., it was noted that the said entity was not operating from the given address. This entity had meager profits but it had reserves of more than Rs.3.92 Crores which would be quite abnormal. The directors of this entity were running various other concerns. The assessee could not produce the said party and therefore, the only conclusion that could be drawn was that the money was merely an accommodation entry. Similar findings were

rendered with respect to other 2 corporate entities. Finally, the issue was summed up by Ld. AO as follows: -

5.8 All the above facts goes to prove that:

- all the individual parties from whom the assessee stated have received amounts towards share capital and share premium do not have creditworthiness to invest such huge amount
- The banking modus operandi of the individuals reveal similar pattern of deposits and subsequent transfer of money to assessee company not only in A.Y. 2009-10 but also in subsequent years ever since the incorporation of the assessee company.
- All the individual parties have account in the same bank where the assessee company has its own account.
- Analysis of bank accounts of the individuals particularly the cash deposits and cheques issued to the assessee company shows that almost 100% cash deposits have been diverted towards share capital and share premium.
- There is no evidence filed by the assessee on record to show that the assessee company had allotted shares to the investors and also the declaration of dividend in any years.
- The investment so received from the individual investors have been diverted by the assessee towards other investments and to the directors and associate concerns of the assessee company, which means that the assessee had no intention to do any business but it was actively involved in accumulating funds in form of share capital and share premium for diversion to its other concerns/directors and other family members of the directors.
- Even though the individual parties have stated that the intention behind their investment was to earn some appreciation on the investments, but in reality there are no returns on the investments and these parties have still continued to be investors in the said company. Hence, the investment is not a genuine investment.
- The assessee company with the help of companies providing accommodation entries has tried to route its unaccounted money through such companies to bring the same it into its books.

5.9 Based on the above observations and conclusions, it is held that the parties do not have creditworthiness for making investment as discussed above and the transaction of receipt of amount towards issue of share capital at huge premium is not genuine, but a sham transaction.

Finally, in the above background, the amount of share capital / share premium was added to assessee's income as unexplained cash credit u/s 68. For obtaining such entries from corporate entities, the assessee must have paid certain commission which was estimated @2% and accordingly, another addition of Rs.1 Lacs was made u/s 69C.

## **Appellate Proceedings**

5.1 During appellate proceedings, the assessee drew attention to the documents submitted before Ld. AO in support of the transactions with non-corporate as well as corporate entities. It was also pointed out that summons issued u/s 131 to 18 parties were duly responded to by all those parties. The assessee, referring to each of the non-corporate share applicant, submitted that these entities were filing Income Tax Returns since past many years and net-worth of all these entities were sufficient enough to make the investment in the assessee. The assessee also refuted the allegation of Ld. AO that there was cash deposit in the bank account before making investment by referring to the bank statements of each of the share applicants, upon perusal of which it was crystal clear that the investment were funded out of cheques deposited by investor in their respective bank accounts. The source of investment was also explained in the written submissions. Similar submissions were made for all the 29 non-corporate entities. Regarding Corporate entities, the assessee submitted that these entities had sufficient net worth to make the investment. On the basis of these submissions, the assessee submitted that it had demonstrated the fulfillment of primary ingredients of Sec.68 and therefore, no such additions could be made in the hands of the assessee. Regarding allegation of high premium, the assessee relied on the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** to submit that it was the prerogative of Board of Directors to decide the quantum of premium amount and the wisdom and freedom of the shareholder to subscribe the shares at premium. Further, the share premium being in the capital field, is not liable to tax as per the said

decision. Reliance was also placed on the decision of Hon'ble Bombay High Court in **CIT V/s Creative World Telefilms Ltd. (2011; 333 ITR 100)** wherein it was held that it was expected on the part of Ld. AO to make proper investigation and reach to shareholders. The Ld. AO did nothing except issuing summons which was ultimately returned back. The AO should have found out the details through PAN Cards, banks account details so as to reach the shareholders since all the relevant material details and particulars were given by the assessee. Various other decisions taking analogous views were also cited which have already been enumerated in the appellate order. It was also submitted that Ld. AO was duty bound to carry out just and reasonable enquiry and the additions could not be made on the basis of mere suspicion, conjectures and surmises.

5.2 The Ld. CIT(A) noted that the initial onus was on assessee to establish by cogent evidence the genuineness of the transaction and creditworthiness of the investors u/s 68 as held by Hon'ble Supreme Court in **Pr. CIT V/s NRA Iron & Steel Pvt. Ltd. (103 Taxmann.com 48)** and various other decisions. The Ld. AO conducted independent enquiries and obtained bank statements of the investor. Upon perusal of the same, cash deposits were noted and subsequently cheques of equivalent amount were issued to the assessee. There was no material on record to prove that the share application money was received from independent legal entities. Few of the investors were found to be non-existent at the given addresses. The investors did not have financial capacity to make the investments as evident from their respective bank statements and cash deposits were diverted towards share capital and share premium. Finally, the action of Ld. AO in making the additions u/s

68 as well as u/s 69C was upheld. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

6.1 After careful consideration of factual matrix, it could be gathered that the assessee has issued 69436 shares of face value of Rs.10/- per share at a premium of Rs.490/- per share during the year to as many as 32 share-applicants. The share-applicants include 29 non-corporate entities (individual share applicants) and 3 corporate entities viz. (i) M/s Priority Exports Pvt. Ltd.; (ii) M/s Safford Mercantile Pvt. Ltd.; (iii) M/s Jagdamba Complex Pvt. Ltd.

6.2 During the course of assessment proceedings, the assessee was directed to substantiate these transactions along with relevant documentary evidences. The assessee filed various replies, documentary evidences as well as net-worth statements of each of the share applicants which have been placed on page nos.49 to 468 of the paper-book. Upon perusal of the same, we find that the assessee furnished complete details of share-applicants along with their respective addresses and the amount received from each of them during the year. With respect to each of non-corporate entities, the assessee had furnished various documents which include Share Application Form, PAN Card, confirmation from share applicants regarding investment, relevant pages of bank passbook / statement, Income Tax Acknowledgement for the year, Statement of Income, Profit & Loss A/c & Balance Sheet as on 31/03/2009 and letter of allotment. In case of corporate share applicants, in addition, the assessee also supplied copies of Board Resolution, Memorandum and Articles of Association.

The assessee summarized net worth position of all the share applicants (page no.450 of the paper-book) in the following manner: -

No.	Name of Shareholders	No. of years of Return of Income	Own Capital as on 01/04/2008	Own Capital / net worth as on 31/03/2009	Amount Invested in Shares
1.	Ashwin L. Gindra	15	14,89,000/-	15,93,000/-	14,79,000/-
2.	Ashwin L. Gindra - HUF	11	7,86,000/-	9,71,000/-	5,82,000/-
3	Bachu M. Patel	14	11,17,000/-	12,70,000/-	11,68,000/-
4	Bharat B. Patel	8	9,98,000/-	11,37,000/-	9,60,000/-
5	Bharti A. Gindra	13	10,34,000/-	11,66,000/-	11,19,000/-
6	Daya S. Patel	13	9,25,000/-	10,80,000/-	10,23,000/-
7	Deepak Karia	12	8,56,000/-	10,02,000/-	5,37,000/-
8	Diwali L. Gindra	13	10,87,000/-	12,07,000/-	9,07,000/-
9	Geeta S. Prajapat	13	10,10,000/-	11,67,000/-	10,09,000/-
10	Hanja P. Prajapat	9	24,69,000/-	26,05,000/-	26,00,000/-
11	Indra Jawanmal Prajapat	13	10,80,000/-	12,34,000/-	11,82,000/-
12	Jawanmal P. Prajapat	17	8,63,000/-	10,20,000/-	9,91,000/-
13	Jawanmal Prajapat- HUF	8	9,95,000/-	11,72,000/-	9,70,000/-
14	Keshav Gokul Nisar - HUF	8	9,97,000/-	11,73,000/-	9,50,000/-
15	Manuben K. Shah	9	25,65,000/-	27,19,000/-	19,45,000/-
16	Mitiksha B. Patel	8	999,000/-	11,64,000/-	8,75,000/-
17	Motilal D. Nisar	14	8,90,000/-	10,43,000/-	9,56,000/-
18	Pravin K. Dagha	24	8,84,000/-	10,47,000/-	9,24,000/-
19	Ranchod C. Parmar	11	8,02,000/-	9,56,000/-	8,22,000/-
20	Ranjan K. Nisar	13	9,31,000/-	10,96,000/-	10,15,000/-
21	Shailesh P. Prajapat	24	8,11,000/-	9,74,000/-	8,41,000/-
22	Shailesh P. Prajapat- HUF	8	10,01,000/-	11,77,000/-	9,65,000/-
23	Shantaben G. Nisar	14	11,44,000/-	13,09,000/-	12,25,000/-
24	Shivji B. Patel	15	8,67,000/-	10,09,000/-	7,56,000/-
25	Shivji B. Patel - HUF	8	9,96,000/-	11,60,000/-	9,85,000/-
26	Somaram Prajapat	13	11,38,000/-	12,85,000/-	3,30,000/-
27	Suresh S. Prajapat	11	7,91,000/-	9,44,000/-	8,65,000/-
28	Ullasba R. Parmar	9	8,58,000/-	10,12,000/-	9,27,000/-

29	Priority Exports Pvt. Ltd.	7	-	4,09,11,000/-	20,00,000/-
30	Safford Mercantile Pvt. Ltd.	7	-	10,07,86,000/-	20,00,000/-
31	Jagdamba Complex Pvt. Ltd.	7	-	8,93,73,000/-	10,00,000/-

Upon perusal of the above chart, it could be seen that all the entities had sufficient net-worth to make the investment in the assessee company. All these entities were filing their Income Tax Returns since past several years ranging from 5 to 15 years. With respect to corporate entities, it is the observation of Ld. AO himself that the investments were sourced out of own capital and share premium account. Undisputedly, the share application money has been received through banking channels which is evident from bank statement of each of the applicants as placed on record. Upon perusal of bank statements, it could also be seen that the investments have been sourced by share applicants out of loan-refund granted by them previously and there are no immediate cash deposit before making investment in the assessee company. Nevertheless, the assessee has placed on record confirmation of transactions wherein all the applicants have confirmed the investment made in the assessee company.

6.3 On the basis of all these documentary evidences, it could be concluded that the assessee had duly discharged the onus of proving the identity of the investor entities, their respective creditworthiness and the genuineness of the transactions. One of the reasons to doubt these transactions is the observation of Ld. AO that notices issued u/s 133(6) as well as summons issued u/s 131 were not responded to by the share-applicants. However, the assessee does not have any legal power to enforce the attendance of the share-applicants. Another noteworthy point that this is the first year of operation of the assessee-company and

therefore, it is difficult to presume that the assessee generated unaccounted money in the first year of operation itself and routed the same in the garb of share-application money.

6.4 On the basis of above facts, it could be concluded that the assessee had discharged the initial onus of proving these transactions in terms of the requirements of Sec.68. Therefore, the onus had shifted on Ld. AO to dislodge the assessee's documentary evidences and bring on record cogent material to establish that the assessee generated unaccounted money and routed the same through banking channels in the garb of share-application money. Unless such an investigation is shown to have been carried out, the additions would not be sustainable in law since it is trite law that no addition could be made on the basis of mere suspicion, conjectures and surmises. Nothing adverse could be borne out of the fact that most of the share-applicants had bank accounts in common bank / branch and the directors of corporate entities were running various other concerns. It could be seen that few of the investors belonged to common family and therefore, it would not be uncommon to operate the bank from same Bank and Branch.

6.5 We find that as per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee's books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by

the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**. The said position has also been reiterated by Hon'ble Bombay High Court in its recent decision titled as **Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020)** which also consider its earlier decision of **Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415)**. Therefore, the assessee was not even otherwise obligated to prove the source of source of share application money in this year.

6.6 The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.
3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was

dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in **Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020]** which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as **Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161]**.

6.7 The Ld. DR has cited the decision of Hon'ble Delhi High Court in **Nova Promoters & Finlease Pvt. Ltd. (18 Taxmann.com 217)** which is factually distinguishable since in that case, the investors made an admission that they were accommodation entry providers. No such admission has been made by the investors in the present case. The case law of Hon'ble High Court of Bombay in **Royal Rich Developers (I) Ltd. V/s Pr. CIT (108 Taxmann.com 382)** is a case where the investor failed to supply necessary details and documents to establish the genuineness of the investment. In the present case, the investments have duly been substantiated by requisite documentary evidences. The decision of Hon'ble Delhi High Court in **CIT V/s Nipun Builders & Dev. Pvt. Ltd. (30 Taxmann.com 292)** has already been distinguished by the

Hon'ble Court in **CIT V/s Nipuan Auto (P) Ltd. (49 Taxmann.com 13)** by observing that the assessee, in the present case, has been able to discharge the initial burden to establish the identity, creditworthiness and genuineness as regards the transactions concerning the allotment of shares. We find that in the case before us, the initial burden has similarly been discharged by the assessee.

6.8 Therefore, on the facts and circumstances, we hold that the impugned additions as made u/s 68 and consequential addition of estimated commission u/s 69C is not sustainable in law. By deleting the same, we allow Ground Nos. 1 & 3 of the appeal which render ground no.2 merely academic in nature. The Ld. AO is directed to re-compute the income in terms of this order. The appeal stand allowed in terms of our above order.

### **Assessment Years 2010-11 to 2012-13**

7. It is admitted position that facts as well issues are identical in all these years. The assessment for AY 2010-11 has been framed u/s 143(3) r.w.s. 147 on 23/03/2016 wherein the share application money of Rs.157.09 Lacs has been added to assessee's income u/s 68 along with estimated commission income of Rs.1 Lacs u/s 69C. In AY 2011-12, the assessee has been saddled with addition u/s 68 for Rs.91.90 Lacs. The quantum of addition for AY 2012-13 is Rs.114.90 Lacs. In all these years, the additions have been made as well as confirmed on similar reasoning & observations. Aggrieved, the assessee is in further appeal before us with identical grounds of appeal.

8. We find that for all these years, the assessee has discharged the onus by adducing sufficient documentary evidences which have been placed in the paper-book. Most of the investors are common investor as

in AY 2009-10. With respect to additional investors, similar documents as well as confirmations were filed by the assessee. The investments made in the assessee company are evidenced by Income Tax Returns as well as Bank statements of the investor entities. The cash deposits made in the bank account of investors are commensurate with the Income reflected by them during the year and duly supported by their respective financial statements. The appellate orders are on similar lines. Therefore, facts being substantially the same as in AY 2009-10, taking the same view, we delete the impugned additions as made u/s 68 as well as u/s 69C and allow all these appeals.

### **Conclusion**

9. All the appeals stand allowed in terms of our above order.

*Order pronounced on 1<sup>st</sup> October, 2021.*

**Sd/-**

**(C. N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/10/2021  
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.**