

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As. No.1428/DEL/2016
Assessment Year 2012-13

ITO, Ward-3(2), New Delhi.	v.	M/s. Arizona Ventures Pvt. Ltd., Flat No.211, 2 nd Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi.
TAN/PAN: AADCD6391B		
(Appellant)		(Respondent)

ITA No.1429/DEL/2016
Assessment Year 2012-13

ITO, Ward-3(2), New Delhi.	v.	M/s. Arizona Global Services Pvt. Ltd., Flat No.211, 2 nd Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi.
TAN/PAN: AADCD7117M		
(Appellant)		(Respondent)

Appellant by:	Shri Satpal Gulati, CIT-DR		
Respondent by:	Shri Rakesh Joshi, CA		
Date of hearing:	15	03	2021
Date of pronouncement:	26	03	2021

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed by the Revenue against separate impugned order of even date, 29.01.2016 passed by Id. CIT(A)-I, New Delhi for the quantum of

assessment passed u/s.143(3) for the Assessment Year 2012-13. In both the appeals, the issues raised are exactly same arising out of identical set of facts and also the same nature of finding is permeating in both the appeals; hence both the appeals were heard together and are being disposed of by way of this consolidated order.

2. The only ground raised by the Revenue in the appeal of M/s. Arizona Global Services Pvt. Ltd. is that, ld. CIT (A) has erred on facts and in circumstances of the case in deleting the addition of Rs. 151,95,00,000/- made u/s.68; and in the case of M/s. Arizona Ventures Pvt. Ltd. Similar ground has been raised for deleting the addition of Rs.53,55,00,000/- made u/s.68 of the Act.

3. For the sake of convenience, the appeal in the case of M/s. Arizona Global Services Pvt. Ltd. in ITA No.1429/Del/2016 is being taken up and as admitted by both the parties, the findings given therein will apply *mutatis mutandis* in other appeal also. The facts in brief are that, M/s. Arizona Global Services Pvt. Ltd. the appellant has its registered office at Flat No. 211, 2nd floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019. It was originally known as M/s Digivive Content Services Pvt. Ltd. and subsequently its name was officially changed. In the year of its incorporation, i.e., during 2010-11, it was in existence for about 1½ months. During this period, no business was conducted and there was not much income or receipts. As per

the Memorandum of Association, the assessee company was to carry on the business of Service Providers, operators, agents, renters, hirers and distributors of cable Television Network, in the line of telecom and communication and to act as business consultants, give advice, to engage in dissemination of information in all aspects of business organization and industry. In the year under consideration, the proposed business was still to take off. The company had some receipts from advisory services shown in the accounts as 'Revenue from operations'. It also had interest income, which has been offered to tax under the head 'Income from other sources' The assessee has been filing its returns of income regularly with the Income Tax Officer, Com. Ward 3(2), New Delhi in the CIT, Delhi-I, New Delhi charge under PAN AADCD7117M. For the A.Y. 2012-13, Income Tax return had been e-filed by the appellant on 29.09.2012 u/s 139(1) of the I.T. Act, 1961 declaring income of Rs. (-) 28,11,844/-. The same was processed as such u/s 143(1) of the Act by the Income Tax Department. Subsequently, the case was picked up for scrutiny and accordingly, scrutiny proceedings u/s 143(3) was initiated by the AO for the assessment year under consideration by issuing notice u/s 143(2) of the Act. After completion thereof, Ld. AO has completed assessment at an income of Rs. 151,66,88,156/- u/s 143(3) of the Act vide order 31.03.2015. In the said assessment, Ld. AO has made addition of Rs. 151,95,00,000/- u/s 68 of the Act, as unexplained cash credit holding that the investment made by

different corporate concerns in OFCDs (Optionally Fully Convertible Debentures) issued by the assessee company have not been satisfactorily explained.

4. As noted by the Assessing Officer, during the year, the assessee-company has received 0% OFCDs amounting to Rs.151,95,00,000/- from the following parties:-

Sr. No.	NAME OF PARTY	PAN	NAME OF ADDRESSES	AMOUNT OF RS.
1	BHARAT VISION INFRA LTD	AADCB9419N	4TH FLOOR, ROOM NO 409, 8 CAMAC STREET KOLKATA WEST BENGAL- 700017	5,30,00,000
2	GANAPTI ADVISORY PVT LTD	AACCG8928N	4TH FLOOR, ROOM NO 409, SHANTI NIKETAN BUILDING, 8 CAMAC STREET KOLKATA WEST BENGAL-700017	5,20,00,000
3	OM VINCOM PVT. LTD	AABCO0241K	53A, 4TH FLOOR, MIRZA GHALIB STREET KOLKATA, WEST BENGAL- 700016.	1,50,00,000
4	RITESH CONSTRUCTION PVT. LTD	AADCR6226K	53A, 4TH FLOOR, MIRZA GHALIB STREET KOLKATA, WEST BENGAL- 700016.	1,50,00,000
5	RUPAK TRADING PVT. LTD	AABCR2787D	62, RADHA BAZAR STREET, 3RD FLOOR ROOM NO 29, CALCUTTA, WEST BENGAL- 700001.	7,50,00,000
6	SCAN INFRASTRUCTURE LTD	AACCB3214C	P-27, PRINCEP STREET, 3RD FLOOR, KOLKATA, WEST BENGAL- 700072	1,50,00,000
7	SWARNAPUSHPA VANIYA PVT. LTD	AAJCS0597G	MAA PAHARI ESTATES PVT LTD, 4 SYNAGOGUE ST, KOLKATA, WEST BENGAL- 700001.	3,50,00,000

8	UNISYS SOFTWARES AND HOLDING INDUSTRIES LTD	AABCC1191Q	75C PARK STREET, BASEMENT, KOLKATA, WEST BENGAL- 700016	3,00,00,000
9	WALTARE INVESTMENT PVT LTD	AAACW2314A	ROOM NO 29, 3RD FLOOR, 63 RADHA BAZAR STREET CHINA BAZAR KOLKATA, BENGAL-700001	3,70,00,000
10	KOA INVESTMENT LTD	AACCK8539K	5/5761, 1ST FLOOR, GALI NO- 2, DEV NAGAR KAROL BAGH DELHI-5	6,75,00,000
11	GLOBAL INFRATECH & FINANCE LTD (FORMELY ASIANLAK CAPITAL AND FIANANCE LTD)	AABCA4255H	T2-3RD FLOOR SINDUR, PANTHEON PLAZA 346, PANTHEON ROAD, EGMORE, CHENNAI, TAMILNADU- 600008	8,00,00,000
12	COMET HODLING LTD	AABCAC0351 J	ROOM NO BA, HASTINGS CHAMBER, 7CKIRAN SANKAR ROY ROAD, HIGH COURT, KOLKATA WEST BENGAL- 700001	1,00,00,000
13	EVERSIGHT TRADECOMM PVT LTD	AAACE7667 E	7TH FLOOR ROOM NO 11 & 12, SHANTINIKETAN, 8 CAMAL STREET, KOLKATA, WEST BENGAL-700017	6,00,00,000
14	AGGRESSIVE EXPORTS INDUSTRIES PVT. LTD	AAACA5741 P	11/6 B 2ND FLOOR, SHANTI CHAMBER, PUSA ROAD, NEW DELHI-110005.	4,50,00,000
15	SHAIL INVESTMENTS PVT LTD	AAJCS6419B	13/34 WEA FOURTH FLOOR MAIN ARYA SAMAJ ROAD, KAROL BAGH, NEW DELHI- 110005.	90,25,00,000

16	ARIZONA VENTURES PVT LTD (FORMERLY DIGIVIVE VENTURE PVT. LTD)	AADCDC6391B	FLAT NO 211 SECOUND FLOOR, HEMKUNT CHAMBERS, 89 NEHRU PLACE, NEW DELHI- 110019.	2,75,00,000
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5. Ld. Assessing Officer in his order has discussed in detail about how the assessee has been uncooperative during the course of assessment proceedings. On the issue of receiving of OFCDs from the aforesaid parties, Assessing Officer has issued various questionnaires which as per the Assessing Officer were not properly responded though assessee had submitted the requisite information. On sample basis, the Assessing Officer issued notices u/s.131 to some of the investor companies, namely, M/s. Shail Investments Pvt. Ltd. and M/s. KOA Investments Ltd. However, no compliance was made by these parties. He also observed that once the notices/summons was not complied with, the Income Tax Inspector was deputed to serve the summons and to conduct certain inquiry and submit his report. In case of KOA Investments Ltd., he observed that notices could not be served because address given is of a small Halwai shop. Regarding M/s. Shail Investments Pvt. Ltd., the notice was served on the given address, however, the Income Tax Inspector has mentioned that there was no name plate/signboard of the company and only an office boy and guard was present. Later on, on inquiry, it was found that it was an office of Mr. Tarun Goyal who was an established

'Entry Operator'. Further, some of the investors were from Kolkata and information was received from the Income Tax Department that the only activities carried out by these parties was to provide accommodation entries. He required the assessee to produce the Directors of all the parties who have invested in OFCDs and all the Directors should bring documentary evidences regarding their identity and appointment as Director, complete books of accounts, copy of company's returns and individual return of income from Assessment Year 2011-12 to 2013-14, bank statements for Financial Years 2010-11 to 2012-13, cheque booklets and minutes of meeting of Board of Directors. He observed that again no compliance to this notice was made. The assessee never produced the Directors of the companies even those based at Delhi. Finally on 25.03.2015, he issued a show cause notice to the assessee to comply with all the contents he has asked for. One of the important thing which was mentioned in his show cause notice was the fact of search and seizure operation u/s.132 conducted at the office premises of Shri Tarun Goyal by the Investigation Wing way back on 15.09.2008, during the course of which, it was found and established that Shri Tarun Goyal was engaged in the business of providing accommodation entries in lieu of cash to a large number of beneficiaries through numerous dummy companies floated and controlled by him. He has also explained the *modus operandi* of bogus companies as discussed in the report that how they were not carrying out

any genuine activity. He also referred to the statement on oath of the employees of Shri Tarun Goyal recorded on 15.09.2008 wherein they have stated that they were signing various documents related to many companies at his behest. The statements of auditors of Shri Tarun Goyal were also recorded who have confirmed that they had no knowledge about the Directors of the companies and all the audits were done at the instructions of Shri Tarun Goyal. From these backgrounds, he made his observation in the show cause notice in the following manner:

“4. The above conclusively proves that the amounts received in the form of OFCD from M/s. Shail Investments Pvt. Ltd. is nothing but your own money which has been taken back through cheques from the ‘Entry Operator’ Companies through accommodation entry.

5. Since nobody appeared in response to the Summons, you were given an opportunity to produce the Directors for personal deposition, but, you failed to do so.

6. As regards the Parties at Kolkata enquiries conducted, in the case of 2 Parties, have revealed that the Parties concerned belong to an Entry Operator Group managed and controlled by the Purohit family. During the course of Search & Seizure Operation u/s 132 of the Act the statement of Sh. Jagdish Prasad Purohit (controller of 246 Entry Operator Companies) was recorded on 21/01/2015. Sh. Anil Kumar Purohit is the son of Sh. Jagdish Prasad Purohit. It has been admitted by Sh. J. P. Purohit that Sh. Anil Kumar Purohit was

one of the many dummy Directors in his numerous Companies including M/s. Scan Infrastructures Ltd. (the Company which has paid Rs. 1,50,00,000/- for OFCD subscription to the Assessee company). It was stated that Sh. Anil Kumar Purohit was a dummy Director in at least 49 Companies of his group. Sh. J. P. Purohit categorically admitted that all the companies were involved in providing accommodation entries only and did nothing else. The cash received from the Entry Seeker / Beneficiary was deposited in account of one Company and routed through multiple Companies within the group for layering of the funds and ultimately the funds were parked in the bank accounts of the 'Entry Seeker' / Beneficiary. In Unisys Software & Holding Industries Limited (the Company which has paid Rs. 3,00,00,000/- for OFCD subscription to the assessee Company) Sh. J. P. Purohit himself is a Director. Further, you yourself have failed to produce the Directors of the Companies whose addresses are at Kolkata. Not even in a single case you have been able to cause their production.

7. Due opportunity was given to you, vide Summons u/s. 131 dated 20/03/15, to produce all the Parties from whom OFCDs had been claimed to have been received but you have failed to do so. Not even a single person concerned was produced before me by you. Therefore, this also is further additional reason which conclusively proves that the investments made by these Parties is not genuine, you are not in a position to furnish requisite evidence and it is your own unaccounted cash which has been taken back through cheques from the 'Entry Operator' Group.

8. *In the light of above, after enquiries conducted on random basis in 4 cases, the source of the funds, genuineness of the transactions and also the creditworthiness of the Parties concerned is not proved in your books / accounts.*

9. *It has already held that you that you deliberately delayed submission of information with a view to prevent complete investigations in all the cases / Parties from whom you received the amounts claimed by you to be OFCD subscription.*

10. *To sum up you have failed to establish your claims and the explanation with regard to the amounts credited in your accounts is seen to be false and not satisfactory. Therefore, provisions of Section 68 of the Act clearly apply in your case. Therefore, please show cause why the entire amount of Rs.151,95,00,000/- should not be added u/s.68 of the Income Tax Act 1961.”*

6. Further in the cases where OFCD subscribers were based in Kolkata, Assessing Officer observed that department has gathered inquiry on sample basis by the Investigation Wing that two of the companies, M/s. Scan Industries Ltd. and M/s. Unisys Software Holdings Ltd. who had subscribed for the OFCDs issued by the assessee company were identified as entry operator companies, because they belong to Mr. Jagdish Prasad Purohit. He has also referred to submission u/s.132(4) of Mr. Jagdish Prasad Purohit whose statement has also been made part of the assessment order as Annexure-B; and also the statement of Shri Tarun Goel which is also part of his order as Annexure C. Thereafter,

Assessing Officer has tried to rebut the contention of the assessee which has been raised vide letter dated 16.03.2015 and 26.03.2015. By and large his observation and finding has been that, all these are part of accommodation entry done through entry operator run by Shri Tarun Goel or Shri Jagdish Prasad Purohit.

7. In sums and substance, observations and findings of the Assessing Officer are that;

- firstly, these companies do not have any appreciable liquidity or surplus funds of their own. Their bank statement shows pattern of accommodation entries, etc;
- secondly, in so far as the assessee's contention that the amount received as OFCD subscription has already been rebutted/refunded in the later year. He has rejected the same after observing and holding as under:

Even though it was claimed that the amounts had been refunded back, yet, it was never explained as to whether the source of funds was from the same Companies to which the funds had been given or whether the source was from some other third parties. It cannot be entirely ruled out that another set of fresh entries were taken for making arrangement of funds to pay back the OFCD subscription amounts. Here, another very important point which commands a great degree of importance is that the terms and conditions governing the issue of OFCDs were very much adverse to the subscribers. The agreement in this regard was seen to be totally lopsided and completely in favour of the Assessee Company. The terms and conditions on which these OFCD subscriptions were made by the subscribing Parties

concerned, in brief, are as described below.

(a) Conversion: The OFCDs would be redeemable after 10 years at par if the conversion option is not exercised.

(b) Usage of Funds: The amount received would be at exclusive disposal of the Company and may be utilized by the Company for any purpose in the manner deemed fit. The OFCD Holder shall have not right to claim or question anything in this regard.

In this regard it is important to keep in mind that even the Hon'ble Delhi High Court has held, in numerous decisions, one of them being Nova Promoters (2012) 342 ITR 169 (Del.) and another being C.IT vs. Focus Exports Pvt. Ltd. in ITA 12. On Page 9 of ITA 218/2012 it has been stated that what is apparent be considered real until it can be shown that there are reasons to believe : the apparent is not real. Proof is required and the assessing authorities are rejected to put blinkers while looking at documents before them. The terms editions were seen to be very un-favourable to the OFCD subscribers. This was one very important aspect which required explanation and the explanation could have been provided by only the Directors of the investor Companies. The assessee blocked all roads in this direction by failing to produce the said Directors. It is also amusing to note that the AR of the Assessee says that it has thing to do with either Sh. J. P. Purohit or Sh. Tarun Goel when in fact the truth is that Sh. Tarun Goel and Sh. J. P. Purohit are themselves the Directors in those very Companies which have paid crores of Rupees to the Assessee Company. If the Directors of the Assessee Companies do not even know the Directors of the OFCD subscribing Companies then how did this money come into the accounts of the Assessee Company. With whom were negotiations held? The fact is that no negotiations were held because the

procedure adopted was to simply take accommodation entries by delivering cash to some other group Company of these entry operator Companies and taking cheques from the account of some other group Company.

Another important aspect which needs to be highlighted here is regarding the direction in which the refund amounts were going. It was seen from perusal of the relevant pages of the relevant bank statements that the amounts from the bank account of the Assessee Company have been transferred to the account of M/s Shail Investments Pvt. Ltd. and further these have flowed into the bank account of M/s Dhartrima Urja Pvt. Ltd. from which they have further flowed into the bank account of M/s Magnifico Minerals Pvt. Ltd. All these Companies have one common address which is 75, Khirki Village, New Delhi. In fact, at this address, after local enquiries it was found that many number of Companies were functioning from this address (75, Khirki Village). Names of some of the other Companies are M/s World Windows Impex Pvt. Ltd., M/s Alstrong International, M/s Aspum Trading, M/s Alubond Enterprises, M/s World Windows Ujala, M/s Mangalam Apartments Pvt. Ltd. etc. Therefore, in the end result, the funds have remained in the chain / loop of the entry operator group itself. These are so many reasons to hold that it makes no difference if the amounts P-- been returned back. The assessee has taken the plea that the money was returned back and hence the net effect is zero and hence no income can be added is not tenable at all. AR of the Assessee vide letter dated 26/03/15 vide para no. 4 submitted thus -"As far as assessee is concerned, we may vouchsafe that the transaction undertaken with them by the assessee company were pure and simple business transactions and these were not any accommodation entries. Furthermore, entire loan amount obtained*

from the parties concerned through OFCDs has since been paid back through the banking channel. The fact of repayment negates the Department's allegation of accommodation entry. Therefore, there is no justification for revoking the provisions of section 68 of the Act on the part of Ld. AO." This reasoning given by AR of the Assessee is faulty. If unexplained and unaccounted sums are found credited in the books of accounts and the same are utilised for some purpose and then the account is squared up, the act of squaring up the account has no impact on the taxability/assessment of such unexplained and unaccounted sums as income. The only point to be seen is unaccounted income has been detected in the accounts and that income is clearly assessable to tax. Repayment of the same would not give a clean chit to the Assessee bi what has been detected is unaccounted income which has been earns which has been taken into accounts in a different form so as to avoid tax. Further, if that unaccounted income has been repaid through same channels would not mean anything significant. Repayment of unaccounted income exonerate the Assessee from liability to be taxed on that unaccounted income."

- Thirdly, he has taken the adverse inference of non producing of Directors and has rejected the assessee's contention that the time allowed for producing the Directors were very short because the notice u/s.142(1) was issued on 05.01.2015 itself and there was long period of almost three months.

7. Regarding objection of the assessee that the Assessing Officer has to prove that the assessee company was doing some business and earning unaccounted income in cash and then routing that unaccounted income through 'Entry

Operators', or else, it is mere presumption. In this regard, he held that the assessee never answered as to what exact business was done by the assessee company from inception. In view of these facts and information of entry operators, there is a presumption in terms of section 132(4A). Further, since assessee never actually did any business then how it was possible that unknown entity will put their own hard money into hands of the assessee company for no return at all. Lastly, he held that the proof submitted by the assessee cannot be considered satisfactory and adequate. In support, he relied upon the judgment of Hon'ble Delhi High Court in the case of **CIT vs. M/s. Focus Exports Pvt. Ltd. in ITA No.218/2001; (2) Nova Promoters and Finlease Pvt. Ltd. (3) CIT vs. NR Portfolio Pvt. Ltd. 206 (2014) DLT 97**, and other decisions. After discussing all those judgments, he finally made the addition after observing and holding as under:

10. The terms and conditions governing the issue of OFCDs were very much adverse to the subscribers. The agreement in this regard was seen to be totally lopsided. The terms and conditions, in brief, were as described below

(a). Conversion : The OFCDs would be redeemable after 10 years at par if the conversion option is not exercised.

(b) Usage of Funds; The amount received would be at exclusive disposal of the Company and may be utilized by the Company for any purpose in the manner deemed fit. The OFCD Holder shall have not right to claim or question anything in this regard.

Under normal circumstances nobody would agree to such adverse conditions prescribed for investing. The Assessee Company never explained even during assessment proceedings as to how the OFCD holders would benefit from subscribing to the OFCDs. There was no project to be undertaken by the assessee Company and there was no information on the projected profitability of the Company in future years. Therefore, there cannot be any valid reason to hold that the OFCD subscription was genuine and the investors were genuine. In view of above discussions it is held that the amounts received in the bank accounts of the Assessee Company and claimed to be of capital nature (claimed as OFCD subscriptions) are not of the nature that these are claimed to be.

The implausible terms of agreement regarding the OFCDs- 0% interest rate, redeemable at par after 10 years, etc coupled with the following:

- findings of the Department regarding Mr. Tarun Goyal and the cases at Kolkata, selected on random basis*
- failure of the AR to produce the Directors of the assessee Company for personal deposition*
- failure of the AR to produce the Directors of the Companies that had been claimed to have given the OFCDs*
- failure of the assessee to prove the identity, genuineness and creditworthiness in respect of the OFCDs received*

proves beyond doubt that the Assessee Company has, through use of colourable device, brought in its books, its own unaccounted money from 'Entry Operators,' in the garb of OFCDs and hence these receipts are hit by provisions of Section 68 of the Act. The explanation provided about the nature of these sums is not found to be satisfactory. Therefore, this sum is liable to be

added u/s 68 of the Income Tax Act, 1961 and is being added back to the income of the Assessee.

Addition : Rs. 151,95,00,000/-

8. Before the ld. CIT (A), the assessee has made a very elaborate submission, in sums and substance can be summarized in the following manner:

➤ The onus discharged by the assessee to substantiate the OFCDs subscribed by the investors by filing following evidences before the Assessing Officer:

i) Complete names and addresses of the subscribers, number of 0% OFCD subscribed and the amount of loan outstanding as on 31.03.2012 of each party.

(ii) Their Permanent Account Nos.

(iii) Photocopies of the acknowledgement portion of their ITRs to establish that all parties were regularly assessed to Income Tax.

(iv) Written confirmation certificates from the respective parties.

(v) Copy of their bank accounts for the relevant period to establish the availability of funds with the said parties.

(vi) Confirmatory certificates of receiving back the loan amount as obtained from each party, after redemption of the OFCDs.

(vi) Copy of relevant portion of our bank account statement, highlighting therein the relevant transaction of repayment to the respective parties after redemption of the OFCDs

(vii) Copy of the ledger accounts of the investors, as in the books of account of the appellant assessee showing the refund of loans.

- The Assessing Officer has relied upon the investigation report wherein there was reference of statement of Shri Tarun Goyal which was recorded in the year 2008 and the statement of Shri Jagdish Prasad Purohit u/s.132(4) on 21.01.2015. In so far as the statement of Shri Tarun Goyal is concerned, the assessee submitted that the same were recorded around seven years back which cannot have any evidentiary value for the transaction undertaken for Assessment Year 2012-13. Assessing Officer has made additions without making inquiry on his own in this regard and simply relying upon the inquiries conducted by the Investigation Wing way back in the year 2008, when the assessee company was not in existence. Another important thing which was pointed out that even in the statement of Shri Tarun Goyal he has not mentioned the name of any company from which assessee company has undertaken transaction was used by him for providing the entries and there is no whisper about the companies from whom assessee had transactions in the year 2011-12. Shri Tarun Goyal has also admitted that there are various companies from which genuine business was carried out.
- Regarding the statement of Shri Jagdish Prasad Purohit, it was pointed out that he has never said that any accommodation entry was provided to the appellant

company and the only name mentioned of the beneficiary of the accommodation entry was M/s. Varaha Infra Ltd. and nowhere the name of the appellant company appeared.

- All 16 subscribers who had subscribed for OFCDs have now been redeemed and the subscriber had accordingly been rebuffed their loans and there is nothing due to them as on date and the account stands fully settled nowhere there is an iota of evidence that repayment has come part to the assessee company in some hidden way even Assessing Officer who has tried to examine the trail of money could not find that the amount of repayment does not finally listed with the subscribers.
- Simply based on inquiry of four cases on sample basis Assessing Officer has applied his finding of sixteen cases including in the name of M/s. Arison Ventures Pvt. Ltd. a subsidiary concern of the assessee-company.
- Another important fact which was pointed out that the inquiries conducted in the case of KOA Investment Ltd., despite the correct address being mentioned in the assessment order and given to the Assessing Officer, the Income Tax Inspector had conducted an inquiry on a wrong address, i.e., instead of 5/5761, 1st Floor, Gali no.2, Dev Nagar, Karol Bagh, Delhi-5, the ITI has gone to other address at 5/5791. Thus, inquiry itself was conducted at a wrong address. And in the case of M/s.

Shail Investment Pvt. Ltd. Even, as per the AO, the notice remain uncomplied with that itself doesn't lead to any adverse inference can be drawn.

- Regarding investigation report from Kolkata, namely, Scan Infrastructures Ltd., M/s. Unisys Software & Holding Industries Limited identified as entry operators, it was pointed out that Assessing Officer never confronted the report or any of the above referred information to the assessee and how the inquiry was conducted on sample basis only in case of two companies.
- Thereafter various judgments have been relied upon and rebutting each and every finding and observation of the Assessing Officer which has been dealt and incorporated in detail in the impugned appellate order.

9. Another important fact which was pointed out that, in fact the time provided by the Assessing Officer was too short because the inference which Assessing Officer has tried to draw was confronted only in the last few days, and therefore, the assessee filed a petition of admission of additional evidence under Rule 46A which has been incorporated in the appellate order as under:

“a) Balance confirmation from the OFCD holders confirming the repayment of amount made to them and showing ‘nil’ balance after making payment to them.

b) *Copy of bank account statement of the appellant company showing the repayment of the amounts made to the respective OFCD holders.*

c) *Copy of bank account statements of all the companies, which invested in OFCDs floated by the appellant company showing receipt back of the respective amounts in their bank accounts.*

d) *Copies of acknowledgement portion of the Income Tax returns of the investing companies in proof of their being Income Tax assesseees.”*

10. The additional evidences and assessee's explanation and submission were forwarded to the Assessing Officer to submit his remand report and to conduct the inquiries and verification. In response, the Assessing Officer had filed his remand report which reads as under:-

“1. Kindly refer to your letter F.No. CIT(A)-I/2015-16/275 dated 13.10.2015 on the above subject. The point wise report is as under:

As far as the admission of additional evidence, it may be noted that Rule 46A of the Income Tax Rules, 1962 prescribes certain conditions subject to the fulfillment of which additional evidence can be permitted which are given as under:-

(a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or

(c) *Where the appellant was prevented by sufficient cause from producing before the Assessing Officer by evidence which is relevant to any ground of appeal; or*

(d) *Where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.*

The plea of the assessee for acceptance of additional evidence was that they could not file copy of Bank statement of all the companies, which invested in OFCDs floated by the assessee company showing receipt back of the respective amounts in their Bank accounts, in respect of all the investors. In this regard it is submitted that the assessee company was allowed sufficient opportunity during assessment proceedings and in my view, the additional evidence is not admissible under Rule 46 A of Income Tax Rules, 1962 as assessee was given sufficient opportunity and none of the specific circumstances under Rule 46A apply to the case of the appellant.

Without prejudice to the above, coming to the merit of the case.

1. *The assessee company has taken unsecured loans in the form of OFCDs. After making proper enquiries in respect of lender companies at Delhi addresses and Kolkata offices as mentioned in the assessment order, it was held that these companies are not doing any significant business on their own and onus of proving creditworthiness has not been complied. Further, it is submitted that your kindself has asked for carrying out necessary verification of the documents filed by the assessee at the appellate stage and to submit the report thereon.*

2. ***In this regard, it is further submitted that the assessee has submitted before your kindself confirmations***

from different parties, copy of its bank account and also those of the parties concerned and evidence relating to their being Income -tax assesses. In order to cross-verify the same, notice u/s 133(6) of the I.T. Act, 1961 were issued to all the parties concerned asking them to confirm the position as also to comment us to whether the document submitted by the assessee are genuinely supplied by them to the assessee or not. The replies from all the parties have since been received and they have confirmed that they had undertaken the transactions, in question, and had also supplied the confirmatory documents to the assessee, on request for the same. It is further stated by the parties that the balance towards the assessee is 'Nil as on date.

3. Irrespective of the above position, I still support the findings of my predecessor as given in the assessment order. As stated in the assessment order, enquiries were got conducted on sample basis at Delhi in two cases namely M/s KOA Investments Ltd and M/s Shail Investments Pvt. Ltd. The inspector was sent with summons u/s 131 to the said parties. M/s. KOA Investments Ltd was not found by the inspector at the given address, where a halwai shop was found existing in place of the office of the said party. Similarly, the other party namely M/s. Shail investments Pvt. Ltd was found to be sharing address 13/34, WEA, 4th floor, Main Arya Samaj Road, Karol Bagh, New Delhi with the CA Sh. Tarun Goyal, who is a known entry operator. Similarly, enquiries were got conducted in the cases of three parties at Kolkata namely M/s Warner Multimedia Ltd., M/s Prime Capital Market Ltd and M/s Unisya Software & Holding Industries Ltd. These enquiries revealed that these parties belonged to an entry operator group of Purohit family. Sh. J.P. Purohit of the said group

admitted in a statement recorded that he was giving accommodation entries. In view of above and also observing the pattern of Return of Income and copy of balance sheet filed by the parties' credit worthiness remains doubtful.

Further it is also submitted that section 68 of the I. T. Act speaks about "Where any sum is found credited in the books.." and is immaterial that the funds have been returned back in future.

4. Considering the above report, the case may kindly be decided by your good self on merits and assessment order may be uphold."

11. Ld. CIT (A) after considering the remand report and also after requisitioning the case records and on examination of the same, found that effective hearing in the assessee's case started only in the month of January, 2015 and till 20th March, 2015, the Assessing Officer did not ask the production of the Directors of the investor company and the details were asked by him in the final show cause notice issued on 25.03.2015 for which assessee could not have collected the information from the parties distantly located within the span of 4 to 5 days. Further, the parties from whom OFCDs were received were paid back in the years 2013, 2014 and 2015, and therefore, there were no regular contact with those parties. The assessee had faced genuine difficulties in collecting evidences from investor parties in such a short time. Based on these facts and circumstances and in the interest of substantial justice, he admitted the additional evidences. He further observed in response to the query raised by the Assessing Officer that the assessee company

had submitted various documents/evidences like complete names and address, PAN, number of OFCD subscriber and amount of loan outstanding as on 31.03.2012, proof of their being regular income tax assessee, viz. copy of return of income, copy of bank statement, confirmation certificates of the investors, copy of ledger account, balance sheet, auditor's report etc. In order to prove the genuineness of the transaction the assessee has also filed the evidences at the appellate stage which were as under:

“a) Balance confirmation from the OFCD holders confirming the repayment of amount made to them and showing ‘nil’ balance after making payment to them.

b) Copy of bank account statement of the appellant company showing the repayment of the amounts made to the respective OFCD holders.

c) Copy of bank account statements of all the companies, which invested in OFCDs floated by the appellant company showing receipt back of the respective amounts in their bank accounts.

d) Copies of acknowledgement portion of the Income Tax returns of the investing companies in proof of their being Income Tax assessees.”

12. Thereafter, he has discussed merits of additions in case of each and every party based on the evidences and the remand report of the Assessing Officer which are incorporated as under:-

BHARAT VISION INFRA LIMITED

The appellant company has received 0% OFCDs of Rs.5,30,00,000/- from M/s Bharat Vision Infra Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.4,99,00,000/- and reserve & surplus to the extent of Rs.44,44,00,207/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Stephen House, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 27.08.2014. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.5,34,312/- has been shown and has declared loss of Rs.31,743/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also sent its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.5,30,00,000/- and refund of the same is reflected. The investor company has also filed copy of the appellant's account from its books of accounts from 01.04.2011 to 31.03.2015, its copy of return of income filed with Income Tax Department along with copy of its balance sheet for the A.Y. 2010-11, 2011-12 and 2012-13 and along with the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor

company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

GANPATI ADVISORY PVT. LTD.

The appellant company has received 0% OFCDs of Rs.5,20,00,000/- from M/s Ganpati Advisory Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.6,09,00,000/- and reserve & surplus to the extent of Rs.53,85,36,219/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Stephen House, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 28.08.2014. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.28,000/- has been shown and has declared loss of Rs.78,519/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2015 along with its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.5,20,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its

balance sheet for A.Y. 2010-11, 2011-12 and 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

OM VINCOM PVT. LTD.

The appellant company has received 0% OFCD subscription of Rs.1,50,00,000/- from M/s. Om Vincom Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.76,12,500/- and reserve & surplus to the extent of Rs.12,89,05,543/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with IndusInd Bank, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 26.06.2013.

The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.88,46,032/- has been shown and has declared income of Rs.8,215/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.1,50,00,000/- and refund of the same is

reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2012-13, 2013-14 and 2014-15 and the confirmation of the amount paid as 0% OFCDs to the appellant company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

RITESH CONSTRUCTION PVT. LTD

The appellant company has received 0% OFCDs of Rs.1,50,00,000/- from M/s Ritesh Construction Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.50,72,500/- and reserve & surplus to the extent of Rs.7,05,13,867/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with IndusInd Bank, Burra Bazar, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 26.06.2013. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.40,05,274/- has been shown and has declared income of Rs.8,593/-. During the course of remand proceedings, Assessing Officer issued notice u/s. 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and 01.04.2013 to 31.03.2014 and its copy of

bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.1,50,00,000/- and the refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2012-13, 2013-14 and 2014-15 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

RUPAK TRADING PVT. LTD

The appellant company has received 0% OFCDs of Rs.7,50,00,000/- from M/s Rupak Trading Private Limited (now known as Iskcon Infra Engineering Pvt. Ltd.). The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.1,70,27,000/- and reserve & surplus to the extent of Rs.14,93,11,552/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with United Bank of India, Netaji Subhash Road, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 22.01.2014 Rs.4,00,00,000/- and on 27.06.2014 Rs.3,50,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.47,87,22,950/- has been shown and has declared loss of Rs.4,47,771/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the

said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and 01.04.2013 to 31.03.2015 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.7,50,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2012-13, 2013-14 and 2014-15 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

SCAN INFRASTRUCTURE LTD

The appellant company has received 0% OFCDs of Rs. 1,50,00,000/- from M/s Scan Infrastructure Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.20,28,99,900/- and reserve & surplus to the extent of Rs.30,37,87,015/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with Kotak Mahindra Bank, Dalhousie, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 25.06.2013. The investor company has also submitted copy of Income Tax Return wherein total revenue

of Rs.87,62,650/- has been shown and has declared loss of Rs.7,20,518/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2015 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs. 1,50,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2010-11, 2011-12 and 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

SWARNAPUSHPA VANIYA PVT. LTD

The appellant company has received 0% OFCDs of Rs.3,50,00,000/- from M/s Swarnapushpa Vaniya Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs. 1,49,56,170/- and reserve & surplus to the extent of Rs.25,92,70,155/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with State Bank of Bikaner and Jaipur, Kolkata wherein the amount refunded by the

appellant company has been credited in the account of the applicant company on 27.06.2014. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.14,60,13,069/- has been shown and has declared income of Rs.32,769/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.3,50,00,000/- is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

UNISYS SOFTWARES AND HOLDING INDUSTRIES LTD.

The appellant company has received 0% OFCDs of Rs.3,00,00,000/- from M/s Unisys Softwares and Holding Industries Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.23,00,02,000/- and reserve & surplus to the extent of Rs.34,08,84,000/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with Kotak

Mahindra Bank, Dalhousie Road, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 22.01.2014. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.201,70,44,000/- has been shown and has declared income of Rs.1,01,28,680/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2015 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.3,00,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2010-11, 2011-12 and 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. In its reply dated 28.10.2015 received by the AO on 09.11.2015, the Director of the said investor company, Shri Jagdish Prasad Purohit has stated that his statement was recorded u/s 132(1) during the course of search on 21.01.2015 at his residence and survey was also carried out in the case of M/s Warner Multimedia Ltd., M/s Prime Capital Market Ltd. and M/s Unisys Software and Holding Industries Pvt. Ltd. He has further stated that during the course of search he was forced to sign on a pre-drafted statement in place of his own replies. He has also mentioned that DDIT took out a list of companies and he was forced to accept that all these companies mentioned in

this list were belonging to him. Sh. Jagdish Prasad Purohit has also written that he had already retracted the said statement by swearing an affidavit on 30.01.2015. Copy of the said affidavit is also enclosed along with the reply filed in response to notice u/s 133(6). Sh. Jagdish Prasad Purohit has confirmed the transaction with the appellant company and has mentioned that these transactions have been taken place through banking channels. He has also filed copy of the Assessment Order passed by the AO in the case of investor company for A.Y. 2012-13 wherein the no adverse view with regard to 0% OFCD given to the appellant company has been taken by the AO in the case of investor company. This shows that the AO was fully satisfied with the transaction of 0% OFCD with the appellant company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

WALTARE INVESTMENT PVT. LTD.

The appellant company has received 0% OFCDs of Rs.3,70,00,000/- from M/s Waltare Investment Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.2,48,66,700/- and reserve & surplus to the extent of Rs.47,20,46,908/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with United Bank of India wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 11.06.2014 of Rs.2,70,00,000/- and on 12.06.2014 of

Rs.1,00,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.8,78,485/- has been shown and has declared income of Rs.39,430/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and 01.04.2014 to 31.03.2015 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.3,70,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2014-15 and the confirmation of the amount paid as 0% OF'CDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

KOA INVESTMENT LTD.

The appellant company has received 0% OFCDs of Rs.6,75,00,000/- from M/s KOA Investment Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.1,04,44,200/- and reserve & surplus to the extent of Rs.10,37,76,346/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the

applicant company with Axis Bank, Karol Bagh Branch, Delhi wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 31.03.2013 of Rs.1,00,00,000/-, on 30.03.2016 Rs.1,00,00,000/-, on 30.05.2013 of Rs.1,00,00,000/-, 02.08.2013 of Rs.1,00,00,000/-, on 14.02.2014 of Rs.1,00,00,000/-, on 04.06.2014 of Rs.50,00,000/-, on 09.06.2014 of Rs.50,00,000/-, on 30.06.2014 of Rs.50,00,000/- and on 01.07.2014 of Rs.25,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.91,506/- has been shown and has declared income of Rs.9,387/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.6,75,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2011-12 and 2012- 13 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

GLOBAL INFRATECH & FINANCE LTD. (FORMERLY ASIANLAK CAPITAL AND FINANCE LTD.)

The appellant company has received 0% OFCDs of Rs.8,00,00,000/- from M/s Global Infratech & Finance Ltd. (Formerly Asianlak Capital and Finance Ltd.). The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.14,00,53,000/- and reserve & surplus to the extent of Rs.5,36,14,137/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Egmore Branch, Chennai wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 22.01.2014 of Rs.8,00,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.1,91,00,416/- has been shown and has declared income of Rs.11,38,614/-. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and 01.04.2014 to 31.03.2015 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.8,00,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department for the A.Y. 2012-13 to 2015-16 along with its balance sheet for

the A.Y. 2013-14 and 2015-16 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

COMET HOLDING LTD.

The appellant company has received OFCD subscription of Rs.1,00,00,000/- from M/s Comet Holding Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.99,92,000/- and reserve & surplus to the extent of Rs.4,52,75,529/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Stephen House, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 26.06.2013 of Rs.1,00,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.27,46,402/- has been shown and has declared loss of Rs.4,86,696/-. During the course of remand proceedings, Assessing Officer issued notice u/s.133(6) of the IT Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 its copy of bank statement whereby the amount given to the appellant company as 0%

OFCD of Rs.1,00,00,000/- is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2010-11, 2011-12 and 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

EVERSIGHT TRADECOMM PVT. LTD.

The appellant company has received 0% OFCDs of Rs.6,00,00,000/- from M/s Eversight Tradecomm Private Limited. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.4,04,41,500/- and reserve & surplus to the extent of Rs.(-)1,51,82,990/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Stephen House, Kolkata wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 26.06.2014 of Rs.1,00,00,000/-, on 30.06.2014 of Rs. 1,00,00,000/-, on 02.07.2014 of Rs.1,00,00,000/-, on 15.07.2014 of Rs. 1,00,00,000/-, on 18.07.2014 of Rs.1,00,00,000/- and on 23.07.2014 of Rs. 1,00,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.38,95,60,109/- has been shown and has declared income of Rs. nil. During the course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s

133(6) and confirmed the transactions with the appellant company. The said company also confirmed the transactions in OFCDs undertaken with the appellant company and filed its copy of bank statement whereby the amount refunded by the appellant company of Rs.6,00,00,000/- is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department along with its balance sheet for A.Y. 2010-11, 2011-12 and 2012-13 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

AGGRESSIVE EXPORTS INDUSTRIES PVT. LTD

The appellant company has received 0% OFCDs of Rs.4,50,00,000/- from Aggressive Exports Industries Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.5,00,100/- and reserve & surplus to the extent of Rs.(-) 4,42,19,421/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with Saraswat Bank, Lajpat Nagar, Delhi wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 24.12.2014 of Rs.4,50,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.2,00,000/- has been shown and has declared loss of Rs.2,68,617/-. During the course of remand

proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s 133(6) and confirmed the transactions with the appellant company. The said company also filed the confirmation with respect to investment in OFCDs outstanding as on 01.04.2014 and its refund in F.Y. 2014-15 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.4,50,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department for A.Y. 2012-13 to 2015-16 and the confirmation of the amount paid as 0% OFCDs to the appellant company and subsequent refund of the same to the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

SHAIL INVESTMENT PVT. LTD

The appellant company has received 0% OFCDs of Rs.90,25,00,000/- from M/s. Shail Investment Pvt. Ltd. The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.1,22,71,030/- and reserve & surplus to the extent of Rs.396,14,41,514/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with Axis Bank wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 24.11.2012 of Rs.2,50,00,000/-, on 19.12.2012 of Rs.2,50,00,000/-, on 02.01.2013 of Rs.2,50,00,000/-, on 03.01.2013 of

Rs.2,50,00,000/-, on 09.10.2013 of Rs.5,00,00,000/- on 10.01.2013 of Rs.5,00,00,000/- on 14.01.2013 Rs.5,00,00,000/-, on 15.01.2013 of Rs.2,50,00,000/-, on 15.01.2013 of Rs.2,50,00,000/-, on 18.01.2013 of Rs.2,50,00,000/-, on 18.01.2013 of Rs.2,50,00,000/-, on 24.01.2013 of Rs.5,00,00,000/-, on 30.01.2013 of Rs.4,00,00,000/-, on 14.03.2013 of Rs.2,50,00,000/-, on 22.03.2013 of Rs.5,00,00,000/-, on 30.03.2013 of Rs.5,00,00,000/-, on 23.03.2013 of Rs.5,00,00,000/-, on 03.04.2013 of Rs.2,00,00,000/-, on 30.05.2013 of Rs.3,00,00,000/-, on 26.06.2013 of Rs.3,00,00,000/-, on 17.07.2013 of Rs.2,25,00,000/-, on 18.07.2013 of Rs.2,00,00,000/-, on 29.07.2013 of Rs.1,00,00,000/-, on 08.08.2013 of Rs.1,00,00,000/-, 21.11.2013 of Rs.3,00,00,000/-, on 04.06.2014 of Rs.1,00,00,000/-, on 05.06.2014 of Rs.1,00,00,000/-, on 10.06.2014 of Rs.1,00,00,000/-, on 15.07.2014 of Rs.1,00,00,000/-, on 28.08.2014 of Rs.1,00,00,000/-, on 17.09.2014 of Rs.50,00,000/-, on 18.09.2014 of Rs.50,00,000/-, on 22.09.2014 of Rs.1,00,00,000/-, on 07.11.2014 of Rs.1,00,00,000/-, on 10.11.2014 of Rs.25,00,000/-, on 12.11.2014 of Rs.1,00,00,000/-, on 20.11.2014 of Rs.50,00,000/-, on 21.11.2014 of Rs.50,00,000/-, on 24.11.2014 of Rs.50,00,000/-, on 25.11.2014 of Rs.50,00,000/- and on 25.11.2014 of Rs.25,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.65,31,90,369/- has been shown and has declared in course of remand proceedings, Assessing Officer issued notice u/s 133(6) of the I.T. Act to the said investor company. The said investor company filed its reply in response to the notice u/s

133(6) and confirmed the transactions with the appellant company. The said company also filed copy of appellant's account from its books of accounts from 01.04.2011 to 31.03.2012 and its copy of bank statement whereby the amount given to the appellant company as 0% OFCD of Rs.90,25,00,000/- and refund of the same is reflected. The investor company has also filed its copy of the return of income filed with Income Tax Department for A.Y. 2012-13 along with the confirmation of the amount paid as 0% OFCDs to the appellant company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.

ARIZONA VENTURES PVT. LTD. (FORMERLY DIGIVIVE VENTURE PVT. LTD).

The appellant company has received OFCD subscription of Rs.2,75,00,000/- from M/s Arizona Ventures Pvt. Ltd.(formerly known as Digivive Venture Pvt. Ltd.). The appellant company submitted the copy of bank statement, income tax return, PAN and audited financial statements of the applicant company in support of its claim. The investor company has got share capital of Rs.1,00,000/- and reserve & surplus to the extent of Rs.(-) 27,01,106/- in its balance sheet. The appellant company has also submitted the copy of bank statement of the applicant company with HDFC Bank, Nehru Place, Delhi wherein the amount refunded by the appellant company has been credited in the account of the applicant company on 08.11.2014 of Rs.2,25,00,000/- and 12.11.2014 of Rs.50,00,000/-. The investor company has also submitted copy of Income Tax Return wherein total revenue of Rs.3,24,701/- has been shown and has

declared loss of Rs.27,01,106/-. The above named company is assessed with the same AO and all facts are reflected in the balance sheet of the investor company. All these facts establish the identity, creditworthiness and genuineness of the transactions made with the investor company.”

13. Regarding the reference of search and seizure conducted in the case of Shri Tarun Goyal and also Shri Jagdish Prasad Purohit, the same has been dealt by the Id. CIT (A) in the following manner:

The AO has referred to the search & seizure operations conducted on one Sh. Tarun Goyal to hold that the companies sharing address with him at Delhi must be under his control and that it might have given an accommodation entry during the relevant period to the appellant company as the said person was found to be involved in the business of giving accommodation entries in the search conducted by the Department on him. By all means it is a far-fetched conception. The money received from the investor companies have been received through banking channels and refunded back to them and same have been credited in their respective bank accounts. Copy of such bank accounts has been filed by the respective investors before the AO as well as before me during the course of remand proceedings. These evidences establish the identity, creditworthiness and genuineness of the transactions. The AR of the appellant has also relied upon Delhi High Court judgment in the case of CIT Vs. Five Vision Promoters (P) Ltd. 65 Taxman .com 71 (Delhi) wherein the Court has held that "whether mere fact that some of investors have a common address is a valid basis to doubt their identity or genuineness - held NO" the ratio of this judgment has given hereunder: -

"Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment years 2007-08 to 2009-10 - Whether mere fact that some of investors have a common address is a valid basis to doubt their identity or genuineness - Held, no - Whether fact that shares of assessee were subsequently sold at a reduced price is germane to question of genuineness of investment in share capital of assessee - Held, no - Assessee was part of SVP Group of companies which were engaged in business of construction and sale of residential and commercial complexes - During search at SVP Group of companies, said companies were found to have received share capital from several companies - According to revenue, said companies were charging 'on- money on sale of flats, shops, etc., which was not accounted for in their regular books of account and was routed back into group companies in form of share application money unsecure loans, etc through conduit channels - On that basis, addition under section 68 was made in case of assessee-company in respect of share application money received by it - Whether allegation of revenue that assessee being a developer was charging on money in cash would not apply to assessee inasmuch as it was involved in construction of shopping mall and its business had not commenced yet - Held, yes - Whether since Tribunal, on a very detailed examination, was satisfied that shareholder companies not only existed, but that assessee had discharged primary onus of proving their creditworthiness and genuineness, addition made by Assessing Officer was to be deleted - Held, yes [Paras 38 to 43] [In favour of assessee]

Further, the AO has referred to the statement of Sh. J.P. Purohit of Kolkata recorded by the Investigation Wing, Kolkata during search

action on him, I have perused the statement of Sh. Purohit. He has acknowledged in his statement that he is in the business of giving accommodation entries apart from being in the profession of tax consultancy. However, subsequent to the search inquiries were made by the AO of the appellant company by sending letter u/s 133(6) of the IT Act wherein he has sent reply to the AO along with the copy of the affidavit filed by him on 30.01.2015 and copy of the assessment orders passed by the respective AO in the case of M/s Warner Multimedia Ltd., M/s Prime Capital Market Ltd. and M/s Unisys Software and Holding Industries Pvt. Ltd. In its reply dated 28.10.2015 received by the AO on 09.11.2015, the Director of the said investor company, Shri Jagdish Prasad Purohit has stated that his statement was recorded u/s 132(1) during the course of search on 21.01.2015 at his residence and survey was also carried out in the case of M/s Warner Multimedia Ltd., M/s Prime Capital Market Ltd. and M/s Unisys Software and Holding Industries Pvt. Ltd. He has further stated that during the course of search he was forced to sign on a pre-drafted statement in place of his own replies. He has also mentioned that DDIT took out a list of companies and he was forced to accept that all these companies mentioned in this list were belonging to him. Sh. Jagdish Prasad Purohit has also written that he had already retracted the said statement by swearing an affidavit on 30.01.2015. Copy of the affidavit is also enclosed along with the reply filed in response to notice u/s 133(6). Sh. Jagdish Prasad Purohit has confirmed the transaction with the appellant company and has mentioned that these transactions have been taken place through banking channels. He has also filed copy of the Assessment order passed by the Assessing Officer in the case of M/s. Warner Multimedia Ltd., M/s. Prime Capital Market Ltd. and M/s Unisys Software and Holding Industries Pvt. Ltd. A.Y. 2012-13 wherein no adverse view

with regard to 0% OFCD given to the appellant company has been taken by the AO in the case of above mentioned three investor company. This shows that the AO was fully satisfied with the transaction of 0% OFCD with the appellant company. It is also seen that in the statement made during the search, Shri Purohit has named certain concerns to which he has provided accommodation entries against commission. However, he has not named the appellant company as to have obtained any accommodation entry from the company wherein Sh. Jagdish Prasad Purohit is Director. In these cases, the money has been received by way of account payee cheques and same has been refunded back to the said companies by way of account payee cheques and have been credited in their respective bank accounts. Copies of such bank accounts have been filed by the respective companies before AO as well as before me during the course of remand proceedings. The financial statement of the three companies wherein Sh. J.P. Purohit is Director have been analyzed here-in-above and it is seen that those companies have sufficient share capital as well as reserves and surpluses to invest in the 0% OFCD offered by the appellant company. It is also seen that Assessing Officer has not brought any information on record which can prove otherwise that appellant has taken accommodation entry in lieu of the cash given by the appellant company. Simply on the basis of statement with reference to some other company it cannot be presumed that appellant has also taken accommodation entry from the said company. Further, the amount received from the said company as 0% OFCD has been refunded back in subsequent years and such amount has been credited in the account of the said applicant company.

Therefore, the AO was not justified in drawing adverse inference

with reference to OFCDs and treating the same as unexplained income of the appellant company u/s 68 of the I.T. Act.

In view of the details filed above by the appellant before the AO as well as before me, the source of the funds invested in the OFCDs of the appellant company by the above named companies has been found to be explained. All the investor companies from whom OFCDs subscription has been received and the companies from whom funds have been received by those investor companies are duly assessed to tax. It is seen that name of the appellant company is appearing in the balance sheet of the above named companies as investee company. In view of the documents filed by the above named investor companies before AO and by the AR of the appellant at the time of assessment proceedings and in the remand proceedings and copy thereof filed before me, the identity, source, creditworthiness of the investor companies and genuineness of the transactions have been established.

I find that the AO has not been able to bring on record any evidence to negate the genuineness of the transaction done by the appellant and the applicant of 0% OFCD. Therefore, the addition cannot be sustained only on suspicion and surmises. Considering the fact that the identity, genuineness and creditworthiness of all the applicants of 0% OFCD is duly established, the addition made by the AO cannot be upheld and hence the AO is directed to delete the addition of Rs. 151,95,00,000/- made on account of 0% OFCD subscription u/s. 68 of the I.T. Act.

Submission of CIT DR

14. Before us, the ld. CIT-DR, Mr. Gulati first of all drew our attention to the various observations and findings of the

Assessing Officer as has been incorporated in the assessment order as well as in his show cause notice and the manner in which Assessing Officer has given his rebuttal on each and every explanation given by the assessee. He has summarized the observations of the Assessing Officer in both the cases as under:

- *AO could not ascertain the exact nature of business run by the assessee.*
- *With no business background, the assessee could collect huge amount as OFCD from number of companies.*
- *Questionnaire issued on 15/10/2013 which got responded by 16/02/2015 (after a gap of 16 months). • AO recorded the delay tactics of the assessee in the assessment order (refer para 4.1)*
- *AO issued another questionnaire dated 20/11/2014 (Arizona Ventures) dated 05/01/2015 (Arizona Global) which got responded partly on 16/02/2015.*
- *Hansraj Jain, director of company was asked to be produced by the AO on 05/01/2015. However, no compliance was made in this regard till 30/03/2015.(refer*

2.1 In the case of Arizona Global Services Pvt. Ltd.-

- *Notice under section 131 of the act was issued to M/s Shail Investments Pvt. Ltd. and to M/s KOA Investments Ltd. Inspector was deputed to get the summons served. Inspector reported that no such company was there at the given address and some other shop/office was being run from the given address. No compliance to summons, (refer para 5)*
- *AO observed that at the given address of the office of Shail Investments, office of Mr. Tarun Goyal Accommodation entry*

provider was being run. Search & seizure action had already taken place at the premises of Tarun Goyal on 15/09/2008 in this regard. Statement of Tarun Goyal is part of the AO order. (Important to note-Delhi High Court decided the case of NDR Promoters after taking note of modus operandii of Mr. Tarun Goyal, entry provider)

- As regards two Kolkata based companies (Scan infrastructure Ltd, Unisys Software & Holding Industries Limited), the AO observed based on information from Income Tax Department investigation at Kolkata that the aforesaid companies were managed by Mr. J.P.Purohit, accommodation entry provider. Search and seizure action had taken place in the case of J P Purohit on 21/01/2015. The AO took note of the fact that M. J P Purohit was director of the aforesaid companies. Statement of J P Purohit is part of the AO order.*

2.2 In the case of Arizona Ventures Pvt. Ltd.

- As regards Kolkata based companies (Warner Multimedia Ltd., Prime Capital Market Ltd, Unisys Software & Holding Industries Limited), the AO observed based on information from Income Tax Department investigation at Kolkata that the aforesaid companies were managed by Mr. J.P.Purohit, accommodation entry provider. Search and seizure action had taken place in the case of J P Purohit on 21/01/2015. The AO took note of the fact that M. J P Purohit was director of the aforesaid companies. Statement of J P Purohit is part of the AO order.*

- The AO recorded that the investigation wing findings were duly communicated to the assessee (refer para 6)*

- At para 7, the AO rebutted the plea of the assessee as to a) how statement recorded in 2008 can be relied upon*

b) the amounts received as OFCD subscriptions have already been repaid/refunded in later years (refer para 7.2) o c) time for producing the directors was short (refer para 7.3)

- The AO observed that how the assessee company could get funds from the investor companies if it was ignorant of Mr. Purohit and Mr. Tarun Goyal.*

- The AO noted that repayment of unaccounted income cannot exonerate the assessee from liability to be taxed on that unaccounted income (refer para 7.2)*

15. Thereafter, he relied upon various judgments which were elaborated by him in the following manner:

3. At the outset, it may be relevant to take note of Hon'ble SC decision in the case of NRA Iron & Steel Pvt. Ltd. (13 taxmann.com 48) (Diary No(S). 41307/2019] In CA No.2463/2019).

4. Hon'ble Supreme court (supra) commented at para 14 of the order that "The practice of conversion of unaccounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of

which, would justify addition of the said amount to the income of the Assessee."

5. Further, Hon'ble SC (supra) held that the onus of the assessee does not stand discharged merely because of filing of all the primary evidence. Further, it is held that ITRs with meagre income does not justify creditworthiness to invest huge sums of money.

6. Hon'ble SC (supra) observed that "If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

7. In the case of Nova Promoters & Finlease Pvt. Ltd. (ITA No.342 of 2011) as decided by Hon'ble Delhi High court, the matter has been decided in favour of revenue despite the fact of retraction of statement of entry provider. It may relevant to take note of important observations in this decision.

- Para 22-Both Rajesh Jassal and Mukesh Gupta, in identically worded affidavits proceed to state that in their earlier statements they have stated that the above companies issued cheques to various companies or entities and in turn received back cash from them and thus the transactions were not genuine and bonafide transactions, that the statements as above were got recorded from them

under pressure and coercion and absolutely against their wishes and that such transactions including the transactions of giving cheques to the assessee company (Nova Promoters and Finlease Pvt. Ltd.) were absolutely genuine and bonafide transactions wherein no cash had been received from assessee company in exchange of cheques issued to them. It has been stated in the affidavits that the cheques were issued to the assessee company for share application money for allotment of shares and subsequently shares were also issued

- Para 25-Affidavit can be rejected if there is enough material on record to negate the claim of genuineness of the transactions.
- Para 30-Material was gathered by the investigation wing and made available to the Assessing Officer, who in turn had made it available to the assessee. Nothing has been said by the Tribunal about the said material. Thus, the Tribunal, with respect, seems to have ignored relevant material.
- Para 31- The Tribunal also erred in law in holding that the Assessing Officer ought to have proved that the monies emanated from the coffers of the assessee-company and came back as share capital. ...It places no duty upon him to point to the source from which the money was received by the assessee. In this regard, the court relied upon decision of the Apex Court in the case of A. Govindarajulu Mudaliar v CIT, (1958) 34 ITR 807.

8. In the case of NDR Promoters Private Limited (ITA 49/2018), following judicial principles and factual positions have been followed while deciding the matter;-

- Principle of human probabilities- In the normal course of conduct, no one will make investment of such huge amounts without being concerned about the return and safety of such investment
- Failure to produce directors- The court laid emphasis on the aspect of failure on the part of the assessee to produce directors despite of filing their confirmations.
 - Financial strength of the assessee company- The court noticed that the respondent- assessee did not have any business income in the relevant year(s) and had not incurred any expenditure in the relevant year.
- Certificate of incorporation, PAN number etc. are relevant for purchase of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor.
- Where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The three requirements (identification of the creditors/shareholder, creditworthiness of creditors/shareholder and genuineness of the transaction)

have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.

- The court took note of the fact that the tribunal failed to take into consideration the evidence and material as found during the course of search of Tarun Goyal regarding the fact of providing accommodation entries to beneficiaries.

9. It is relevant to take note of the facts in the case of Five Vision Promoters Private Limited (ITA 234/2015 -as decided by Hon'ble Delhi High court) where the court decided the case in favour of the assessee only on the ground that the director of the investor companies appeared before the AO and accepted the fact of investment by producing their books of accounts, (refer para 40 of the order).

10. It may be important to take note of decision of Hon'ble ITAT in the case of APJ Construction Pvt. Ltd. (ITA No. 722/Del/2015 dated 31/12/2019 (AY 2005-06) where the ITAT listed out set of questions based on various decisions including PCIT vs. NRA Iron and Steel (P) Ltd and NR Portfolio Private Limited and held that

- "...Unless and until satisfactory answers are obtained to these questions, it would be difficult to reach a positive conclusion as to the identity and creditworthiness of the share applicants and the genuineness of the transaction.

Merely because the assessee was successful in completing the paperwork very meticulously or bringing into existence certain documents, the statutory obligation of the authorities does not get absolved merely because the assessee produced certain documents. It is incumbent on the authorities to verify the genuineness of such documents also in the light of the attending circumstances.

11. The questions as listed out by Hon'ble ITAT are discussed as under with reference to the case in hand:-

- whether the two parties are related or known to each other, or mode by which parties approached each other?

Answer:- Investor and recipient entities are not known to each other except for one sister concern Arizona Ventures Private Limited making investment with Arizona Global Services Private Ltd.

- whether the transaction is entered into through written documentation to protect investment?

Answer;- No such documentation is there to protect investment. On the other hand, the AO observed certain adversarial terms and conditions of OFCD (Optionally Fully Convertible Debentures) which included redemption after 10 years at par in case conversion option is not exercised and no right to claim or question anything with regard to the usage of funds.

- whether the investor was an angel investor?

Answer; No

- what is the quantum of money invested?

Answer: Ranging from Rs. 50 lakhs per entity to Rs. 21.25 crore per entity-in case of Arizona Ventures (Overall investment-Rs. 53.55 Crore) and ranging from Rs. 1 crore per entity to Rs. 90.25 crore per entity-in case of Arizona Global Services (Overall Investment-Rs. 151.95 Crore).

- how the party believed the credit-worthiness of the recipient?

Answer; Being private placement, the investor would invest with an intent to gain. However, the assessee did not specify as to how the investor was convinced about the return on such a huge investment.

- what is the object and purpose of payment/investment?

Answer; The assessee did not point out any details in this regard as it is in private knowledge of the assessee company.

- whether the share applicant is in existence and an independent entity?

Answer;- The share applicant is a shell company with no operational income. It is the group company floated by entry provider.

- how the financial capacity of the share applicant to invest funds is proved?"

Answer;- The assessee submitted ITR, bank account and PAN number.

how the source of funds from which the high share premium was invested is dealt with by the assessee?

Answer:- It is a case of OFCD (Optionally Fully Convertible Debentures) and the source of huge funds is layered one to route it through network of accommodation entry provider.

why the investor companies had applied for shares of the Assessee Company at a high premium?

Answer: It is a case of OFCD (Optionally Fully Convertible Debentures).

in case the field enquiry conducted by the AO revealed that the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee?

Answer:- The asscssee failed to produce the directors of the investing companies. The AO also made enquiry on sample basis in case of two Delhi based entities and found to be non-existent. As regards Kolkata based companies, the same were found to be pari of companies managed by entry provider.

- whether the assessee discharged their legal obligation to prove the receipt of share capital/premi m to the satisfaction of the AO?

Answer;- The AO was not satisfied as the directors of the investing companies were neither produced at the assessment

stage nor at the appellate stage. The entry operators did state the modus operandii which was retracted after a long gap.

- whether the assessee discharged the onus to establish the credit worthiness of the investor companies?

Answer;- Except for filing ITR, the assessee did not establish credit worthiness of the investor companies.

- did the assesscc do anything more than mere mention of the income tax file number of an investor to discharge the onus under Section 68 of the Act?

Answer;- No

12. It may also be relevant to take note of decision of Hon'ble Delhi High Court in the case of Bikram Singh (ITA 55/2017) on the issue of accommodation entry in the form of unsecured loans wherein it is observed that "...This device of loan entries continues to plague the legitimate economy of our country. As seen from the facts narrated above, the transactions herein clearly do not inspire confidence as being genuine and are shrouded in mystery, as to why the so-called creditors would lend such huge unsecured, interest free loans - that too without any agreement..."

13. In view of the above facts of the case and jurisprudence on the issue of cash credits, there is no doubt that the facts of the present case do not inspire confidence as being genuine and are clouded with doubt. It is prayed that the order of the AO may be upheld.

Submissions on behalf of the Assessee

16. Before us, ld. counsel for the assessee, Mr. Rakesh Joshi submitted that to prove the identity and creditworthiness of the subscribers as well as genuineness of the transaction the assessee had filed following evidences before the Assessing Officer;-

- (i) Complete names and addresses of the subscribers, number of 0% OFCD subscribed and the amount of loan outstanding as on 31.03.2012 of each party.
- (ii) Their Permanent Account Nos.
- (iii) Photocopies of the acknowledgement portion of their ITRs to establish that all parties were regularly assessed to Income Tax.
- (iv) Written confirmation certificates from the respective parties.
- (v) Copy of their bank accounts for the relevant period to establish the availability of funds with the said parties.
- (vi) Confirmatory certificates of receiving back the loan amount, as obtained from each party, after redemption of the OFCDs.
- (vii) Copy of relevant portion of our bank account statement, highlighting therein the relevant transaction of repayment to the respective parties after redemption of the OFCDs.
- (viii) Copy of the ledger accounts of the investors, as in the books of account of the appellant assessee showing the refund of loans.

The copies of these documents was also shown and referred to as has been placed in the paper book from pages 88 to 600. Thereafter, he submitted that Assessing Officer has rejected these evidences without assigning any reason and has held to be bogus mostly based on conjectures and surmises.

17. He has submitted the point-wise rebuttal of Assessing Officer's observations and findings in the following manner:

S No	Page/Para # of AO order	AO observation	Assessee Reply
1	Page 3 Para 4 & 4.1	AO stated that there was no co-operation from the assessee during the assessment proceeding in submitting details in compliance to notices issued U/s 142(1) and not produced directors of the assessee company as desired	we submit that first Notice U/s 142(1) was issued on 15/10/2013 seeking preliminary details i.e. Income tax return (ITR), Balance sheet, details of directors and shareholders etc. In response to this notice basic details i.e. ITR, Balance sheet & Computation filed on 24/10/2013, which also covers other details like directors, shareholder etc. in the return. Thereafter second notice was issued on 05/01/2015, almost after 15 months asking for various details 63 numbers, in the specific format. These details were filed on 16/02/2015. Thereafter the AO issued summon U/s 131 dated 20/03/2015 to produce directors of the subscribing companies on 24/03/2015, which was served to watchman on late evening of 21/03/2015 i.e. Saturday.

			<p>So effectively the notice was received by the assessee on 23/03/2015 and replied on 24/03/2015. Final show-cause notice dated 25/03/2015 was issued which was replied on 27/03/2015. So there is no non-co-operation from the assessee's side.</p> <p>Similarly, the allegation of non-attendance and adopting delaying tactics etc. has no substance. Had there been any delaying tactics or intentional skipping of hearing on the assessee's part, the AO must have initiated penalty proceedings u/s 271(1)(b) of the I.T. Act, 1961 and should have completed the assessment u/s 144 of the Act rather than section 143(3) of the I.T. Act, 1961. Not only there is no penalty notice issued u/s 271(1)(b) in our case, there is no adverse comment against the assessee on the order sheet of the assessment proceedings with regard to any lapses.</p>
2	Page 6 Para 4.2	AO stated that vide notice dated 05/01/2015 point no. 63, assessee was asked to produce Directors of the	<p>The contention of the AO is wrong. In this notice vide point No. 62 & 63, AO stated as under: -</p> <p>62. Who was the individual who signed the cheque dated 26/06/2011 and 25/08/2011 for Rs. 10 crore and Rs. 5 crore respectively for giving donation to Bahujan Prerna Trust.</p> <p>63. Can you produce before me in</p>

		company, but not produced.	<p>person, for examination on oath (on the date and time to be decided as per mutual convenience) the individual mentioned in point no. 62 above.</p> <p>From the above points it is clear that the AO has not at all asked to produce directors in the above questionnaire. He simply asked whether it is possible. Now in summon dated 20/03/2015 which was effectively served on 23/03/2015, it was first time asked to produce directors on 24/03/2015. It is not possible for assessee to co-ordinate with the various parties and produce them before AO. The applicant has provided entire details of these parties in response to Jan 2015 notice, however AO has not taken any action from his end and at the last moment of passing order he asked for the same. Therefore, there is no default on the part of assessee to comply with the requirement.</p> <p>Further, it was averred by Delhi High Court in the case of CIT v. Victor Electrodes Ltd. [2012] 20 taxmann.com 680 (Delhi) that <i>“Non-production of parties cannot be a ground for making addition, when assessee has produced corroborative evidence in support of its claim.”</i></p>
3	Page 7	AO stated that	As stated above the summon was

	Para 5	summon U/s 131 was issued but not complied with by the assessee.	effectively served only on 23/03/2015 and the same was duly replied on 24/03/2015(refer page 601 of paper book -Vol. II). The assessee requested for sometime as it was not possible to produce parties within such a short notice.
4	Page 8 - 10.	AO discussed inspector report on these pages and alleged that one of the party address is of Tarun Goyal office address.	<p>On page 9, AO stated that in case of KOA Investment Ltd. The inspector visited the address 5/5791, 1st Floor, Gali No. 2, Dev Nagar, Karol bagh, New Delhi and found that it was a small Halwai shop. In this regard we submit that the assessee has submitted address of the party, copy of which available on page 317 and the address read as 5/5761, 1st Floor, Gali No. 2, Dev nagar, Karol bagh, New Delhi-11005. When the assessee is proving an address by the inspector visits at some other address, it is not the fault of assessee. Therefore, no cognizance can be taken of such report.</p> <p>The inspector's enquiry at Delhi proves nothing conclusively. Moreover, the inspector's report, as such, was never confronted to the assessee. Hence, it cannot legally be used against the assessee.</p> <p>AO also discussed that Sail Investment Co is having address of Tarun Goyal who was an entry operator as per 2008</p>

			<p>investigation report. We submit that notice sent by AO on the given address was duly served upon the party, however reply not received due to lack of time. However, in remand proceeding all parties including this party duly submitted all the desired details to the AO. Further AO has not done any investigation ion the case except relying upon investigation wing report of 2008. As for different statements of Shri Tarun Goyal, CA recorded around 7 years back, it is humbly stated that these statements have practically 'zero' evidentiary value as on date, so far as the impugned issue is concerned. What Sh. Tarun Goyal, CA was doing in the distant past has nothing to do with the transactions entered into by the appellant assessee in the year 2011-12.AO failed to point out whether Tarun Goyal named this party in his statement and how the same is related to him except common address. Further AO relied upon report of investigation wing dated 31/03/2009 which is also part of assessment order as Annexure 'D' in this report it is clearly stated that the report relates to A Y 2004-05 to 2009-10 for the beneficiaries listed therein. So this report no way connected with the assessee at all. Therefore, merely a</p>
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			<p>common address can not be reason to doubt a transaction without any tangible material to prove otherwise.</p> <p>Moreover, in no statement, Sh. Tarun Goyal, CA has mentioned the name of any company as to be used by him for providing of entries, with which the appellants had transactions in subsequent period i.e. in 2011-12. Nonetheless, Sh. Tarun Goyal, CA, in his statement dated 15.09.2008 (recorded by Sh. Saroj Kumar Dubey, the then DDIT(Inv.), Unit-11, New Delhi) stated that some of the companies (with which he was associated) were doing genuine business. While replying to a question on various cheque books found from his office, he stated at page 4 of this statement that "I confirm that some of the bank accounts mentioned in the Annexure-2 belong to the companies and their associated persons doing normal and genuine transactions."</p> <p>So, Shri Tarun Goyal, CA has stated in his statement that a number of companies he was associated with were doing genuine business. Therefore, it is not reasonable on the part of the Assessing Officer to have decided the issue on the basis of old statements of Shri Tarun Goyal, CA. Ld. AO has</p>
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			brought no material on record to establish that he is still continuing with this nefarious business of accommodation entry providing.
5	Page 12 Para 6	AO discussed about two Kolkata party i.e. San Infrastructure Ltd and Unisys Software & Holding Ind. Ltd. and stated that these companies pertains to Jagdish Purohit who is also an entry operator.	Ld AO relied upon the statement of Jagdish Purohit dated 21/01/2015 wherein he has admitted that he is controlling few companies which are engaged in providing accommodation entries. In this regard we submit that in reply to Q No. 23, he provided list of companies who are engaged in the business of providing accommodation entries. Name of these two companies are not appearing in such list given by Shri Jagdish Purohit, Copy of statement is enclosed herewith for Your Honour's Kind perusal. Further in question No. 25 it was specifically asked that Mr Jagdish Purohit is also controlling few other companies, which includes these two companies, and M/s Varah Infra Ltd. Raised capital through these companies also, whether this transaction is also an accommodation transaction. In reply to this question Mr Purohit categorically stated that these companies have subscribed to capital of other companies out of their own capital which was raised through public issue/ private placement & merger with other companies through High Court

			order. Copy of his statement as provided by AO alongwith assessment order is enclosed herewith. The AO failed to consider this vital information in this statement and directly jumped to the conclusion that all companies controlled by Mr. Purohit and a sham transaction. Mr. Purohit nowhere stated in his statement that the assessee companies is one of the beneficiaries of the accommodation transactions.
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18. Ld. Counsel further pointed out that in subsequent pages AO dealt with reply filed by the assessee company in response to show cause notice wherein he reiterated same plea. He also investigated bank transaction with various parties at the time of repayment of OFCD holders and after thorough investigation. Ld. AO has himself certified in the assessment order, after conducting due enquiry and examining the trail of money, that amount of repayment finally rested with the subscribers (to whom he refers as 'entry operator group'). He states at page 15 of the assessment order in its second para, in concluding lines "Therefore, in the end result, the funds have remained in the chain/loop of the entry operator group itself." The relevant question here arises- When the funds obtained through OFCDs did not remain in the possession of the appellant and have been paid to the parties from where these originated (and finally rest with them as per the finding of the AO), then how can the appellant be called 'a beneficiary of accommodation entry'.

19. Further regarding granting sufficient time to produce parties on page 17 of the AO order (underlined para) he stated as under:

“ Therefore, because the Directors of the assessee company themselves did not appear for personal deposition it can definitely be held that even if AR of the assessee company has been requested one year back to produce the directors of subscriber companies then too, AR would never have been produced those directors because of many reasons.”

The above attitude of the AO shows that the entire basis of the AO is on presumptions and surmises. He himself assuming that AR would have never been produced these parties for many reasons. This is nothing but denial of opportunity of being heard to the assessee on the basis of own presumptions and assumptions. In the earlier para it is clearly demonstrated that AO had never asked assessee to produce its directors before 20/03/2015.

20. The AO has also relied on the statement of Shri Jagdish Prashad Purohit recorded by the Search & Seizure party of the Income Tax Department on 21.01.2015. On perusal of this statement, it may be observed that Sh. Jagdish Prashad has never said that any accommodation entries were provided to the appellant company. In the statement, only name mentioned of the beneficiary of accommodation entries is M/s Varaha Infra Ltd. The name of the appellant company figures nowhere. As per Ld. AO, since Sh. Tarun Goyal, CA and Sh. J.P Purohit of Kolkata are tainted persons in the eyes of the Income Tax Department, it is confirmed that any company, with which their name is associated in one way or the other, must be indulging in giving ‘accommodation entries’. Ld. Counsel pointed out that this view is

not reasonable and not sufficient enough to hold the assessee guilty of taking accommodation entries. Further, it is worth noting that neither of the above-said two persons has directly accused the assessee company as beneficiary of any accommodation entry. Further, Ld. AO has simply enclosed photocopies of the statements of Sh. Tarun Goyal, CA and Sh. J.P Purohit with the assessment order only. These statements, as such were never confronted to the assessee except for referring them in his letter dated 25.03.2015 marked "Last & Final Opportunity". Legally speaking, he should have supplied copies of these statements to the assessee and sought its comments. He cannot legally rely upon any adverse material in his possession without confronting the same to the assessee.

21. Ld. Counsel relied upon the case of **CIT-1, Jaipur V. A.L. Lalpuria Construction (P) Ltd. (2013) 32 taxmann.com 384 (Rajasthan)**, wherein the Hon'ble High Court held that "*oral statement of a third party recorded by search authorities, which was never placed to be confronted by assessee and no documentary evidence was supplied to the assessee, could not be considered in making addition on account of alleged accommodation entries.*"

He submitted that neither copies of statements nor any other adverse material were ever supplied to the assessee for its comments/explanation. These were only made enclosure/annexure of the assessment order to render support to the same.

22. Similarly, in case of CIT v. Ashwani Gupta(2010) 191 Taxman 51 (Delhi), wherein, it was held by Hon'ble Delhi High Court that "*Once there is a violation of the principles of natural*

justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person, on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following approach adopted by us in SMC Share Brokers Ltd.'s case (supra), we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration.”

23. Thus, he submitted that on the basis of Investigation Wing's old report on Sh. Tarun Goyal, CA, the statements of the latter and a general statement of Shri J. P. Purohit, Ld. AO is not legally correct to the hold the entire sum of loan obtained from 16 parties as 'accommodation entry'. Such an action is totally unwarranted and highly unjustified. Again on page 19 para 9 AO relied upon the decision of CIT v. Focus Exports Pvt. Ltd. ITA 218/2012(Delhi). In this regard he submitted that the ratio of the cited case does not apply to the instant case since the facts and circumstances are quite different as detailed herein below:

- (i) In the cited case, the assessee did not cooperate with the AO and filed utterly incomplete details and consequently, the assessment in the said case was completed ex-parte u/s 144 of the I.T. Act. Hon'ble Court noted that "the assessee filed some details but they were not exhaustive/complete." As against this, in the case of the appellant, full details were filed. Moreover, the AO was requested in writing to kindly point out if any specific detail remains to be filed so that the same may also be filed.
- (ii) In the cited case, Hon'ble Court noted that "the assessee did not furnish complete details and particulars and virtually

“absconded” during the course of reassessment proceedings, resulting in a best judgment assessment.”

As against this, the appellant does not remember ever skipping any hearing on any date. The proceedings were regularly attended. Even the adjournments were mostly given by the AO on his own accord asking for complete details in one go, refusing to accept the details from the assessee in piecemeal. Consequently, assessment in the case of the appellant company was completed u/s 143(3) of the I.T. Act, 1961.

iii. In the cited case, the assessee failed to file requisite details and evidence with regard to the cash credits received in the form of share applications. Hon’ble Court pointed out that the AO had called for exhaustive details but the assessee did not file “details of amounts received on account of share premium along with the details of share capital, and the address and PAN Numbers were not provided for all parties. Some other details were filed consisting of some short notes and a list without PAN numbers and addresses of the investors.

As against this, the appellant filed all the necessary details and evidence with regard to the impugned issue of OFCDs subscription from all the 16 parties, as detailed in para above, such as complete names & addresses and PAN Numbers of the subscribers, photocopy of acknowledgment portion of their respective ITRs, confirmation certificates/ledger account confirmations duly signed by the subscribers, photocopies of bank accounts/bank statements of the subscribers, evidence of refund back of the loan in the form of confirmation certificates/account confirmations and copies of bank accounts etc. Similarly, he cited other decisions also but ratio of these decisions also not applicable on facts of this

case. So, the findings of the cited case cannot be applied to the instant case since the facts of the cited case are clearly distinguishable.

24. Finally, on page 28 para 10 Assessing Officer stated that terms of issue of OFCD were very much adverse to the subscriber. At the outset we submit that these are the issue of commercial understanding between two or more independent parties. Therefore, department can not interfere between these commercial transactions. In this regard reliance is placed on the decision of Hon'ble Delhi High Court in case of CIT Vs. B. Dalmia Cement Ltd. (245 ITR 377) (Delhi). Secondly, the terms which are stated to be adverse to the interest of subscriber are as under:-

- a. Conversion : The OFCDs would be redeemable after 10 years at par if the conversion option is not exercised.
- b. Use of Funds: The amount received would be at exclusive disposal of the company and may be utilized by the company for any purpose in the manner deemed fit. The OFCD holders shall have no right to claim or question anything in this regard.

In the opinion of AO the above terms are adverse to subscriber but if we look it at commercial angle there is no such adversity in these terms. The debentures are fully convertible to shares and if any party not willing to convert it they can take their principal amount. Where is the question of any adversity in this term. Further regarding use of funds also if the assessee company do not put such condition each and every debenture holder will disturb day to day functioning of the company. It is not their job to run the business. Therefore, the allegation of AO is without any basis and support.

25. Further, in the appellate stage when Ld CIT (A) Appeal called for remand report, AO has not given any opportunity to the assessee to produce parties. He send notice U/s 133(6) to all the parties and all such parties duly responded to the AO and filed desired details. Thereafter no investigation done by the AO and submitted his report to the Ld CIT (A). This clearly proves that the AO was satisfied with the details submitted before him by the assessee as well as by the respective parties. It is worthwhile to note that out of various parties one of the subscriber is Arizona Ventures Pvt. Ltd. Who is also assessed by the same AO and similar additions were made by the AO in this company and it is also one of the respondent before the Hon'ble bench. This shows that in other cases the AO has not applied his mind at all.

26. Ld CIT(A) after considering facts of the case and remand report received from the AO, verified credentials of each and every subscriber and held that the assessee company has explained identity, genuineness and creditworthiness of each and every party. Further, Ld CIT (A) based on assessment records also gone through statement of Tarun Goyal and Jagdish Purohit. He also taken note of the fact that there is no reference of assessee company name in the statement and Shri Jagdish Purohit retracted his statement. After considering all the facts and various judicial pronouncement, Ld CIT(A) deleted the entire addition.

27. He also relied upon the following judgments.

-(2010) 194 Taxman 43 (Delhi)/(2011) 330 ITR 298 (Delhi) in the case of CIT Vs. Dwarkadhish P. Ltd.

It was held by Hon'ble Delhi High Court that "In any matter, the onus of proof is not static one. Though in section 68 proceedings,

*the initial burden of proof lies on the assessee, yet **once he proves the identity of the creditors/share applicants by either furnishing their PAN numbers or Income-tax assessment numbers and shows the genuineness of the transaction by showing money in his books of account either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. Just because creditors/share applicants could not be found at the address given, it would not give the revenue right to invoke section 68.** One must not lose sight of the fact that it is revenue, which has all the powers and wherewithal to trace any person. Moreover, it is a settled law that the assessee need not to prove the source of source.” (Para 8)*

- **(2014) 52 taxmann.com 23(Delhi) CIT-XI V. Rama Krishna Jewellers.**

In this case, various additions were made under section 68 for relevant years as confirmations, bank account statements, Income Tax returns of persons who had given unsecured loans and cash credits to the assessee were not brought on record- The assessee before Commissioner (Appeals) had filed several details including their PAN, bank statements and Income Tax returns- Commissioner (Appeals) deleted additions being based on no material- Whether there was no reason to interfere with the said finding- Held, yes [Para 23]

- **[2014] 49 taxmann.com 13 (Delhi) CIT v. Nipun Auto (P) Ltd.**

*Hon’ble **Delhi High Court** averred in this case that “**Where identity of share applicants had been established and their bank accounts, IT returns and balance sheet in addition to confirmation letters were produced, addition under section 68 was to be deleted.**”*

- **CIT Vs. Divine Leasing and Finance Ltd. [2008] 299 ITR 0268(Delhi)**

It was held by Hon'ble Delhi High Court that "If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with the copy of the share holders' register, share application forms, share transfer register etc., it would constitute acceptable proof or acceptable explanation by the assessee"

In the case of the appellant, a number of documents, as enumerated in the earlier paragraphs were furnished to AO, which constitute acceptable proof.

- **[2008] 307 ITR 0334(Delhi) CIT v. Value Capital Services P. Ltd.**

In this case, Hon'ble Delhi High Court, relying on the decisions in the case of CIT v. Stellar Investment Ltd. (1991) 192 ITR 0287 (Delhi) and CIT v. Sophia Finance Ltd.[1994] 205 ITR 0098 (Del) held that:

"It is quite obvious that it is very difficult for the assessee to show the credit worthiness of strangers. If the Revenue has any doubt with regard to their ability to make the investment, their returns may be reopened by the Department.

In any case, what is clinching is the additional burden on the Revenue. It must show that even if the applicant does not have the means to make the investment, the investment made by the applicant actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. This has not been done in so far as the present case is concerned and that has been noted by the Tribunal also

Under the circumstances, we are of the view that the Tribunal has not committed any error in deleting the addition"

- **[2013] 30 taxmann.com 328 (Delhi) CIT v. Gangeshwari Metal (P) Ltd.**

It was held by Hon'ble Delhi High Court that "Where the assessee in support of transaction of receipt of share application money brought on record various documents such as names and addresses of share applicants, their confirmatory letters, copies of bank statements etc., said transaction was to be regarded as genuine and, consequently, no addition could be made in respect of same under section 68."

- **[2012] 19 taxmann.com 26 (Delhi) CIT-II v. Kamdhenu Steel & Alloys Ltd.**

Hon'ble Delhi High Court held in this case that "Once adequate evidence/material is given, which would prima facie discharge burden of the assessee in proving identity of shareholders, genuineness of transaction and creditworthiness of shareholder, thereafter in case such evidence is to be discarded or it is proved that it is 'created' evidence, revenue is supposed to make thorough investigation before it could nail assessee and fasten assessee with liability under sections 68 and 69. Where assessee had given particulars of registration of investing/applicant companies; confirmation from share applicants; bank account details; and had shown payment through account payee cheques, etc., it could be said that assessee had discharged its initial onus and just because some of creditors/share applicants could not be found at the address given, it would not give revenue a right to invoke section 68 without any additional material to support such a move."

- **CIT v. M/s Vishal Holding & Capital (P) Ltd. ITA 1031/2010 (Delhi)**

*In this case, it was held by Hon'ble **Delhi High Court** that “**In our opinion, the AO has simply acted on the information received from the Investigation Wing without verifying the details furnished by the assessee.** The assessee has also produced best possible evidence to support its claim. Consequently, the addition made by the AO cannot be sustained.”*

In the case of the appellant as well, Ld. AO has simply acted on the report of the Investigation Wing and conducted no meaningful enquiry at his level. So, there was no case for making the addition.

- **CIT v. Steller Investment Ltd. [2001] 251 ITR 263/115 Taxman 99(SC)**

In this case, Hon'ble Supreme Court affirmed the view of Delhi High Court in the case of CIT v. Steller Investment Ltd. [1991] 192 ITR 287/59 Taxman 568, that reads as under:

“It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself.”

The above-cited case relates to cash credit on account of subscription to shares whereas the assessee's case is thatof loan by way of subscription to OFCDs. The nature of both the receipts is similar as money is received in both cases from

the subscribers. Hence, the ratio of the above case is quite applicable to the instant case.

-[2002] 256 ITR 795(SC) CIT v. Gujarat Heavy Chemicals Ltd.

Hon'ble **Supreme Court** expressed its opinion in this case that in case where the share applicants were to be considered genuine, the right course for the Assessing Officer is to identify the real person to whom the money belongs and assess him to tax instead of assessing the company and as such there was no justification for assessing the company.

- (2014) 43 taxmann.com 395 (Gujarat) CIT-1 V. Dharamdev Finance (P) Ltd.

The following questions were held in favour of the assessee:

Various additions were made to the assessee's income on account of cash credits- It was found that in respect of said credits, the assessee had filed PAN of creditors, their confirmations and their bank statements, which established their credit worthiness. Moreover, the transactions were made through banking channels. Whether any addition could not be made to assessee's income u/s 68- Held Yes (Para 5).

Whether in the absence of any contrary material, any addition should not be made to the assessee's income- Held yes (Para 9).

- (2014) 42 taxmann.com 473 (Gujarat) CIT-1 Vs. Apex Therm Packaging (P) Ltd.

*It was held that "Where **name, address, PAN, copy of I.T. returns, balance sheet, P&L a/c of all creditors/lenders as well as their confirmation had been furnished, the AO could not make addition on account of unsecured loan and interest thereon.**"*

- **(2013) 37 taxmann.com 340 (Allahabad) CIT-1, LKO v. Lucknow Property Management Group**

It was held by Hon'ble High Court that "Addition as cash credit was not sustainable where assessee-developer received amounts from allottees, who were regularly assessed to tax."

- **(2014) 41 taxmann.com 550 (Gujarat) CIT-1 Vs. Shailesh Kumar Rasiklal Mehta**

Hon'ble Gujarat High Court averred that "Where transactions were routed through bank and the assessee had explained the source of income, additions u/s 68 could not be made."

*In the case of **CIT v. Jitendra Dolepatbhai Shah (2014) 41 taxmann.com 523 (Gujarat)**, Hon'ble High Court averred that "The source of credit has been explained by the assessee with documentary evidence and the documents were not found false. On perusal of the impugned order of the CIT(Appeals), we are convinced that on doubts and suspicion, the AO has treated short term capital gain as unexplained credit..... **On the basis of doubts and suspicion, the cash credits cannot be held as unexplained.**"*

*Similarly, in the case of **MOD Creations Pvt. Ltd. v. ITO(Delhi High Court)**, it was held that "The assessee had discharged its 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.***

Reliance is also placed on the following case laws:

- (i) [2014] 45 taxmann.com 473 (Rajasthan) CIT, Jaipur-II v. MoraniAutomotives (P) Ltd.*
- (ii) [2014] 44 taxmann.com 460 (Rajasthan) CIT, Central, Jaipur v. Supertech Diamond Tools (P) Ltd.*
- (iii) [2015] 58 taxmann.com 226 (Madras) CIT v. Mark Hospital (P) Ltd.*
- (iv) [2014] 52 taxmann.com 23 (Delhi) CIT-XI v. Rama Krishna Jewellers.*
- (v) [2015] 54 taxmann.com 75 (Allahabad) CIT, Central, Kanpur v. Anurag Agarwal*
- (vi) [2014] 51 taxman.com 205 (Gujarat) CIT, Ahmedabad-IV v. Sachitel Communications (P) Ltd.*
- (vii) CIT v. Lovely Exports (P) Ltd. [2008] 216 CTR (SC) 195*

28. In the case of M/s. Arison Ventures Pvt. Ltd. in ITA No.1428/Del/2016, he submitted that though facts are exactly similar however out of total addition made by the Assessing Officer of Rs.53,55,00,000/-, the amount of Rs.26,75,00,000/- was received in the earlier years and OFCD was allotted in Assessment Year 2011-12, therefore amount of Rs.26,75,00,000/- could not have been made in this year.

29. Further another important aspect in this case is that, there is no transaction with Sail Investment Pvt. Ltd. claimed by Assessing Officer as Tarun Goyal Company. Further, as far

as companies of Jagdish Purohit are concern in this case also none of the subscribed companies were termed as accommodation entry Provider Company in by Jagdish Purohit in his statement.

DECISION

30. We have heard the rival submissions and perused the relevant finding given in the assessment order, appellate order as well as material referred to before us at the time of hearing. We have already discussed the facts in detail as well as the arguments raised by the parties. The only issue involved is addition made u/s.68 for the Assessment Year 2012-13 on account of assessee having received 0% OFCDs from various parties. The adverse inference drawn by the Assessing Officer for making the additions have been discussed herein in detail, however in a succinct manner is reasons for rejecting the assessee's explanation in making the addition are as under:

- Nature of assessee's business could not be ascertain and was not explained before him.
- The assessee has been non cooperative throughout the assessment proceedings and despite asking the assessee to produce the Directors of the investor company the assessee was unable to produce any of the Directors or authorized representative of the company.
- In the case of two parties, i.e., M/s. Shail Investments Pvt. Ltd. and M/s. KOA Investments notices sent to the Directors were not complied with and when Income Tax Inspector was

deputed to serve the summons and the same could not be served because at the given address nobody was found or no board was there on the address.

- The above two companies, i.e., M/s. Shail Investment and M/s. KOA Investment Ltd. where the company controlled and operated by Shri Tarun Goyal, who is an established entry operator which was found during the course of search and seizure operation u/s.132 way back on 15.09.2008. Similarly, the two companies, namely, M/s. Scan Infrastructure Ltd. and M/s. Unisys Software and Holding Industries Ltd. which are Kolkata based company was managed and controlled by Shri Jagdish Prasad Purohit who was also found to be entry operator in the search conducted on him on 21.01.2015 wherein he has admitted that he is controlling few companies which are engaged in providing accommodation entries.
- He has also referred to finding of the Investigation Wing of Kolkata regarding Mr. Jagdish Prasad Purohit who has also enclosed the statement of Shri Jagdish Prasad Purohit in the assessment order.
- The repayment of OFCD does not exonerate the assessee from liability to be taxed on unaccounted income.

31. The assessee company was in existence for about only one and a half months during the relevant period and not much business was conducted, however, as per the memorandum of association the assessee company was formed to carry on the business as service provider/operators, agents, lenders, hirer and distributors of cable television network in the line of telecom and

communication and also to act as business consultant. Admittedly the company had meager receipts from advisory services and some interest income. On the issue of receiving of OFCDs from various the Assessing Officer has required the assessee to furnish the relevant evidences and documents to establish the identity and creditworthiness of the investor companies and also the genuineness of the transaction. In response, the assessee had filed following evidences:-

- (i) Complete names and addresses of the subscribers, number of 0% OFCD subscribed and the amount of loan outstanding as on 31.03.2012 of each party.
- (ii) Their Permanent Account Nos.
- (iii) Photocopies of the acknowledgement portion of their ITRs to establish that all parties were regularly assessed to Income Tax.
- (iv) Written confirmation certificates from the respective parties
- (v) Copy of their bank accounts for the relevant period to establish the availability of funds with the said parties.
- (vi) Confirmatory certificates of receiving back the loan amount, as obtained from each party, after redemption of the OFCDs.
- (vii) Copy of relevant portion of bank account statement, highlighting therein the relevant transaction of repayment to the respective parties after redemption of the OFCDs

(viii) Copy of the ledger accounts of the investors, as in the books of account of the appellant assessee showing the refund of loans.

32. Nowhere these evidences or documents have been rebutted by Assessing Officer or any specific material has been brought on record to allay the veracity of these documents.

33. In so far as the Assessing Officer's allegation that the assessee was non cooperative, already it has been explained by the assessee before the ld. CIT (A) as well as before us that, in the first notice u/s. 142(1) issued on 15.10.2013 seeking preliminary details, the assessee had filed their requisite details, which were, income tax return, balance-sheet, computation and details of Directors of shareholders. Thereafter, 2nd notice was issued on 15.01.2015 which was almost after 15 months from the date of first notice, wherein 63 points were listed, which too was complied with by the assessee on 16.02.2015. It was for the first time that at the fag end of the limitation of passing of the order that the Assessing Officer issued summons u/s.131 on 20.03.2015 to produce the Directors of the subscriber companies on 24.3.2015 and said summons was served on the late evening of 21st March, 2015 which was a Saturday and in response assessee has replied on 24.03.2015 that time allowed was too short. The Assessing Officer immediately thereafter issued a final show cause notice on 25.03.2015 which again was

responded on 27.03.2015. Under these admitted facts, which have been duly noted by the Id. CIT (A) which is also evident from the records, there cannot be any allegation of non co-operation by the assessee or failure to produce the Directors. If the Assessing Officer was really desired to examine the Directors, then he would have given sufficient time to the assessee specifically when most of the Directors are based out station. Id. DR before us has pointed out that in notice dated 05.01.2015 assessee was asked to produce the Directors however from the content of the said notice specifically vide points no.62 and 63, Assessing Officer had asked the following:-

“62. Who was the individual who signed the cheque dated 26.06.2011 and 25.08.2011 for Rs.10 crore and Rs.5 crore respectively for giving donation to Bahujan Prerna Trust.

63. Can you produce before me in person, for examination on oath (on the date and time to be decided as per mutual convenience) the individual mentioned in point no.62 above.”

Though, he may have asked the assessee but the tenor of the question shows that he just wants to ascertain, whether it would be possible for the assessee to produce the person who has signed the cheque dated 26.06.2011 and 25.08.2011 for Rs.10 crore and Rs.5 crore respectively for giving donation to Bahujan Prerna Trust. It was for the first time that he insisted to produce the Directors on the summons dated 20.03.2015 served on 21.03.2015 to be produced on 24.03.2015. In such

a short time, ostensibly it can be impossible for anyone to respond to such summon.

34. Now in so far as Income Tax Inspector's report that address of KOA Investment was a small Halwai shop, it has already been clarified that the Income Tax Inspector has gone on the wrong address, and therefore, this report of the Income Tax Inspector cannot be taken into cognizance. Another point raised by the ld. counsel is that the Income Tax Inspector's report was never confronted to the assessee and if there was any such adverse report regarding wrong address or parties not available, at least assessee should have been confronted to clarify or to provide the correct address.

35. Another very important fact is that, when ld. CIT (A) in the remand proceedings asked the Assessing Officer to carry out necessary inquiry, then also, Assessing Officer did not ask the assessee to produce the Directors, *albeit* has sent notices u/s. 133(6) to these companies who had duly responded to and had given all the necessary details and confirmation along with documentary evidences substantiating the case of the assessee. In such remand report also no adverse inference has been drawn which fact has already been noted by the ld. CIT (A) and has dealt with same while deleting the addition in the case of each and every subscriber/investor company. Hence, non production of Directors on the facts and circumstances of the case cannot be adversely viewed and cannot be the sole reason for sustaining the addition.

36. Coming to the Assessing Officer's observation regarding statement of Shri Tarun Goyal and the investigation carried out in his case in the year 2008. First of all, different statements of Shri Tarun Goyal which has been referred to by the Assessing Officer is more than seven year back and then without there being any specific information given by him regarding assessee that it was one of the beneficiaries, then such a statement practically holds no evidentiary value and what he did in the distant past has nothing to do with the transaction entered by the assessee company in the Assessment Year 2012-13. There is no iota of reference by the Assessing Officer, whether Shri Tarun Goyal named any of the parties with whom assessee had undertaken a transaction in his statement and how the same is related to him except the common address even in the report of the Investigation Wing dated 31.03.2009 annexed in his Assessment order. The report also relates to Assessment Years 2004-05 to 2009-10, wherein list of beneficiaries are contained and in such list, nowhere there is a mention and whisper about the assessee company. In his statement, Shri Tarun Goyal has mentioned the name of certain company who were providing accommodation entries in the earlier years. However, at the same time, in his another statement he has stated that some of his companies were doing the genuine business and it as a matter of record that all the statements were later on retracted wherein he has said that he was providing

accommodation entries through of some of the companies and in majority companies he was doing genuine business. Under these circumstances, this factum of investigation report in the case of Shri Tarun Goyal which relates for much earlier years cannot be conclusive material to hold that either Shri Tarun Goyal was still continuing with his nefarious business of accommodation entry or assessee was beneficiary of any accommodation entry in this year.

37. Now coming to the statement of Shri Jagdish Prasad Purohit dated 21.01.2015, wherein he has admitted that he is controlling few companies which were engaged in providing accommodation entry. From a bare perusal of the statement specifically question no.23, he has provided the list of the companies which were engaged in providing accommodation entries. The name of the two companies, namely, M/s. Scan Infrastructures Ltd. and M/s. Unisys Software and Holding Industries Ltd. has not been mentioned at all. Further, in question no.25, he has categorically stated that some of his companies controlled by him has raised the capital in genuine manner and has subscribed capital of other companies out of their own capital which was raised through public issue or by private placement or either merger with other companies through High Court orders. The reliance placed by the Assessing Officer in his statement to draw the adverse inference is not correct, because Assessing Officer has just jumped to the conclusion that, since these companies are controlled by Shri Jagidsh Prasad Purohit, therefore, it has to

be sham transaction or bogus. At least there should have been some reference that the assessee company was one of the beneficiaries of the accommodation transaction or was figuring in the list of the companies through which he has been provided accommodation entries. Without any such material information from his statement or investigation report qua the assessee, all the reference made by the Assessing Officer has no legs to stand so as to warrant any adverse inference while examining the credit entries in the case of the assessee company.

38. The Assessing Officer has also referred the investigation of bank transaction with various parties at the time of repayment of OFCD holders and came to the conclusion that the amount of repayment finally vested with the subscribers. If the fund obtained through OFCD have been refunded back which is an admitted fact and did not remain in the possession of the assessee company and then how the refunded amount has been utilised by the subscriber companies is none of burden of the assessee, unless these parties have confirmed otherwise and from where the funds have originated. How the assessee can be held to beneficiary of accommodation entry until and unless there is some information or statement or material that for the period the assessee had taken OFCDs was through unaccounted money which was introduced in the books and later on it has repaid back which is also duly reflected in the books of account and

has received a cash back from these entities. It is merely presumption drawn by the Assessing Officer based on certain facts and circumstances which were completely extraneous to the case of the assessee.

39. Further as stated above, if the assessee could not produce the Directors during the assessment proceedings in response to the summons issued by the Assessing Officer due to lack of time, then what prevented the Assessing Officer to ask the assessee to produce the Directors during the course of remand report when ample opportunity was given by the CIT (A) to him. The inquiry during the course of remand proceedings conducted by Assessing Officer in fact exonerates the assessee, because Assessing Officer has sent notices u/s.133(6) to each of the parties and in response to which the replies from all the parties have been received and they have confirmed that they had undertaken the transactions with the assessee company and they were also supplied confirmatory documents to the assessee and finally the balance towards the assessee was 'Nil' as on date this fact has been noted by the Assessing Officer in his remand report only.

40. Ld. CIT(A) have dealt with each and every party in detail which we have already incorporated above and on perusal of the same, we find that ,firstly he has taken note of all the evidentiary documents, i.e., copy of the bank statement of the assessee company as well as the subscriber; the factum of refund of OFCD; factum of Assessing Officer

issued notice u/s.133(6), wherein the parties have duly confirmed the transaction with documentary evidences which was also reflected in the bank statement and balance sheets, their income tax return and the audited financial statement wherein each and every thing has been reflected. Thereafter, he has also dealt with date wise entries in most of the companies specifically in the case of M/s. Shail Investment Pvt. Ltd. to reach to the conclusion that the onus cast upon the assessee was duly discharged. He has also dealt in detail with the statement of Shri Jagdish Prasad Purohit and also Shri Tarun Goyal which finding we have already corroborated in the foregoing paragraphs. After considering the entire gamut of fact and material available on record, we do not find any reason to tinker with the findings of the ld. CIT (A) which is based on facts and material on record, the remand report of the Assessing Officer and proper rebuttal of the Assessing Officer's observation and the finding and accordingly the same is confirmed.

41. In so far as the judgments relied upon by the ld. CIT-DR, specifically in the case of NRA Iron & Steel Pvt. Ltd., the Hon'ble Apex Court had opined that in case of private placement of shares, where a higher onus is required to be placed on its and legal obligation of the assessee to prove the receipt of share capital to the satisfaction of the Assessing Officer. The onus cannot be discharged merely by filing of primary evidence. Here in this case as stated above not only

the primary evidence but also in the inquiries carried out by the Assessing Officer qua the investor specifically in the remand proceedings wherein they have duly confirmed the transaction with the documentary evidences along with their balance sheet and income tax records from where they have been duly shown and proved that they have subscribed to the OFCDs with their source disclosed in their balance sheet duly supported by their bank statement. Though these companies may have a meager income but if they have sufficient funds in the form of capital and surplus duly disclosed in the audited statement and also to the income tax department, then it cannot be held that they did not have any creditworthiness. In the case of NRA Iron & Steel Pvt. Ltd. the investigation/inquiry is actually found that the creditors were dubious and lack creditworthiness. Similarly, in the case of Nova Promoters & Finlease Pvt. Ltd. (supra) there was a categorical statement of the entry providers that they have issued cheques and in turn received cash back from them which itself goes to prove that entire transactions were not genuine. In the case of NDR Promoters Pvt. Ltd. (supra) also, there was evidence and material to show that the shareholder company was only a paper company having no source of income. In that case inquiry and investigation was carried out by the Assessing Officer, wherein the evidences filed by the assessee had lost its credibility due to material brought on record and were found to be paper companies. Thus, on the facts and circumstances of the case which has been discussed in detail

in the foregoing paragraph the principle and *ratio decendi* in these cases are not applicable. Apart from that, the ld. Assessing Officer has heavily relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Focus Export which the ld. counsel had already rebutted and given a counter as to why the judgment is not applicable on the facts and the same reasoning is also adopted by us.

42. Though catena of judgments have been cited by the ld. counsel and in support of his contention and how they are applicable on the facts of the case, the same are not being discussed because the case is being decided on the facts and material brought on record and the findings of the ld. CIT (A) has been confirmed by us after analyzing each and every material and also the reasoning given by the Assessing Officer. Accordingly, the addition made by the Assessing Officer is deleted and order of the ld. CIT (A) is confirmed.

43. In the case of M/s. Arizon Ventures Pvt. Ltd., our finding given therein will apply *mutatis mutandis* as admittedly similar facts and issues are involved; and moreover in this case out of total addition of Rs.53,55,00,000/-, the amount of Rs.26,75,00,000/- could not be added in this year because OFCDs were received in the earlier years and were also allotted in Assessment Year Assessment Year 2011-12 and not in Assessment Year 2012-13. Rest of the facts remains the same, and therefore, our

findings given in the above appeal, the appeal of the Revenue in this year also dismissed.

44. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 26th March, 2021.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED: 26th March, 2021

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER