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IN THE INCOME TAX APPELLATE TRIBUNAL,
'' A'' BENCH, PUNE
(CONDUCTED THROUGH VIRTUAL COURT AT PUNE)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI S.S. VISHWANETHRA RAVI, JUDICIAL MEMBER

आयकर □□□□ □□./**ITA No. 1337/PUN/2016**
ानध □र ण वष □/**Asstt. Year: 2010-2011**

D.C.I.T., Central Circle, Aurangabad.	Vs.	M/s. Mahalaxmi TMT Pvt. Ltd., B-1/4, MIDC, Deoli, Dist. Wardha-442101. **PAN: AAECM8393D**

(Applicant)		**(Respondent)**

Revenue by	:	Shri Deepak Garg, D.R
Assessee by	:	Shri Dharmesh Shah, A.R

स □□□□□ □□त □र □ख **/Date of Hearing : 18/02/2021**
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आ दश □ /O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-1, Aurangabad, dated 22/03/2016 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-2011.

2. The only issue raised by the Revenue is that the learned CIT (A) erred in deleting the addition made by the AO for ₹ 37,02,25,00/- on account of unexplained cash credit under section 68 of the Act.

3. Briefly stated facts are that the assessee in the present case is a private limited company and engaged in the business of Iron and steel marketing. The assessee in the year under consideration has issued 40,00,000 equity shares having face value at ₹10 and share premium at ₹90 per share aggregating to ₹40 crores only. The details of the companies which acquired the shares at premium of the assessee company stand as under:

S. No	Name of shareholder	Face value (in₹)	Premium (in₹)	Gross amount (in₹)
1	Sangam Infratech Ltd.	2,20,00,000/-	19,80,00,000/-	22,00,00,000/-
2	Dhanlaxmi Re-Rolling Mill	90,00,000/-	8,10,00,000/-	9,00,00,000/-
3	Swift Venture Pvt Ltd	90,00,000/-	8,10,00,000/-	9,00,00,000/-
4	Total	4,00,00,000/-	36,00,00,000/-	40,00,00,000/-

3.1 The assessee, besides the above, has also received share application money pending for allotment of shares amounting to ₹ 25,23,27,371/- only from the companies as detailed under:

(1)	*Sangam Infratech Ltd.*	*Rs.13,95,00,000.00*
(2)	*Swift Ventures Private Limited*	*Rs. 2,95,00,000.00*
(3)	*Dhanlaxmi Re-rolling Mills.*	*Rs.5,21,78,717.00*
(4)	*Shri Ramkishan Mantri*	*Rs. 50,000.00*
(5)	*Shri Sanjay mantra*	*Rs.1,05,98,654.00*
(6)	*Shri Nilesh Chechani*	*Rs. 5,00,000.00*
(7)	*Kalyan Sangam Infratech Ltd.*	*Rs.2,00,00,000.00*
Total		***Rs.25,23,27,371.00***

3.2 Out of the above amount of ₹ 65,23,27,371/-(i.e. share capital of ₹ 4 crore, Premium of ₹ 36 crore and share application money for ₹ 25,23,27,371/-) the assessee during the year received a sum of Rs. 37,02,25,000/- through banking channel detailed as under:

1.	*Sangam Infratech Ltd.*	*Rs. 17,85,00,000/-*
2.	*Swift Venture Pvt Ltd*	*Rs. 8,10,00,000/-*
3.	*Dhanlaxmi Rolling Mills*	*Rs. 9,07,25,000/-*
4.	*Kalyan Sangam Infratech Ltd*	*Rs. 2,00,00,000/-*
	Total	*Rs. 37,02,25,000/-*

3.3 However the AO found that the assessee company was established dated 10 August 2004 i.e. during the financial year 2004-05 corresponding to the assessment year 2005-06 and it did not carry out any business activity till the year under consideration. Conversely, it has issued shares at a premium of ₹ 90 per share aggregating to ₹ 36 crores as well as it has received share application money for the amount as discussed above. Accordingly, the AO had a doubt on the genuineness of the share capital, share premium and share application money and thus sought an explanation from the assessee by issuing notice dated 10th September 2012 under the provision of section 142(1) of the Act.

3.4 The assessee vide letter dated 15th March 2013 submitted that it is going to set up an integrated steel plant at Wardha which is very much viable and profitable. The assessee filed a detailed project report in support of its contention. Accordingly the management of the company decided the fair value of the shares at Rs. 100 only which were issued to the promoters and their associate concerns without calling any money from the public or any other outside person.

3.5 However, the AO disagreed with the contention of the assessee by observing that the assessee being a newly start-up company, having no

experience in the line of its business, failed to prove the valuation of shares at Rs. 100/- based on cogent reason.

3.6 The AO further found that the assessee has inflated the cost of various items shown in the project in comparison to the market rate which is summarized, on sample basis, as under:

S. No.	*Product description*	*Cost of the item*	*Market Value*
1.	*Two 40 MT Induction furnance*	*11 crores*	*9 crores*
2.	*Casting machine*	*5.23 crores*	*4 Crores*
3.	*20 M. Ton Crane*	*22.65 lakhs*	*18.5 lakhs*
4.	*30 M. Ton Crane*	*34.65 lakhs*	*32.5 lakhs*

3.7 Accordingly, the AO to verify the genuineness of the capital cost shown by the assessee under the project with respect to certain items issued notices to the suppliers of the capital goods but none of them replied. Thus the AO was of the view that the assessee has inflated the project cost of the capital goods in order to avail higher funds from the banks. In other words the assessee claimed the high project cost so that it could take the money back from the supplier which could be reinvested in the guise of share capital/share premium in the name of the companies as discussed above.

3.8 Likewise, the AO found that the companies, namely Sangam Infratech Limited (in short SIL) and Swift Venture Private Limited (in short SWPL), which invested in the assessee company were either showing the meagre income or the losses. Furthermore, these companies (SIL and SWPL) have shown sources of funds in their respective hands by way of issuing shares on premium which was not possible for the simple reason that there was no major activity carried on by them.

3.9 The AO, further to verify the share capital in the hands of SIL and SWPL issued commission under section 131(1)(d) of the Act which submitted its report. The same is placed on pages 18 to 20 of the paper book. The AO based on such commission report found that the company namely SWPL was owned by M/s Mandhani Group. Shri Yogesh Mandhani was the key person of the group who had no experience of the steel business but joined the assessee company as a director in the FY 2008-09. Thus, the AO was of the view that the assessee has introduced its unaccounted money through the collusion of SWPL.

3.10 Regarding the capital introduced by SIL in the company, the AO found that the director of SIL could not justify the sources of funds available in its hands.

3.11 Likewise, M/s Kalyan Sangam Infratech Ltd., a company invested share application money for Rs. 2 crores in assessee company, failed to explain the sources of funds in its hands satisfactorily.

3.12 Similarly, the capital of M/s Sanjay Mantri HUF, proprietor of M/s Dhanlaxmi Rerolling Mills as on 31st March 2009 stands at ₹ 3,14,19,954/- and the loan increased during the year stands at ₹ 2.33 crores whereas it has invested in the shares of the company for an amount of ₹ 9,07,25,000/- only. In other words, there was not sufficient balance available with M/s Dhanlaxmi Rerolling Mills for acquiring the shares of ₹ 9,07,25,000/. Thus the source of funds in the hands of the company were not satisfactorily explained.

3.13 In view of the above the AO treated the sum of ₹ 37,02,25,000/- as unexplained cash credit under section 68 of the Act and added the same to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT (A).

5. The assessee before the learned CIT (A) claimed that it has discharged its onus imposed upon it under section 68 of the Act i.e. by establishing the identity of creditor/investor, genuineness of transaction and credit worthiness of creditor/investor. The assessee further submitted that during the assessment proceeding to prove identity, genuineness and credit worthiness of the parties, it has furnished name, address, PAN, CIN, company master data, MOA, AOA, balance sheet, bank statement, copy of share certificate, copy of allotment of shares filed with MCA in form-2 etc of investors companies. In view of the above document, the assessee claimed that identity of the investors get established by the fact that the they are income tax assessee and assessed under the provision of the Act. The genuineness of transaction is established by the fact that the subscribers of share confirmed the investment and reflected the same in their respective balance sheet and all the payments were made through banking channel. Similarly the credit worthiness is also proved beyond doubt that they have available funds in their bank account for making investment. The assessee also submitted that the duty of assessee is only to explain the sources of money in its own hand and not to explain the sources of source. Therefore doubting the impugned transaction of share subscription was not justified, specially, in the facts and circumstances where no cash was deposited in its banks as well as in the bank accounts of the subscribers of shares. Similarly, the aforesaid parties have shown investment in their respective income tax return. There was no information or finding available with the AO that any cash transaction is carried out between the investors and assessee.

5.1 It was further contended that once the assessee discharges its primary onus, then it was duty of the AO to bring cogent material to overturn the documentary evidence supplied by it (assessee) and prove that the same as accommodation entry. But the AO without bringing any cogent material treated the transaction as unexplained cash credit which is nothing but a mere suspicion and surmise.

5.2 With regard to AO allegation that why a prudent businessman would make investment in a non-operating company, the assessee contended that it is not the jurisdiction of the AO to enquire why third party subscribed the shares of a company. The AO's duty is limited only to the extent to enquire the identity of investor, genuineness of transaction and credit worthiness of the investor which was proved beyond reasonable doubt. Further, the viability and strength of the project were independently verified by the bank and banking consortium while providing finance to the assessee. In the project report, the earning per equity share (i.e. EPS) was estimated at Rs. 35, 50 and 61 for the next three years. Thus the reason for charging a premium @ 90/ per share does not remain unexplained in view of future viability of business. The assessee further contended that decision to charge premium on share and the extent of charging such premium depends upon the prudence of BOD of company and subscribing the share on such premium depend upon the prudence of the investor.

5.3 The assessee also claimed that the AO without providing opportunity held that project cost was inflated based on certain unilateral observation. The assessee also claimed that, the business of the assessee was not yet started then in such scenario, the question of having undisclosed or unaccounted income in the hand of it (assessee company) does not arise.

6. The learned CIT (A) after considering the assessee's submission and assessment order held that the assessee has discharged primary onus by furnishing the identity of investor, genuineness of transaction and credit worthiness of the investors. The learned CIT (A) in this regard observed as under:

(a) The investor companies namely M/s Sangam Infratech Ltd, M/s Swift Venture Pvt Ltd. M/s Kalyan Sangam Infratech Ltd and M/s Dhanlaxmi Re-Rolling Mills are regularly filing returns of income. The assesse has furnished the copy of PAN, audited balance sheet and confirmation from the investors. Further all the above parties were subject to assessments

under section 143(3) of the Act for the year under consideration and for the subsequent years.

(b) The impugned companies/parties have shown investment in the shares of the assessee company in their audited financial statements.

(c) The investors namely M/s Sangam Infratech Ltd, M/s Swift Venture Pvt Ltd during the year under consideration has received share capital and premium amounting to Rs. 67 crore and 22.39 crore respectively. But the AO of the respective parties in the assessment proceeding has not doubted the same. Hence it is proved that that they were having adequate fund in their hands for the impugned investments.

(d) Similarly, M/s Dhanlaxmi Re-Rolling Mills has shown taxable income of Rs. 3,57,98,017/- share capital of Rs. 3.14 crore and unsecured loan of Rs. 27.80 crores in its balance sheet. But the AO during the assessment proceeding under section 143(3) has made no adverse remark about the same. Further the assessment of impugned party was conducted by the AO range -1 which was headed by the AO of the assessee on hand.

(e) The impugned investors are filing the Annual returns with MCA regularly disclosing all the necessary details about their financial positions.

(f) On perusal of the bank statement of impugned investors, it was found that all the payments toward share capital and premium were made through the banking channel and no cash deposits was found in their respective bank accounts.

(g) The decision for issuing shares on premium is the decision of the board of directors of the company. As such the Board of Directors have decided to issue the shares on a premium of Rs. 90 per share having the face value at

₹10.00 only. Further, it is the wisdom of the subscriber of the shares to acquire the shares at premium. Thus the AO has no role to play in questioning the shares issued at the premium, particularly in the circumstances where the assessee has discharged its onus cast under section 68 of the Act. As per the learned CIT (A), the amount of premium represents the capital account transaction which cannot be brought to tax until it is specified under the provisions of the Act. As such there is no bar under the provisions of law for issuing the shares at premium.

(h) There was no material available on record suggesting that the subscribers of the share capital of the assessee were engaged in providing accommodation entries. Similarly, there was no cash deposited the bank account of the respective subscribers of the shares. All the transactions were carried out through the banking channel. The summons/notices issued to the subscribers of the shares were duly complied with by them. Therefore such transactions cannot be held as bogus.

(i) In fact the conditions as applicable under section 68 of the Act has been duly complied with such the identity, creditworthiness of the parties and the genuineness of the transactions.

(j) The book value of the shares based on the financial statements as on 31 March 2010 worked out at ₹256.48 whereas the assessee has issued shares at Rs. 100.00 only (face value ₹10 and premium ₹90) which is less than the book value. Likewise the PE ratio of the company based on the projections gives the valuation of the shares at ₹ 105 only whereas Board of Directors have issued shares at 100 only.

(k) The statements of Shri Rampal Soni, director of M/s Sangam Infrastructure Limited and Shri Jagdish P. Purohit and Shri Eknath N. Mandavkar do not give rise to the doubt that the assessee has received share application money on premium after connivance with the subscribers.

(l) There is no clarity with respect to the notices issued under section 133(6) of the Act to the suppliers the machineries/expenses and various contractors about the date of notices and when the response from them was due. Furthermore if the suppliers have not responded to the notices issued under section 133(6) of the Act then the AO does not get the authority to draw any adverse inference against the assessee until and unless such fact is brought to the notice of the assessee for its rebuttal. But what appears from the order of the AO that such opportunity has not been afforded to the assessee.

(m)Likewise, the allegation of the AO that the assessee has accepted the cash from the suppliers by inflating cost of the project is without any tangible material. The onus was upon the AO to bring corroborative evidence on record before arriving at the conclusion that the assessee has inflated its cost of the project.

6.1 In view of the above the learned CIT (A) was pleased to delete the addition made by the AO by observing that the amount of share capital received by the assessee stands explained and therefore there cannot be any addition under section 68 of the Act. Accordingly the learned CIT (A) deleted the addition of ₹3 702 25,000 only. Thus the ground of appeal of the assessee was allowed.

7. Being aggrieved by the order of the learned CIT (A), the Revenue is in appeal before us.

8. The learned DR before us filed various paper books running from pages 1 to 477 and other one is running from pages 1 to 59 and submitted as under:

> *14. It is kindly submitted that original assessment u/s 143(3) of the Act was completed on 28.03.2013. Subsequent to this assessment,* ***a search operation u/s 132 of the Act was conducted on 02.05.2013 on the assessee as well as some of the investor companies*** *(which subscribed shares in AY 2010-11). During the search/post search and assessment proceedings u/s 153A of the Act, various enquiries regarding the genuineness of share application money received by the assessee during various years (including the year under consideration) were carried out of various persons were also*

recorded Assessment u/s 143 r.w.s. 153A of the Act for AY 2010-11 was completed on 30.03.2016.

15. In this connection, copy of the assessment order u/s 143(3) r.w.s. 153A of the Act, dated 30.03.2016 along with the copies of statements recorded during the search operation/post search enquiries have been filed in the paper book. A perusal of these documents suggest:

(i) ***M/s Sangam Infratech Pvt.Ltd.*** *was also covered under search/survey operations. Statement u/s. 132(4) on 06/05/2013 of Shri Rampal Soni (director of M/s Sangam Infratech)* ***admitted an additional income of Rs. 14 Crores*** *on account of unexplained funds in case of M/s. Sangam Infratech Pvt. Ltd.* ***(page 81 of paper book filed by the department)***

(ii) *During the search operation/post search enquiries, it was found that M/s Sangam Infratech Pvt. Ltd. Was used as a conduit to channel the unaccounted money. The assessee company has taken share application money from M/s Sangam Infratech Pvt Limited during various assessment years. In the assessment order u/s 143(3) r.w.s. 153A of the Act, this amount has been added in the hands of Sangam Infratech on protective basis and in the hands of assessee company on substantive basis,* ***(para 9.16 of assessment order u/s 153A, page 110 of paper book filed by the department)***

(iii) *M/s Swift Ventures Pvt Limited was also covered under search/survey operations. It was admitted by the director of the assessee company that the shares of Swift Ventures were purchased by the promoter group @ Rs. 3 per share in FY 2009-10 (page 156 of paper book of the department).The said shares were purchased from the companies controlled by Mr. Jagdish Purohiti as admitted by the director of assessee company in his statement recorded on 3.05.2013.At* ***the time of such purchase, Swift Venture was a shell/paper company of accommodation entry operator Mr.Jagdish Purohit.***

(iv) *Shri Jagdish Purohit in a statement on oath u/s 132(4) acknowledged multilayering of funds and providing accommodation entries. A list of companies through which accommodation entries were provided is at page 162 to 165 of the paperbook filed by the department.* ***The name of M/s Swift Ventures Pvt Limited is appearing at SI. No. 24 (page 164 of department's paper book) of this list of paper/shell companies.***

(v) *At the time of purchase of shares of M/s Swift venture by promoters of the assessee company, Swift Venture was having so called investment in paper companies amounting to Rs. More than 22 crores. This paper investment was purchased by the promoters at a value of Rs. 75 lakhs (approx.) and over a period of few years, unaccounted money was introduced by showing the liquidation of such paper investment in bogus companies which was simultaneously introduced in the assessee company.*

(vi) *A list of paper companies in which the investment was liquidated over the years is at page 144 of the paperbook filed by the department. Oncomparison of this list with the list of shell companies operated by Sh Jagdish Purohit (page 162-165), it can be seen that name of many companies are appearing in both the lists. Which further corroborates that the so called investment of M/s Swift Venture was only in shell/paper companies.*

(vii) Similarly, if one compares the list of shell companies as provided by Mr Purohit with the shareholders of M/s Swift Ventures (page 129-131 of paperbook of department) from whom the shares were purchased @ Rs. 3 per share by the promoters of the assessee company, it can be seen that the names of many companies are common.

(viii) Statement of Shri Yogesh R Mandhani in the case of M/s. Swift Ventures Pvt.Ltd. was recorded on 16/05/2013 who made a declaration of Rs. 6.95 Crores in the hand of family members on account of cash introduced by camouflaging the sale of shares held as investment by M/s Swift Ventures, (page 148 of the paper book filed by the department)

(ix) As regards to the investment by M/s Dhanlaxmi Rerolling Private Limited, it was found during the search/post search enquiries that this company received a loan of Rs. 23 crores from M/s Dhanlaxmi Software Pvt Limited. ***Dhanlaxmi software was also a shell company having common directors with M/s Swift Ventures.*** *This complfny~Tfacr"received huge"security premium from other shell companies having common directors. A_survey was conducted on Dhanlaxmi software where it was not found on the given address. A survey was also conducted on* ***the Auditor of Dhanlaxmi Software who admitted that a number of companies were^ floated on the direction of Mr. Jagdish Prasad Purohit.*** *These facts have been discussed in the assessment order u/s 153A of the Act of the assessee company (page 82-83 of department's paper book)*

16. *It may also be submitted that the Ld. CIT(A) has accepted themake believe paper evidences submitted by the assessee and deleted the addition by largely following the decision of Hon'ble Supreme Court in the case of M/s Lovely Exports Limited. However, the issue of introducing unaccounted income in the garb of share application money through paper companies have been a subject matter of discussion by various courts wherein the make-believe paper work regarding such transactions has not been accepted by the Hon'ble Courts. It may be submitted that in a recent case of* ***Pr. CIT v. NDR Promoters (P.) Ltd. [2019] 102 taxmann.com 182/261 Taxman 270/410 ITR 379 (Delhi),*** *Hon'ble Delhi High Court has held that a case involving make-believe paper work to camouflage the bogus nature of the transactions is to be treated as unexplained credit u/s 68 of the Act.* ***The said decision of Hon'ble Delhi High Court has been upheld by Hon'ble Supreme Court109 taxmann.com 53(SC)***

17. The Hon'ble Supreme Court in its decision dated 25.03.2019 in the case of ***NRA Iron & Steel Pvt Limited 412 ITR 161 (SC)*** *after discussing a number of decisions including its own decision in the case of* ***M/s Lovely exports*** *has held that the practice of conversion of un-accounted money through the cloak of share capital/share premium must be subjected to a careful scrutiny and has held that the AO is duty bound to investigate the creditworthiness of the creditor/subscriber and to ascertain whether the transaction is genuine or these are bogus entries of name-lenders. The Hon'ble SC has also held that if the enquiries and investigation reveal that the identity of creditor is 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. A review petition to this decision has also been dismissed by the Hon'ble Supreme Court.*

18. *It may also be submitted that this decision of Hon'ble SC has been followed by Hon'ble Delhi HC in the matter of M/s* ***RDS Projects Limited vs ACIT WPC No. 11274/2019 dated 23.10.2019 and M/s Vedanta Limited WPC No. 13036/2019.***

19. *It may also be submitted that in the decision M/s* ***NRA Iron & Steel Pvt Limited 412 ITR 161 (SC),*** *the Hon'ble SC has reproduced the list of shell companies involved in that particular case* ***(page 186 - 190 of department's paperbook).***

(i) On comparison of this list with the list of paper companies (in which so called investments were held by M/s Swift ventures which were statedly liquidated I by the promoters of assessee company) placed at page 142 of department's paperbook, it can be seen that the name of M/s Prominent Vyapaar Pvt Limited is appearing in both the lists.

(ii) On comparison of this list of NRA Iron case with the list of paper companies (from whom the shares of Swift Ventures were purchased by promoters of assessee company) placed at page 129-131 of department's paperbook, it can be seen that the names of M/s Natraj Vinimay Pvt Limited and M/s Warner Multimedia Pvt Limited are appearing in both the lists.

(iii) On comparison of this list of NRA Iron case with the list of paper companies controlled by Sh Jagdish Purohit available at page 162-165 of department's paperbook, it can be seen that the names of M/s Eternity Multi Trade Private Limited, M/s Neha Cassettes Private Limited and M/s Natraj Vinimay Pvt Limitedare appearing in both the lists.

These common names clearly indicate that the investor companies involved in the present case are shell/paper companies because some of the associated companies of investor companies in present case have already been held as shell companies by the Hon'ble Supreme Court.

20. *Kind attention is also drawn to the decision of* ***Hon'ble ITAT (Pune Bench)*** *in the case of* ***M/s Prathamesh Ceremics Pvt Limited (ITA No. 2260-2262/PUN/2014) dated 04.02.2020.*** *In this case, the Ld. CIT(A) had deleted the addition by accepting the make-believe documentation and following the decision in the case of Lovely Exports. After considering the decision in the case of NRA Iron & Steels Private Limited and M/s NDR Promoters (P) Limited, the Hon'ble ITAT held that the decision in the case of M/s Lovely Exports is no more a binding decision, The Hon'ble ITAT accordingly remanded the matter back to file of Ld. CIT(A) for deciding the matter in accordance to the decision in the case of M/s NRA Iron & Steels Private Limited and M/s NDR Promoters (P) Limited,* ***(para 10 of the said order page, page 311 of department's paper book)***

21. Kind attention is also drawn to para 9.10 ofthe decision of ***Hon'ble ITAT (Pune Bench)*** *in the case of* ***M/s Prathamesh Ceremics Pvt Limited (ITA No. 2260-2262/PUN/2014) dated 04.02.2020 (page 310 of department's paperbook)*** *which clearly mentions that the accommodation entry operator involved in that case was also Shri Jagdish Prasad Purohit who is involved in the present case also. Also some of the companies of Shri Purohit mentioned in para 4 of Hon'ble ITAT's order are common to the present case.*

22. It may also be submitted that as informed by the assessing officer, while completing the assessment u/s 143(3) r.w.s. 153A of the Act, an addition of Rs. 45.05 crores was made u/s 68 of the Act for the AY 2010-11. It has also been informed that presently, the assessee's appeal against this order is pending before Ld. CIT(A)-12, Pune.

23. It is also submitted that the Ld. CIT(A) did not consider various facts revealed during the search operation/post search enquiries. Neither, the admission made by directors of the assessee company, directors of investor companies, accommodation entry operator Mr. Jagdish Purohit, etc. were considered by the Ld. CIT(A). Also, the Ld. CIT(A) did not have the benefit ofthe decisions of Hon'ble Supreme Court in the case of M/s NRA Iron & Steels Private Limited and the decisions in the case of NDR Promoters (P) Limited. It may also be submitted that the same issue is involved in the assessment u/s 143(3)

r.w.s. 153A of the Act for the assessee for same year as well which is presently pending before the Ld. CIT(A)-12, Pune. Considering the totality of facts, it is requested that the matter may be restored back to the file of the Ld. CIT(A).

9. On the other hand the learned AR before us filed a revised paper book dated 29-08-2019 running from pages 1 to 324 and submitted that the issue before the Hon'ble bench relates to the assessment framed under section 143(3) of the Act and therefore there is no question of making any reference to the search materials which has been used for the purpose of making the assessment under section 153A of the Act. As such the Bench is not adjudicating the issue arising from the assessment framed under section 153A of the Act post search proceedings.

9.1 The learned AR further submitted that the assessee is in the process of setting up of its plant and for this purpose it has incurred an expense of Rs. 101,44,88,596 only. The assessee to incur such huge expenses has already taken loan from the Union Bank of India. The learned AR in support of his contention drew our attention on the financial statements of the assessee which are placed on pages 1 to 10 of the paper book and sanctions letters issued by the bank which are placed on pages 154 to 232 of the paper book. The learned AR also drew our attention on the techno economic feasibility report of assessee's project which was placed on pages 233 to 266 of the paper book.

9.2 The learned AR further submitted that the assessee has not inflated its project cost as alleged by the AO in his order. In fact the AO has grossly erred in comparing the cost incurred by the assessee with the data available on the Internet which has no relevance. As per the learned AR, the capacity of the product acquired by the assessee were different with the product compared by the AO on the basis of the data obtained from the Internet. The learned AR in support of his contention drew our attention on the invoice issued by the supplier placed on pages 299 to 301 of the paper book. The learned AR also contended that the notices were issued to the suppliers vide letter dated 18 March 2013 whereas the

assessment was completed under section 143(3) of the Act dated 28th of March 2013. Thus the notices were issued under section 133(6) of the Act at the fag end of the assessment. Thus no adverse inference can be drawn against the assessee due to non-response of the notices issued to the suppliers.

9.3 The learned AR further contended that the assessee has furnished all the relevant details of the parties which have subscribed the shares of the assessee at a premium. Thus the assessee has discharged its onus by furnishing the details of the identity, genuineness of the transactions and the creditworthiness of the parties which are available on pages 11 to 153 of the paper book. The learned AR also contended that the source of funds in the hands of the parties which subscribed the shares of the assessee company have been accepted by the revenue in their respective assessments.

10. Both the learned DR and the AR before us vehemently supported the order of the authorities below as favourable to them.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The dispute in the instant case relates to the share capital received by the assessee in the year under consideration from certain parties amounting to Rs. ₹ 37,02,25,000/- which was treated as unexplained cash credit under section 68 of the Act. The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are:

(i) identity of the investors;

(ii) their creditworthiness/investments; and

(iii) Genuineness of the transaction.

11.1 The Revenue exercise starts only when these three ingredients are established *prima facie*, by the assessee and the department is required to

investigate into the facts presented by the assessee. As per the statutory provision of Sec 68 and jurisprudence of the Hon'ble court, it is clear that primarily the onus is on the assessee to discharge that the credit received by it is from the sources whose identity can be proved, the genuineness of the transaction and the creditworthiness of the creditor is also established by the documentary evidences. If the assessee presents all these details during the assessment proceeding before the AO, the responsibility shifts to the AO to prove it wrong. If the AO accepts such evidences without proving it wrong, it can be said that assessee has discharged its onus. If the AO presents some contrary evidences, the responsibility again shifts upon the assessee to rebut such contrary evidences.

11.2 Admittedly, in the case on hand, the assessee has discharged its onus by furnishing the necessary details such as a confirmation of the parties, copy of ITR-V, copy of bank statement of parties along with their balance sheet, share certificate, MOA, AOA etc. in support of identity of the parties and genuineness of transaction and credit worthiness of the parties. These details of the parties are available on pages 16 to 161 of the paper book. Similarly, there is also no dispute to the fact that all the transactions were carried out through the banking channel. What is the inference that flows from a cumulative consideration of all the aforesaid contending facts is that the assessee has discharged its onus imposed under section 68 of the Act. The details filed by the assessee were cross verified by the Revenue from the respective parties and no infirmity was pointed out in the same except doubting the credit worthiness of the parties on the reasoning that these parties are earning lower income/ incurring the losses/ capital was insufficient for such investment. Accordingly the AO had a suspicion that the investors as discussed above were acting as the conduit for converting the unaccounted money of the assessee in the guise of share capital /share application money and premium on shares. Conversely the AO has not brought anything on record suggesting amount credited in the books of assessee does not belongs to respective parties but the same belongs to the assessee. Now we

proceed to look into the facts of each investors which invested money in the company in the form of share capital along with share premium.

11.3 Sangam Infratech Limited (Investment of Rs. 17.85 crores)

- On perusal of the balance sheet of SIL, placed on pages 35 of the paper book, it was noticed that its position of the fund including the unsecured loan stands at ₹ 110 crores approximately as on 31-3-2010. Out of such fund there was the opening balance as on 1 April 2009 at ₹ 56.40 crores approximately. Thus what is transpired is this that the fund in the hands of the company i.e. SIL was not generated in the year under consideration for making the investments in the company. Similarly, the company i.e. has made investment in various other companies in the year under consideration as well as in the earlier assessment years which can be verified from the details placed on page 39 of the paper book. Thus, it is not the case that the entire capital of the company i.e. SIL was invested in the shares of the assessee company.
- Likewise, there was an assessment under section 143(3) of the Act under CASS in the case of the company i.e. SIL wherein the capital generated by SIL was accepted by the revenue. The copies of the assessment orders for the year under consideration as well as for the assessment year 2011-12 are placed on pages 56 to 62 of the paper book. Here, it is pertinent to note that though the assessment was made under CASS but the same was not converted to the normal/complete scrutiny. In other words, it can be inferred that the Revenue was aware of the financial position of the company i.e. SIL and was satisfied with the same.
- It was noticed that the assessee received a sum of Rs. 2 crores in the earlier assessment year from SIL which was accepted by the Revenue. In other words there was no doubt raised by the Revenue of whatsoever in the earlier assessment year for the amount of Rs. 2

crores received by the assessee. Thus a question arises whether the creditworthiness can be doubted in the year under consideration towards the amount received by the assessee in the year in dispute. To our mind, the answer stands in negative. It is for the reason that once the revenue has accepted the creditworthiness of the company in the earlier year, the same cannot be disturbed in the subsequent year until and unless the corroborative evidences require otherwise. But no such evidences were brought on record.

iv) It is also pertinent to note that the commission under section 131(1)(d) of the Act was issued upon the company SIL which submitted its report but there was no negative remark about the financial position of the company i.e. SIL.

v) It is also important to note that the assessee besides the share capital of ₹17.85 crores has also received share application money for ₹13.95 crores from the company i.e. SIL, which is pending for allotment as on 31 March 2010 but there was no doubt raised by the revenue with respect to such share application money which is pending for the allotment. In other words the revenue has accepted part of the amount shown as share application money pending for allotment as correct with respect to the identity /creditworthiness of the party as well as genuineness of the transaction. To our mind, the AO erred in accepting part of the amount as genuine and at the same time doubting the genuineness for part of the amount as discussed above.

11.4 Kalyan Sangam Infratech Limited (for short KSIL)– Share application money of Rs. 2 crores

i) On perusal of the balance sheet of KSIL, placed on pages 72 of the paper book, it was noticed that its position of the fund including the loan stands at ₹ 143.1 crores approximately. Out of such fund there was the opening balance as on 1 April 2009 at ₹25.20 crores proximately.

Thus what is transpired is this that the fund in the hands of the company i.e. KSIL was not generated in the year under consideration for making the investments in the company. Similarly, the company i.e. KSIL has been awarded the project by Maharashrtra Sate Public Works Dept (MSPWD) division, Thanne for the estimated project cost at Rs. 353 croes which was financed by the bank namely IDBI Bank for an amount of Rs. 225 crores and the promoter contributions of ₹128 crores. Likewise the assessee has incurred an expense of ₹ 158.60 crores approximately under the head capital work-in-progress. This fact can be verified from the directors report and audited financial statements placed on pages 67 to 78 of the paper book. Thus, it is not the case that the entire capital of the company i.e. KSIL was invested in the shares of the assessee company. In other words the company i.e. KSIL was not a paper company which was used as conduit for converting the unaccounted money of the assessee as alleged by the AO.

- Likewise, there was an assessment under section 143(3) of the Act in the case of the company i.e. KSIL wherein the activities of the company i.e. KSIL were accepted by the Revenue. The copy of the assessment orders for the assessment year 2011-12 and 2012-13 are placed on pages 80 to 83 of the paper book.
- There was also an assessment framed by the AO in the case of KSIL for the year under consideration under section 143(3) r.w.s. 147 of the Act vide order dated 21-03-2016 wherein the financial position of the company was accepted. The copy of the assessment order is placed on pages 3 to 8 of the paper which was received separately dated 22-2-2021.

11.5 <u>Swift Venture Pvt. Ltd. share capital of Rs. 8,10,00,000/-</u>

i) On perusal of the balance sheet of SVPL, placed on pages 95 of the paper book, it was noticed that its position of the fund stands at ₹ 22.50 crores approximately as on 31-3-2010 and 31-3-2009. Thus what is transpired is this that the fund in the hands of the company i.e. SVPL was not generated in the year under consideration for making the investments in the assessee company. Similarly, the company i.e. SVPL has made investment in various other companies in the year under consideration as well as in the earlier assessment year which can be verified from the financial statement of the company. Thus, it is not the case that the entire capital of the SVPL was invested in the shares of the assessee company.

ii) It was also noticed that the assessee received a sum of Rs. 85 lacs in the earlier assessment year from SVPL which was accepted by the revenue. In other words there was no doubt raised by the revenue of whatsoever in the earlier assessment year for the amount of Rs. 85 lacs received by the assessee from SVPL. Thus a question arises whether the creditworthiness can be doubted in the year under consideration towards the amount received by the assessee in the year in dispute. To our mind, the answer stands in negative. It is for the reason that once the revenue has accepted the creditworthiness of the company in the earlier year, the same cannot be disturbed in the subsequent year until and unless the corroborative evidences require otherwise. But no such evidences were brought on record.

iii) It is also pertinent to note that the commission under section 131(1)(d) of the Act was issued upon SVPL in response to which it submitted its report but there was no negative remark about the financial position of the company i.e. SVPL.

iv) It is also important to note that the assessee besides the share capital of ₹ 8.10 crores has also received share application money for ₹2.95 crores, which is pending for allotment as on 31 March 2010 from the

company i.e. SVPL but there was no doubt raised by the revenue with respect to such share application money which is pending for the allotment. In other words the revenue has accepted part of the amount shown as share application money pending for allotment as correct with respect to the identity /creditworthiness of the party as well as genuineness of the transaction. To our mind, the AO erred in accepting part of the amount as genuine and at the same time denying part of the amount as not genuine.

11.6 Dhanlaxmi Re-rolling Mills (DRM)

- On perusal of the balance sheet of DRM as on 31-3-2010, placed on pages 125 of the paper book, it was noticed that its position of the fund including the loan stands at ₹ 21.7 crores approximately. Out of such fund there was the opening balance as on 1 April 2009 at ₹ 31.81 crores approximately as evident from the balance sheet an on 31-3-2009, placed on page 116 of the PB. Thus what is transpired is this that the fund in the hands of the company i.e. DRM was not generated in the year under consideration for making the investments in the company.
- Similarly, the company i.e. DRM has shown the turnover more than of Rs. 100 crores as evident from the audited profit and loss account, placed on page 124 of the paper book. Thus, it is the case that the firm i.e. DRM is not a paper entity which was used as conduit for converting the unaccounted money of the assessee as alleged by the AO.
- It is also important to note that the firm i.e. DRM is a proprietary concern owned by Shri Sanjay Mantri HUF and KARTA of the HUF has also made investments in the share application money in the individual capacity which has been accepted by the revenue. Thus what is transpired that the revenue has not believed on the creditworthiness of the HUF but did not doubt on the creditworthiness of the KARTA of the HUF in his individual capacity.

iv) Likewise, there was an assessment under section 143(3) of the Act in the case of the firm i.e. DRM wherein the financial position of the firm was not doubted. The copy of the assessment order for the year under consideration is placed on pages 152 to 153 of the paper book.

v) It was also noticed that the assessee received a sum of Rs. 5,14,53,717/- in the earlier assessment year from DRM which was accepted by the revenue. In other words there was no doubt raised by the revenue of whatsoever in the earlier assessment year for the amount of Rs. 5.14 crores received by the assessee. Thus a question arises whether the creditworthiness can be doubted in the year under consideration towards the amount received by the assessee in the year in dispute. To our mind, the answer stands in negative. It is for the reason that once the revenue has accepted the creditworthiness of the company in the earlier year, the same cannot be disturbed in the subsequent year until and unless the corroborative evidences require otherwise. But no such evidences were brought on record.

vi) It is also important to note that the assessee besides the share capital of ₹9,00,00,000/- crores has also received share application money for ₹ 5.21 crores, which is pending for allotment as on 31 March 2010 from the firm i.e. DRM but there was no doubt raised by the revenue with respect to such share application money which is pending for the allotment. In other words the revenue has accepted part of the amount shown as share application money pending for allotment as correct with respect to the identity /creditworthiness of the party as well as genuineness of the transaction. To our mind, AO erred in accepting part of the amount as genuine and at the same time denying part of the amount as not genuine.

12. Now proceeding to examine whether the principles laid down by the Hon'ble Supreme Court in the case of Pr. CIT v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC) are applicable to the present facts of the case. In that case, the assessee-company received share capital and premium of Rs. 17.60 crores in all from nineteen parties (six from Mumbai, eleven from Kolkata and two from Guwahati). The shares had a face value of Rs. 10 and were subscribed by the investor-companies at a premium of Rs. 190 per share. The AO made the addition of Rs. 17.60 crores after carrying out various inquiries as under-

(i) To verify the veracity of the transactions, the notices were served on three investor-companies namely *Clifton Securities Pvt. Ltd.*-Mumbai, *Lexus Infotech Ltd.*-Mumbai, *Nicco Securities Pvt. Ltd.* Mumbai but no reply was received.

(ii) The address with respect to a company namely Real Gold Trading Co. Pvt. Ltd.-Mumbai was not correct.

(iii) The notice could not be served on two investor-companies, namely Hema Trading Co. Pvt. Ltd.-Mumbai, Eternity Multi Trade Pvt. Ltd.-Mumbai.

(iv) Submissions from nine companies were received (*Neha Cassetes Pvt. Ltd.*-Kolkata, *Warner Multimedia Ltd.* Kolkata, *Gopikar Supply Pvt. Ltd.* Kolkata, *Gromore Fund Management Ltd.* Kolkata, *Bayanwala Brothers Pvt. Ltd.* Kolkata, *Shivlaxmi Export Ltd.* Kolkata, *Natraj Vinimay Pvt. Ltd.* Kolkata, *Neelkanth Commodities Pvt. Ltd.* Kolkata, *Prominent Vyappar Pvt. Ltd.* Kolkata), however, they had not given any reasons for paying such a huge premium. Furthermore, they had declared very low income in their respective returns of income.

(v) The details of share purchased and the amount of premium were not specified by certain companies namely Super Finance Ltd. Kolkata, Ganga Builders Ltd. Kolkata. Furthermore, these companies had not enclosed the bank statement.

(vi) In addition to above, ld. AO found that:

a. Out of the four companies at Mumbai, two companies were found to be non-existent at the address furnished.

b. With respect to the Kolkata companies, nobody appeared nor did they produce their bank statements to substantiate the alleged investments.

c. Guwahati companies - Ispat Sheet Ltd. and Novelty Traders Ltd., were found non-existent at the given address.

d. None of the investor-companies appeared before the A.O.

12.1 Based on the above it was held the by the Hon'ble Apex Court, that the Assessee-Company failed to discharge the onus required under Section 68 of the Act. Therefore, the Assessing Officer was justified in adding back the amounts to the Assessee's income. However in the case on hand, we find that the assessee has discharged its onus cast upon it under the provisions of section 68 of the Act which has been elaborated in the preceding paragraphs.

12.2 In our humble understanding, we also note that the decision in the case of *NRA Iron & Steel (P.) Ltd.* (*supra*) is based on facts. Thus such case will become binding on those cases having similar facts and circumstances and not other cases having different facts and circumstances. In this regard, we draw support and guidance from the judgment of Hon'ble Calcutta High court in the case of *CIT* v. *Peerless General Finance and Investment Co. Ltd.* [2006] 154 Taxman 179/282 ITR 209- wherein it was observed that the binding nature of a decision is of two kinds—one is in relation to the facts and the other is in relation to the principles of law. A principle of law declared would be treated as precedent and binding on all. The finding of facts would bind only the parties to the decision itself and it is the ultimate decision that binds. Where facts are distinguishable, such as assessee has replied and

clarified all the doubts like non-service of summons on the directors of the investing companies due to change of address, existence of the investing companies on the portals of MCA/ROC and with the Income Tax Department long after investment, providing DIN of directors of investing companies and their other particulars, providing reasons for charging huge premium, adequate creditworthiness on the basis of assets, source of immediate availability of funds for investment, etc., then this decision in *NRA Iron & Steel (P.) Ltd.* (*supra*) cannot be applied.

123 Admittedly, the assessee in the case on hand has sufficiently furnished the details of the parties which have been elaborated somewhere in the preceding paragraph. Therefore in our humble understanding the principles laid down by the Hon'ble Apex court in the case of NRA steels *(supra)* are not applicable to the facts of the case.

124 It is also pertinent to note that various Hon'ble court after considering the judgment of Hon'ble Supreme Court in the case of NRA Steel (supra) has deleted the addition made by the AO under the provisions of section 68 of the Act. In this connection we draw support and guidance form the judgment of Hon'ble Bombay High Court in case of PCIT vs. Ami Industries (India) (P.) Ltd. reported in 424 ITR 219 where it was held as under:

> ***21.*** *From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.*
>
> ***22.*** *In NRA Iron & Steel (P.) Ltd. (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The*

field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

12.5 The next aspect that arises for our consideration whether the assessee company can issue the shares at a premium in view of the fact that it had not carried out any business activity in the year under consideration since its inception. On perusal of the profit and loss account of the assessee as on 31 March 2010, placed on page 2 of the paper book, it is revealed that it has not shown any turnover or profit therein except the purchases and the closing stock at ₹ 15,11,83,038/- only. However, on perusal of the audited balance sheet of the assessee, it is revealed that it has shown capital work in progress amounting to ₹ 101,44,88,596/- which evidences that the assessee was in the process of setting up of its plant which was not yet operationalized in the year under consideration. Therefore, there was no turnover and income shown by the assessee in its profit and loss account.

12.6 Besides this we also find that the assessee has taken finance facilities from the Union Bank of India which was also extended subsequently. The details of the sanction letters issued by the bank are placed on pages 154 to 232 of the paper book.

12.7 Likewise, there was techno economic feasibility report dated 2nd February 2010 prepared by M/s Korus engineering solutions private Ltd, placed on pages 233 to 266 of the paper book, wherein various details were furnished. These details among other information include the informations, summarized as under:

i. Currently status of the project and technological aspects.

ii. Location analysis where the project was in the process of setting up.

iii. The investments in the project was expected at ₹ 602.17 crores with the debt equity ratio of 2.96 and internal rate of return at 37% was estimated.

iv. It was also estimated that it will start its operation in the capacity of 70% which will increase gradually to the tune of 95%.

v. It was also estimated that the sales realisation in the 1st year of its operation shall be at ₹ 16,825 Lacs which will increase gradually to ₹ 30,439 lakhs over a period of time.

vi. The details of the cash flow statements.

12.8 Based on the above documents, it cannot be said that there was no business activity carried out by the assessee in the year under consideration as it has not shown any profit in the books of accounts. As such the assessee was in the process of setting up of the plant in the year under consideration and its commercial activity did not start. Accordingly, we are not convinced with the allegation of the AO that the assessee did not carry out any business activity in the year under consideration.

12.9 On perusal of the financial statement of the assessee we also note that it has shown reserve and surplus for the year ending 31st March 2009 at ₹ 25,12,448/- against the share capital of ₹1 lakh which was divided into 10,000 shares of ₹10 each. In other words the valuation of the shares of the assessee company as per its financial statement stands at ₹ 250/- approx. (₹ 25,12,448/10000). Based on this information only, the intrinsic value of the share of the assessee company is much more than the value at which it has issued the shares at premium. Furthermore, we note that the shares has been issued by the assessee based on the techno economic feasibility report as discussed above.

12.10 Regarding the allegation of the Revenue that the assessee has inflated its project cost, we note that cost which has been shown by the

assessee in its books of accounts has been compared with the data obtained by the AO from the different websites using the Internet. In our considered view, the basis adopted by the AO for the comparison between the project cost shown by the assessee with the market value was absurd. It is because the information which is available on the Internet cannot be relied blindly until and unless it is compared with the actual facts and figures.

12.11 We also note that the AO has issued notices to the suppliers who supplied capital goods to the assessee for the purpose of the verification but there was no response from the side of such suppliers. However we find that the AO has issued notices under section 133(6) of the Act dated 18th March 2013 at the fag end of the assessment and at the same time the assessment order was framed dated 28th of March 2013. Accordingly, we are of the view that the AO has not given sufficient time to the suppliers for furnishing the necessary replies. This fact can be verified from the details available on page 294 of the paper book where 1 of the supplier namely M/s Angira Construction has claimed to have received the notice issued by the AO dated 2nd April 2013. This party has also made a reply in response to the notice issued under section 133(6) of the Act which is available on pages 294 to 301 of the paper book. In this regard we also note that the Assessee was not afforded the opportunity to counter the allegation of the AO. It was the duty of the AO to provide an opportunity to the assessee to put its case on finding which is adverse to the assessee. But the AO has not done so, therefore such finding or allegation of the AO is not sustainable.

12.12 We also note that the assessee during the assessment proceedings has furnished the necessary details of the fixed assets, placed on pages 267 to 288 of the paper book, along with the name of the suppliers and the breakup of the assets. But the AO has not pointed out any infirmity in such details furnished by the assessee. In fact the assessee has duly discharged its onus by furnishing the requisite details and therefore the onus was shifted upon the AO to reject the contention of the assessee based on the cogent materials. As

such the assessee cannot be penalised for non-response of the suppliers, particularly in a situation, where the notices to the suppliers were issued by the AO at the fag end of the assessment.

12.13 It is also significant to note that the entire thrust of the learned DR was based on the documents/informations collected in the course of search proceedings under section 132 of the Act which was conducted on 2 May 2013. As per the learned DR the information gathered during the search proceedings should also be considered while adjudicating the issue on hand. The learned DR further submitted that the matter of the assessee for the year under consideration against the search proceedings is pending before the learned CIT (A). Accordingly the learned DR contended that the matter on hand can also be restored to the file of the learned CIT (A) for fresh adjudication along with the search proceedings. However, we are not convinced with the argument of the learned DR for the reason that both the proceedings are separate and independent to each other.

12.14 The assessments in the search proceedings are special assessments to be carried out under the provisions of section 153A of the Act which begins with non-obstante clause. As a result of search, the proceedings under section 153A of the Act have already begun which are based on the search materials. Furthermore, the issue before us is arising against the assessment order framed under section 143(3) of the Act and we are not adjudicating the appeal/matter arising against the assessment framed under section 153A of the Act. It might be quite possible that search material has a bearing on the income to be determined for the year under consideration but for that purpose the proceedings have already been initiated and the same will be taken care by the revenue authorities in the respective proceedings. Accordingly, we are not convinced with the argument of the learned DR.

12.15 At the time of hearing both the ld. DR and the AR have cited series of judgments but we do not want to recapitulate all of them but it is suffice to

hold that the cash credit received by the assessee during the year remains no longer unexplained as provided under section 68 of the Act for the reasons as discussed above. In view of the above, we do not find any infirmity in the finding of the learned CIT (A). Accordingly, we confirm the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the Revenue is dismissed.

13. In the result, the appeal of the Revenue is **dismissed.**

Order pronounced in the Court on 19/04/2021.

Sd/-	**Sd/-**
(S.S. VISHWANETHRA RAVI)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune ; Dated 19/04/2021
Manish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. □□□□□□□ / The Appellant
2. □□□□□□□□ / The Respondent.
3. सं□□□□धित आयकर आ□□□□त / Concerned CIT
4. आयकर □□□□□□(□□□□) / The CIT(A)
5. विभागीय □□□□ित निधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. □□□□□ □□□□ / Guard file.

आदेश□नुसार□□/BY ORDER,

// True Copy //

उप/□□□□□ □□□□□□
(Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / **ITAT, Ahmedabad**

1. Date of dictation : 26/03/2021
2. Date on which the typed draft is placed before the Dictating Member
3. Date on which the approved draft comes to the Sr.P.S./P.S. -
4. Date on which the fair order is placed before the Dictating Member for Pronouncement ……..
5. Date on which the file goes to the Bench Clerk .. : /04/2021
6. Date on which the file goes to the Head Clerk…….
7. The date on which the file goes to the Assistant Registrar for signature on the order……..
   Date of Despatch of the Order……