



2025:CGHC:45211-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**TAXC No. 167 of 2023**

Assistant Commissioner of Income Tax, Central Circle-II, District :  
Raipur, Chhattisgarh

**... Appellant**

**versus**

Agrawal Infrabuild Pvt. Ltd, 1st Floor, V. R. Plaza, Bilaspur PAN No.  
AAFCA6636C.

**... Respondent**

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For Appellant/Revenue : Mr. Ajay Kumrani, Advocate  
For Respondent/Assessee : Mr. Siddharth Dubey, Advocate  
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**Hon'ble Mr. Ramesh Sinha, Chief Justice**  
**Hon'ble Mr. Bibhu Datta Guru, Judge**

**Judgment on Board**

**Per Ramesh Sinha, Chief Justice**

**04.09.2025**

1. Heard Mr. Ajay Kumrani, learned counsel for the appellant/  
Revenue as well as Mr. Siddharth Dubey, learned counsel,  
appearing for the respondent/ Assessee.
2. The present appeal under Section 260A of the Income Tax Act,  
1961 (for short, 'the Act') has been filed by the appellant /  
Assistant Commissioner of Income Tax, Central Circle-II Raipur

(C.G.) being aggrieved by the order dated 30.03.2023 (Annexure-A/1) passed by the Income Tax Appellate Tribunal, Raipur (for short 'ITAT') vide ITA No. 11/RPR/2020, arising out of order dated 27.11.2019 passed by the Commissioner of Income Tax (Appeals)-3 Bhopal (M.P.) (Annexure- A/2), for the assessment year 2014-15, which in turn arises out of order dated 28.12.2018 passed by the Assessing Officer (Annexure- A/3) (for short, 'the AO').

3. This appeal was admitted for hearing vide order dated 17.04.2025 by a Co-ordinate Bench, on the following substantial question of laws :

*“Whether the ITAT is justified in setting aside the order of CIT (Appeals) by deleting addition of Rs. 6,40,50,000/- made by the AO by recording a finding which is perverse to the record ?”*

4. The aforesaid substantial question of law has to be answered in the following factual backdrop: -
5. The respondent / assessee being a Pvt. Ltd. Company, derives income from business and profession. In this case, search and seizure operations were carried out under Section 132 of the Act at the factory and office premises of the respondent/assessee on 08.02.2017. Consequently, notice U/S 153A of the Act was issued on 21.02.2018 for AYs 2011-12 to 2016-17. The assessee, in reply, on 30.04.2018, filed returns of income for AYs 2011-12 to

2016-17. The brief details of returns of income filed for AY 2014-15 are as under:-

A.Y.	Date of filing of return u/s 139(1)	Total Income	Date of filing of return u/s 153A	Total Income declared in Return u/s 153A	Additional income offered
2014-15	25.11.2024	2,39,20,030/-	30.04.2018	5,07,57,060/-	2,68,37,030/-

6. The AO made addition vide Assessment Order dated 28.12.2018 U/s 153A read with Section 143(3) of the IT Act of Rs.6,40,50,000/- in AY 2014-15 on account of bogus share capital/premium from shell companies by recording following finding:-

The investigation in the case of Satya Group has brought to light a clear modus operandi of introducing unaccounted income into the books of account in the guise of share capital and share premium. The so-called investor companies are nothing but shell/paper entities, mostly based in Kolkata, which, though possessing PAN and filing income tax returns, neither carried on any genuine business activities nor had any independent financial worth. These entities were created and controlled by entry operators and professionals for the sole purpose of providing accommodation entries in lieu of commission. The enquiries revealed that the funds, ostensibly shown as share application money, originated from the Satya Group itself. The trail of bank statements establishes that cash deposits or cheques issued by group concerns were routed through a series of layering transactions involving multiple intermediary accounts of entry operators, and ultimately

returned to the assessee group in the garb of share application money and premium.

Survey action and independent verifications further confirmed that the alleged investor companies were not traceable at their registered addresses, their directors were only name-lenders, and their balance sheets showed no genuine financial strength to justify such investments. Statements of key persons such as Shri Binod Agarwal and Shri Rupesh Garg corroborated the fact that these entities were under the control of the Satya Group and had been used solely to channel its undisclosed funds into the books. Despite adequate opportunities, the assessee failed to discharge its statutory onus under section 68 by proving the threefold requirement of (i) the identity of the investors, (ii) their creditworthiness, and (iii) the genuineness of the transaction. Mere production of incorporation certificates, PAN details, or reliance on routing transactions through banking channels cannot, by themselves, establish the genuineness of the investment, as repeatedly held by the Hon'ble Supreme Court and various High Courts. It is a settled proposition that the apparent is not real, and the Assessing Officer is empowered to lift the corporate veil to ascertain the true nature of the transaction.

In view of the overwhelming evidences gathered during search, survey and post-search enquiries, coupled with the failure of the assessee to substantiate its claim, it stands conclusively established that the share capital and share premium credited in the books do not represent genuine investments but only accommodation entries. Accordingly, the amounts so credited are treated as unexplained cash credits representing the unaccounted income of the Satya Group, and are rightly chargeable to tax under section 68 of the Income Tax Act.

7. Feeling aggrieved and dissatisfied with the order of the AO making addition under Section 153A read with Section 143(3) of the IT Act, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), but the CIT (Appeals), by order dated 27.11.2019, dismissed the appeal and upheld the addition made by the AO by recording findings in paragraphs 4.2.1 to 4.2.4 in its order which are as under: -

**4.2.1** On examination of the fact, it was found that, M/s Artline Fiscal Services Pvt Ltd does not have income to introduce such huge share capital/premium in the appellant company also the appellant failed to furnish any details of the company despite various opportunities given from time to time. As per AO M/s Artline Fiscal Services Pvt Ltd does not have any business activity but only engaged in giving accommodation entries. The appellant had shown total receipt of Rs. 1,55,22,000/- in AY 2013-14 and Rs. 6,40,50,000/- in AY 2014-15 in the grab of bogus share capital and premium received from the said company. Since, the transaction with these entities were not found to be genuine, therefore, the AO made addition of Rs. 1,55,29,716/- in AY 2013-14 and Rs. 6,40,82,025/- in AY 2014-15 under section 68 of the IT Act which includes commission @ 0.05%.

**4.2.2** The AO after detailed field enquiry found that M/s Artline Fiscal Services Pvt Ltd is a shell company with no business activity, no employee and without any physical existence. Statement of Shri Binod Kumar Agrawal was recorded on oath wherein he has clearly stated that he was director in Artline Fiscal Services Pvt Ltd till 12.02.2008 and now the company is wholly controlled by Satya Group and is involved in providing accommodation entries.

**4.2.3** I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. From the perusal of the details/document filed by the appellant, it is clear that the lender was not having any business activity. It was having meagre income from which it is clear that it was paper/shell companies of meagre means and engaged in giving accommodation entries to the beneficiaries in the garb of share capital including share premium.

**4.2.4** Onus was on the appellant to prove genuineness of the transactions shown by them but they failed to do so. The above-mentioned company was not doing any business activities and these were engaged in giving accommodation entries. In this regard, judgments of Hon'ble Delhi High Court in the cases of CIT Vs. Nova Promoters and Finlease (P) Ltd. (2012) 342 ITR 169 (Del) and CIT Vs. N.R. portfolio Pvt. Ltd.(2014) 264 CTR 258 (Del) are relied upon. Further, the judgment of Hon'ble Kolkata High Court in the case of Rajmandir Estate Pvt. Ltd. (2016) reported in 70 Taxmann.com 124 (Cal) and the judgment of IT AT, 'D' Bench, Mumbai in ITA no.1835/Mum/2014 dated 24.8.2016 in the case of Royal Rich Developers Pvt. Ltd. are also relied upon. In view of above facts, I am of the considered view that this is not sufficient to discharge the onus cast on the appellant as contemplated u/s.68 of the Act just giving addresses and PAN of the companies concerned when the AO has doubted the credit worthiness/capacity of the company having meager means and known sources of income to have invested huge amount in lending. The genuineness of the transactions was also doubted by the AO wherein the lenders did not have any business/project in hand and is merely a person of meager means, as it is brought on record that these lenders are persons of meager

means declaring nominal income and his Balance Sheet/statement of affairs revealed that he has otherwise insignificant assets other than investment in the appellant. Section 68 of the Act cast onus on the appellant to satisfy the ingredients of Section 68 to establish the identity and creditworthiness of the creditors and to establish the genuineness of the transactions. Once appellant filed the basic details such as name and address of creditor, PAN, income tax return, confirmation and bank statement, the initial onus gets discharged but since, the AO has doubted the creditworthiness of the lender and genuineness of the transaction as per the reasons cited and set out above, the onus shifts back to the appellant company to offer an explanation to the satisfaction of the AO as contemplated u/s 68 of the Act which could have been discharged by producing the lenders before the AO so that truth behind the smokescreen could have been unraveled by the AO by interrogating them. The burden/onus is cast on the appellant and the appellant is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. The fact remains that the appellant is private limited company, for which the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the lenders and genuineness of the transaction. In view of the above discussion, I am of the considered view that merely submission of the name and address of the lender, income tax returns, Balance Sheet/statement of affairs of the lender and bank statement is not as well as to the genuineness of the transaction entered into. The alleged lender was not found to be in existence and thus, the onus shifts back to

the appellant to produce the lenders before the AO and if the appellant falters, the additions can be made u/s 68 of the Act. Section 68 of the Act has been amended by Finance Act, 2012 w.e.f. 01-04-2013 whereby the onus is cast upon the appellant to justify the source of loan, to explain the source of the source of raising the loan which has been held to be clarificatory in nature. In the present case, the appellant could not prove the identity and credit worthiness of the alleged lender and the genuineness of the lender. Being company, it was therefore, viable and proper and duty on the part of the appellant to prove genuineness of the transaction but the fact remains that the appellant could not prove the same. The lender was having nominal income. This company is having very insignificant amount of income for the period under consideration and hence their creditworthiness is also not established. The M.P. High Court held in the case of CIT v. Rathi Finlease Ltd wherein considering the judgment of Hon'ble Supreme Court in the case of CIT v Steller Investment and the judgment of Hon'ble Supreme Court in the case of Lovely Export Ltd., Hon'ble High Court has held that each and every transaction of share application money involving application of provisions of section 68 in matter of contribution of share application/share capital and whether this onus on the assessee has 'peen discharged or not has to be appreciated on totality of evidences available on record and surrounding facts and circumstances of the case.

The creditworthiness or genuineness of transactions depends on whether the parties are related or known to each manner or mode by which parties' purpose for which payment/investment was made, etc. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of



onus. The lender does not have creditworthiness to invest to the tune of Rs.7,95,72,000/-. The lender company is hardly earning any income to invest such an amount as loan to the appellant. Therefore, it is held that transaction is not genuine. This company had no creditworthiness, financial worth or regular resources to justify, short term borrowings. The appellant has not discharged the genuineness of the transaction. The appellant has not established the ingredients of section 68 of the IT. Act. Therefore, the credit is not acceptable. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to ensure that the subscriber had made genuine investment. In the following cases ITAT, Indore bench and other Judicial Authority held as under:-

1. Assessee has to establish identity of lender and prove their creditworthiness and genuineness of transaction; furnishing of income-tax file numbers may not be sufficient to discharge the burden - CIT v. Nivedan Vanijya Niyojan Ltd. [2003J 130 Taxman 153 (Cal.).

2. **Unsecured loan/Share Application Money - Addition is called for** - Assessee obtained loan and also received share application money - AO doubted the identity, genuineness and creditworthiness of these credits - AO made addition for same u/s. 68 - CIT(A) held that the ingredients of section 68 are not satisfied. However, in one of the cases, CIT(A) held that addition, shall be made substantively in the hands of assessee and protectively in the hands of alleged investors in terms of ITAT Judgement in Asst. CIT v. Narmada

Extrusion Ltd. (2012) 19 TTJ 202 (Trib.-Indore) – HELD - Assessee has not established the ingredients of section 68; credits cannot be accepted - Also, in Asst. CIT v. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore), it was found that additions has already been made in the hands of investor - In the present case, assessee is unable to establish the ingredients of section 68 - Addition is called for. Pramila Investment and Finance Ltd. v. ITO (2013) 22 ITJ 149 (Trib. =Indore).

**3. CIT vs Bikram Singh (Delhi High Court): P Mohankala 291 ITR 278 (SC): Diza Holdings 255 ITR 573 (Ker): CIT vs Precision Finance 208 ITR 265 (Cal)-** wherein it has been held that if the lenders do not have the financial strength to lend such huge sum and if there is no explanation as to their relationship with the assessee, no collateral security and no agreement the transactions have to be treated as bogus unexplained credits.

**4. Share Capital and Loan - Assessee not able to establish identity of investor - Merely filing PAN, IT returns, Certificate of incorporation, Balance Sheet etc. do not establish the identity -** Share Capital and Loan - "HCL" and "OTIL" had subscribed in shares of assessee company - In some cases, "HCL" and "OTIL" had given loans to assessee company - AO required assessee to prove transaction - Assessee furnished various documents to prove the transaction - On inquiry, the companies were found to be non-existent - Noticed issued to them were returned unserved - HELD - Assessee is not able to establish identity of

investors - Merely filing PAN, IT returns, Certification of incorporation, Balance Sheet etc. do not establish the identity of subscribers or produce them - Addition u/s. 68 shall be made. Agrawal Coal Corporation P. Ltd. v. Addl. :CIT (2011) 18ITJ 717 (Trib. - Indore) : (2012) 135 ITD 270: (2011)142 TTJ 409: (2012) 13ITR(T) 531 .

5. The facts of the case will hold more strength with the decision of Hon'ble Calcutta High Court in the case of **CIT vs United Commercial & Industrial Co (P) Ltd (1991) 187 ITR 596 (Cal)** wherein it has been held that the mere circumstances that loans are taken through cheques does not establish neither genuineness of the loans nor the credit worthiness of the creditors.

Following the decision of above Judicial Authorities, it is held that the lender company is a paper company without any means.

The appellant company was obliged to prove:-

- (a) The identity of the alleged lender.
- (b) The credit worthiness of the lender.
- ( c ) The genuineness of the transactions.

But it is clear from the facts as discussed above that the appellant could not prove the same, therefore, in the light of above facts and case laws as discussed above, I am of the considered view that the transactions of bogus share capital/premium as claimed by the appellant are not genuine. Further, in various case across India it has been

observed that commission is also paid for acquiring bogus share capital and premium. The AO is justified in adopting commission of share premium @ 0.05%. Therefore, the AO was fully justified in making addition on account of unexplained cash credit U/S 68 of the Act. Thus, addition made by the AO amounting to **Rs. 1,55,29,7611- (Rs. 1,55,22,000/- + Rs. 7,7611-) in AY 2013-14 and Rs. 6,40,82,025/- (Rs. 6,40,50,000/- + Rs. 32,025/-) in AY 2014-15 are Confirmed.** Therefore, appeal on these grounds is **Dismissed.**

8. Questioning the legality, validity and correctness of the order passed by the CIT (Appeals) upholding the addition made by the AO, the Assessee preferred an appeal before the learned ITAT and the learned ITAT allowed the appeal by the impugned order resulting into filing of instant appeal before this Court.
9. Mr. Ajay Kumrani, learned counsel for the appellant/ Revenue, would submit that the ITAT has grossly erred in law and on facts in deleting the additions made by the AO and affirmed by the CIT(A). The ITAT has proceeded solely on the basis of documents filed by the assessee, such as incorporation certificates, PAN, ITRs, audited accounts and VSVS compliance, without appreciating that such papers, in isolation, do not establish the genuineness of the transaction or the creditworthiness of the investor Company. The AO, in the course of proceedings under section 153A read with section 143(3), had carried out detailed and independent

enquiries, including analysis of bank statements, field verifications, survey actions, and recording of statements of key individuals such as Shri Binod Agarwal and Shri Rupesh Garg. These investigations revealed that the alleged investor, M/s Artline Fiscal Services Pvt. Ltd., was nothing but a paper/shell company having no real business, no infrastructure, no employees, and only meagre income, which, by no stretch of imagination could justify advancing loans or subscribing to share capital of crores of rupees. He further submitted that the AO has brought on record the entire money trail showing how funds were first generated within the Satya Group, routed through a complex web of layering transactions involving accommodation entry operators, and then reintroduced into the assessee's books in the guise of share capital and premium. The fact that the investor Companies were not traceable at their registered addresses, their Directors were mere name-lenders, and that the investor itself admitted to being controlled by the Satya Group, further demonstrates that these transactions were only colourable devices designed to launder unaccounted income. He also submitted that it is a settled proposition of law that under section 68, the assessee is under a heavy burden to cumulatively prove (i) the identity of the creditor, (ii) the creditworthiness of the creditor, and (iii) the genuineness of the transaction. Mere filing of papers or routing transactions through banking channels does not *ipso facto* discharge this burden. In support of his contention, he placed reliance on the

judgment passed by the Hon'ble Supreme Court in ***PCIT (Central)-1 v. NRA Iron & Steel (P.) Ltd. (2019) 103 taxmann.com 48 (SC)***, whereby it has been categorically held that if the investor companies have no real financial capacity, negligible income and no genuine business activities, the assessee cannot be said to have discharged its burden under section 68, and additions are justified. The ratio of ***NRA Iron & Steel*** (supra) squarely applies to the present case where the investor had insignificant income, no genuine business, and was only engaged in providing accommodation entries. The ITAT, however, brushed aside this wealth of incriminating material unearthed by the AO and CIT(A), and placed undue reliance on superficial compliance documents such as VSVS declarations, ignoring the settled legal position that accommodation entry operators also file returns and obtain PAN, which cannot by itself prove genuineness. The VSVS scheme, being a settlement mechanism, cannot override the requirement of Section 68 that the assessee must establish the creditworthiness and genuineness of the transaction in its own books. By failing to examine the "source of the source" as mandated by the amended Section 68 post Finance Act, 2012, the assessee's explanation remained wholly unsatisfactory. In view of the above, it is submitted that the findings recorded by the ITAT are perverse, contrary to the evidence on record, and inconsistent with binding precedents of the Hon'ble Supreme Court. The additions made by

the AO and sustained by the CIT(A) were fully justified, and the order of the ITAT deserves to be set aside.

10. Mr. Siddharth Dubey, learned counsel, appearing on behalf of the respondent/Assessee, supporting the impugned order of the ITAT, would submit that the assessee has duly discharged its statutory burden under Section 68 of the Act by proving the identity of the investor, furnishing ITRs, computation of income, audited accounts, bank statements, assessment orders, as well as compliance under VSVS wherein the investor has already paid due taxes on disclosed income. He further submitted that the funds were initially advanced as interest-bearing unsecured loans, on which TDS was duly deducted and interest paid, and only later converted into share capital in AY 2015–16, thereby substantiating the genuineness of the transaction. He also submitted that it is settled law, as laid down by the Hon'ble Supreme Court in ***CIT v. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)***, that once the identity of the investor is established, the Department is free to proceed against such investor in accordance with law but the same cannot be taxed in the hands of the assessee. Further reliance is placed on the recent judgment of the Hon'ble Delhi High Court in ***PCIT v. Surya Agrotech Infrastructure Ltd. 2023 SCC OnLine Del 5530***, wherein it was held that once the assessee furnishes all primary documents and the investor is assessed to tax, the onus shifts to the Revenue to make further enquiries. In the present case, since the assessee has produced

overwhelming evidence, including VSVS compliance, and the Revenue has failed to rebut such material, the ITAT has rightly deleted the additions, in which no interference is warranted.

11. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
12. The controversy which falls for consideration in the present appeal revolves around the true scope of Section 68 of the Act and the extent of the onus which lies upon an assessee when unexplained share capital and share premium are credited in its books of account. The law in this regard is fairly well settled that the assessee must satisfactorily establish three cumulative ingredients: (i) the identity of the creditor/investor; (ii) the capacity or creditworthiness of such investor; and (iii) the genuineness of the transaction. If any one of these elements is not proved, the AO is justified in invoking Section 68 to treat the sum credited as unexplained cash credit.
13. It is equally well settled that the initial burden of proof is always upon the assessee. This burden does not stand discharged by mere production of incorporation certificates, PAN numbers, income tax returns, or by showing that the transactions were routed through banking channels. These documents, though relevant, are not conclusive when the surrounding circumstances indicate otherwise. In ***NRA Iron & Steel*** (supra), the Hon'ble



Supreme Court categorically held that when investor Companies have negligible income, no genuine business, and no real financial capacity, then mere production of documents or banking records cannot establish genuineness of the transactions. The apparent is not real, and the AO is entitled to lift the corporate veil to unearth the true character of such transactions. The Supreme Court, at para 8.2, 8.3, has reiterated the principle laid down, which are reproduced hereinbelow:-

*“8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.*

*The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):*

- *Proof of Identity of the creditors;*
- *Capacity of creditors to advance money; and*
- *Genuineness of transaction*

*This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.*

*8.3 With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and*

*credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. The Delhi High Court in CIT v. Oasis Hospitalities (P.) Ltd. [2011] 9 taxmann.com 179/198 Taxman 247/333 ITR 119, held that : "The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise."*

14. In the present case, the AO undertook a painstaking exercise. Detailed field enquiries and survey actions were carried out. Statements of key persons such as Shri Binod Agarwal revealed that the so-called investor company, M/s Artline Fiscal Services Pvt. Ltd., was wholly controlled by the Satya Group itself and was merely used as a conduit for providing accommodation entries. The entity had no business activity, no infrastructure, no employees, and was not even traceable at its registered address. Its financial statements revealed meagre income which, by no stretch of imagination, could justify investment of several crores of rupees in the assessee company.
15. The money trail unearthed by the AO further demonstrated that the funds originated from the coffers of the Satya Group itself, were routed through a web of layering and multiple accounts controlled by entry operators, and eventually reintroduced into the assessee's books in the guise of share application money and premium. This factual finding is supported not only by banking records but also by statements of individuals directly connected

with the *modus operandi*. Thus, the AO's conclusion was founded upon tangible, cogent and independent evidence, and not on conjecture.

16. The CIT(A), upon an elaborate appraisal of the material, rightly upheld the addition. The CIT(A) referred to binding judicial precedents including ***CIT v. Nova Promoters & Finlease (P) Ltd. (2012) 342 ITR 169 (Del)***, ***CIT v. N.R. Portfolio (P) Ltd. (2014) 264 CTR 258 (Del)***, and ***Rajmandir Estates Pvt. Ltd. v. Pr. CIT (2016) 70 taxmann.com 124 (Cal)***, wherein it has been consistently held that when investor companies are found to be shell entities with no real worth, and the assessee fails to produce them for examination or to explain the source of source, additions under Section 68 of the Act are warranted.
17. The ITAT, however, while reversing the well-reasoned orders of the AO and CIT(A), has placed undue reliance on formal compliance documents such as incorporation certificates, PAN details, ITRs, and particularly on the fact that the investor had settled tax disputes under the "Vivad Se Vishwas Scheme" (VSVS). In our view, the approach of the ITAT is wholly unsustainable. It failed to consider that accommodation entry operators also routinely obtain PAN, file ITRs, and maintain bank accounts, which are used precisely to give a facade of legitimacy to sham transactions. Such superficial compliance cannot, by itself, prove creditworthiness or genuineness.

18. The reliance placed by learned counsel appearing for the respondent/assessee on ***Lovely Exports (P) Ltd.*** (supra) is misplaced. That judgment cannot be read to mean that once identity is shown, the enquiry ends. Subsequent decisions, particularly ***NRA Iron & Steel*** (supra), clarify that the assessee must prove not merely identity but also capacity and genuineness. In the present case, the capacity of the investor is conspicuously absent, as it had negligible income and no independent financial strength. Similarly, genuineness is disproved by the positive evidence of money trail showing circulation of assessee's own unaccounted funds.
19. Likewise, the reliance on ***Surya Agrotech Infrastructure Ltd.*** (supra) does not assist the assessee. In that case, the Revenue had failed to carry out further investigation despite the assessee producing relevant documents. Here, in contrast, the Revenue has carried out detailed and comprehensive enquiries and has unearthed incriminating material demonstrating the bogus nature of the investor company.
20. Taking into consideration of rival submissions advanced by learned counsel for the parties, the materials brought on record and in the light of aforementioned judicial precedents, it is clear that the assessee has failed to discharge the heavy burden cast upon it under Section 68 of the IT Act. The AO and CIT(A) were justified in treating the share capital and premium as unexplained cash credit. The ITAT, in ignoring this unimpeachable evidence

and deleting the addition merely on the basis of superficial documents, has recorded a finding that is not only contrary to record but also perverse in law.

21. For the foregoing reasons, we answer the substantial question of law in favour of the Revenue and against the assessee, holding that the ITAT was not justified in setting aside the order of the CIT(A).
22. The impugned order dated 30.03.2023 passed by the ITAT in ITA No. 11/RPR/2020 is hereby set aside, and the order of the CIT(A) dated 27.11.2019 affirming the addition of Rs.6,40,50,000/- made by the AO stands restored.
23. The appeal stands **allowed**.

Sd/-  
**(Bibhu Datta Guru)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice

**Head – Note**

If the Assessee is not able to provide a satisfactory explanation of the nature and source of the investments made, it is open to the Revenue to hold that it is the income of the Assessee, and there would be no further burden on the Revenue to show that the income is from any particular source.