

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

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

I.T.A. No.267/DEL/2019
Assessment Year: 2015-16

Prime Comfort Products P. Ltd., L-7A (LGF), South Extension, Part-II, New Delhi.	vs.	ACIT, Circle-20(1), New Delhi.
TAN/PAN: AAFCP 2306Q (Appellant)		(Respondent)

Appellant by:	S/Shri Raj Kumar & Sumit Goel, CA		
Respondent by:	Shri Surender Pal, Sr.D.R.		
Date of hearing:	11	07	2019
Date of pronouncement:	04	10	2019

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against the impugned order dated 20.11.2018, passed by Commissioner of Income Tax (Appeals)-VII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2015-16. In the grounds of appeal, the assessee has raised following grounds:

"1. That under the facts and circumstances, the Ld. A.O. exceeded his jurisdiction in examining the receipt of share capital/premium for Rs.3,18,00,000 w.r.t. sec.68 of the Act although it was a limited scrutiny case for examining only the issue of shares only w.r.t. sec.56 (2) (viib), without seeking mandatory permission from PCIT

for extending the scope of examination for including the examination u/s.68 of the I.T. Act and without complying with the mandatory procedure as laid down for extending the scope of limited scrutiny cases.

2. That under the facts and circumstances, both the lower authorities grossly erred in law and on merits in making and sustaining addition of Rs.3,18,00,000/- u/s.68 of the I.T. Act for share capital/premium received from Avishkar Marketing (P) Ltd., by not accepting the source in the hands of Avishkar Marketing company being loans taken by Avishkar Marketing company from following parties:-

Rs.2,68,00,000/- Raju Investment (P) Ltd.

Rs. 50,00,000/- M/s Superb Developers (P) Ltd.

Rs.3,18,00,000/- Total

2.1 That **without prejudice**, the assessee fully discharged his onus to prove the ingredients of sec.68 for Rs.3,18,00,000 and the Ld. A.O. exceeded his jurisdiction and scope of examination by extending his inquiries for **source of the source of the source**, which is not permissible U/s.68 of the I.T. Act.

2.2 That **without prejudice**, under the facts and circumstances and in view of the documents information's and explanation furnished, even the source of the source stands fully proved."

2. The facts in brief are that assessee-company is engaged in the business of manufacturing various kinds of PU foam. The return of income was filed on 24.09.2015 declaring income of Rs.4,30,61,880/-. The assessee's case was selected for limited scrutiny under CASS for the reasons 'Large Share Premium received'. During the course of assessment

proceedings and on perusal of the balance sheet, the Assessing Officer noted that assessee has received share capital amounting to Rs.3,68,00,250/- from M/s. Aviskar Marketing Pvt. Ltd. M/s. Prime Holding is the holding company of M/s. Aviskar Marketing Pvt. Ltd. and the Directors of both the companies were common. In order to verify the identity, genuineness and creditworthiness of M/s. Aviskar Marketing Pvt. Ltd., notice u/s. 133(6) was issued by the Assessing Officer asking various details. As per the Assessing Officer, no communication was received from the said party. However, on 14.11.2017 assessee had stated as under:

“during the year, the equity shares of face value of Rs.10/- per share has been issued at Rs.150/- per share i.e. at premium of Rs.140/- per share. The issue price was determined as per DCF (Discounted free cash flow) method, as per accountants report dated 25.03.2015 attached. As per accountant’s report, the value per equity shares stands calculated at Rs.150.05 per share.”

3. From the confirmation, the ld. Assessing Officer has observed that M/s. Aviskar Marketing Pvt. Ltd has no revenue from operations or any other income during the year. It has received unsecured loan from various parties which were then transferred to the assessee-company towards share capital and share premium. He has also incorporated the balance sheet and P&L account of M/s. Aviskar Marketing Pvt. Ltd. for the Financial Year 2014-15 which reveal that it had Share Capital of Rs.20 lacs and Reserves and Surplus of Rs.3.76

crores and Long Term Borrowings of Rs.4,15,50,000/-. The Revenue from operation was 'Nil'. Entire balance-sheet and P&L account of this company has been incorporated in assessment order from pages 3 to 5. Ld. Assessing Officer further observed that the said company has taken unsecured loan from M/s. Raju Investments Pvt. Ltd. which had a closing balance of Rs.1.88 crore; and from Superb Developers Pvt. Ltd. with closing balance of Rs.77,50,000/-. These unsecured loans were taken immediately before subscribing of shares along with share premium from the assessee company. He also verified from MCA website about these lender companies and issued notices u/s. 133(6) to these companies for further clarification. In response, they had filed their confirmations, bank statement (filed subsequently during the course of assessment proceedings), audited financial accounts and their income tax returns. Later, on 08.12.2017, a reply was received to the Assessing Officer from M/s. Aviskar Marketing Pvt. Ltd. on e-mail, therein they had stated as under:

“In this regard, it appears that these 05 names and the amount have been taken from the audited balance sheet of Aviskar as on 31.03.2015. In fact, the source of Rs.6,68,00,000/- given to Prime in this year is only from following 03 companies namely.

<i>Raju Investments (P) Ltd.</i>	<i>2,68,00,000/-</i>
<i>Superb Developers (P) Ltd.</i>	<i>50,00,000/-</i>
<i>Mahesh Wood Products P Ltd.</i>	<i>50,00,000/-</i>
Total	3,68,00,000/-”

4. AO further observed that these parties had not submitted any bank statement, ledger account etc., therefore, identity, genuineness and creditworthiness of the above parties remain questionable and no one was produced by the assessee. The assessee's detailed submission wherein various documents were filed to discharge the onus u/s.68 and the source of the funds have been discussed in detail as incorporated by the Assessing Officer from pages 7 to 11 of the assessment order.

5. In sums and substance, the relevant contents of the assessee's reply enlisting the evidences /documents filed was as under:

- Firstly, the documents filed to discharge the onus:-
 - (i) confirmation letter dated 21.11.2017;
 - (ii) confirmed copy of account in the books of M/s. Aviskar Marketing Pvt. Ltd.;
 - (iii) ITR;
 - (iv) Audited Financial statement for the Assessment Years 2015-16;
 - (v) Investment in assessee's company appearing in the balance sheet by way of note no.6;
 - (vi) Form PAS-3 filed in ROC for allotment of share;
 - (vii) Board Resolution for allotment of shares to Aviskar;
 - (viii) Relevant Bank statement of Union Bank of India of Aviskar;
 - (ix) Share valuation report dtd. 25.03.2015 (as per DCF method);

(x) Emailed reply sent to Assessing Officer directly by Aviskar on 05.12.17.

- Thus, it was stated that the source in the hands of assessee stands proved.
- Further to prove the source of the source, it was explained that M/s Aviskar had received following loans which were utilized for investment of Rs. 3,68,00,000/- in the shares of assessee as under:

Loan from Raju Investment Pvt. Ltd.:	Rs.2,68,00,000/-
Loan from Superb Developers Pvt. Ltd.:	Rs. 50,00,000/-
Loan from Mahesh wood Products Pvt. Ltd.:	Rs. 50,00,000/-
Total	Rs.3,68,00,000/-

- In support of above, following documents are attached:
 - Confirmed ledger a/c of Raju Investment Pvt. Ltd in books of Aviskar for A. Y. 15-16 showing loan of Rs. 2,68,00,000/- to Aviskar.
 - ITR of Raju Investment Pvt. Ltd of A. Y. 15-16.
 - Confirmed ledger a/c of Superb in books of Aviskar for A. Y. 15-16 showing loan of Rs.50,00,000/- to Aviskar.
 - ITR of Superb of A. Y. 15-16.
 - Confirmed ledger a/c of Mahesh in books of Aviskar for A. Y. 15-16 showing loan of Rs. 50,00,000/- to Aviskar.
 - ITR of Mahesh of A. Y. 15-16
- It was thus contended that the above documents goes to show that these loans have been given by these three parties

to Aviskar. The assessee had also filed the confirmed ledger a/c of assessee in books of Aviskar, bank a/c of Aviskar. From all above documents, it was submitted that direct nexus is apparent, that is, these three companies have given loan to Aviskar which is coming in the bank a/c of Aviskar and from the bank a/c of Aviskar same amounts has been given to assessee. In the bank a/c of Aviskar, the name of the assessee is appearing showing that Aviskar has given these amounts to assessee. Thus even the source of the source stands explained by the assessee.

6. Ld. Assessing Officer without adverting to the documents filed went to observe that assessee did not produce any of the Directors of M/s. Aviskar Marketing Pvt. Ltd., M/s. Raju Investments Pvt. Ltd. and Superb Developers Pvt. Ltd., despite that assessee-company is the holding company of M/s. Aviskar Marketing Pvt. Ltd. He has also analyzed the bank statement of M/s. Aviskar Marketing Pvt. Ltd. and found that there were immediate credits in the bank account of the company before the loan was given to the assessee and there is a regular trend in the account of the company of credits followed by exact amount and this company has shown very meager income. He had also perused the bank statement of M/s. Raju Investment Pvt. Ltd. and M/s. Superb Developers Pvt. Ltd. alleged to have given unsecured loan to M/s. Aviskar Marketing Pvt. Ltd. After detailed discussion, and observing that the directors of the assessee-company and other company M/s. Aviskar Marketing Pvt. Ltd. and other two lending companies were

given loan to M/s. Aviskar Marketing Pvt. Ltd were common but also there is no revenue from operations by subscribing company. On these reasonings, he made the addition u/s.68 of Rs.3,18,00,000/-.

7. Ld. CIT (A) too has confirmed the said addition, rejecting all the contentions of the ld. counsel and has also quoted catena of judgment including the following ones;-

(i) CIT vs. Nipun Builders and Developers P. Ltd., (2013) 350 ITR 407 (Delhi).

(ii) CIT vs. N.R. Portfolio Pvt. Ltd. (2014) 2 ITR-OL 68 (Delhi)

(iii) CIT v. Gold Leaf Capital Corporation Ltd. (2013) 353 ITR 163 (Delhi).

(iv) Riddhi Promoters P. Ltd. vs. CIT, (2015) 377 ITR 641 (Delhi)

(v) PCIT vs. Bikram Singh, (2017) 399 ITR 407.

8. Before us, the ld counsel, Shri Raj Kumar Gupta, first of all, challenging the addition on the ground that the same is beyond the scope of limited scrutiny, submitted that the reasons for selection of scrutiny under CASS was to inquire the share premium vis-à-vis the applicability of Section 56(2)(viib) and the scrutiny for selection was not covered to examine the share premium u/s.68. He pointed out that in assessee's case, during the year, assessee has received loan of Rs.12.86 crore and had it be the selection of case u/s.68, then same would have been entirely for whole of the amount. Thus, the additions cannot be made or sustained in beyond

the limited scrutiny guidelines. In support he also referred to CBDT Instructions issued from time to time.

9. On the other hand, ld. DR submitted that the selection of the case for scrutiny was to examine the large share premium and share capital received during the year and the Assessing Officer has right to examine the issue of share capital from all the angles intrinsically linked with share premium, not only Section 56(2)(viib) but also u/s.68. Otherwise also, the purpose of selection limited scrutiny was to flag doubtful transaction to further scrutiny by the Assessing Officer to get fruitful and focused result and Assessing Officer is duly empowered under the Act to call for any information which is relevant to adjudicate the ground for scrutiny from all angles.

10. After considering the aforesaid submission *qua* the validity of additions being beyond the scope of limited scrutiny proceedings, as noted above, the case was selected for limited scrutiny to examine the **“Large share premium received during the year (verify applicability of Section 56(2)(viib))”**. Once, the Assessing Officer has the mandate to examine the large share premium received during the year, then he has to examine the transaction as a whole and it does not restrict him only to see the applicability of Section 56(2)(viib), which has bracketed to verify its applicability. AO has to examine the transaction of share premium received holistically, whether, same is genuine or not and its taxability

from all the angles under the Act including in terms of Section 56(2)(viib). If the selection for scrutiny under CASS was to examine the large share premium received during the year, then Assessing Officer cannot circumscribe himself to a particular section and put blinkers when he during the course of assessment proceedings find that it is taxable under different section. His power to examine the issue encompasses under different sections also including u/s 68. It is not a case here that Assessing Officer has gone to issues other than share premium received during the year, albeit he has restricted himself to large share premium received and genuineness of share capital only. Had it been a case that Assessing Officer had transgressed himself to examine other issues other than the point of selection without any approval from the higher authority or beyond the limited scrutiny guidelines, then perhaps it could have been held that Assessing Officer could not have made the addition on the other issues. Thus, we do not find any merits in the grounds raised by the ld. counsel that Assessing Officer could not have examine the issue which was selected for scrutiny under section 68 and accordingly his contentions are dismissed.

10. In so far as the merit of the addition is concerned, Ld. Counsel submitted that the shares were issued to M/s. Aviskar Marketing Pvt. Limited at Rs.150/-, which had a face value of Rs.10/- and premium of Rs.140/- and has received the share application money of Rs.3,68,00,000/-. The source

of the loan taken by M/s. Aviskar Marketing Pvt. Ltd. was from following three companies:

Raju Investment (P) Ltd.	Rs.2,68,00,000/-
Superb Developers (P) Ltd.	Rs. 50,00,000/-
Mahesh Wood Products (P) Ltd.	<u>Rs. 50,00,000/-</u>
Total	<u>Rs. 3,68,00,000/-</u>

Out of which, **Assessing Officer has accepted amount of Rs.50 lacs received from M/s. Mahesh Wood Products Pvt. Ltd.** Thus, same transaction from one party has been accepted to be genuine.

11. At the outset, Ld. Counsel submitted that assessee-company is not a holding company of M/s. Aviskar Marketing Pvt. Ltd. and it has wrongly been mentioned by the Assessing Officer at many places. Further, M/s. Aviskar Marketing Pvt. Ltd. is neither under investigation nor has been identified by the Department as an entry provider nor there is any material or adverse report against M/s. Aviskar Marketing Pvt. Ltd. During the course of assessment proceedings, the assessee had furnished following documents before the Assessing Officer in support of receipt of share application money:

- *Confirmed copy of a/c of assessee in books of Avishkar;*
- *ITR ack. of Avishkar - A. Y. 15-16;*
- *Audited financial statement of Avishkar - A.Y.15-16 (this amt. / addition in investment is appearing in bal. sheet);*
- *Form PAS-3 (filed to ROC for allotment of shares by assessee);*

- *Board resolution of assessee for allotment of shares to Avishkar;*
- *Relevant bank statement of Avishkar;*
- *Notice u/s. 133 (6) Dtd.23.11.17 sent by A.O. to Avishkar;*
- *Reply to notice u/s. 133 (6) by Avishkar (confirming the investment of 3.68 Cr in shares of assessee).*

12. No such discrepancies or short coming has been pointed out in the above documents by the Assessing Officer. Not only that, here the assessee has even proven the source of the source, i.e., the source of the fund in the hands of M/s. Aviskar Marketing Pvt. Ltd. which were out of loan taken by the said company from two other parties which is evident from the bank statement of M/s. Aviskar Marketing Pvt. Ltd..

13. In so far as loan received from M/s. Raju Investments Pvt. Ltd., it was clearly pointed out that it is a NBFC who had given the loan out of ITS own funds and entire loan has been repaid by M/s. Aviskar Marketing Pvt. Ltd. mostly in the same assessment year and the balance in the two subsequent year. The proof of which, were given before the Assessing Officer and the Ld. CIT (A). The documents furnished to the Assessing Officer or collected by the Assessing Officer in respect of the loan received by M/s. Aviskar Marketing Pvt. Ltd. from M/s. Raju Investment were as under:

- *Notice u/s.133 (6) Dtd.21.11.17 issued to Raju Investment, which was received to the said party;*
- *Letter Dtd.25.11.17 by Raju Investment to A.O. in reply to Sec. 133 (6);*

- *Confirmation from Raju Investment to A.O. in reply to Sec. 133 (6);*
- *ITR ack. of Raju to A.O. in reply to Sec. 133 (6);*
- *Ledger a/c of Raju in books of Avishkar - A.Y.16-17, 17-18 (showing the return of loan by Avishkar to Raju);*
- *Bank statement of Avishkar (showing the return of loan to Raju);*
- *Audited financial statement of Raju - A.Y. 15-16 (Showing the loan outstanding receivable from Avishkar).*

14. Similarly with regard to the loan from M/s Super Developers Pvt. Ltd. received by M/s. Avishkar Marketing Pvt. Ltd. again the documents furnished to Assessing Officer in relation to receipts given were as under:-

- *Notice u/s. 133 (6) Dtd.21.11.17 issued to Superb*
- *Letter Dtd.25.11.17 by Superb to A.O. in reply to Sec. 133(6)*
- *Confirmation from Superb to A.O. in reply to Sec. 133 (6)*
- *ITR ack. of Superb to A.O. in reply to Sec. 133 (6)*
- *Ledger a/c of Superb in books of Avishkar - A.Y.16-17 (showing the return of loan by Avishkar to Superb)*
- *Bank statement of Avishkar (showing the return of loan to Superb)*
- *Audited financial statement of Superb - A.Y.15-16 (Showing the loan outstanding receivable from Avishkar)*
- *Bank statement of Superb (showing loan given to Avishkar).*

15. Thus, not only the source but also the source of the source stood explained by the assessee but onus cast upon the assessee stood fully discharged. Here, in this case, the identity is proved by ROC records, bank a/c, ITRs and reply

u/s. 133(6). Apart from that, source of fund to the extent of Rs.50,00,000/-, received from Mahesh Wood Products (P) Ltd. given to Avishkar Marketing Pvt. Ltd, who in turn has utilized the same for paying for share capital and share premium stands accepted by the A.O. Further, the genuineness of the transaction stands proved by confirmation letters from the parties, their bank statements and the entire transaction is appearing in the audited balance sheet of Avishkar Marketing Pvt. Ltd, who is assessed to income tax including the reply u/s. 133(6) directly given to the Assessing Officer by Avishkar. Lastly, the creditworthiness also stands explained because, the source of funds in the hands of Avishkar, was duly explained and not only that, the source of the source also was explained with evidence. It is not a case where the share application money has been given out of income but it has been given out of the loans taken from other parties out of which major amount has come from Raju Investments, which is a registered NBFC. In support of all his contentions, Ld. Counsel has also relied upon the catena of judgments.

16. On the other hand, ld. DR strongly relied upon the order of the Assessing Officer and Ld. CIT (A) and further relied upon the following judgments:-

- a. *PCIT vs. NRA Iron & Steel Pvt. Ltd. (SC) dated 05.03.2019*
- b. *PCIT vs. NDR Promoters Pvt Ltd. (2019-TIOL-172-HC-DEL-IT)*
- c. *CIT vs. MAF Academy (P) Ltd. (361 ITR 258)*
- d. *CIT vs. Navodaya Castle Pvt. Ltd. (2014) 367 ITR 306 (Del)*
- e. *Konark Structural Engineering P. Ltd. v. DCIT (2018) 96 taxmann.com 255 (SC)*

- f. Pratham Telecom India Pvt. Ltd. vs. DCIT (2018-TIOL-1983-HC-MUM-IT)*
- g. CIT vs. Nipun Builders & Developers (P) Ltd., 30 taxmann.com 292*
- h. CIT vs. Nova Promoters & Finlease (P) Ltd. (18 taxmann.com 217)*
- i. CIT vs. N R Portfolio Pvt. Ltd., (2014) 42 taxmann.com 339.*
- j. CIT vs. Empire Builtech P. Ltd., 366 ITR 110*
- k. PCIT vs. Bikram Singh, (2017) 85 taxmann.com 104*
- l. ITO (Exemptions) vs. M/s. Synergy Finlease Pvt. Ltd., ITA No.4778/Del/2013.*

17. We have heard the rival submissions and perused the relevant finding given in the impugned order as well as material referred to before us. The assessee company had received share application/share premium money of Rs.3,68,00,000/- received from M/s. Aviskar Marketing Pvt. Ltd. The Assessing Officer at various places had stated that it is a holding company of the assessee, whereas in paragraph 3 of the his assessment order, he himself has mentioned that M/s. Prime Holding is the holding company of M/s. Aviskar Marketing Pvt. Ltd. (which is a different entity from the assessee company) and Directors of both the companies are common. Common directors cannot make it a holding company except for the fact that these companies may be held to be related companies. But nothing turns around from this fact because, what is to be examined here is, whether, there is any colourable transaction and whether the onus cast upon the assessee company has been discharged or not and what the material has been brought on record by the

Assessing Officer to dislodge the assessee's explanation and the evidences. During the course of assessment proceedings, as stated above, the assessee has filed various documents to prove the identity, genuineness and creditworthiness of the parties subscribing to the shares and paying share capital share premium to the assessee company, like, confirmed copy of account, ITRs, audited financial statements where the amount invested has been duly disclosed in the balance sheet, documents filed in the ROC for allotment of share by the assessee to the subscribing company, board resolution for allotment of shares, relevant bank statement and most importantly, in response to notice u/s.133(6) sent by the Assessing Officer to M/s. Aviskar Marketing Pvt. Ltd., same has been duly responded to wherein all the details have been filed directly before the Assessing Officer. From the perusal of the balance sheet, it is seen that M/s. Aviskar Marketing Pvt. Ltd has long term borrowings of Rs.4,15,50,000/- and reserves and surpluses to the tune of Rs. 3,76,05,866/-. This company before the Assessing Officer had stated that the source of share application money was given out of unsecured loan received from three companies, namely, M/s. Raju Investment Rs. 2,68,00,000/-, Super Developers Pvt. Ltd. Rs.50,00,000/- and Mahesh Wood Products Pvt. Ltd. Rs.50,00,000/-, out of which total amount of share money invested at Rs.3,68,00,000/-. As stated above, amount of Rs.50 lacs, i.e., the share application money to the tune of Rs.50 lacs subscribed by M/s. Aviskar Marketing Pvt. Ltd.

has been accepted by the Assessing Officer, which inter-alia means that the genuineness of part of the transaction of share capital and share premium stands accepted. The M/s. Aviskar Marketing Pvt. Ltd. before the Assessing Officer had filed the confirmations of the parties, who had given loan to it alongwith their ITRs, copy of ledger account, audited financial statements, etc. One of the major loan had come from M/s. Raju Investment Pvt. Ltd. who is a registered NBFC, has given loan of Rs.2,68,00,000/- and the loan taken by M/s. Aviskar Marketing Pvt. Ltd. from the said company has been returned back mostly in this year and partly in the subsequent year. Even the audited financial statement of M/s. Raju Investment Pvt. Ltd. reflects the loan outstanding/receivable from M/s. Aviskar Marketing Pvt. Ltd. Similarly, loan given by Super Developers to M/s. Aviskar Marketing Pvt. Ltd. has also been substantiated by providing audited financial statement, bank statement, confirmation, ITRs etc. Both these companies in response to notice u/s. 133(6) have also furnished their documents before the Assessing Officer.

18. Under the deeming provision of Section 68, the primary onus lies upon the assessee to prove the nature and source of credit. Here, in this case, the nature has been stated to be share application money which has been duly allotted by the assessee company to the subscribing company for which all the documentary evidences, including from ROC has been filed. The source of credit has been explained from the bank statement of the subscribing company, audited balance sheet,

ITRs, etc. Further, the subscribing company, M/s. Aviskar Marketing Pvt. Ltd has also explained the source of fund received by it from three other companies who have also furnished the entire details of the loan given to the said company. No adverse material has been brought on record by the Assessing Officer after assessee had filed these evidences against these companies nor any inquiry have been made that the entire transactions by these companies are colourable or sham. Here, it is not a case of any accommodation entry provider nor there is any investigation or report or inquiry that either M/s. Aviskar Marketing Pvt. Ltd. or two other companies who had given loan to M/s. Aviskar Marketing Pvt. Ltd. were involved in any bogus accommodation entry or were in collusion. One of the reason given by the Assessing Officer is that revenue from operations of M/s. Aviskar Marketing Pvt. Ltd. was Nil/ meager. However, in the balance sheet itself incorporated by him in the assessment order it is clearly borne out that there is huge availability of fund in the form of long term borrowings of more than Rs. 4.15 crores and reserves and surpluses of Rs. 3.76 crores. If the said company has stated that it has subscribed to the share application money out of borrowing and has also proved the genuineness and creditworthiness of the loan taken from the 3 parties directly before the Assessing Officer, then primary onus cast upon the assessee stands fully discharged. It is not the case here that any adverse material has been unearthed or has

been found that all these transactions are 'make believe arrangements' or all the evidences are mere paper trail.

19. One of key reasons harped upon by the Assessing Officer is that there were common directors. Commonality of Directors will not render a transaction non- genuine or colourable, unless any inquiry or material is found to prove the nexus of the directors involved in some kind of accommodation entry routing any unaccounted income of the assessee company. If these entities are separate corporate entities having separate legal identity and separately assessed to tax, then they have to be treated independently, unless there is any doubt regarding the source of credit or source of the source is colourable. In that case the same needs to be examined by the Department in the case of the person who has given the money and if anything adverse is found regarding source; or source of the source then, onus shifts heavily upon the assessee. The Assessing Officer cannot presume the transaction to be bogus sans any inquiry or material. Doubt cannot be raised on the explanation backed by evidences without any adverse material coming before Assessing Officer. Here the genuineness of the transaction is proven from the fact that M/s. Aviskar Marketing Pvt. Ltd. has subscribed the shares on premium out of loan taken from NBFCs and has given the immediate source; and not only that, it has also given the documents and confirmations from the NBFC companies confirming the loan given to the subscribing company who in turn has subscribed the share of

the assessee company. Under these circumstances and facts of the case and without there any material that any unaccounted money has been routed through various channels, then simply based on presumption and hypothesis deeming fiction cannot be invoked. If the assessee has proved the source as well as the source of the source of the fund then onus shifts upon the Assessing Officer to carry some prima facie inquiry to rebut the explanation given by the assessee. In absence of any such exercise, addition cannot be sustained simply based on certain hypothesis.

20. Another reasoning given by the Assessing Officer for rejecting all the evidences was that assessee has not produced the directors. Now when the party subscribing the shares and paying the money has confirmed the transaction and has proved the source from where it has got the funds directly before the Assessing Officer by giving all the evidences as discussed above, then mere non-appearance will not make the transaction doubtful or colourable. It is only when there are inconsistencies in the explanation and the evidences filed then the Assessing Officer may ask the assessee to produce. One has to see in such cases, *firstly*, whether primary onus of proving the nature and source of credit has been discharged, that is, identity, creditworthiness and genuineness of the transaction; and *secondly*, post such onus, Assessing Officer has made any inquiry or has some material to rebut the explanation and the evidences filed by the assessee. If there are any inconsistencies, then Assessing Officer may ask the

assessee to produce the person and if assessee is unable to do so for certain reasons, then Assessing Officer has the power to issue summons u/s 131 to ensure the presence. Otherwise Assessing Officer cannot simply doubt the entire the entire credit which is share application money and shares have been allotted.

21. Lastly, the judgments relied upon by the Ld. DR are not applicable on the facts of the case as discussed above, as the entire share application money and premium received by the assessee company stands proved by the assessee company and also by the subscribing company, which has even proved the source of money given to the assessee company. Here it is not case of any accommodation entry provider nor there is any report of investigation wing nor has any inquiry been conducted by the Assessing Officer to allay or rebut the evidences filed by the assessee company or by the subscribing company. Thus, ratio of all these judgments will not apply in the present case.

22. In view of our reasoning given above, we hold that share application money received by the assessee company from M/s. Aviskar Marketing Pvt. Ltd cannot be held to be non-genuine. Accordingly, the addition made u/s.68 is directed to be deleted. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 4th October, 2019.

Sd/-
[PRASHANT MAHARISHI]
[ACCOUNTANT MEMBER]

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 4th October, 2019