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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

7 to 13 & 31 to 35

\+ **ITA 871/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent

Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinde Aggarwal, Advocates.

WITH

\+ **ITA 872/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent

Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 873/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent

Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 874/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP DEVELOPERS LIMITED ..... Respondent

Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 875/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant

Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing

Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

S.V. LIQUOR INDIA LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 876/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

S.V. LIQUOR INDIA LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 883/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 962/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP DEVELOPERS LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 963/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder

Aggarwal, Advocates.

WITH

\+ **ITA 964/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

SVP BUILDERS (INDIA) LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

WITH

\+ **ITA 965/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

S.V. LIQUOR INDIA LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

AND

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\+ **ITA 966/2015**

COMMISSIONER OF INCOME TAX-VIII ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel, Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

S.V. LIQUOR (INDIA) LIMITED ..... Respondent
Through: Mr C. S. Aggarwal, Senior Advocate with Mr Prakash Kumar and Mr Rupinder Aggarwal, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
% 15.12.2015

CM No.30897/2015 in ITA No.962/2015
CM No.30899/2015 in ITA No.963/2015
CM No.30901/2015 in ITA No.964/2015
CM No.30904/2015 in ITA No.965/2015
CM No.30906/2015 in ITA No.966/2015

1. Allowed, subject to all just exceptions.

2. The applications stand disposed of.

CM No.26995/2015 in ITA No.871/2015
CM No.26997/2015 in ITA No.872/2015
CM No.26999/2015 in ITA No.873/2015
CM No.27001/2015 in ITA No.874/2015
CM No.27003/2015 in ITA No.875/2015
CM No.27005/2015 in ITA No.876/2015
CM No.27018/2015 in ITA No.883/2015

CM No.30898/2015 in ITA No.962/2015
CM No.30900/2015 in ITA No.963/2015
CM No.30902/2015 in ITA No.964/2015
CM No.30905/2015 in ITA No.965/2015
CM No.30907/2015 in ITA No.966/2015

3. For the reasons stated therein, the delay in re-filing the appeals is condoned.

4. The applications stand disposed of.

ITA Nos.871/2015, 872/2015, 873/2015, 874/2015, 875/2015, 876/2015, 883/2015, 962/2015, 963/2015, 964/2015, 965/2015 & 966/2015

5. These appeals by the Revenue are directed against the common impugned order dated 29th April, 2014 passed by the Income Tax Appellate Tribunal (ITAT) for Assessment Years (AYs) 2003-2004 to 2009-2010 in respect of the three Respondent-Assessees herein, i.e. SVP Builders (India) Limited (SVPB), SVP Developers Limited (SVPD) and SV Liquor India Limited (SVLI). In all these appeals, the only question urged by the Revenue for consideration is as under:

> "Whether the ITAT erred in deleting the addition under Section 68 of the Income Tax Act (Act) on the facts and circumstances of the present case?"

6. The background facts are that a search was conducted on 14th October 2008 in the premises of SVPD and the SVP Group of Companies. According to the Revenue, four companies comprised the core of the SVP Group, i.e., SVPB, SVPD, SVLI and Five Vision Promoters Private Limited (Five Vision). These four companies were found to have received share capital from 106 companies between AYs 2003-2004 and 2009-2010. The

said shareholders have been categorised as Table-I, Table-II and Table-III shareholders. Shareholder companies in Table-I were subjected to search under Section 132 of the Act. As regards shareholder companies in Table-II, proceedings were initiated under Section 153C of the Act against them consequent upon the search. Table-III comprised 74 shareholder companies whose identity and existence were not doubted since they were being regularly assessed to tax.

7. The case of the Revenue is that the SVP Group of companies (in whose premises and the residential premises of their Directors, searches were conducted) were engaged in the business of construction of residential, commercial and business complexes and also sale/purchase of lands. The further case of the Revenue was that the Group had been charging 'on-money' on the sale of flats, shops etc. which was not accounted for in thei regular books of accounts. The allegation was that 'on-money' was taken in cash and in turn was routed back into the Group companies in the form of share application money/unsecured loans, share capital etc. The unaccounted money routed through the said channel was reinvested in the purchase of further lands and for new projects. The share application money received in cash was also utilized for booking bogus expenses as site development charges for inflating the cost of construction to bring down profits.

8. The further case of the Revenue was that during the pre-search enquiries it was gathered that SVP Group of companies had been receiving shar capital from several companies which did not undertake any genuine business activities but acted as 'conduit channels' for converting black

money into white. The broad general allegation was that in the course of the investigation undertaken by the Additional Director of Income Tax (Investigation), Ghaziabad, the SVP Group of companies did not produce the shareholders despite being served with notices for that purpose. It was alleged that the shareholders were not produced till finalization of assessment order, i.e., upto 21 months thereafter.

9. As far as SVPB is concerned it was incorporated on 28th February, 2000 under the Companies Act, 1956. SVPD was incorporated on 9th February, 1996 and SVLI on 4th February, 1994. The said Respondents are engaged in the business of real estate and are regularly assessed to tax.

10. A statement of one Mr. Vijay Kumar Jindal was recorded on 15th October 2008, one day after the search operation took place. On 25th October 2010, notices were issued to the three Respondents in respect of the share capital year-wise for AYs 2003-2004 to 2009-2010 in the case of SVPB, for the years 2007-2008 and 2008-2009 in the case of SVPD (although it had not commenced business in those AYs) and AYs 2004-2005 to 2009-2010 in the case of SVLI. Further notice was issued under Section 142(1) of the Act to the three Assessees on 22nd November, 2010 (in the case of SVPB and SVPD) and 2nd December, 2010 in the case of SVLI.

11. On the basis of the replies filed by the Assessees, assessments were framed under Section 153A/143(3) of the Act and additions were made as unexplained cash credit under Section 68 of the Act. The findings of the Assessing Officer (AO) in the Assessment Order dated 13th December, 2010 were as under:

(i) As far as Table I shareholders were concerned, the AO noted that none of the companies were found to be operating at the given addresses. There was neither any display board bearing the names of these companies nor their books of accounts and other related accounts or documents found from such premises.

(ii) Moreover, even the persons available at the said premises namely Shri Bajrang Bahadur Dubey, Smt. Meena Goyal, Smt. Sushila Goyal and Shri Sachin Garg denied that any of the said companies existed at the said addresses. Further, despite letter dated 5th March 2009, and summons under Section 131 dated 20th March and 6th April 2009, the Assessee failed to produce the shareholders for cross examination.

(iii) As far as the Table III companies were concerned, many of the summons issued were returned unserved with the remarks "unknown" or "no such person". 24 of the companies submitted replies and some filed affidavits but did not submit any other details. The letter of M/s. Ganesh Buildtech showed that it had invested Rs. 10.50 crores in 16 of the companies figuring in Tables III and they in turn invested in the SVP Group companies. This was proof of the said companies acting as a "conduit channel". Further, the Assessee failed to produce the shareholders for cross-examination.

(iv) Also, the nexus of the shareholders and the beneficiary, i.e. the SVP Group, stood proved from the fact that shares were bought back by the individuals/concerns belonging to SVP Group. During the search, original share certificates worth Rs. 38 crores were found,

some of which were seized. During the search one Shri Vijay Jindal gave a statement that shares were allotted at Rs. 10 per share and later on bought back at Rs.2-3/- per share. The actual average purchase price was Rs. 1.04 per share. Thus shares that were initially issued by the SVP Group to the extent of Rs. 81.19 crores had been cheaply bought back for Rs. 10.38 crores and therefore the transactions were sham.

(v) Thus the Assessee had failed to prove the identity, genuineness and creditworthiness of the said shareholders. Accordingly, the aforementioned sums shown as investments in its shares for the AYs in question were added to its income for those AYs.

12. After the Commissioner of Income Tax (Appeals) [CIT(A)] by orders dated 21st May 2012 dismissed the appeals of the Assessees, thereby sustaining the additions, the Assessees filed appeals before the ITAT. Allowing the appeals, the ITAT by its impugned order held as under:

(i) The Revenue had been unable to deny the factual position that only 11 of the 20 companies in Table I had actually been searched. The material on record showed that directors of 18 companies of the 20 companies were examined by the AO in the course of the remand proceedings and found from the books of accounts that the share capital stands duly recorded in their books of accounts. Thus there was no justification for drawing an adverse inference particularly since no contrary material was placed on record by the revenue.

(ii) The statements of Shri Bajrang Dubey and Shri Sachin Garg when carefully examined did not show that the investor companies did not exist or did not in fact subscribe to the share capital of the SVP Group companies.

(iii) As far as Ganesh Buildtech was concerned, while no addition was made by the AO of the sum of Rs.28 lakhs invested by it in Five Vision for AY 2006-07 and Rs. 1,57,27,500 in AY 2007-08, he added the sum of Rs. 1,74,75,000 received from it in AY 2007-08. This apparent contradiction showed that the addition was made without appreciating the complete facts on record.

(iv) The decision of this Court in ***CIT v. M/s. Nova Promoters and Finlease (P) Ltd. 342 ITR 169 (Del)*** was distinguishable on facts since in that case two directors of the shareholder companies admitted to maintaining benami accounts and providing accommodation entries, whereas in the present cases there were no such statements. Also, here the AO did not take any steps to rebut the confirmation and evidence tendered by the shareholders.

(v) The common address of shareholders was not a valid basis to disregard the claim of the Assessee in view of the decision of this Court in ***CIT v. Winstral-Petrochemicals Pvt. Ltd. 330 ITR 603 (Del).***

(vi) The subsequent sale of the shares subscribed was not germane to the question of the genuineness of the share capital amount received by the Assessees. Once the capital raised stood explained, the issue of

disinvestment by the shareholder subsequently was a non-issue. The addition if at all was to be examined in the hands of the person purchasing the shares.

(vii) There was no material to support the Revenue's case that the 'on-money' collected in cash was routed back into the SVP Group companies in the form of share application money and later reinvested in purchase of further lands for new projects.

(viii) There was no material to conclude that some of the investors were 'paper' companies. They had been regularly assessed to tax and had produced their books of accounts during their respective assessment proceedings to show that they had made the investment in question. This had been accepted by the CIT (A) in their assessments by deleting the additions made of the said sums to their income by the AO concerned by holding that the additions if at all should be made in the hands of the beneficiaries. In the appeals filed in those cases, the Revenue had contended that the additions ought to have been sustained. Thus, the stand of the Revenue was contradictory and untenable.

(ix) The Assessee had discharged its primary onus of proving the identity, genuineness and creditworthiness of the said shareholders.

13. In particular in para 8.7 of the impugned order, the ITAT held as under:

> "8.7 Having regard to the above judicial pronouncements rendered by the Hon'ble jurisdictional High Court, we now proceed to examine the evidence tendered by the four appellant companies to discharge their initial onus under section 68 of the

Act. In the instant case, it is undisputed that all the 106 shareholders are corporate entries having been incorporated under the Companies Act. These shareholders are also assessed to tax. The documentary evidence for all the shareholders placed on record includes confirmation, affidavits of directions, returns of income of shareholders, bank statements of shareholders, board resolutions, certificate of incorporation and, Memorandum of Association of shareholder companies. The Assessing Officer issued summons under section 131 of the Act to such shareholders who then independently confirmed that they have only subscribed to the share capital of the appellant companies. No further investigation was carried out by the Assessing Officer during the course of assessment proceedings in respect of such share capital received by the appellant companies. The finding recorded in the order of assessment that the appellant the shareholders had been directed to be produced during the course of assessment proceedings, has been admitted to be factually incorrect both in the remand report by the Assessing Officer and further in the written submission filed before the Ld. CIT DR. Further investigation was also carried out by the Ld. CIT(A) to verify the genuineness of the capital and the evidence led by the appellant during the remand proceedings. He had directed the appellant to produce 7 directors of 39 shareholders companies. Out of 7 directors, 6 directors had been produced whose statements had been recorded and in their statements, they have duly deposed and confirmed that they have subscribed to the capital of the appellant companies. These directors had not only produced the books of accounts that source of the shareholders companies but also established from such books of accounts that source of investment was duly recorded in the books of such companies. No other evidence placed on record to rebut the documentary evidence placed by the appellant to support the share capital received by the appellant companies. In such circumstances, it has to be held in terms of the judgment of the Hon'ble Supreme Court in the case of Lovely Exports (supra) and Hon'ble jurisdiction Allahabad High Court in the case of Jay Dee Securities and Finance Ltd. (supra) and M/s Misra Preservers

> Pvt. Ltd. (supra) the initial burden which lay upon the appellants to establish the source of the share capital received stands duly discharged."

14. At the outset it requires to be noticed that the grounds urged in the present appeals by the Revenue and the question of law urged is similar to that urged in the appeals filed by the Revenue against the 5th company in the core group in the SVP Group of Companies, i.e., Five Vision, viz., ITA Nos.234, 235 and 236/2015. Those appeals were also directed against the same common impugned judgement dated 29th April, 2014 passed by the ITAT. This Court has by a judgement dated 27th November, 2015 dismissed the said appeals holding that the Revenue had not been able to show that there was any legal infirmity in the impugned order of the ITAT as regards the analysis of the facts and application of law in relation to Section 68 of the Act.

15. In the present appeals, a perusal of the grounds urged by the Revenue shows that they are no different from what was urged in the Revenue's appeals in the case of Five Vision, viz., that the Assessees had manipulated substantial funds movement through 'paper existence' of the investor companies; that the CIT(A) found that common directors repeatedly appeared in the list of directors of the Assessee Companies which showed that they belonged to the same group and were manipulating their books for the purpose of introduction of unexplained cash money and creating 5-steps of cheque transactions before the investment was made eventually in SVP Group of Companies; that the creditworthiness of three shareholding companies did not have any worthwhile share capital and their activities

were only in the form of management of fund rotation in the garb of share application money invested in each other with a view to artificially inflate their creditworthiness; that the Assessee bought back its own shares at a very low price; that the shares allotted at the face value of Rs.10/- were transferred in the names of individuals/concerns belonging to SVP Group at a meagre price ranging from Rs.0.50 to Rs.2.00 per share; that the persons available at the premises during the search of the Table-I companies denied the existence of such companies; that the cash of Rs.2,23,40,000/- was found during the search operation from the residence of the Directors of the Assessees and the fact that it had received Rs.44.15 crore in cash as share application money was ignored; that the decision in ***CIT v. Nova Promoters and Finlease (P) Ltd.*** *(supra)* was wrongly distinguished and the decision of the Supreme Court in ***CIT v. Lovely Exports (P) Ltd. 216 CTR 195 (SC)*** was distinguishable on facts.

16. It has been pointed out by the Assessees in their written note of submissions before this Court that apart from the fact that all of the corporate shareholders invested in the share capital of the Assessees were Income Tax Assessees who had filed independent confirmations that they had contributed towards the share capital and the sums had been recorded in their respective books of accounts, no incriminating evidence was found as a result of the search to suspect that the shareholders had not contributed to the share capital. Further it is pointed out that in respect of each of the share holders, the following evidence was tendered by the Respondent-Companies before the AO:

"i) Name and address of the Investor

ii) PAN of the Investor
iii) Ward of the Investor
iv) Bank account details of the investors
v) Detail of amounts received and mode of receipt cheque no. date of cheque; amount of cheque
vi) Copy of certificate of incorporation of the investor
vii) Copy of ITR
viii) Copy of Share Application form
ix) Copy of Board resolution
x) Confirmation in the affidavit by the investor
xi) Copy of the letter with enclosures submitted by the investor companies in response to the summon u/s 131 of the Act."

17. It is pointed out that for AYs 2008-2009 and 2009-2010, the contributions of the share capital of the three Assessee was by Table-III companies in respect of which the CIT(A) observed as under:

> "I have carefully appreciated the contentions and do admit that at least these few companies do not seem to be having connection with the majority of the 'conduit' companies and their common directors and that their financial creditworthiness is on much better footing."

18. Additionally it is pointed out that as far as SVPB is concerned no business had commenced during AYs 2007-2008 and 2008-2009. The Profit and Loss Account of the aforesaid AYs showed that the only revenue received was interest from the banks. Therefore the allegation of "charging on-money" in cash and routing back of the same into the main stream in the form of share capital, etc., is incorrect.

19. The Respondents have placed before the Court charts to show the details of the investments made by the investor companies in each of them year-wise. The three companies appear to have been in existence much prior to

the date of the search and commenced their business operations at least 5-6 years earlier thereto. It has been pointed out that as far as SVPB is concerned, the following details were furnished:

> "Details/Evidence of 20 share holders contributing Rs. 10,96,00,000/- of Table I in A.Y. 2003-04 to 2009-10 ; 12 share holders contributing Rs. 8,26,00,000/- of Table 11 in A,Y. 2003-04 to 2009-10; & 44 share holders contributing Rs.15,85,50,000/- of Table III in A.Y. 2003-04 to 2009-10 and evidence filed before AO in respect of these shareholders."

20. As far as SVPD is concerned, the following details were furnished:

> "Details/Evidence of 16 share holders contributing Rs.3,32,50,000/- of Table I in A.Y. 2007-08 & 2008-09 ; 10 share holders contributing Rs.1,70,00,000/- of Table II in A.Y. 2007-08 & 2008-09; & 30 share holders contributing Rs. 5,22,50,000/- of Table III in A.Y. 2007-08 &2008-09 an evidence filed before AO in respect of these shareholders"

21. As far as SVLI is concerned, the following details were furnished:

> "Details/Evidence of 19 share holders contributing Rs.7,16,00,000/- of Table I in A.Y. 2004-05 to 2009-10; 10 share holders contributing Rs.3,58,50,000/- of Table II in A.Y. 2004-05 to 2009-10; & 36 share holders contributing Rs.17,10,50,000/- of Table III in A.Y. 2004-05 to 2009-10 and evidence filed before AO in respect of these shareholders"

22. The other submission is that the Revenue's allegation that the Assessees were themselves being used as conduits for routing the 'on money' or that the investment in the Assessees was also for routing such 'on money' ha not even *prima facie* been able to be established by the Revenue. On the one hand there is an attempt to treat the cash credit found in the Assessees' books of accounts to be the 'undisclosed income of the Assessee' by showing the investors to be 'paper companies'. On the other hand, the attempt is to show

that this money in fact belongs to certain other entities whose source has not been explained by the Assessees. As noted by the ITAT in the assessment proceedings of the investor companies, the monies invested were sought to be added as income of those companies by the AOs. The said additions were deleted by the CIT (A) in their cases holding that the additions if at all should be made in the hands of the beneficiaries. The Revenue then filed appeals in the ITAT insisting on the additions being sustained. Thus there is no clarity in the stand of the Revenue in these cases.

23. Coming to the core issue concerning the identity, creditworthiness and genuineness of the investor companies, it is seen that as far as the Table I investors were concerned, only 9 were searched and in their cases, the ITAT on a very detailed examination was satisfied that they not only existed, bu that the Assessees had discharged the primary onus of proving their creditworthiness and genuineness. They had responded to the summons issued to them. Directors of 14 of these companies appeared before the AO and produced their books of accounts.

24. As regards Table-III companies, notices were issued under Section 131 of the Act to which many of them responded confirming having made investments. The Assessees had been asked by the CIT (A) to produce 7 directors of the Table III companies. 6 directors appeared and their statements were recorded. They had confirmed that they had subscribed t the share capital of the Assessees. These directors had not only produced the books of accounts but showed that the source of investment was duly

recorded therein. The Revenue on the other hand did not produce any further evidence to dispute the above evidence produced by the Assessees.

25. As far as Table II shareholders were concerned, if the Revenue was of the view that they were simply using the Assessees for parking their undisclosed income, then it was certainly open to the Revenue to make additions to the income of those Table-II companies. As far as Table-I shareholders was concerned, none of them denied having made the investment in the Assessee companies. The AO does not appear to have undertaken any particular investigation into the affairs of the Table-I, II or Table III companies apart from issuance of the notices under Section 131 of the Act which were duly responded to.

26. Detailed findings have been given by the ITAT in the present cases after a thorough examination of the records. The Court finds no reason to differ from the decision of the ITAT in its rejection of the very same contentions urged before the Court by the Revenue. In particular, the Court concurs with the ITAT that the mere fact that some of the investors have a common address is not a valid basis to doubt their identity or genuineness.

27. Also, the fact that the shares of the Assessees were subsequently sold at a reduced price is indeed not germane to the question of the genuineness of the investment in the share capital of the Assessees. The question o avoidance of tax thereby may have to be examined in the hands of the person purchasing the shares.

28. Some of the investor companies, for e.g., (i) Quality Security Services

Pvt. Ltd., (ii) United Head Hunters Pvt. Ltd. and (iii) Wellset Pharma & Drugs Pvt. Ltd. have been shown to be filing returns and being assessed on a regular basis. Some of them have been shown to be in existence even before the incorporation of the Assessee. Indeed the Revenue was unable to produce material to substantiate its case that the genuineness and creditworthiness of the investors and the source of the money received by the Assessee by way of investments in the AYs in question was not satisfactorily explained by the Assessees. Also, the ITAT rightly distinguished the decision in ***CIT v. M/s. Nova Promoters and Finlease (P) Ltd.*** (*supra*) in its application to the facts of the present case.

29. The law concerning Section 68 of the Act has been discussed in some detail by this Court in its decision dated 27th November, 2015 in ITA No.234/2015 (***CIT v. Five Vision Promoters Pvt. Ltd.***). In the said decision, reference has been made to the decisions in ***CIT v. Lovely Exports (P) Ltd. 216 CTR 195 (SC),*** the decision dated 21st January 2008 of the Supreme Court in SLP (Civil) (CC) 375 of 2008 ***(CIT v. Divine Leasing and Finance Ltd.)*** and decision dated 17th September 2012 of the Supreme Court in SLP (Civil) CC 15640 of 2012 ***(CIT v. Kamdhenu Steel & Alloys Limited)***. In all the above three decisions the Supreme Court had affirmed the corresponding decisions of this Court including ***CIT v. Divine Leasing and Finance Ltd. 299 ITR 268.*** Reference was also made to the decisions of this Court in ***CI v. Sophia Finance Ltd. (1994) 205 ITR 98 (FB) (Del), CIT v. Dolphin Canpack Ltd. 283 ITR 190, CIT v. Kamdhenu Steel & Alloys Ltd. 206 Taxman 254, Sarthak Securities Co. (P) Ltd. v. ITO 329 ITR 110, CIT v. Nipun Builders and Developers (2013) 350 ITR 407 (Del)*** and ***CIT v. N.R.***

Portfolio Pvt. Ltd. (2014) 206 DLT 97 (DB).

30. In sum, it was explained by this Court in ***CIT v. Five Vision Promoters Pvt. Ltd.*** (*supra*) that: "under Section 68 of the Act, the AO has jurisdiction to undertake enquiries with regard to the amount credited in the books of the accounts of an Assessee. This could be any sum whether in the form of sale proceeds or receipt of share capital money. First, the AO is to enquire whether the alleged shareholders in fact exist or not. The truthfulness of the assertion by the Assessee regarding the nature and the source of the credit in its books of accounts can be examined by the AO. Where the identity of the shareholders stands established and it is shown that they had in fact invested money in the purchase of the Assessee's shares, then the amount received would be regarded as capital. Where the Assessee offers no explanation at all or the explanation offered is unsatisfactory, the provision of Section 68 may be invoked."

31. When the impugned order of the ITAT is examined in the light of the law governing Section 68 of the Act, the Court finds that the ITAT was fully justified in coming to the conclusion that there exists no evidence to establish that there was any re-routing of the money collected by the Respondent-Companies. None of the shareholders denied having contributed to their share capital. The Revenue has not been able to show why the decision of the Supreme Court in ***CIT v. Lovely Exports (P) Ltd.*** (*supra*) does not apply to the facts and circumstances of the case.

32. The Court accordingly concludes that in the present appeals the Revenue has not been able to show that the impugned decision of the ITAT in its

analysis of the facts or application of the law governing Section 68 of the Act suffers from any legal infirmity.

33. No substantial question of law arises for consideration from the impugned order of the ITAT vis-a-vis the Respondents/Assessees in these appeals.

34. The appeals are accordingly dismissed but in the circumstances with no orders as to costs.

S. MURALIDHAR, J.

VIBHU BAKHRU, J.

DECEMBER 15, 2015
b'nesh