

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.12.2015

+ ITA 727/2015

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ ITA 729/2015

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ ITA 760/2015

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ ITA 718/2015

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 345/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 355/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 356/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 362/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 364/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 399/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

WITH

+ **ITA 612/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

AND

+ **ITA 633/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

MATCHLESS GLASS SERVICES PVT. LTD.

..... Respondent

Advocates who appeared in these cases:

For the Appellant : Ms. Suruchi Aggarwal, Senior Standing counsel
and Ms. Lakshmi Gurung, Junior Standing
counsel alongwith Mr Shiv Raj Singh, Dy. CIT.
For the Respondent : Mr C.S. Aggarwal, Senior Advocate with
Mr Prakash Kumar and Mr Gautam Jain.

CORAM:
DR. JUSTICE S.MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 29th October, 2014 passed by the Income Tax Appellate Tribunal (hereafter the 'ITAT') in a batch of two hundred and eighty-four appeals including twelve appeals pertaining to the Assessee in respect of six Assessment Years ('AY') being 2003-04, 2004-05, 2006-07, 2007-08, 2008-09 and 2009-10. The aforesaid twelve appeals included six appeals preferred by the Assessee and six appeals preferred by the Revenue. The said appeals, respectively, impugned six separate orders passed by the Commissioner of Income Tax (Appeals) [CIT(A)] – all dated 22nd February, 2012 - disposing of the respective appeals preferred by the Assessee against the assessment orders dated 31st December, 2010 passed in respect of the aforementioned AYs.

2. The Revenue has projected the following questions of law in each of the aforesaid appeals:-

- “(i) WHETHER in the facts and circumstances of the case, ITAT could have deleted additions under section 68 of the Act on the ground that they are not based on any material found as a result of the search on the assessee company?

- (ii) WHETHER in the facts and circumstances of the case, ITAT could have held that there was no valid search since the impugned additions have been made under section 153A /143(3) of the Act without reference to any material found as a result of search?
- (iii) WHETHER in the facts and circumstances of the case, ITAT could have held that additions made in non-abated assessments, are invalid?
- (iv) WHETHER on the facts and circumstances of the case, findings of the ITAT are perverse?”

3. Insofar as question nos. (ii) and (iii) are concerned, the same do not arise from the impugned orders passed by the ITAT. The ITAT had noted in its order that the Assessee had not pressed the legal issues involved in its appeal. It was further noted that the Assessee had also not challenged the assumption of jurisdiction under Section 153A of the Act. The only grounds that were agitated before the ITAT were related to the merits of the additions made by the AO under Section 68 of the Act. In the circumstances, the only question that arises is whether the ITAT has erred in holding that additions under section 68 of the Act were invalid.

4. Since the issues involved and the questions of law projected by the Revenue are common, these appeals were heard together.

5. The above proceedings emanate from the search and seizure operations under Section 132 of the Act, which commenced on 14th October, 2008 in respect of “SVP Group of companies”.

6. According to the Revenue, the core of SVP Group of companies consisted of four companies, namely, SVP Builders India Ltd., SVP Developers (India) Pvt. Ltd., SVP Liquors India Limited and Five Vision Promoters Pvt. Ltd, which were engaged in the business of construction of residential, commercial and business complexes as well as in the sale and purchase of land. It was found that the aforesaid four companies had received share capital from 106 companies during the AYs 2003-04 to 2009-10. It is the case of the Revenue that the aforesaid four companies forming core of the SVP Group had been charging on-money on sale of flats and shops which was not accounted for in the regular books of accounts. According to the Revenue, usually this on-money was taken in cash and was routed back into the Group companies in the form of share application/unsecured loans, share capital etc. These funds were further invested by the SVP Group of companies to purchase lands for new projects as well as for booking bogus expenses, as site development charges, for inflating the cost of construction. In addition to the four companies forming the core of the SVP Group, warrants for search and seizure operations were also issued in respect of twenty other companies.

7. The Assessee was one of companies on whom a search and seizure operation u/s 132 of the IT Act was carried out in connection with the issues of providing share capital contribution to the SVP Group of concerns. Along with the Assessee company 19 other such companies were covered U/s 153A of the Act. Based on the materials seized from the premises of SVP Group of companies with regard to the investment in

shares mainly in cash, action u/s 153C of the Act was also initiated in respect of the 12 companies.

8. According to the Revenue, a notice under Section 153A of the Act was issued on 17th February, calling upon the Assessee to file its returns within 15 days from the receipt of the said notice, however, this is disputed by the Assessee and it is contended that no such notice was ever issued but only an order-sheet entry was passed which was not signed by the AO. Thereafter, another notice dated 15th September, 2010 was issued under Section 153A of the Act calling upon the Assessee to file returns for the AYs 2003-04, 2004-05, 2006-07, 2007-08 and 2008-09 within a period of fifteen days. Further, on the said date, notice under Section 142(1) of the Act was also issued for AY 2009-10. In response to the aforesaid notice, the Assessee filed its returns for the respective six AYs in question on 5th October, 2010. Thereafter, various notices were issued by the AO.

Assessment orders

9. On 31st December, 2010, the AO passed assessment orders in respect of each of the AYs in question. The AO noted that search operations were conducted at the premises declared by the Assessee to be its registered office, however, no books of accounts or any other documents relating to the Assessee were found at the said premises. The address of the registered office of the company was that of a 'Janta Flat', which was used for residential purposes. During the search operations, a statement of one Sh. Bhजारंग Bahadur Dubey, who was present at the said premises, was recorded and he denied the existence of an office of any company at the

premises. It was also noted that in addition to the Assessee Company, there were six other companies that were declared to be located at the same address - B-4/71A, Lawrence Road, Delhi that had subscribed to the share capital of the core operational companies of the SVP Group. None of the aforesaid companies were also found to be functioning at the said address. The name of the companies was also not displayed. The AO concluded that the activities carried on by the Assessee were genuine activities and it had merely received share application money and had shown the same to be invested in share capital of unquoted companies. The AO, thus, concluded that all receipts reflected by the Assessee were unexplained credits taxable under the provisions of Section 68 of the Act. However, the AO deleted the investments made in share capital of SVP Group as the same were taxed as unexplained credits in the hands of the investee companies of the SVP Group. The AO held that the Assessee was not cooperative and had failed to provide the requisite details, hence, made additions under section 68 of the Act as indicated below:

Assessment Year	Total Deposits	Less Amount Invested in SVP Group	Additions made by AO	CIT(A)/ITAT (Addition Deleted) (See note below)
2003-04	Nil (No bank account)	Nil	50,00,000 (Adhoc)	50,00,000 (Adhoc)
2004-05	Nil (No bank account)	Nil	50,00,000 (Adhoc)	50,00,000 (Adhoc)
2006-07	2,89,65,680* (Bank Deposits)	51,00,000	2,38,65,680	2,38,65,680
2007-08	4,93,20,498* (Bank Deposits)	84,00,000	4,09,20,498	4,09,20,498

2008-09	2,50,67,324* (Bank Deposits)	Nil	2,50,67,324	2,50,67,324
2009-10	2,18,05,733 (Bank Deposits)	Nil	2,18,05,733	2,18,05,733

10. Insofar as AY 2003-04 and AY 2004-05 are concerned, no funds were received by the Assessee, nonetheless, the AO made *ad hoc* additions “to protect the revenue leakage”.

Proceedings before CIT(A)

11. The Assessee, being aggrieved by the assessment orders, preferred appeals before the CIT(A), *inter alia*, challenging that the Assessee had not been provided with reasonable and sufficient opportunity to explain its stand and that the additions made were arbitrary. The Assessee contended that no material much less evidence was found as a result of the alleged search to make the impugned addition -in an order of assessment u/s 153A & 143(3) of the Act. In fact, it was admitted that no material was found in the search notice dated 16th December, 2010 which recorded that “*nothing has been seized relevant in your case during the course of perch and seizure proceedings conducted at the registered office of the company*”.

12. The Assessee filed its written submissions and also produced books of accounts as well as the source of the funds received by the Assessee. Thereafter, CIT(A) issued a letter of enquiry under Section 250(4) of the Act dated 10th January, 2012 / 24th January, 2012 calling upon the Assessee to explain entries in respect of cash transaction along with necessary documents. The CIT(A) also called for a remand report on the submissions

made by the Assessee. In the meantime, the Assessee once again provided the books of accounts and sought to explain the sources of receipts with reference to the books of accounts. The Assessee also filed affidavits of several persons in respect of funds received by the Assessee.

13. The CIT(A) considered the remand report of the AO and observed that companies stated to have invested in the Assessee were having similar features: most of the investor companies had two Directors whose stake in the initial capital of the company was very small; that the disclosed address of the directors was the Janta Flat – thus inferring that the said directors belonged to lower middle strata of the society; each director was also a director in several other similar companies; that all companies had made investment in shares of unlisted companies, which were not saleable in the open market and were thus not a “tradable commodity”; and that shares of companies had been purchased at a heavy premium even though the companies were not carrying on any business and existed only on papers. The CIT(A) noted that all companies were inter-related and worked in collusion to reflect them as functional companies.

14. In view of the above, the CIT(A) concluded that (i) that the Assessee company had no real business activity; (ii) that the Assessee was a conduit engaged in rotating undisclosed income of the beneficiaries from the SVP Group; and (iii) that the Assessee did not earn any income and was acting only as a conduit. The CIT(A) held that the funds invested through the Assessee were liable to be taxed in the hands of the beneficiaries and, therefore, upheld the decision of the AO in not adding the amounts invested by the Assessee in SVP Group as undisclosed income of the Assessee. The

CIT(A) further deleted the addition made and held that the same were also liable to be taxed in the hands of respective beneficiaries (i.e. persons who were the recipients of the funds brought into the Assessee). In addition to the above, the CIT(A) gave other directions including for launching prosecution under Section 277A read with Section 278B of the Act. Insofar as the AY 2003-04 and 2004-05 are concerned, the *ad hoc* addition of Rs.50,00,000/- made by the AO in respect of each of those years was also deleted.

Proceedings before the ITAT

15. The Revenue as well as the Assessee filed appeals before the ITAT. The Revenue contended that the CIT(A) had erred in deleting the additions made under Section 68 of the Act. According to the Revenue, the Assessee had failed to discharge its onus of proving the credits in the Assessee's account and, thus, the amount credited in its books was liable to be taxed under Section 68 of the Act. The Assessee, on the other hand, filed appeals challenging the issue of search authorization under Section 132 of the Act and the assumption of jurisdiction under Section 153A of the Act, as no seizure had been made during the search conducted under Section 132 of the Act. Further, the Assessee contested the findings of the CIT(A) that the Assessee was a conduit for routing funds to various beneficiaries including the SVP Group and also impugned the directions issued by CIT(A).

16. Insofar as the legal issues raised relating to the validity of the search as well as the assumption of jurisdiction under Section 153A of the Act are concerned, the Assessee did not press those grounds. The ITAT recorded

that the issues pressed before it related to the merits of the addition made by the AO under Section 68 of the Act and both the Revenue and the Assessee agreed that the facts and issues were identical to the appeal in the case of Pranjul Overseas (P) Ltd. and, therefore, there was no necessity to hear the appeals pertaining to the Assessee separately.

17. In view of the above, the ITAT reproduced its findings arrived at in the case of Pranjul Overseas (P) Ltd. and held that the additions made under Section 68 of the Act were not in accordance with law. The grounds pressed by the Assessee were, accordingly, allowed while the grounds urged by the Revenue were dismissed.

Submissions of the counsel

18. Ms Suruchi Aggarwal, the learned counsel appearing for the Revenue supported the observations made by the CIT(A). She submitted that the Assessee was merely a paper company. She emphasized that the office of the Assessee was shown to be located in a Janta Flat and in an on-spot examination it was found to be non-existent. She reiterated that the Assessee had been unable to discharge its onus to show the creditworthiness of the investor companies. In the circumstances, she submitted that the additions made by the AO under Section 68 of the Act were justified and the ITAT had erred in holding that the additions under Section 68 of the Act were not warranted.

19. Countering the contentions advanced by Ms. Suruchi Agarwal, Mr C.S. Aggarwal, learned Senior Counsel appearing for the Assessee contended that the assessments for the AYs 2003-04, 2004-05 and 2006-07

had already been finalized and, therefore, had abated on the date of the search. Since, admittedly, no incriminating material had been unearthed during the search, no additions could have been made by the AO. He argued that the ITAT had accepted the above contention in the case of Pranjul Overseas (P) Ltd. and as the Revenue had agreed before the ITAT that the facts and issues involved were identical to those involved in Pranjul Overseas (P) Ltd., the findings of the ITAT in the case of Pranjul Overseas (P) Ltd. would also apply in the case of the Assessee.

20. Insofar as the merits of the addition under Section 68A of the Act is concerned, Mr Aggarwal stressed that the credit in the books of the Assessee had been duly explained and was supported by affidavits of persons from whom the money have been received. He submitted that no defect in the affidavits had been pointed out and no reasons have been provided as to why the evidence provided by the Assessee was not accepted. He submitted that none of the affidavits had been challenged and further, no investigation or enquiries had been conducted with regard to the genuineness of the receipts. He submitted that the Assessee on its behalf had discharged its onus of not only providing confirmation from the persons from whom funds had been received but had also in addition provided evidence that such persons were assessed under the Act by providing their Permanent Account Numbers (PAN). He argued that in the circumstances, the identities of the payers and the genuineness of the transaction had been established and the same could not be arbitrarily rejected by the Revenue. On the other hand, the Revenue had not produced

any material which would controvert the evidence produced by the Assessee.

21. Mr C.S. Aggarwal further contended that the stand of the Revenue in the proceedings before the authorities was contradictory; whilst, on one hand the Revenue claimed that the Assessee was merely conduit for laundering the money for the beneficiaries (recipients), on the other hand, the Revenue was seeking to tax the income of the Assessee as income from business. He stated that not only the Assessee but the persons (including companies) from whom the Assessee had received funds had been taxed on their income. He argued that once having accepted the persons from whom the Assessee had received money were assessable to tax, it was not open for the Revenue to now contest their identity or the genuineness of the transactions, which had been accepted by the Revenue while making assessments in respect of those persons.

Reasoning and Conclusion

22. The law relating to Section 68 of the Act has been a subject matter of several decisions and the legal position is now well settled. An addition under Section 68 of the Act can be made only where the Assessee either offers no explanation for the credit in its books or the explanation offered by it, is unsatisfactory. In cases where the identity of the source of the funds as well as the creditworthiness of the payer is established by the Assessee alongwith an explanation as to the nature of the transaction leading to the credit entries, the Assessee would have discharged its initial onus and the burden would now shift to the AO to provide reasons for

doubting the explanation provided by the Assessee. For the purposes of examining the identity of the payer and the genuineness of the transaction, the Assessee can make such enquiries as are necessary. If on enquires, the AO finds that either the identity of the payer is not established or lacks the means for supporting the transaction or on the basis of some material it is found that the transaction is not genuine or the payer, the AO would have to confront the Assessee with such material and, thereafter, draw an inference as to the merits of the explanation provided by the Assessee. In **CIT v. Sophia Finance Pvt. Ltd.:** (1994) 205 ITR 98 (Del), a full Bench of this Court had held as under:-

"What is clear, however, is that section 68 clearly permits an Income-tax Officer to make enquiries with regard to the nature and source of any or all the sums credited in the books of account of the company irrespective of the nomenclature or the source indicated by the assessee. In other words, the truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of account can be gone into by the Income-tax Officer. In the case of Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi), the Income-tax Officer had accepted the increased subscribed share capital. Section 68 of the Act was not referred to and the observations in the said judgment cannot mean that the Income-tax Officer cannot or should not go into the question as to whether the alleged shareholders actually existed or not. If the shareholders are identified and it is established that they have invested money in the purchase of shares then the amount received by the company would be regarded as a capital receipt and to that extent the observations in the case of Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi), are correct but if, on the other hand, the assessee offers no explanation at all or the explanation offered is not satisfactory then, the provisions of section 68 may be invoked. In the latter case section 68,

being a substantive section, empowers the Income- tax Officer to treat such a sum as income of the assessee which is liable to be taxed in the previous year in which the entry is made in the books of account of the assessee."

23. This Court in a recent decision in the case of **Commissioner of Income Tax - 3 vs. Five Vision Promoters Pvt. Ltd.:** ITA 234/2015, decided on 27th November, 2015 examined and reiterated the law relating to Section 68 of the Act. It is now well established that *"the AO has jurisdiction to undertake enquiries with regard to the amount credited in the books of the accounts of an Assessee"*.

24. In the aforesaid circumstances, the only issue that needs to be examined is whether the findings of the ITAT are in consonance with the settled law relating to Section 68 of the Act. A perusal of the order passed by the ITAT, insofar as the present Assessee is concerned, indicates that the appeals filed by the Revenue in respect of the Assessee were not taken up for hearing in view of the statement made by the parties that the facts and the issues involved were identical to that in the case of Pranjul Overseas (P) Ltd. Thus, it is apparent that the ITAT did not examine whether the Assessee had established the identity, genuineness of the transaction and the creditworthiness of the persons from whom the Assessee claimed that it had received the funds used by the Assessee for purchasing shares of other companies. The AO also could not examine the explanation of the Assessee during the assessment proceedings since at that stage the Assessee had not provided the necessary evidence to establish the identity of the persons as well as the genuineness of the transactions relating to the credit entries in

its books. The AO had, therefore, held that the Assessee had failed to provide the necessary material and had not cooperated in the assessment proceedings. He had, accordingly, made additions under Section 68 of the Act as indicated hereinbefore. The Assessee had assailed the assessment orders, *inter alia*, on the ground that it had not been provided a reasonable opportunity to furnish the necessary evidence during the assessment proceedings. Before CIT(A), this ground was stoutly disputed by the AO and according to him the Assessee had been provided several opportunities but had failed to comply with the notices and questionnaires issued relating in the additions made by the AO. However, the grievance of the Assessee was allayed as CIT(A) gave sufficient opportunities to the Assessee, during the appellate proceedings, to produce the relevant material in support of the credit entries in its books of accounts.

25. The documents filed by the Assessee before the CIT(A) have not been filed in these proceedings except in ITA 362/2015, which relates to the AY 2003-04. A perusal of the documents filed by the Assessee indicates that the Assessee had filed affidavits of several persons who claimed to have made large cash payments to the Assessee as share application money for allotment of shares. It is seen that one Vijay Kumar, Director of M/s Chyris Information Management Services (P) Ltd. had filed an affidavit affirming that M/s Chyris Information Management Services (P) Ltd. had made a cash payment of Rs.6 lacs to the Assessee. The registered office of the said company was affirmed as B-4/71A, Lawrence Road, Delhi, which was the same as the registered office of the Assessee Company. A similar affidavit was filed by one Manoj Kumar in his

capacity as a Director of M/s Lawrence Distributors (P) Ltd. affirming that Lawrence Distributors (P) Ltd. had made a cash payment of Rs.5 lacs on 6th November, 2006 as share application money to the Assessee. The registered office of Lawrence Distributors (P) Ltd. was also shown as B-4/71A, Lawrence Road, Delhi. Vijay Kumar affirmed another affidavit as a Director of Sharwan Advertising (P) Ltd. affirming that the said company had paid Rs.5 lacs in cash to the Assessee as share application money. The registered office of Sharwan Advertising (P) Ltd. was also reflected at B-4/71A, Lawrence Road, Delhi-35. One Ghanshyam Dass who was a Director of the Assessee Company at the material time, also furnished affidavits on behalf of the M/s Broad Traders & Finances Pvt. Ltd, M/s Busy Traders and Finances Pvt. Ltd. and Aggarwal Plasto Chem Pvt. Ltd. affirming that the said companies had made cash payments of Rs.5 lacs each to the Assessee Company as share application money. It is also relevant to note that the registered office of all the three said companies was reflected at B-4/71A, Lawrence Road, Delhi. Mr Ghanshyam Dass and Vijay Kumar also affirmed affidavits in their individual capacity of having made large cash payments to the Assessee Company. In addition to the above, one Jasoud Singh and one Manoj Kumar also affirmed affidavits of having made cash payments of Rs.5 lacs each to the Assessee Company as share application money. The affidavits also affirmed them to be residents of B-4/71A, Lawrence Road, Delhi. During the course of the proceedings before us, we pointedly asked Mr Aggarwal whether it was disputed that B-4/71A, Lawrence Road, Delhi was a Janta Flat and, if so, how was it possible that it housed several residents as well as offices of several companies. While it was not disputed that B-4/71A, Lawrence Road, Delhi

which is the registered office of the Assessee was a residential Janta Flat, Mr Aggarwal stressed that it was not unusual for offices to be located in residential buildings and it was also not unusual for a single dwelling unit to be used as a registered office for several companies.

26. We are unable to accept that such affidavits as filed before the CIT(A) could have been accepted to establish the genuineness of the transaction or the creditworthiness of the investors. More so, when the AO had noted that during the search, no office was found to exist at the address and one Bhजारंग Bahadur Dubey who was a resident of the said address had also stated that he had not heard of the Assessee Company. The fact that a common address is shared by several companies may not be a ground to doubt the identity or the creditworthiness of the companies; however in the given facts there are several factors, which viewed cumulatively, clearly provide a good reason to doubt the veracity of the Assessee's claims. The address is that of a Janta flat which is normally used as residence by persons of limited means; the said address is also stated to be residential address of several individuals, who are ostensibly not related to each other; large payments have been made in cash; shares are stated to have been subscribed at a premium even though the Assessee company has no track record and for two years (out of six years in question) did not even have a bank account; and even though the Assessee company has not made significant profits, does not employ any qualified personnel (its expense on salary and wages is insignificant) and has not made any investment in traded securities yet it has attracted large subscriptions to its share capital. These factors are required to be considered for ascertaining whether the

Assessee has established the creditworthiness of the persons who are stated to have made payments to the Assessee as well as to the genuineness of the transactions.

27. At this stage, we must also observe that the stand of the Revenue is somewhat unclear; while the Revenue is contending that the Assessee is liable to pay tax on the amount credited in its books as under Section 68 of the Act. It is also deleted the amount invested by the Assessee in shares of SVP Group companies on the ground that the Assessee is only a conduit. The AO has been influenced by the fact that several companies who had subscribed to share capital of SVP Group aggregating a sum of Rs. 85,48,50,000/- out of which shares subscribed/purchased at an aggregate value of Rs. 81,19,32,000/- had subsequently been sold/transferred to other SVP concerns/promoters for a sum of Rs. 10,38,65,200/-. Resultantly, the shareholders of SVP group had acquired shares corresponding to funds of Rs. 81,19,32,000/- infused in SVP Group of companies for an aggregate consideration of Rs. 10,38,65,200/-. Thus, acquiring hidden capital of 70,80,66,800/- without payment of corresponding taxes required to generate that wealth. This fact had led the AO to believe that all the companies that had subscribed to the share capital of core SVP Group companies and had subsequently transferred them at a fraction of the value, had acted as a conduit for routing the money generated by SVP operational companies by charging 'on money' on booking of flats. Although, the transactions at such scale definitely give rise to suspicion that money generated by SVP Group has been re-routed, the same cannot be established as a fact without other relevant evidence. Thus, the AO cannot

be faulted for proceeding on a hypothesis that the funds invested into SVP Group by the Assessee and other such companies were cash funds generated by SVP Group that had been routed through companies such as the Assessee. However, AO needed evidence to establish the hypothesis and without any material to establish the link between the source of funds received by the Assessee company (and such other companies) and the investee companies of SVP Group, it was not permissible for the AO to hold that the Assessee had acted as a conduit. There was no material before the AO which would establish that the funds received by the SVP Group were cash funds generated by the SVP Group and, therefore, the question of deleting any alleged unexplained credit on account of the funds invested with the SVP Group did not arise. In the circumstances, the only issue that could be examined by the AO and the CIT(A) was whether the Assessee had explained the sources of the credit entries in its books. It cannot be disputed that the fact; (a) that the Assessee's registered office was located at a Janta Flat occupied by the persons belonging to lower middle class; (b) that no commercial activity was found at the registered office of the company; (c) that several persons/companies which the Assessee claimed had paid funds to the Assessee for acquiring its share capital or for purchase of shares of other companies held by the Assessee were also stated to be located/residents of the same Janta Flat, it was also the registered office of the Assessee Company; (d) that a large amount of payments received by the Assessee were in cash; (e) that the Assessee did not have a bank account in two years, would certainly be relevant factors in determining whether the credit entries in the books of the Assessee were genuine and from creditworthy sources. However, it was for the fact-

finding authorities to finally examine the evidence on record and determine whether the Assessee could satisfactorily explain the credit entry in its books and could establish the genuineness of the transactions claimed to have been entered into by it. Clearly, the ITAT has not examined the facts relating to the Assessee. The ITAT had simply proceeded on the basis of the facts obtaining in the case of Pranjul Overseas (P) Ltd. on the statement of the parties that the facts of that case were similar to the facts in the case of the Assessee. However, an examination of the documents filed before us, it does not appear that the facts in the case of Pranjul Overseas (P) Ltd. were similar to that as obtaining in the present case. While it appears that in the case of Pranjul Overseas (P) Ltd., the Assessee disputed that any search took place at its registered office, the written submissions filed by the Assessee in this case, does not indicate that any such dispute was raised. Even before us it has not been contended that no search took place at the declared registered office of the Assessee.

28. In the circumstances, we find it is necessary to remand the matter to the Tribunal to examine the facts relevant to the Assessee for determining whether an addition under Section 68A of the Act was sustainable. Needless to mention that it would also be open for the ITAT to remand the matter for further enquiries if it is so considered necessary.

29. Before concluding, it would be necessary for us to observe that it is not open for the Assessee to challenge the validity of the search under Section 132 of the Act or the assumption of jurisdiction under Section 153A of the Act, as those issues had not been pressed by the Assessee before the ITAT. Mr Aggarwal's contention that since in the case of Pranjul

Overseas (P) Ltd., the ITAT had held that no addition could be made under Section 153A of the Act as no incriminating material had been found and the search was also not valid, the findings of ITAT in that case would also enure to the benefit of the Assessee. In our view, the aforesaid contentions cannot be entertained as the Assessee had, concededly, not pressed the legal issues under Section 153A of the Act which was expressly recorded by the ITAT in its order. In the circumstances, notwithstanding the ITAT's findings in the appeals relating to Pranjul Overseas (P) Ltd., it is not open for the Assessee to contend that its challenge to the maintainability of the proceedings has been upheld. On the contrary, it is now no longer open for the Assessee to even raise that challenge.

30. Question (i) is decided in favour of the Revenue and against the Assessee. These appeals are remanded to the ITAT to decide afresh after considering the facts relevant to the Assessee.

VIBHU BAKHRU, J

S. MURALIDHAR, J

DECEMBER 18, 2015
RK