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T.C.A.No.296 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2025

DELIVERED ON : 28.11.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

T.C.A.Nos.296 of 2023

The Commissioner of Income Tax,
Chennai.

.. Appellant

vs

Lalitha Jewellery Mart Pvt. Ltd,
123, Usman Road, T.Nagar,
Chennai-600 017

.. Respondent

PRAYER: Appeal filed under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, dated 27.05.2022 in ITA No.274/Chny/2018.

For Appellant : Mr.Karthik Ranganathan
Sr. Standing Counsel

For Respondent : Mr.N.Murali Kumaran
Senior Counsel
for M/s.McGAN Law Firm



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JUDGMENT

THE CHIEF JUSTICE

Questioning the legality and validity of the order dated 27.5.2022 passed by the Income Tax Appellate Tribunal [ITAT], the revenue has filed this appeal, which was admitted on the following substantial questions of law:

1. Whether on the facts and circumstances of the case and in law, the order of the Tribunal is not perverse and is justified in deleting the addition made u/s. 68 of the IT Act, without appreciating the evidence on record that the investor companies to whom shares were allotted with huge share premium, were mere shell companies who are in the activity of provision of accommodation entries as admitted by those operating the shell companies?

2. Whether on facts and circumstances of the case and in law, the Tribunal is justified in deleting the addition made u/s. 68 of the IT Act, holding that the addition was made based on presumptions and surmises, without appreciating the statement on oath recorded from Shri Shrish Chandrakanth Shah,



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u/s. 132(4) of the IT Act, constitute valid evidence and which clearly proves that accommodation entries were in fact provided to the assessee company, through the paper companies controlled by Shri Shrish Chandrakanth Shah?

2.1. A précis of the facts runs thus: The assessee company is engaged in the business of retail trading in gold jewellery and the assessee had filed its return of income for the Assessment Year 2012-2013 on 28.9.2012 declaring total income of Rs.27,59,23,680/-. On 2.9.2014, a search and seizure operation was conducted under Section 132 of the Income-tax Act, 1961 [*the Act*] and, consequent thereto, notice under Section 153A of the Act was issued to the assessee on 9.1.2015. In response, the assessee filed its return of income on 16.6.2015 declaring the total income of Rs.27,59,23,680/-, which was the same total income returned in the original return filed.

2.2. The case was taken up for scrutiny and, during the course of assessment proceedings, the Assessing Officer noticed



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that during previous years 2010-2011 to 2014-2015, the assessee company had received share application money/share premium from its Managing Director, Kiran Kumar, and various other companies. During the assessment proceedings, on the basis of the information received from the Directorate of Income Tax (Investigation), Ahmedabad, the Assessing Officer called upon the assessee to justify share capital/share application money received from certain shareholders, including companies from Kolkata.

2.3. The Assessing Officer, taking note of the search operation conducted by the Directorate of Income Tax (Investigation), Ahmedabad, in the case of Shrish Chandrakanth Shah, came to the conclusion that Shrish Chandrakanth Shah had been involved in the business of providing accommodation entries of share capital to various parties through web off companies floated by him. During investigation, statements under Section 132(4) of the Act from Shrish Chandrakantha Shah and his associates (i)Deepak Patwari; (ii)Hare Krishna Behara; (iii)Rajendra Bhubna; (iv)Mahendra Sethia;and (v)Shri Goutham Ghouse, were recorded. It is averred



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that, in response to various questions, Shrish Chandrakanth Shah admitted that he had floated various companies to provide accommodation entries of share capital to various beneficiaries through number of layers of transactions. The Assessing Officer also noted that Shrish Chandrakanth Shah had floated more than 200 companies with dummy Directors, who are either his employees or associates and, through the said companies, facilitated accommodation entries of share capital/share premium to various companies, including assessee company.

2.4. The Assessing Officer noted that the assessee company had received share capital and share application money from Speciality Paper Mills Limited; Emporis Projects Limited; Sanguine Media Limited; Swastik Securities and Finance Limited and Secundrabad Health Care Limited and these companies were managed and controlled by Shrish Chandrakanth Shah. Ergo, the Assessing Officer opined that the so-called share application money received from the above companies is accommodation entries, but not real transactions with the assessee. From the information



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gathered during the course of search, coupled with the statements recorded from Shrish Chandrakanth Shah and his associates, the Assessing Officer came to the conclusion that the assessee is one of the beneficiaries of accommodation entries of share capital/share application money received from various companies floated and controlled by Shrish Chandrakanth Shah.

2.5. Despite providing an opportunity to the Managing Director of the assessee company, Kiran Kumar, to appear either in person or with an authorised representative at the time of recording evidence from Shri Shrish Chandrakanth Shah, so as to enable him to cross-examine the witness, the Director did not avail the opportunity. The Assessing Officer arrived at a conclusion that the so-called share application money received from the companies controlled and operated by Shrish Chandrakanth Shah is nothing but accommodation entries used by the Assessee company to convert its undisclosed income in the form of share application money/share premium.



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2.6. The Assessing Officer also opined that the transaction between the assessee and the shareholders is not a genuine transaction and does not satisfy the conditions prescribed under Section 68 of the Act. Therefore, the Assessing Officer held that the amount of share application money/share premium received from companies controlled by Shrish Chandrakanth Shah is unexplained cash credit which is taxable under Section 68 of the Act and, accordingly, the Assessing Officer treated a sum of Rs.51 Crores share capital/share premium as unexplained cash credit and brought to tax under Section 68 of the Act and passed the assessment order dated 30.12.2016.

2.7. Aggrieved by the assessment order, the Assessee preferred an appeal before the Commissioner of Income-tax (Appeals) [the CIT(A)], *inter alia*, contending that the Assessing Officer has erred in making additions towards share capital received from certain companies as unexplained cash credit under Section 68 of the Act only on the basis of the statement of certain third parties without any further evidence contrary to various evidence produced



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by the assessee, including the names and addresses of persons from whom share capital is received, their PANs, financial statements, and confirmation from the parties.

2.8. Upon consideration of the rival submissions and after discussing the decisions relied on by the parties, the CIT(A) partly allowed the appeal holding that the action of the Assessing Officer in rejecting the assessee's claim and thereby making an addition of Rs.51 Crores is incorrect. While holding so, the CIT(A) also discussed the ground of disallowance of interest on excess payment of lease rental advance raised by the assessee. The CIT(A) also arrived at a finding that the action of the Assessing Officer in restricting the lease rent based on the report cannot be termed as baseless and dismissed the said ground raised by the assessee.

2.9. Aggrieved by the non-interference with the findings of the CIT(A) qua disallowance of interest on excess payment of lease rental advance, the assessee preferred an appeal in I.T.A.No.3160/Chny/2017. Being aggrieved by partly allowing the appeal of the



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assessee, the revenue preferred appeal in I.T.A.No.274/Chny/2018. Both the appeals were taken up and heard together by the ITAT and, vide common order dated 27.5.2022, the ITAT dismissed the appeal of the revenue and partly allowed the appeal filed by the assessee. Aggrieved by the dismissal of the appeal, the revenue filed this appeal.

3. There are two questions of law on which this appeal has been admitted for our consideration. To begin with, we are of the view that ideally the question of law should have been one, as the question of law requiring our consideration is whether the ITAT was justified in law in holding that the premium collected by investors purchasing shares of the assessee company were liable to be added as unexplained income under Section 68 of the Act, without appreciating/ignoring the evidence relied upon by the Assessing Officer to conclude that the transactions were apocryphal.

4.1. The submission of learned counsel for the appellant/revenue is that after search was conducted in the premises of



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another person (*Shrish Chandrakanth Shah*), the Assessing Officer, based on disclosures made therein, conducted a search in the premises of the assessee and various post-search statements of *Shrish Chandrakanth Shah* and many persons were recorded, on the basis of which the Assessing Officer came to the conclusion that the shares of very high premium amount were purchased by doubtful investors, who appear to be shell companies.

4.2. It is further submitted that the assessee failed to discharge its onus to prove that the investors were genuine and they were *bona fide* transactions of purchase of shares on the premium amount in crores of rupees and the assessee did not even cross-examine the persons whose statements were recorded. Therefore, the Assessing Officer has rightly drawn the conclusion of fact that the transactions were not genuine and the investors were all being operated through *Shrish Chandrakanth Shah* by providing accommodation entries. He added that the conclusion arrived at by the Assessing Officer was based on detailed consideration of all the statements and that the Assessing Officer did not blindly rely upon



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the statement of Shrish Chandrakanth Shah, but also found corroboration of his statement in the statements made by other persons post-search.

4.3. The next plank of argument advanced by learned counsel for the revenue is that the defence of the assessee was not found plausible and, in those circumstances, addition under Section 68 of the Act was made in the assessment carried out under Section 153A of the Act.

4.4. The further submission of learned counsel for the revenue is that the CIT(A) as well as the ITAT both upset the finding rendered by the Assessing Officer only on the basis that in relation to previous assessment year, in respect of the same assessee, similar transactions, which were made the basis to make addition under Section 68 of the Act, were deleted by holding that once all transactions are through banking system and the details of the investors are provided, irrespective of whether the same doubt is created on the genuineness of the investors, that could not be



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made the basis to make addition under Section 68 of the Act against the assessee.

4.5. It is contended that the principle on which a Division Bench of this court had answered the questions of law against the revenue and in favour of the assessee were made applicable in the present case by the CIT(A) and the Tribunal without adverting to the distinguishable features. According to learned counsel for the revenue, even though SLP was dismissed and even review was also dismissed, the decision of this court, as between the revenue and the assessee, on similar issue in the previous year does not apply in the present case, as in the present case there is abundance of credible evidence in the form of statements of various persons which was made the basis to doubt the investors.

4.6. Learned counsel for the revenue proceeded to argue that merely because the assessee had given the details of shares purchased and disclosed the names of the investors, the hands of the revenue are not tied and it is within the jurisdiction and



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competence of the Assessing Officer to delve into the genuineness of the transactions, once incriminating material is disclosed during the search.

4.7. It is further submitted that, in the present case, the law laid down by the Hon'ble Supreme Court in the case of *Principal Commissioner of Income-tax (Centra)-1 v. NRA Iron and Steel (P) Ltd*¹, would be squarely applicable and not the other decisions which were cited at the bar before the Division Bench of this court in the earlier round of litigation between the assessee and the revenue.

5.1. Per contra, learned counsel for the respondent/assessee, defending the order of the ITAT, would submit that, in fact, no question of law arises for consideration, as the CIT(A) as well as the ITAT both have minutely scrutinized the evidence on record, both oral and documentary, to arrive at a finding of fact that the case of addition under Section 68 of the Act is not made out, which can neither be said to be against the settled principles of law, nor is perverse.

¹ (2019) 103 taxmann.com 48 (SC)



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5.2. Learned counsel for the assessee submits that the Assessing Officer was swayed by certain statements recorded behind the back of the assessee and nothing more. Those were the statements recorded during search in the premises of another assessee and that could not be used against the assessee without taking into consideration all other material on record, particularly the documentary evidence. He hastened to add that the Assessing Officer did not even take into consideration the material evidence submitted by the assessee, which, on the face of it, discharges its onus that the investors were genuine. Since these illegalities in the finding recorded by the Assessing Officer were noticed by the CIT(A) and the ITAT, upon threadbare analysis of the entire material, including oral and documentary evidence, and not confined only to the statements of certain persons, rendered a finding that no case for addition was made out.

5.3. It is further submitted that the approach of the CIT(A) and the ITAT does not suffer from perversity. He added that while



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the Assessing Officer arrived at a conclusion by taking into consideration only the statements of certain persons, the orders of the CIT(A) and ITAT are based on due appreciation of both oral and documentary evidence. The appellate authorities have preferred to rely more on the documentary evidence, rather than the statements recorded by the Assessing Officer behind the back of the assessee.

5.4. The further submission of learned counsel for the assessee is that, in almost identical circumstances, in relation to the assessee's own case pertaining to previous assessment year, in *Lalitha Jewellery Mart P. Ltd v. Deputy Commissioner of Income-tax and another*², a Division Bench of this Court deleted the additions made by the revenue upon detailed consideration of the facts and law applicable, and noting that the transactions were through banking process and other material on record *prima facie* indicated that the investors were *bona fide*. The earlier judgment was based on the principle that once the assessee discloses the identity of the investors and all payments are made through banking transactions, if any doubt is raised against investors, action could be taken

² (2017) 399 ITR 425 (Mad)



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against them, but it could not be made a basis to make addition under Section 68 of the Act of an amount corresponding to the value of shares of the assessee company purchased by investor(s). He would highlight that the SLP filed against the said judgment of this court was dismissed and review petition was also dismissed.

6. We have bestowed our consideration to the respective submissions made by learned counsel for the parties and perused the records of the case.

7. If we sift through the order passed by the Assessing Officer, it is palpable that the basis for arriving at the conclusion that the transactions were sham and that the assessee failed to discharge its onus that the investors were *bona fide* was certain statements made by the persons during search. It is understood that the search operation was conducted under Section 132 of the Act in the case of Shrish Chandrakanth Shah. In those search proceedings, the statements of Shrish Chandrakanth Shah and five other persons were recorded. The finding which has been recorded



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by the Assessing Officer from paragraph 3.6 onwards reveals that after recording the statement up to 10 pm on 13.4.2013, it was resumed at 11 am on 14.4.2013. The assessee was given an opportunity to read his previous statement given on 13.4.2013 and then immediately questions were put to him. It is not a case where the copy of the statements were provided to the assessee and sufficient opportunity was granted to it. The assessee has raised the issue that proper opportunity of cross-examination was not given to it. The assessee was put certain questions and his response was taken. It appears that, in the same breath, the statements of other persons were recorded and a conclusion was drawn that the transactions were apocryphal and that Shrish Chandrakanth Shah was providing accommodation entries to many, including the assessee company, based on certain material received from the Directorate of Income-tax (Investigation), Ahmedabad.

8. The Assessing Officer, during the post-search proceedings, required the assessee to produce the details of investors, instead of satisfying himself about the genuineness of the proceedings through



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the investors, whose names were clearly disclosed by the assessee in various transactions.

Upon notice given to the assessee, a reply was submitted. The assessee's reply was noted in paragraph 3.23. However, thereafter, the Assessing Officer, without scrutinizing the veracity of the said documents which were placed on record, jumped to the conclusion that the onus to substantiate the genuineness of the share application money/share premium received lies on the assessee and it cannot be wished away by saying that it is the prerogative of the Board of Directors of the company to decide the premium, and that no document was shown as to how premium was arrived at.

The conclusion that the transactions were apocryphal was drawn only on the basis that premium was charged to save cost of fees payable on increase of authorised capital. The submission of the assessee that the entire transaction was through banking channels and the names of the investors have already been disclosed was rejected outright on the ground that attending circumstances, in fact, prove otherwise.



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The conclusion thus arrived at was only based on certain pre-recorded statements, without giving proper opportunity to the assessee and completely ignoring the documentary evidence on record. On the one hand, it is stated that the onus is on the assessee to prove that the investors were *bona fide* and, on the other hand, the material placed before the Assessing Officer by the assessee was completely ignored from consideration.

Therefore, the findings recorded and the conclusion arrived at by the Assessing Officer are one-sided and the statements recorded during search proceedings conducted earlier were taken as gospel truth.

9. On appeal filed, the CIT(A), vide his order dated 26.10.2017, re-appreciated the entire evidence on record. It was noted that the share capital had been received by the assessee through regular banking channels. As against this documentary evidence, the Assessing Officer recorded a finding that the assessee had introduced its unaccounted income in the form of share application/share premium solely based on the statement recorded



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from a third party in the search conducted.

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The CIT(A) relied on the judgment of the Division Bench of this Court in *Lalitha Jewellery Mart P. Ltd v. Deputy Commissioner of Income-tax and another* (supra), wherein the principle enunciated is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour and the money so invested in the assessee company would still be the money available and belonging to the investors.

10. On further appeal by the revenue, the ITAT also recorded a detailed finding in this regard concurring with the view taken by the CIT(A), which was based on the decision of this court in *Lalitha Jewellery Mart P. Ltd v. Deputy Commissioner of Income-tax and another* (supra) relating to almost similar transactions in the previous year, wherein the addition made under Section 68 of the Act was deleted.

The ITAT noted that the sole basis for making addition is the



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report of the investigation wing and certain statements recorded during the course of search operation in connection with another person.

The ITAT elaborately considered the legal position in the matter of addition that could be made under Section 68 of the Act, as would be clear from the following paragraphs:

"12. The provisions of section 68 of the Income Tax Act, 1961, deals with a case, where any sum is found credited in the books of an assessee maintained for any previous year and the assessee. offers no explanation about the nature and source, thereof or the explanation offered by the assessee, in the opinion of the AO is not satisfactory,, then sum found credited may be treated as income of the assessee of that previous year. A plain reading of section 68 of the Act, makes it very clear that in order to bring any credit within the ambit of section 68 of the Act, the AO has to examine three ingredients, i.e., identity, genuineness of transaction and creditworthiness of the parties. But, as per law, under section 68, it is the assessee who is required to offer an explanation about the nature and the source of credit, for which an entry is found in his books and such explanation has to be to the satisfaction of the Assessing Officer. Therefore, it is for the assessee to explain credit with necessary evidences to the satisfaction of the Assessing Officer. Such proof



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includes proof of the identity of the creditor, the capacity of such creditor to advance the money and lastly, the genuineness of the transaction. Only when the assessee has proper evidence to establish prima facie the aforesaid facts, the onus shifts on to the Department. Once the source of the credit, the genuineness of the remittance and the identity of the sender are established, it would be for the Department to show that the amount in question is not a loan but constitutes income assessable to tax. In such a case the Departmental authorities are entitled to probe further into the matter and investigate the materials available to them to come to an independent and unbiased finding as to the genuineness of the transaction though they should not reject the assessee's explanation summarily or arbitrarily or without sufficient reason. The duty of the Assessing Officer is to examine all materials carefully and objectively. Therefore, from above discussion what is clear is that as per the provisions of section 68 of the Act, both parties shall discharge their onus one after the other.

13. The question whether such onus has been duly discharged by the assessee or has been shifted to the Revenue can only be determined after the evaluation of all the surrounding circumstances. There cannot be one general or universal proposition of law which could be the guiding yardstick in the matter. Each case has got to be decided on the facts and circumstances of that case. In



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holding a particular receipt as income from undisclosed source, the fate of the assessee cannot be decided by the Revenue on the basis of surmises, suspicions or probabilities. Where the assessee furnished the names and addresses and IT file numbers of the creditor and filed a confirmatory letter from him, it is for the Assessing Officer to prove that the cash credit is not genuine. He cannot arbitrarily reject the evidence on the ground that the creditor confessed that he had not invested in any firm without issuing summons under section 131 or taking any other steps in that regard. The, AO while deciding the issue, shall consider evidences on record placed by the assessee and also must consider surrounding circumstances, but he cannot simply reject evidences on summary basis on the basis of surrounding circumstances. As per the well settled principles of law by the decision of various courts, the initial onus is on the assessee. Once, assessee discharges Its onus, and then onus shifts to the Assessing Officer. Therefore, in our considered view, the assessee must first file necessary evidences to prove identity, genuineness of transaction and credit worthiness of the parties. The question of proving identity does not mean, just filing certain documentary evidences, but it is establishing real identity of the creditor. Similarly. proving genuineness of transaction does not mean payment/receipt by cheque, but it is establishing real intention of the parties to enter into transactions. Likewise, real meaning of



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creditworthiness of creditor means, their capacity to establish source for investments. This aspect has been explained in judgments of various courts, as per which, the courts had interpreted provisions of section 68 of the Act, and its implications on the assessee as well as the Assessing . Officer. The Hon'ble Supreme court in the case of CIT v. Lovely Exports P Ltd (SC) - 216 CTR 195, has very clearly held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income u/s.68 of the assessee company. Therefore, from the above discussion what is clear is that the assessee shall first discharge its onus by filing necessary evidences and once, the assessee files all details, then it is for the AO to disprove what is claimed is not real and sum credited in the books is income from undisclosed sources of the assessee."

We find that the principles of law which were discussed by the ITAT for being applied to the facts of the case are those which were laid down by the Supreme Court in the case of *CIT v. Lovely Exports P. Ltd*³. It was correctly recorded by the ITAT that, as per

³ 216 CTR 195



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the well settled principles of law, the initial onus is on the assessee and once the assessee discharges its onus, it shifts to the Assessing Officer.

11. Having discussed the legal position, the ITAT then proceeded to examine the facts of the case. The finding of fact recorded by the ITAT that the evidence led by the assessee satisfied the conditions prescribed under Section 68 of the Act was on correct application of law. The relevant observation is reproduced hereunder:

"14. In light of above settled legal position, if we examine facts of present case, there is no doubt, the assessee has discharged burden cast upon it under section 68 of the Income-tax Act, 1961 in respect of share capital received from share capital subscribers. The AO has not disputed the fact that the assessee has furnished various evidences to prove identity of the subscribers. The assessee has filed name and address of subscribers, their PAN numbers, details of amount received and allotment made to them, return of allotment filed with Registrar of companies, company master data as available on website of Ministry of Corporate Affairs Certification of Incorporation along with Memorandum and Articles of



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Association, ITR acknowledgement, audited financial statements, copies of relevant bank statements and confirmation letters from share applicants along with source of funds for investment in assessee's company. The evidences filed by the assessee clearly satisfy the condition prescribed u/s.68 of the Act. The assessee not only proved identity, but also established credit worthiness of the parties which is evident from the fact that all subscriber companies financial statement shows source of income to explain Investments made in Assessee Company which is further supported from the fact that all transfer of funds was through proper bank accounts. It is a well established legal principle of law by the decision of various courts including the Hon'ble Supreme Court in the case of CIT vs. Stellar Investments Pvt. Ltd., supra, where it was clearly held that once alleged bogus shareholders details are provided to the AO then the AO is free to proceed to reopen the assessments of alleged bogus shareholders but sum received by the assessee cannot be treated as unexplained credit u/s.68 of the Act. In this case, although the assessee has filed various details, but the AO disregarded all evidences filed by the assessee and has made additions solely on the basis of investigation report without confronting those reports and statements recorded from those individuals to the assessee for rebuttal."



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12. The ITAT, in particular, noted the fallacy in the approach of the Assessing Officer as below:

"15. The sole basis for the AO to draw an adverse inference against assessee is investigation report of Income Tax Department Ahmadabad and statements of certain persons recorded at the time of investigation. First up all, the AO did not refer investigation report and its contents in his assessment order and further did not share copy of said report to the assessee. Further, even in statement of certain parties, no direct or indirect reference to the assessee. Nowhere the parties stated that the assessee is one of the beneficiaries of alleged transactions. In fact, the director of Assessee Company denied meeting any of the persons from whom statements were taken by the department. If you go through statement relied upon by the AO, except a general statement of modus operandi of entry providers, there is no direct or indirect reference to Assessee Company in any of statements. From the above, it is clear that the AO totally ignored genuine documents produced before him and passed the Assessment Order on a sweeping statement without any material evidence or fact on record. The AO has merely stated modus operandi of how, the transaction took place without considering the facts of the present case. He had instead passed a. general statement on the lines of suspicion and surmises without any vital material evidence against the



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Assessee. From the above, it is very clear that the observations of the AO in his assessment order on the basis of report of investigation wing, Kolkata is a general observation of modus operandi of certain parties who are involved in alleged activity of entry providing, but it cannot be a conclusive evidence to draw an adverse inference against the assessee of having benefited from so called alleged hawala activity. No doubt, an alleged scam may have taken place, but, it has to be seen whether the assessee is part of an alleged activity and he had any direct or indirect role in alleged scam. Unless, evidences in the possession of the AO directly or indirectly linked to the assessee, it is difficult to implicate the assessee in the alleged scam. This is because, suspicion however strong, cannot take place of evidence as held by the Hon'ble Supreme Court in the case of Umacharan Shaw & Bros vs. CIT (1959) 37 ITR 271 (SC). In our considered view, on the basis suspicion, modus operandi, preponderance of human probabilities, the claim of assessee cannot be discarded, unless specific evidences are brought on record to controvert voluminous evidences filed by the assessee. This view is fortified by the decision of Hon'ble Supreme Court in the case of Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (SC) where it was held that no addition can be made on the basis of suspicion and conjectures. In the case of CIT VS. Daulat Ram Rawatmull (1973) 87 ITR 349 (SC) it was held that the onus to prove that apparent is not real



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is on the person who claims it to be so.

16. ... We have gone through reasons given by the AO in light of various evidences filed by the assessee and we ourselves do not agree with the findings of the AO for simple reason that although, statements recorded from Shri Shirish Chandrakant Shah and his associates throw some light on general modus operandi of entry provides, but nothing is coming out about assessee from those statements recorded from them. Further, assessee has filed complete set of documents, including, name and address of the parties. Once, assessee filed complete documents, it is for the AO to carry out further investigation by exercising all possible options available to him, but merely on the basis of their confession, the assessee cannot be Implicated to alleged scam of hawala business. There may be various reasons for Shri SCS and his associates to confess before the Department about their activity, however unless evidences found during the course of search indicates involvements of the assessee in to alleged scam, no action can be taken on the basis of statements of those persons alone. The shareholder companies are very much available in the given address. They had filed their annul accounts with Registrar of Companies every year. As per ROC website, the companies are in active status. Further, the assessee done what best it could have done and filed, whatever information available with it, in order to satisfy the AO.



Therefore, we are of the considered view that when assessee has filed complete details to prove identity, genuineness of transactions and creditworthiness of the parties, then there is no reason for the AO to come to the conclusion that share capital and share premium received from certain companies as unexplained cash credit."

13. The ITAT found that the findings recorded by the Assessing Officer were completely based on certain statements recorded under Section 132 of the Act and, at the same time, completely ignoring from consideration the most vital documents in the form of evidence led by assessee to discharge its onus. In this regard, the findings recorded are reproduced herein below:

"17. In this case, there is no dispute with regard to fact that the assessee has filed all evidences, including confirmation letters from the parties to prove identity of the shareholders. The assessee had also filed financial statements and bank statements to prove genuineness of transactions, as per which transactions between the assessee and investor companies are routed through proper banking channels. The assessee had also proved creditworthiness of shareholders by filing their income tax returns filed for the relevant assessment years, as per which all the parties are having sufficient source of income in the form of income declared in the return of



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income or source in the form of loans & advances. In fact, the Assessing Officer never, disputed fact that the assessee has filed necessary evidences, but he has ignored all the evidences filed by the assessee only on the basis of statement recorded from Mr. Shrish Chandrakanth Shah and came to the conclusion that transactions of share capital / share application money is nothing but undisclosed income of the assessee which has been routed through share application money from web off companies floated by Mr.Shrish Chandrakanth Shah through multiple layers. In our considered view, the conclusion drawn by the Assessing Officer on the basis of statement of some persons is completely on the basis of suspicion and surmises without there being any further evidences to support his findings. Further, we have gone through statements recorded from some persons, which are part of assessment order and we find that nowhere persons directly alleged that the assessee is Involved in the activity of taking accommodation entries of share capital / share application money from those companies. In fact, the assessee has proved with necessary evidence that an allegation of the Assessing Officer is wrong and transaction between the assessee and investor companies are genuine business transactions. Therefore, we are of the considered view that the Assessing Officer has completely erred in making additions towards share capital / share application money received from certain companies as unexplained cash credit which is taxable



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u/s.68 of the Income Tax Act, 1961."

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14. The ITAT also relied upon the judgment of the jurisdictional High Court in assessee's own case for the assessment year 2007-2008 and many other judgments which show that while recording findings, the ITAT adopted correct approach under the law. The finding of the ITAT in this regard is as below:

"18. The assessee has relied upon plethora of decisions in support of its arguments, including decision of the Hon'ble jurisdictional High Court in assessee's own case for Asst. Year 2007-08. The Hon'ble Jurisdictional High Court of Madras in the assessee's own case for assessment year 2007-08 reported in (2017) 399 ITR 425 (Mad) had considered an identical issue in light of additions made by the Assessing Officer towards share application money u/s.68 of the Income Tax Act, 1961. The Hon'ble High Court, after considering relevant facts and also by following decision of the Hon'ble Supreme Court in the case of CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 158 ITR 78 held that when the assessee company had completely explained source of investments received by it by way of share application money, it had also disclosed identity of such investors and all payments had been received through banking channels and amount of share application money could not be treated as



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assessee's undisclosed income u/s.68 of the Income Tax Act, 1961."

15. We may also profitably refer to herein the decision of this court in *Lalitha Jewellery Mart P. Ltd v. Deputy Commissioner of Income-tax and another* (supra), as between the assessee and the revenue in respect of the assessment year 2007-2008, where identical issue as to whether a case for addition under Section 68 of the Act was made out cropped up for consideration. It was held thus:

"However, the main theme, upon which, the Assessing Officer as well as the Tribunal proceeded to discredit the investors of the assessee is completely erroneous. They are both looking for proof beyond doubt. They are proceeding on an element of suspicion that the amounts of investments are really those of the assessee, which have been ploughed back by the assessee, whereas the settled principle of law is that any amount of suspicion, however strong it might be as well, is no substitute for proof. Suspicion is not sufficient enough to lead to a conclusion that the investments received by the assessee-company are all manipulated receipts and on that basis, recorded a finding that the explanation of the assessee is not satisfactory.



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On the other hand, the legal principle enunciated by the Supreme Court, as noticed supra by us, is that so long as the proof and identity of the investor and the payment received from him is through a doubtless channel like that of a banking channel, the receipt in the hands of the assessee towards share capital or share premium does not change its colour. The money so invested in the assessee-company would still be the money available and belonging to the investors. The consistent principle followed is that the investors' sources and creditworthiness cannot be explained by the assessee. If the Department has a doubt about the genuineness of the investors capacity, it is open to it to proceed against those investors. Without taking such a course of action, the Assessing Officer and the Tribunal are proceeding on conjectures that the assessee has, in fact, ploughed back the money. The very approach of the Assessing Officer and the Tribunal are completely opposed to settled legal principles enunciated and they have arrived at conclusions contrary to the legal principles on the subject. Further, they are finding fault with the assessee for the alleged failure of its investors in proving beyond doubt that they have the capacity to invest at the moment they did in the assessee-company. That is clearly a perverse view, as the Assessing Officer is not expected to perform a near impossibility. The assessee cannot call upon its investors to disclose all such business



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transactions they carried on in the immediate past and as to how much they made from their respective business enterprises. The assessee cannot also call upon its investors to prove their good business sense in investing in the assessee-company, as such investors cannot gain any controlling stake."

16. Ergo, it cannot be said that the order of the ITAT is perverse and without appreciating the evidence on record. The present is a case where all the three authorities, viz., the Assessing Officer, CIT(A) and the ITAT, have considered the material on record and recorded their findings, which are essentially findings of fact. The ITAT has recorded the finding of fact after detailed consideration of not only the material on record, but also by applying the correct principles of law. The fundamental flaw in the order of the Assessing Officer is that it was based on certain statements, ignoring the documentary evidence led by the assessee. The Assessing Officer is required to record his finding after taking into consideration all the evidence on record. Undue reliance placed on statements recorded during search in the premises of another assessee and ignoring the evidence produced



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by the assessee was rightly interfered with.

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17. The CIT(A) reversed the finding recorded by the Assessing Officer mainly on the basis that the identical case was decided against the revenue and in favour of the assessee in the previous years. The ITAT gave a detailed finding. Therefore, the findings are essentially findings of fact based on application of the correct principles of law and upon consideration of all relevant material on record, both oral and documentary.

18. For the foregoing reasons, the questions of law are decided in favour of the assessee and against the revenue.

The appeal is dismissed. There shall be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (SUNDER MOHAN,J)
28.11.2025

Index : Yes
Neutral Citation : Yes
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To

1. The Assistant Registrar
Income Tax Appellate Tribunal
Chennai.
2. The Commissioner of Income Tax (Appeals)-18,
Chennai.
3. The Assistant Commissioner of Income Tax,
Central Circle-1(4) (i/c), Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

(sasi)

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28.11.2025