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

+ ITA 530/2023

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -

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.....Appellant

Through: Mr. Ruchir Bhatia, SSC.

versus

JAGUAR BUILDCON PVT. LTD.

.....Respondent

Through: Mr. Shubham Gupta and Ms.
Shalini Upadhyay, Advs.

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Shalini Upadhyay, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

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ORDER

03.03.2025

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1. The Principal Commissioner has approached this Court questioning the correctness of the judgment handed down by the **Income Tax Appellate Tribunal**¹ on 31 August 2021 for **Assessment Years**² 2011-12 and 2012-13.

¹ Tribunal

² AYs



2. The Tribunal has interfered with the view taken by the **Assessing Officer**³ who had formed the opinion that the investments and infusion of funds as made by the assessee had not satisfied the tests of Section 68 of the **Income Tax Act, 1961**⁴. It is this principal finding as returned and rendered by the AO which has come to be set aside by the Tribunal.

3. We had, in terms of our order dated 09 July 2024, admitted this appeal on the following question of law:

“Whether the findings rendered by the Tribunal in respect of deletion or addition under Section 68 of the Income Tax Act, 1961 are not rendered perverse in light of the evidence which had been relied upon by the AO?”

4. Insofar as the issue of addition under Section 68 of the Act is concerned, the Tribunal has observed as follows:

“21. Thus, the reason assigned by the Assessing Officer does not have much credence to dislodge the evidences filed by these parties to corroborate the assessee’s explanation and the documents submitted by the assessee to prove the nature and source of credit. Regarding various observations and allegation of the Assessing Officer, the Id. Counsel has given a very detail rebuttal based on documents on record as incorporated above in the foregoing paragraphs. From bare perusal of the explanation duly supported by the documents, we find that whatever so called inquiry which was conducted by him has not lead to any iota of adverse material so as to hold that the transaction is not genuine. The Assessing Officer required the Directors/the representatives of the three companies which were produced before him, the same were duly complied with and not only they were produced but have also confirmed the transaction and given the required documents on the subsequent dates. Once these parties have directly confirmed the transaction with all the documents and the authorized representatives have duly appeared before the Assessing Officer, then without any substantial ground he has disbelieved on a very technical and whimsical reasons. Here in this case, the investee companies are based outside Delhi and if he was not satisfied with the authorized representative sent by them, then at least he could not have issued a commission u/s.133(1)(d) to be examined by the

³ AO

⁴ Act



local Income tax authority. Further, these authorized representative have adduced the document but nowhere Assessing Officer has pointed out what was lacking in such documents which was already submitted by these companies in reply to the notice u/s. 133(6) and what extra he wanted to examine, has not been mentioned.

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23. Another allegation by the Assessing Officer was that these companies have received funds from other companies before issuance of cheques through the assessee company and also tried to analyze fund trail to assume that assessee-company had ploughed back its own money in the books of account in the garb of share application money. The said allegation itself is based on erroneous assumption of facts which has been demonstrated by the Id. counsel, from the details of funds chart as reproduced above, specifically in the case of payment made by M/s. Godsons Pvt. Ltd. to the assessee. The chart clearly indicates that against the payment of Rs.42.2 crore to the assessee on 14.07.2010, the company was having funds of Rs.12.25 crore in bank account and the balance amount was received from various parties between 11.06.2010 to 12.07.2010. Further as per the bank statement as on 01.07.2010 there was a bank balance of Rs. 21.01 crore in the bank account of M/s. Godsons and M/s. Biotech Ltd. against which the funds were transferred to the assessee-company on 14.07.2010. Thus, this allegation of the Assessing Officer also does not have any basis. Similarly in the case of funds received from M/s. Topgrain Mercantile Company Pvt. Ltd. on 10.05.2010 also it was duly shown that this company has received funds from other parties prior to date. Nowhere in the so called alleged cash trail there is an element of cash or anything has been brought on record that any of the trails, assessee's undisclosed cash or income has been routed. In fact, none of these bank account requisitioning by the Assessing Officer u/s. 133(6), there was any cash deposits.

24. In so far as the source of the fund and the creditworthiness of the parties, it is seen from the chart reproduced hereinabove that these parties had sufficient own funds to invest and the share of assessee-company duly reflected in their balance sheet as on 31.03.2011.

25. Thus, on these facts and circumstances of the case and material on record, it cannot be held that the onus cast upon the assessee to prove the identity, creditworthiness of the investee parties or genuineness of the transaction has not been explained properly nor there is any adverse finding or material gathered from any inquiry that it is a bogus transaction or kind of accommodation entry. Thus, we do not find any reason to tinker or deviate from the finding of



the Id. CIT (A) while deleting the addition. Accordingly, the order of the Id. CIT (A) is confirmed and the appeal filed by the Revenue is dismissed.”

5. Proceeding then to the facts as they obtained in AY 2012-13, and observing that the findings in that regard would apply *mutatis mutandis* to AY 2011-12, the Tribunal held:

“26. In so far as the appeal for the Assessment Year 2012-13 is concerned, the facts are exactly the same, as here in this year assessee has received share application money of Rs. 23 crore. Out of Rs.23 crores, Rs. 4.50 crore was received from M/s. TVH Trading Company and Rs. 18.50 crore from Vishaka Tech Pvt. Ltd. One additional fact in this year is that, shares could not be allotted to these parties and the share application money has been treated as advance received against the property for which the assessee-company has filed confirmation from the said parties to this effect. Here, in this year also, all the parties have confirmed and given the details to the Assessing Officer in response to the notice u/s. 133(6) and Assessing Officer has simply relied upon the finding of the earlier year. Additionally in this year, Director of M/s. TVH Trading Company Pvt. Ltd. had personally appeared before the Assessing Officer in relation to investment in Assessment Year 2011-12 also, who has confirmed the transaction not only for Assessment Year 2011-12 but also for Assessment Year 2012-13. Our finding given in the appeal for Assessment Year 2011-12 will apply *mutatis mutandis* in this year also as a finding of the Id. Assessing Officer and the Id. CIT (A) is exactly the same. Accordingly, appeal for the Assessment Year 2012-13 is also dismissed.”

6. From the paragraphs extracted above, we find that the Tribunal also alludes to a chart on the basis of which it came to form an opinion that the issue of creditworthiness and genuineness had been duly established. That chart appears in paragraph 13 of its order and is extracted hereinbelow:

	TVH Trading Co P Ltd	Topgrain Mercantile P Ltd.	Godsind Biotech Ltd.
Share Capital	1,95,12,000	189,20,000	97,24,000

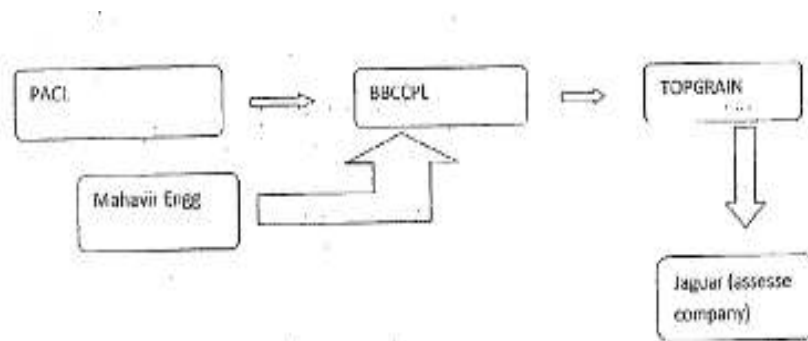


Reserve & Surplus	46,58,88,000	45,16,80,000	45,19,76,000
Total Own Funds	48,54,00,000	47,06,00,000	46,17,00,000
Investment in share of assessee Company	26,40,00,000	35,50,00,000	41,90,00,000

7. However, in the present case, we are faced with a copious exercise that was undertaken by the AO and who had come to record the following findings:

“TOPGRAIN MERCANTILE PVT LTD(Rs. 35.50 crores)

The assessee company has shown receipt of Rs. 35.50 crores from M/s Topgrain Mercantile Pvt Ltd. As mentioned above, on the basis of bank statement submitted by the assessee, enquiries were conducted in banks. On verification, it was found that actually, the amount has been directly received by the assessee company from the account of M/s Bridge and Building Construction Co. Pvt Ltd. (BBCCPL). On verification of bank statement of BBCCPL, it was noticed that just before it made any payment to the assessee company, it has received funds from M/s PACL, a Delhi based company. The pictorial diagram of the funds movements look like as under:



The said company has also received funds from M/s Passionate Agency, Radhika Investment and Virat Solution.

GODSEND BIOTECH LTD(Rs. 42.35 crores):

The assessee company has shown receipt of Rs. 42.35 crores from M/s Godsend Biotech Limited. On verification of bank statement of the said company, it was noticed that the said company just before making any payment to the assessee company has received



funds from Oshin Investments And Finance (P) Ltd., Novelty Traders Ltd., Sidh Housing Development Company Ltd., Albatross, Stocknet International ltd., Ispat Sheet Ltd., etc. All these companies have in turn received funds from other companies namely M/s SKS Corporation, M/s Mahadev Securities etc.

It is noticed that there are several cash deposits made in the Dhan Laxmi bank accounts of M/s Shubham Supply Agency, M/s Global Infotech and M/s Arihant Tradecom which are third layer companies/firm of funds movement trail.

6. Further, details of the income of certain companies who are a part of these cash trail could be obtained either through net or through the submissions directly sent by these companies/collected through notice issued u/s 133(6). From these, the details of income/profit and loss shown by these companies are shown hereunder:

S. No	Name of the company	Returned income/ profit/loss shown in audited P/L A/c	
		2010-11	2011-12
	M/s TVH Trading Company (P) Ltd	675	755
	M/s Topgrain Mercantile (P) Ltd	2825	2793
	M/s Godsend Biotech Limited	26423	(-) 478551

7. In respect of Topgrain Mercantile P Ltd, it is noticed that the money has been directly transferred to the assessee's account from BBCCPL, Kolkata on behalf of Topgrain Mercantile P Ltd. Therefore, as mentioned earlier in this order, a letter was written to the investigation wing of the department of Kolkata to enquire into the details of business activities of BBCCPL. Inquires conducted by the DDIT, Unit-III(2), Kolkata revealed that no such company existed at their given official addresses and prima facie it appeared that the same is a mere paper entity.

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8.5. Party Trail and money trail:

The 3 companies which have contributed to the share capital of the assessee have in turn received monies from the earlier mentioned 3rd and 4th layer companies/firms. The details of the companies/firms which have contributed towards financing of 1st /2nd layer were analysed. It has been found their places of operation are confined to more or less few addresses i.e. Vivekanand Nagar, Regent Park, West Bengal, Kolkata-700040; 164 Rabindra Sarani, Kolkata-70007, West Bengal, 242/1, Netaji



Subhash Road, 1st Floor Flat No. 1 02, Howrah, West Bengal-711101; Raj Yog Apartments Flat No. 3B Ground Floor, 60 Feet Road, Bhayander West, Maharashtra-421101 from where all these companies are being run.

8.6. As has been mentioned earlier, to prove and substantiate the share capital assessee was asked, on 20.02.2014 to produce the controlling persons of the companies which had applied for allotment of shares in the closely held assessee company to prove the genuineness of transactions. On 21/03/2014, the AR of the assessee attended and produced Shri Govind Agrawal, ex-director & AR of M/s Topgrain Mercantile P Ltd, TVH Trading Co P Ltd, TVH Trading Co P Ltd and also produced Shri Pravin Nayak, Advocate and AR of Godsend Biotech Ltd. for personal examination. Though the assessee produced the persons who were not directors, for the sake of natural justice, their statement was recorded. When requested for letter of authority, they replied that they were not holding the same at that time. They were asked to give details of share holding pattern, sources of investment made by above mentioned companies, in response to which they submitted that they may be given more time preferably 3 weeks, as the details are maintained at Kolkata and Mumbai and they need time to collect the same. They were then intimated that as the assessment in this case was getting barred by limitation on 31/03/2014, no further time can be granted. However, they were asked if they would be able to submit the same by next day, in response to which they replied in negative. However, the above mentioned persons submitted the letter of authorities in the evening. On perusal of the letter of authorities submitted by them, it is seen that these are a simple paper having no letter head of the authorising companies. Only a seal of director is there. There was also no mention of place in some of the letter authority.

8.7 From the above mentioned facts, it becomes evident that the assessee is not in a position to explain satisfactorily about the source of credits appearing in its books in the form of share capital and premium. Even though, the assessee was specifically requested to produce the directors of investor companies with all the relevant documents/supporting evidences to establish the identity, creditworthiness and genuineness of transactions, almost one month ago, it produced a person claiming to be ex-director./ ARs who were not holding any valid letter of authorities, had no other documents/details in respect of the transactions made with the assessee company.

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10. During the assessment proceeding the money in the garb of share contribution passed to following companies to reach to



beneficiary company:

Assessee Company

S.No.	Name of the company
1.	Jaguar Buildcon Private Limited

Entry companies contributed to share capital
(Second layer companies)

S.No.	Name of the Parties
1	TVH Trading CO P Ltd
2	Godsend Biotech Limited
3	Topgrain Mercentile (P) Ltd

Entry companies contributed fund to above companies
(Third Layer companies)

S.No.	List of the Companies
1	Panchwati Commotrade (P) Ltd
2	Helpful Distributor (P) Ltd
3	Powerful merchandise (P) ltd
4	Bridge & Building Construction Company (P) Ltd
5	Passionate Agency
6	Radhika Investment
7	Gromore Fund Investment company
8	Artelligence Bio-innovations Ltd.
9	Gyaneshwar Trading and Finance Company
10	Sidh Housing development Company ltd.
11	Albatross Share
12	One2E Solution
13	Novelty Traders Ltd.
14	Stocknet international Ltd.



15	Oshin Investment and finance corporation ltd.
16	Ispat Sheets Ltd.
17	Virat Solutions
18	Panchwati Commotrade (P) Ltd

Further the money movement has been examined. The assessee received monies from Layer-2 companies who are proved to be paper entities who in turn received monies from other paper entities grouped as Layer-3

The date and the amount of monies received is enquired through banking channels.

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The money/fund trail proved how the amounts were transferred from one entity to other immediately on the same or nearer dates.”

8. It was on the basis of the aforesaid findings of fact, that the AO ultimately came to the following conclusion:

“11.2. Thus, the assessee has failed to discharge its liability to prove that the amount received is genuine and failed to prove the onus of capital receipt. Not only that the department has fairly prove with their party evidences, through bank statements, by establishing the trails that the amount is undisclosed in the hands of the assessee.”

9. As is manifest from the above, the Tribunal has clearly failed to either engage or deal with the aforesaid conclusions on facts that were drawn by the AO. As we view paragraphs 21 to 26 of the order impugned before us, it proceeds merely on the *ipse dixit* and general observations to the effect that there was no ‘iota of adverse material’ to lead one to conclude that the transactions were not genuine. The entire discussion is centred upon the assessee having been able to establish the source of funds. The Tribunal has clearly failed to deal with the material which had been gathered and taken into consideration by the AO while dealing with the issue of genuineness and credit worthiness. The Tribunal has completely ignored this vital



aspect and which was imperative in order for it to be held that the assessee had discharged the onus placed by Section 68 of the Act.

10. The Tribunal also appears to have based its conclusion proceeding on the premise that the AO had the benefit of the statements made by the Directors/representatives of the three companies and who had also confirmed the transactions having submitted relevant documents while observing that the AO disbelieved the genuineness of the transactions on ‘very technical and whimsical reasons’. This too clearly appears to be a finding which is wholly perverse when viewed in the backdrop of what the AO had ultimately come to record, namely, that of some members of the erstwhile management having come forward and who were not even authorised.

11. The law that governs addition being made under Section 68 is no longer *res integra*. We would deem it apposite to notice the following principles which had come to be laid down by the Supreme Court in **Commissioner of Income Tax v. NRA Iron and Steel (P) Ltd.**⁵ and where it had held as follows:

“9.1. The issue which arises for determination is whether the respondent assessee had discharged the primary onus to establish the genuineness of the transaction required under Section 68 of the said Act.

9.2. Section 68 of the IT Act (prior to the Finance Act, 2012) read as follows:

“68. **Cash credits.**—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 him is not, in the opinion of the assessing officer, satisfactory, the

⁵ 2019 SCC OnLine SC 311



sum so credited may be charged to income tax as the income of the assessee of that previous year.”

(emphasis supplied)

The use of the words “any sum found credited in the books” in Section 68 of the Act indicates that the section is widely worded, and includes investments made by the introduction of share capital or share premium.

9.3. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction, and creditworthiness of the investors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the assessing officer [*CIT v. Precision Finance (P) Ltd.*, 1993 SCC OnLine Cal 384 : (1994) 208 ITR 465] :

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

This Court in the landmark case of *Kale Khan Mohd. Hanif v. CIT* [*Kale Khan Mohd. Hanif v. CIT*, (1963) 50 ITR 1] and, *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938] laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the Revenue to show that the income is from any particular source.

9.4. With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge.

9.5. The Delhi High Court in *CIT v. Oasis Hospitalities (P) Ltd.* [*CIT v. Oasis Hospitalities (P) Ltd.*, 2011 SCC OnLine Del 506 : (2011) 333 ITR 119] , held that: (SCC OnLine Del para 43)



“43. ... the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise....”

9.6. It has been held that merely proving the identity of the investors does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established. In *Shankar Ghosh v. CIT* [*Shankar Ghosh v. CIT*, 1985 Tax Pub (DT) 1012 : (1985) 13 ITD 440 : (1985) 23 TTJ 20], the assessee failed to prove the financial capacity of the person from whom he had allegedly taken the loan. The loan amount was rightly held to be the assessee's own undisclosed income.

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12. On the issue of unexplained credit entries/share capital, we have examined the following judgments:

12.1. In *Sumati Dayal v. CIT* [*Sumati Dayal v. CIT*, 1995 Supp (2) SCC 453 : (1995) 214 ITR 801] this Court held that: (SCC p. 456, para 4)

“4. ... if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the assessing officer, not satisfactory, there is prima facie evidence against the assessee viz. the receipt of money, and if he fails to rebut the same, the said evidence being un rebutted can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.”

12.2. In *CIT v. P. Mohanakala* [*CIT v. P. Mohanakala*, (2007) 6 SCC 21 : (2007) 291 ITR 278] this Court held that: (SCC p. 28, paras 16, 19 & 25 : ITR pp. 278-79)

A bare reading of Section 68 of the Income tax Act, 1961, suggests that (i) there has to be credit of amounts in the books maintained by the assessee; (ii) such credit has to be a sum of money during the previous year; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books or (b) the explanation offered by the assessee, in the opinion of the assessing officer, is not satisfactory. It is only then that the



sum so credited may be charged to income tax as the income of the assessee of that previous year. *The expression “the assessee offers no explanation” means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. ...*

The burden is on the assessee to take the plea that, even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature.

(emphasis supplied)

12.3. The Delhi High Court in a recent judgment delivered in *CIT v. NDR Promoters (P) Ltd.* [*CIT v. NDR Promoters (P) Ltd.*, 2019 SCC OnLine Del 6599 : (2019) 410 ITR 379] upheld the additions made by the assessing officer on account of introducing bogus share capital into the assessee company on the facts of the case.

12.4. The Courts have held that in the case of cash credit entries, it is necessary for the assessee to prove not only the identity of the creditors, but also the capacity of the creditors to advance money, and establish the genuineness of the transactions. The initial onus of proof lies on the assessee. This Court in *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938], held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the additions back into the income of the assessee.

12.5. The Guwahati High Court in *Nemi Chand Kothari v. CIT* [*Nemi Chand Kothari v. CIT*, 2003 SCC OnLine Gau 248 : (2003) 264 ITR 254] held that merely because a transaction takes place by cheque is not sufficient to discharge the burden. The assessee has to prove the identity of the creditors and genuineness of the transaction: (SCC OnLine Gau para 19)

It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has *proved the identity of his creditors*, the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors vis-à-vis the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the Revenue to show that though covered by cheques, the amounts in



question, actually belonged to, or was owned by the assessee himself....

(emphasis supplied)

12.6. In a recent judgment the Delhi High Court [*CIT v. N.R. Portfolio (P) Ltd.*, 2013 SCC OnLine Del 6466 : (2014) 42 Taxman.com 339 : 222 Taxman 157] held that the creditworthiness or genuineness of a transaction regarding share application money depends on whether the two parties are related or known to each other, or mode by which parties approached each other, whether the transaction is entered into through written documentation to protect investment, whether the investor was an angel investor, the quantum of money invested, creditworthiness of the recipient, object and purpose for which payment/investment was made, etc. The incorporation of a company, and payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus.

12.7. Other cases where the issue of share application money received by an assessee was examined in the context of Section 68 are *CIT v. Divine Leasing & Finance Ltd.* [*CIT v. Divine Leasing & Finance Ltd.*, 2006 SCC OnLine Del 1624 : (2008) 299 ITR 268 : (2007) 158 Taxman 440] and *CIT v. Value Capital Services (P) Ltd.* [*CIT v. Value Capital Services (P) Ltd.*, 2008 SCC OnLine Del 1474 : (2008) 307 ITR 334]

13. The principles which emerge where sums of money are credited as share capital/premium are:

13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

13.2. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

12. As is manifest from the aforesaid principles which came to be



elucidated, the mere identity of the investor or a creditor does not result in the onus of proof being discharged. The assessee is additionally obliged to establish the creditworthiness and genuineness of the transaction and thus prove that the entities making the payment had the capacity and the means. The Tribunal has thus, in our considered opinion, clearly failed to bear the aforesaid aspects in consideration. We, consequently, find ourselves unable to sustain the order impugned.

13. We would thus answer the question posited in the affirmative and in favour of the appellant.

14. We consequently allow the appeal and set aside the order of the Tribunal impugned herein. The order of the AO shall, in consequence, stand restored.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 03, 2025/nd