

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No.4980/Del/2013
Assessment Year : 2008-09

Assistant Commissioner of
Income Tax,
Central Circle-17,
New Delhi.
(Appellant)

Vs. M/s Bahubali Dyes Limited,
B-82, Defence Colony,
New Delhi.
PAN : AAACB0751G.
(Respondent)

CROSS OBJECTION No.1/Del/2014
Assessment Year : 2008-09

M/s Bahubali Dyes Limited,
B-82, Defence Colony,
New Delhi.
PAN : AAACB0751G.
(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-17,
New Delhi.
(Respondent)

Revenue by : Smt. Anuradha Misra, CIT-DR.
Appellant by : Shri Ved Jain, Smt. Rano Jain and
Shri Venkatesh, Chartered
Accountants.

ORDER

PER G.D. AGRAWAL, VP :

ITA No.4980/Del/2013 :-

This appeal by the Revenue is directed against the order of learned CIT(A)-III, New Delhi dated 24th June, 2013 for the AY 2008-09.

2. The Revenue has raised the following grounds of appeal:-

"1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.2.50 cr. made by the Assessing Officer on account of unexplained credit.

2. *That the Commissioner of Income Tax (Appeals) erred in admitting additional evidence.*

3. (a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*

(b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

3. At the time of hearing before us, it is submitted by the learned CIT-DR that during the accounting year relevant to assessment year under consideration, the assessee had received ₹2.50 crores from the following six companies in the form of share capital and share premium :-

Sl.No.	Name of the company	Amount-Rs.
1.	Beetal Plantation P.Ltd.	30,00,000
2.	M/s Integrator Consultants P.Ltd.	50,00,000
3.	M/s Pargati Portfolio Foods P.Ltd.	70,00,000
4.	M/s Pragati Foods P.Ltd.	30,00,000
5.	M/s Tone Financial Services P.Ltd.	50,00,000
6.	M/s Unit Commercial P.Ltd.	20,00,000
	Total	2,50,00,000

4. The enquiries conducted by the Assessing Officer in the aforesaid companies reveal that all these companies were not doing any real business but were engaged in the business of providing accommodation entries. There was negligible profit shown by these companies. However, in the balance sheet, they have shown huge share premium reserve on one side and investment in unquoted shares on the other side. On the enquiries conducted through the Inspector of Income Tax, none of these companies was found at the available address. On these facts, the Assessing Officer rightly concluded that

the assessee has not been able to discharge the onus which lay upon it to prove the identity of the shareholders, creditworthiness of the shareholders and the genuineness of the transactions. Therefore, the Assessing Officer rightly added the share capital/share premium as unexplained and made the addition of ₹2.50 crores under Section 68 of the Income-tax Act, 1961. The CIT(A) admitted the additional evidence though the same was objected by the Assessing Officer, without proper justification. That the CIT(A) allowed relief to the assessee on the basis of those additional evidences which were not produced before the Assessing Officer. She, therefore, submitted that the order of learned CIT(A) should be reversed and that of the Assessing Officer may be restored, or alternatively, matter may be set aside to the file of the Assessing Officer for fresh investigation considering the additional evidence which was produced by the assessee before the learned CIT(A) for the first time.

5. Learned counsel for the assessee, on the other hand, relied upon the order of the CIT(A). He stated that the allegation of the Assessing Officer that the six shareholder companies are not doing real business and are engaged in the business of providing accommodation entries is based upon his presumption and suspicion. No basis in support of such allegation is mentioned in the assessment order or furnished before the CIT(A) or the ITAT. The above observation of the Assessing Officer is contrary to the facts on record. He pointed out that all the six companies are registered with the Registrar of Companies. They have furnished their income tax returns year after year and are assessed as independent entity. In the case of most of the shareholder companies, assessments have been completed under Section 143(3). In the income tax assessment of those companies, it is nowhere alleged by the Revenue that those companies are providing accommodation entries. With regard to admission of additional evidence, the learned

counsel pointed out that the Assessing Officer vide letter dated 14th December, 2011 asked the assessee to produce evidence in support of share capital/share premium of ₹2.50 crores. The case was fixed for hearing on 19th December, 2011. Thus, the time of only five days was allowed to furnish necessary evidence with regard to share capital/share premium. The assessee furnished the reply on 19th December, 2011 in which the assessee filed the copy of share application form, copy of income tax return of the shareholder, copy of bank account and cheque number through which share application money was received, copy of share certificate issued by the assessee company for shares allotted to those shareholders and copy of annual return in Form-2 filed with the Registrar of Companies. Thereafter, the Assessing Officer, without allowing any further opportunity, disbelieved the assessee's explanation with regard to share capital/share premium and made the addition of ₹2.50 crores. Thus, it is evident that the Assessing Officer allowed merely five days' time to furnish necessary details which, by no stretch of imagination, can be said to be adequate opportunity of being heard and producing necessary evidence. Considering these facts, learned CIT(A) rightly admitted the additional evidence. He, therefore, submitted that the order of learned CIT(A) should be sustained and the Revenue's appeal may be dismissed.

6. We have carefully considered the submissions of both the sides and perused relevant material placed before us. Paragraph 2.1 of the assessment order reads as under:-

"2.1 The enquiries conducted in the case of above companies it is found that all these companies were not doing real business and are engaged in the business of providing accommodation entries. All these companies are maintaining their bank accounts in the same area of the Daryagunj. There is negligible profit shown by these company though thereon balance sheet also show huge

share premium reserves on one side and investments in unquoted shares on the other search. The summary details of their balance sheet of some companies is as under.

<i>Particulars (As on 31.03.2008)</i>	<i>M/s Integrator Consultants P.Ltd.</i>	<i>M/s Pragati Portfolio P.Ltd.</i>	<i>M/s Tone Financial Services P.Ltd.</i>
<i>Issued subscribed and paid-up Capital</i>	<i>1,34,15,000</i>	<i>1,65,50,000</i>	<i>3,00,00,000</i>
<i>Share Premium</i>	<i>14,60,85,000</i>	<i>9,34,50,000</i>	<i>00</i>
<i>Profit (Loss)</i>	<i>(11,187)</i>	<i>6,89,609</i>	<i>(19,045)</i>
<i>Quoted Shares</i>	<i>-</i>	<i>-</i>	<i>-</i>
<i>Un-quoted shares</i>	<i>13,89,42,475</i>	<i>8,92,82,661</i>	<i>1,65,36,549</i>
<i>Other Current Assets</i>	<i>2,04,89,251</i>	<i>1,90,47,450</i>	<i>1,34,26,615</i>

7. From the above, it is evident that in the above paragraph, the Assessing Officer alleged :-

- (i) The enquiries conducted in the case of shareholder companies revealed that these companies were not doing real business but engaged in the business of providing accommodation entries.
- (ii) These companies have negligible profit but their balance sheet shows huge share premium reserve on one side and investment in unsecured shares on the other side.

8. We have carefully considered both these allegations of the Assessing Officer in the light of material available with us and the arguments of both the sides. So far as the first allegation is concerned that the shareholder companies were not doing any real business but engaged in the business of providing accommodation entries, we find no material having been pointed out by the Assessing Officer in the

assessment order. Though the Assessing Officer has mentioned about some enquiries being conducted in this regard, but, he has not mentioned what was the outcome of those enquiries which led him to believe that these companies were engaged in providing accommodation entries. On the other hand, the evidence produced by the assessee shows that all these companies are regularly assessed to income tax and filing their income tax returns year after year. In the case of four companies viz., M/s Beetal Plantation P.Ltd., M/s Integrator Consultants P.Ltd., M/s Pragati Foods P.Ltd. and M/s Unit Commercial P.Ltd., assessments have been completed under Section 143(3) and in those assessments, the Assessing Officer has not found that these companies were in the business of providing accommodation entries. The assessee has also filed the copy of balance sheet of these companies which indicated that these companies are having substantial capital and have invested in the shares of various companies. Therefore, we are of the opinion that evidence on record placed by the assessee which is not controverted by the Revenue establishes that all the six companies which invested in the shares of the assessee company are genuine companies.

9. The second point made by the Assessing Officer was that these shareholder companies were having negligible profit but in the balance sheet, they have shown huge share premium reserve. However, this aspect needs to be examined in the case of those companies and not in the case of the assessee company. As we have already mentioned, all these companies are separately assessed to income tax, they have filed their income tax returns alongwith their balance sheet which indicated their share capital as well as share premium. That merely because they have substantial share capital or substantial share premium, would be no ground to doubt either their identity or their creditworthiness. On the other hand, substantial share capital/share

premium would only support the case of the assessee that these companies have substantial worth to invest in the shares of the assessee company.

10. In page 3, the Assessing Officer has also observed that the enquiries got conducted through the Inspector of Income Tax and these companies were not found physically operating from the addresses given by the assessee. However, in the same paragraph, the Assessing Officer has mentioned that the summons were issued to those companies and in response to the summons, the companies have furnished the reply and also forwarded the copies of account statement, bank account and income tax returns. That the above finding by the Assessing Officer itself proves that the shareholder companies were existing at the address given by the assessee, otherwise, how the summons could be served upon and reply could be sent by those parties. In view of above, we hold that all the allegations made by the Assessing Officer for doubting the genuineness of shareholder companies are without any basis and contrary to the facts on record.

11. Now, we come to the grounds of appeal raised by the Revenue. Before adjudicating ground No.1, it would be necessary to decide ground No.2 of the Revenue which is with regard to admission of additional evidence.

12. Rule 46A empowers the CIT(A) to admit the additional evidence. It reads as under:-

“[Production of additional evidence before the [Deputy Commissioner (Appeals)] [and Commissioner (Appeals)].

46A. (1) The appellant shall not be entitled to produce before the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer], except in the following circumstances, namely :—

(a) where the [Assessing Officer] has refused to admit evidence which ought to have been admitted ; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer] ; or

(c) where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal ; or

(d) where the [Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

(3) The [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the [Assessing Officer] has been allowed a reasonable opportunity—

(a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or

(b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the [Deputy Commissioner (Appeals)] [or, as the case may be, the Commissioner (Appeals)] to direct the production of any document, or the examination of any witness, to

enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the [Assessing Officer]) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.].”

13. From the above, it is evident that the assessee is not permitted to produce additional evidence unless the circumstances specified in clauses (a), (b), (c) & (d) of Rule 46(1) exist. Clause (d) of Rule 46A(1) permits an assessee to submit additional evidence when the Assessing Officer completed the assessment without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal. Therefore, let us examine whether the Assessing Officer allowed adequate opportunity to the assessee to adduce the relevant evidence. At page 53 of the assessee's paper book, the assessee has given the copy of show cause notice dated 14th December, 2011 issued by the Assessing Officer. By this letter, the Assessing Officer asked the assessee to show cause why the share capital/share premium of ₹2.50 crores should not be treated as unexplained and added to the total income under Section 68 of the Act. The assessee was directed to furnish the reply latest by 19th December, 2011. Thus, the time of mere five days was allowed. The assessee did file the reply on 19th December, 2011 alongwith various evidences which included share application form, income tax returns of the shareholders, copy of bank account of the shareholders, details of cheque number through which share application money was received, copy of share certificate in respect of shares allotted and form of annual return filed with the Registrar of Companies showing allotment of shares. Thereafter, the Assessing Officer did not ask the assessee to produce any further evidence and completed the assessment making the addition of ₹2.50 crores. Therefore, the moot question is whether the time allowed to

the assessee to produce the evidence in support of share application and share premium can be said to be sufficient time as envisaged by Rule 46A(1)(d). In our opinion, certainly not. The time of only five days cannot be said to be a sufficient time to produce necessary evidence. Moreover, within those short period of five days, the assessee furnished the details/evidences which were available with him. If the Assessing Officer was not satisfied with those details/evidences produced by the assessee, he should have allowed further opportunity to the assessee to produce further evidence in this regard but no further opportunity was allowed by the Assessing Officer. On these facts, in our opinion, the CIT(A) rightly admitted the additional evidence with the following finding:-

“In my humble view, the time of 5 days given to the appellant was too short and having said that, I find that the documents filed during the appellate proceedings are not in the nature of any additional evidence per se rather they are of the nature of supporting evidences, they are taken on record and are admitted as evidences. The issue of genuineness, creditworthiness and identity of shareholders is decided keeping in light these documents also.”

14. In view of the above, ground No.2 of the Revenue's appeal has no merit and the same is rejected.

15. Now, we come to the main question, i.e., whether the assessee has been able to discharge the onus of proving the credit of ₹2.50 crores in the form of share capital/share premium. Admittedly, the onus is upon the assessee to discharge this onus and to discharge the onus, the assessee is required to prove the identity of the shareholder, creditworthiness of the shareholder and the genuineness of the transaction. Let us examine the facts of the assessee's case so as to arrive at the conclusion that the assessee has been able to discharge

its onus. We find that the CIT(A) has examined the facts of each and every shareholder company in detail and then arrived at the following conclusion:-

"9.4 Beetal Plantation Pvt. Ltd. (Rs.30,00,000)

On going through the paper book I find that the money has been received from bank account of Beetal Plantation Pvt. Ltd. maintained with Punjab National Bank, Darya Ganj, New Delhi and there are no deposit in cash in this bank account before applying for shares in the appellant company and payment has been made out of the money received by the shareholder company from Saline Steels Pvt.Ltd. and Shree Balaji Traders. I have also perused the bank account of the Saline Steels Pvt. Ltd. and Shree Balaji Traders where a sum of Rs. 20 Lac and Rs. 10 Lacs have been paid to the shareholder company on 05.10.2007 and 12.10.2007 Saline Steels Pvt. Ltd. and Shree Balaji Traders Pvt. Ltd.

It is also seen that Beetal Plantation Pvt. Ltd. is assessed to income tax and so is the case of all the companies from whom credit has been received in their bank account during the year under consideration. Further, the Balance Sheet of Beetal Plantation Pvt. Ltd. shows the net worth of more than Rs. 8.99 crore. Beetal Plantation Pvt. Ltd. has been assessed to income tax under section 143(3) for the assessment year 2007-08 vide order dated so" November, 2009, no adverse inference has been drawn against this company in the assessment order. Further, the AD in his report dated 27.08.2012 has also not controverted any of the above facts.

In the assessment order passed under Section 153A/143(3), I find that there is no specific adverse finding by the AD on the basis of which the amount received from Beetal Plantation Pvt. Ltd. is being considered as unexplained credit. The AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Beetal Plantation Pvt. Ltd. is not a

genuine transaction.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.5 Integrator Consultants P. Ltd. (Rs. 50,00,000)

On going through the paper book, it is seen that the amount has been received by cheque from the bank account of Integrator Consultants P. Ltd. and there are no cash deposit in this bank account before applying for shares in the appellant company. This money has been paid out of the money received by it from different entities. The details about such entities, its identity, income tax particulars have also been filed by the appellant. It is further seen that, Integrator Consultants P. Ltd. is a income tax assessee and the Balance Sheet shows the net worth of Rs. 15.94 crore and a sum of Rs. 50,00,000 has been shown as investment in the name of the appellant company. Further, the AO in the remand report dated 27.08.2012 has not controverted any of these facts. The AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Integrator Consultants P. Ltd. is not a genuine transaction. On the contrary, I find that the appellant has placed evidences {paper book page 136} that this company has confirmed to ADIT regarding its investment with the appellant company during the post search investigation.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.6 Pragati Portfolio Foods ~ Ltd. (Rs. 70,00,000)

On going through the paper book I find that the money has been received from bank account of Pragati Portfolio Foods {P} Ltd. maintained with Oriental Bank of

Commerce, Darya Ganj, New Delhi and there is no deposit in cash in this bank account before applying for shares in the appellant company and payment has been made out of the money received by the shareholder company from Shree Balaji Traders, Paradise Commercial Pvt. Ltd., Royal Traders Ltd., P. Chand Jewellers Pvt. Ltd., Shreya Portfolio Pvt. Ltd. and Vikas Holding Pvt. Ltd.

It is also seen that Pragati Portfolio Foods (P) Ltd. is assessed to income tax and so is the case of all the companies from whom credit has been received in their bank account during the year under consideration. Further, in the balance sheet of Pragati Portfolio Foods (P) Ltd. that they have shows net worth of more than Rs.11.01 crore and sales and purchases of Rs.4.77 crores and Rs.7.27 crores respectively and a sum of Rs.70,00,000 has been shown as investment in the name of the appellant company. Further, the AD in his report dated 27.08.2012 has also not controverted any of the above facts.

In the assessment order passed under Section 153A/143(3), I find that there is no adverse finding by the AO on the basis of which the amount received from Pragati Portfolio Foods (P) Ltd. is being considered as unexplained credit. The AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Pragati Portfolio Foods (P) Ltd. is not a genuine transaction. On the contrary, I find that the appellant has placed evidences (paper book page 160) that this company has confirmed to ADIT regarding its investment with the appellant company during the post search investigation.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.7 Pragati Foods Pvt. Ltd. (Rs. 30,00,000)

A sum of Rs. 30,00,000 has been received from the bank account of Pragati Foods Pvt. Ltd. and I notice that

there are no immediate cash deposit in this bank account before applying for shares of appellant company and this money has been paid out of the money received by the shareholder company from Bonanza Portfolio (P) Ltd. Further, it is seen that Pragati Foods Pvt. Ltd. is also assessed to income tax and its assessment for the year 2005-06 has been completed under section 143(3) of the Act vide order dated 14th December, 2007 and there is no adverse finding or comment regarding its financials.

The Balance Sheet and Profit and Loss Account of the Pragati Foods Pvt. Ltd. shows assets of Rs. 11.38 crore and sales and purchase of Rs. 4.22 crore and Rs.48 lacs respectively and a sum of Rs.30,00,000 has been shown as investment in the name of the appellant company. Further, the AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Pragati Foods Pvt. Ltd. is not a genuine transaction.

All these issues were raised by the appellant in the written submissions and the AO in the remand report dated 27.08.2012 has not been able to rebut or controvert any of these facts.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.8 Tone Financial Services (P) Ltd. (Rs. 50,00,000)

On going through the paper book I find that the money has been received from bank account of Tone Financial Services (P) Ltd. maintained with Oriental Bank of Commerce, Darya Ganj, New Delhi and there is no deposit in cash in this bank account before applying for shares in the appellant company and payment has been made out of the money received by the shareholder company from Saline Steels Pvt. Ltd. and Bloom Field Properties and Holdings Pvt. Ltd.

Further, the Balance Sheet of Tone Financial Services (P)

Ltd. shows net worth of more than Rs. 3.00 crore and sales and purchases of Rs. 27.52 lacs and Rs. 58.00 lacs respectively and a sum of Rs.50,00,000 has been shown as investment in the name of the appellant company. Further, the AD in his report dated 27.08.2012 has also not controverted any of the above facts.

In the assessment order passed under Section 153A/143(3), I find that there is no adverse finding by the AD on the basis of which the amount received from Tone Financial Services (P) Ltd. is being considered as unexplained credit. The AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Tone Financial Services (P) Ltd. is not a genuine transaction.

On the contrary, I find that the appellant has placed evidences (paper book page 253) that this company has confirmed to ADIT regarding its investment with the appellant company during the post search investigation.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.9 Unit Commercial P. Ltd. (Rs. 20,00,000)

On going through the paper book I find that the money has been received from bank account of Unit Commercial Pvt. Ltd. maintained with Oriental Bank of Commerce, Darya Ganj, New Delhi and there is no deposit in cash in this bank account before applying for shares in the appellant company and payment has been made out of the money received by the shareholder company from Precious Commercial Pvt. Ltd.

It is also seen that Unit Commercial Pvt. Ltd. is assessed to income tax and so is the case of the company from whom credit has been received in their bank account during the year under consideration. Further, in the Balance Sheet of Tone Financial Services (P) Ltd. that they

have shows net worth of more than Rs.26.4 crore and sales and purchases of Rs. 4.96 crores and Rs. 1.99 crores respectively and a sum of Rs.20,00,000 has been shown as investment in the name of the appellant company. No adverse inference has been drawn against this company in the assessment order. Further, the AO in his report dated 27.08.2012 has also not controverted any of the above facts.

In the assessment order passed under Section 153A/143(3), I find that there is no adverse finding by the AO on the basis of which the amount received from Unit Commercial Pvt. Ltd. is being considered as unexplained credit. The AO in the assessment order has referred to the enquiries conducted in the case of a few companies but the assessment order is totally silent as to what enquiries have been made on the strength of which he came to the conclusion that the investment made by Unit commercial Pvt.Ltd. is not a genuine transaction.

As the appellant company has explained its source as well as the source of its shareholder, therefore, in view of the above discussion appellant company has established the identity, creditworthiness and genuineness of the transaction.

9.10 Thus in all the above 6 shareholders the appellant has placed on record substantial evidences to prove the identity, creditworthiness and genuineness of the transactions. The appellant has not only proved the identity but has also gone to the extent of establishing the identity as well as and creditworthiness but have even given the source of immediate credit as well as the source of such credit in the hands of the shareholder company.

It is also seen that no enquiry was conducted to examine the contents of the information filed by the appellant before the AO at the assessment stage and no adverse finding has been reported by the AO as well in the remand report stage except the general findings viz. that the amounts are in round figures, the board resolution has not been filed, all the shareholders are trading in unlisted companies etc. etc. In my view, these general remarks cannot be the sole criteria for holding that share transaction is not a genuine one. What is

important is the source of credit while making addition under Section 68. Here is a case where appellant has given sufficient evidence to explain the source and further no inquiries have been conducted by the AO to rebut the evidences filed by the appellant both at the assessment stage as well as at the remand report stage.”

16. We have also examined the facts relating to all the six companies who invested in the share capital of the assessee. We find that the assessee has produced the copy of share application form submitted by those companies before the Assessing Officer. Copy of the share application form shows the name and address of the company who applied for shares, number of shares applied, amount, date and cheque number by which payment is made, name of the bank on which cheque was drawn and the permanent account number of the company. No discrepancy in any of these details is pointed out.

17. All the shareholder companies are assessed to income tax and the acknowledgements of filing of their income tax returns by those companies were furnished. That the balance sheet of all those companies were furnished and the balance sheet shows substantial share capital and reserve of the relevant companies. It would be appropriate to give the details of the share capital and reserve of the companies and the amount invested by those companies in the shares of the assessee which is as under:-

Sl.No.	Name of the Company	Share Capital and Reserves & Surplus	Amount invested with the assessee company
1.	M/s Beetal Plantation P.Ltd.	8,98,80,569	30,00,000
2.	M/s Integrator Consultants P.Ltd.	15,94,31,726	50,00,000
3.	M/s Pargati Portfolio Foods P.Ltd.	11,01,42,376	70,00,000

4.	M/s Pragati Foods P.Ltd.	11,00,00,000	30,00,000
5.	M/s Tone Financial Services P.Ltd.	3,00,00,000	50,00,000
6.	M/s Unit Commercial P.Ltd.	26,39,99,900	20,00,000

18. From the above, it is evident that the share capital including reserves and surplus of all the six companies who applied in the shares of the assessee company is several times more than the investment made by them in the shares of the assessee company. The assessee has also furnished the copy of the assessment order passed under Section 143(3) in the case of four companies, viz., M/s Beetal Plantation P.Ltd., M/s Integrator Consultants P.Ltd., M/s Pragati Foods P.Ltd. and M/s Unit Commercial P.Ltd. The assessee has produced certificate of incorporation issued by the Registrar of Companies in the case of all companies. Copy of bank account of all the companies is produced which shows the amount debited for acquiring the shares in the assessee company. On the basis of above evidence, we have no hesitation to hold that the identity of all the six shareholder companies is duly established, all the companies are registered with the Registrar of Companies, they are assessed to income tax and they have also responded in response to the summons issued by the Assessing Officer. Therefore, identity of these companies cannot be disputed. So far as creditworthiness is concerned, we find that the share capital as well as share premium/reserve of all the companies is several times more than the amount invested by them in the share capital of the assessee company. All the companies are assessed to income tax, therefore, in our opinion, the creditworthiness of these companies cannot be disputed. So far as genuineness of the transaction is concerned, we find that the amount has come by cheque, the assessee has furnished the copy of the bank account of the company from where the cheque was issued, the amount invested in the shares of the

assessee company has been disclosed in the schedules of investment attached with the balance sheet of each company. Each company is assessed to income tax and the shares were allotted to each company on the basis of the share application form. Therefore, in our opinion, the genuineness of the transaction is also duly established. The Assessing Officer doubted the creditworthiness or the genuineness of the transaction on the basis of mere presumption and suspicion without properly appreciating the evidences on record. In view of the above, we entirely agree with the above finding of the learned CIT(A).

19. Before we part with the matter, we would like to mention that the learned CIT(A) while giving relief has also relied upon the decision of Hon'ble Apex Court in the case of CIT, Orissa Vs. Orissa Corporation P.Ltd. – [1986] 159 ITR 78. That in the said case, in the accounts of the assessee company, there was credit in the name of three individuals. The assessee produced before the Assessing Officer the letter of confirmation of the creditor, the discharged hundis and gave the income tax particulars of those creditors. Since the assessee was unable to produce the creditors before the Income Tax Officer, on the assessee's request, summons were issued under Section 131 of the Income-tax Act. However, the summons were returned unserved by the postal authorities with the remark "left". Therefore, the Assessing Officer made the addition of ₹1,50,000/- for unexplained credit. On appeal, the Tribunal deleted the addition on the ground that the assessee had discharged the onus to prove the credit. The Hon'ble High Court rejected the application of the Department for reference. On appeal to Hon'ble Supreme Court, their Lordships held as under:-

"That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the

Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case."

20. That the facts of the assessee's case are much better than the facts in the case of Orissa Corporation P.Ltd. (supra). In the aforesaid case, the summons issued under Section 131 to the creditor were returned unserved by the postal authorities with the remark "left". While, in the case of the assessee, summons issued by the Assessing Officer to the shareholder companies were duly served upon them and the shareholder companies responded to the Assessing Officer by affirming the investment made by them in the shares of the assessee company and also produced the necessary evidence in support of such investment. The assessee has produced copy of acknowledgement of filing of income tax returns by all the companies, copy of their bank accounts in which amount paid to the assessee is debited, their balance sheet which shows substantial share capital, and in the schedule forming part of the balance sheet, the investment made in the shares of the assessee company was duly disclosed. None of these evidences was rebutted by the Revenue. In view of the above, we are of the opinion that the above decision of Hon'ble Apex Court would certainly support the case of the assessee. No contrary decision is brought to our knowledge. In view of the above, we, respectfully relying upon the above decision of Hon'ble Apex Court as well as the

facts of the assessee's case as discussed earlier, find no justification to interfere with the order of learned CIT(A). The same is sustained and Revenue's appeal is dismissed.

Cross-objection No.1/Del/2014 :-

21. In the cross-objection, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) [CIT(A)] has erred both on facts & in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A and order passed by the learned Assessing Officer (AO) under Section 153A/143(3) is without jurisdiction.

2. On the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) [CIT(A)] has erred both on facts & in law in rejecting the contention of the assessee that the order passed by the learned AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.

3. On the facts and circumstances of the case, Ld. Commissioner of Income Tax (Appeals) [CIT(A)] has erred both on facts & in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the course of the search.

4. On the facts and circumstances of the case the learned CIT(A) has erred both on facts & in law in going ahead with the reassessment order and not closing the reassessment proceedings, despite the fact that no incriminating material belonging to the assessee was found and has been subject matter of addition in any of the reassessment under section 153A for all the six years.

5. On the facts and circumstances of the case the learned CIT(A) has erred both on facts & in law in ignoring the fact that the addition of Rs.2,50,00,000/- made by the

AO are otherwise untenable since the same is not arising from the any incriminating material seized during the course of search and reassessment under Section 153A/153A consequent to search is to be confined only to the incriminating material belonging to the assessee found during the course of the search.

6. The respondent craves leave to add, amend or alter any of the grounds of cross objections."

22. However, we find that in the assessment order passed under Section 143(3) against which these proceedings have emanated, the only addition made was with regard to the share capital and share premium amounting to ₹2.50 crores. Such addition was deleted by the CIT(A) and his order is upheld by us by dismissing Revenue's appeal. Therefore, by the cross-objection, the assessee is not seeking any further relief. Accordingly, the cross-objection is rendered infructuous. We, therefore, treat the cross-objection as infructuous and reject as such.

23. In the result, the appeal of the Revenue as well as the cross-objection of the assessee is dismissed.

Decision pronounced in the open Court on 25th July, 2014.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated : 25.07.2014
VK.

Copy forwarded to: -

1. Appellant : **Assistant Commissioner of Income Tax,
Central Circle-17, New Delhi.**
2. Respondent : **M/s Bahubali Dyes Limited,
B-82, Defence Colony, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar