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

\+ **ITA 409/2012**

Reserved on: 2nd December,2013
% Date of Decision: 10th December,2013

COMMISSIONER OF INCOME TAX DELHI ..... Appellant
Through Mr. Sanjeev Sabharwal,
Sr. Standing Counsel

versus

GLOBUS SECURITIES & FINANCE PVT. LTD
..... Respondent
Through Mr. Salil Kapoor with
Mr. Sanat Kapoor, Mr. Vikas Jain and
Ms. Sugandha Anand, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J.

This appeal by the Revenue which relates to assessment year 2006-07 stands for adjudication on the following question:

> "Whether the impugned order of the Income Tax Tribunal (ITAT) is an error of law in approving the deletion of the amount included by the assessing officer by applying Section 68 of the Income Tax Act, 1961, in the facts and circumstances of the case?"

2. Commissioner of Income Tax (Appeals) and the tribunal have held that the respondent assessee has been able to discharge onus under Section 68 of the Act as the respondent assessee had filed

names and addresses of share applicants, PAN number details, confirmation letters, their income tax returns, copies of bank statements of share applicants from the account from which investments were made, copy of share application form and copy of audited balance sheet of the share applicants. It has been accordingly held that the identity, creditworthiness of the shareholders and genuineness of the transactions has been established. Reference and reliance was placed on judgments of Delhi High Court in ***CIT vs. Stellar Investment Ltd.*** [1991] 192 ITR 287, ***Monnet Ispat and Energy Ltd. vs. DCIT*** (2008) 171 Taxman 27, ***CIT vs. Divine Leasing and Finance Ltd.*** (2007) and ***CIT vs. Lovely Exports Pvt. Ltd.*** both reported (2008) 299 ITR 268. Some other decisions have also been referred to in the order of the Commissioner of Income Tax (Appeals) (CIT (A) for short).

3. For the sake of convenience, we are reproducing below the observations made by the Tribunal in their order dated 4th November, 2011 dismissing the appeal of the Revenue. The relevant paragraph reads as under:

> "4. We have considered the facts of the case and submissions made before us. We find that the assessee had filed sufficient evidence in the form of name, address and PAN details of the contributors. Further, copies of confirmation, income-tax return, bank statement, share application form and balance-sheet

have also been filed. These details establish the identity of the contributors. This, in fact, has not been doubted by the AO also. He has relied on information received from investigation wing, which listed four of the contributors as persons who were indulging in furnishing accommodation entries. This point has not been examined in details by making any further enquiry. He has also noted that there are matching credits in the case of Inter Stellar Exports Pvt. Ltd., Sober Associates Pvt. Ltd. and Ritika Finance & Investments Pvt. Ltd. However, further enquiry has not been made in the case of the contributors to establish in any manner that the source of the credits was the assessee. It has also been found that shares were issued in the immediately preceding year and no premium was charged. This does not lead to the inference that the amount of premium received in this year is bogus or that such amount flowed from the coffers of the assessee. Therefore, we are of the view that the enquiries do not establish that source of the contribution was the assessee. On the other hand, the identities of the contributors have been established. In the light of the decision in the case of Lovely Exports (P) Ltd. (supra), the assessee was not required to bring anything further than establishing the identity. Thereafter, if any doubt persisted, the action lied in the case of the contributors. Accordingly, it is held that the ld. CIT(Appeals) was right in deleting the addition."

4. It is an undisputed position that during the assessment year in question, the respondent assessee had received Rs.51,10,000/- from six different companies as per details given below:

"1.	M/s Inter Steller Exports Pvt. Ltd.	Rs. 9,35,000
2.	M/s Parivartan Capital & Financial Services Pvt. Ltd.	Rs. 9,75,000
3.	M/s Sober Associates Pvt. Ltd.	Rs. 7,00,000
4.	M/s Ritika Finance & Investment Pvt. Ltd.	Rs.10,00,000
5.	M/s Victoria Advertising Pvt.Ltd.	Rs. 9,00,000
6.	M/s Shri Niwas Leasing & Finance Ltd.	Rs. 6,00,000
	Total	**Rs.51,10,000"**

5. These six companies had paid Rs.9,22,000/- @ Rs.10/- per share towards face value of the share and Rs.41,88,000/- @ Rs.40/- per share as share premium to accordingly make a total sum of Rs.51,10,000/-. This factual position is not disputed.

6. Before us relying upon the order of the Assessing Officer, it was submitted by the respondent assessee that there was no corresponding credit entry in the bank account of M/s Inter Steller Exports Pvt. Ltd. as the assessment order mentions that there were debit entries of Rs.4,23,000/- and Rs.5,15,000/- on 27th May, 2005 before a sum of Rs.9,35,000/- was transferred to the respondent assessee's account. The word 'debit', it is apparent, is a typographical error in the order of the Assessing Officer. Paragraph 3 of the impugned order passed by the tribunal which records the submission made by the Departmental Representative, reads:-

> "3. Before us, the ld. DR submitted that the shares of the face value of Rs. 10/- have been issued at Rs. 50/- per share and, thus, premium of Rs. 40/- per share has been charged. There are matching deposits in the bank account of the contributors. The relevant schedules of the balancesheet of the contributors, containing the details of investments, have not been filed. The assessee had not charged premium in any earlier year. Thus, it is argued that the creditworthiness of the contributors and genuineness of the transactions have not been established."

7. In paragraph 4 of the impugned order quoted above, it is recorded by the Tribunal that there were matching credit entries in Inter Steller Exports Pvt. Ltd, Sober Associates Pvt. Ltd. and Ritika Finance & Investments Pvt. Ltd. Thus, it can be savely construed that as per the bank statements of Inter Steller Exports Ltd., Sober Associates Pvt. Ltd and Ritika Finance & Investments Pvt. Ltd., there were corresponding or substantial deposits and credit entries before the investments were made towards share capital. This is the factual position, not commented upon by the tribunal.

8. It is also accepted as true and correct that the respondent assessee had not charged premium in the immediately previous year from the share subscribers. This factual position is recorded and mentioned in the order of the Tribunal. Further, the shareholder companies had not filed the relevant schedule of the balance sheet relating to details of investments made by them. It is noticeable that for the assessment year in question, the respondent assessee had filed a return declaring income of Rs.71,910/-. The respondent assessee was carrying on business of trading in shares and derivatives besides which they had earned interest income of Rs.23,533/- and dividend income of Rs.21,550/-. The assessment order records that M/s Parivartan Capital and Financial Services Pvt. Ltd. was controlled by

Shri Hari Om Bansal and M/s Sober Associates Pvt. Ltd. and M/s Shri Niwas Leasing & Finance Ltd. were controlled by Shri Mahesh Garg, who in their statements before Director of Income Tax (Investigations) had admitted that they were engaged in the business of providing accommodation entry through various companies controlled by them.

9. The short issue in question is raised whether the tribunal was right in holding that the respondent assessee had discharged the onus in establishing the identity of the shareholders, their creditworthiness and genuineness of the transactions. We have quoted the reasoning given by the tribunal which is recorded and elucidated in only one paragraph i.e. paragraph 4 of the impugned order. Tribunal on the basis of the judgment in the case of ***Lovely Exports Pvt. Ltd. (supra)*** has held that the assessee was not required to produce any further material, than establishing the name, identity by way of address, PAN details, and copies of confirmation, income tax return, bank statements, share application and balance sheet. Thereafter, if any doubt persisted, the action lied in the case of the contributors i.e., the share applicants.

10. We had the occasion to deal with a similar controversy and issue in our recent decision dated 22nd November, 2013 passed in ITA No. 1018/2011 and 1019/2011 titled ***CIT vs. N.R. Portfolio Pvt. Ltd.***

In the said decision we referred to the decisions of Delhi High Court in ***Lovely Exports Pvt. Ltd. (supra)*** and ***Divine Leasing & Finance Ltd. (supra)*** and observed as under:

> "18. In the remand report, the Assessing Officer referred to the provisions of Section 68 of the Act and their applicability. The word "identity" as defined, it was observed meant the condition or fact of a person or thing being that specified unique person or thing. The identification of the person would include the place of work, the staff, the fact that it was actually carrying on business and recognition of the said company in the eyes of public. Merely producing PAN number or assessment particulars did not establish the identity of the person. The actual and true identity of the person or a company was the business undertaken by them. This according to us is the correct and true legal position, as identity, creditworthiness and genuineness have to be established. PAN numbers are allotted on the basis of applications without actual *de facto* verification of the identity or ascertaining active nature of business activity. PAN is a number which is allotted and helps the Revenue keep track of the transactions. PAN number is relevant but cannot be blindly and without considering surrounding circumstances treated as sufficient to discharge the onus, even when payment is through bank account.
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> 19. On the question of creditworthiness and genuineness, it was highlighted that the money no doubt was received through banking channels, but did not reflect actual genuine business activity. The share subscribers did not have their own profit making apparatus and were not involved in business activity. They merely rotated money, which was coming through the bank accounts, which means deposits by way of cash and issue of cheques. The bank accounts, therefore, did not reflect their creditworthiness or even genuineness of the transaction. The beneficiaries, including the respondent-assessee, did not give any share-dividend or interest to the said entry operators/subscribers. The profit motive normal in case of investment, was entirely absent. In the present case, no profit or dividend was declared on the shares. Any person, who would invest money or give loan would certainly seek return or income as consideration. These facts are not adverted to

and as noticed below are true and correct. They are undoubtedly relevant and material facts for ascertaining creditworthiness and genuineness of the transactions."

On the question of 'source of source' and 'origin of origin', it was elucidated:

"24. We are conscious of the doctrine of 'source of source' or 'origin of origin' and also possible difficulty which an assessee may be faced with when asked to establish unimpeachable creditworthiness of the share subscribers. But this aspect has to be decided on factual matrix of each case and strict or stringent test may not be applied to arms length angel investors or normal public issues. Doctrine of 'source of source' or 'origin of origin' cannot be applied universally, without reference to the factual matrix and facts of each case. The said test in case of normal business transactions may be light and not vigorous. The said doctrine is applied when there is evidence to show that assessee may not be aware, could not have knowledge or was unconcerned as to the source of money paid or belonging to the third party. This may be due to the nature and character of the commercial/business transaction relationship between the parties, statutory postulates etc. However, when there is surrounding evidence and material manifesting and revealing involvement of the assessee in the "transaction" and that it was not entirely an arm's length transaction, resort or reliance to the said doctrine may be counter-productive and contrary to equity and justice. The doctrine is not an eldritch or a camouflage to circulate ill gotten and unrecorded money. Without being oblivious to the constraints of the assessee, an objective and fair approach/determination is required. Thus, no assessee should be harassed and harried but any dishonest façade and smokescreens which masquerade as pretence should be exposed and not accepted."

With reference to two decisions, it was further held

"25. In ***Lovely Exports (supra)***, a Division Bench examined two earlier decisions of this court in ***CIT vs. Steller Investment Ltd.*** [1991] 192 ITR 287 (Delhi) and ***CIT vs. Sophia finance Ltd.*** [1994] 205 ITR 98 (FB) (Delhi). The decision in ***Steller Investment's case***

(supra) was affirmed by the Supreme court but, by observing that the conclusion was on the facts and no interference was called for. ***Lovely Exports (supra)*** was a case of public limited company where shares were subscribed by public and it was accordingly observed:-

> "This reasoning must apply a fortiori to large scale subscriptions to the shares of a public Company where the latter may have no material other than the application forms and bank transaction details to give some indication of the identity of these subscribers. It may not apply in circumstances where the shares are allotted directly by the Company/assessee or to creditors of the assessee. This is why this court has adopted a very strict approach to the burden being laid almost entirely on an assessee which receives a gift."

26. Thereafter reference was made to Full Bench decision in the case of ***Sophia Finance Ltd.'s case*** *(supra)* wherein it has been observed that if the shareholders exists then, "possibly", no further enquiry needs to be made and that the Full Bench had not reflected upon the question of whether the burden of proof rested entirely on the assessee and at which point this burden justifiably shifted to the assessing officer. The Full Bench has observed that they were not deciding as to on whom and to what extent was the onus to show that the amount credited in the books of accounts was share capital and when the onus was discharged, was not decided. The standard of proof might be rigorous and stringent and was dependent upon nature of the transaction and where there was evidence that the source of investment cannot be manipulated, it was material. Similarly, it was observed that assessee could scarcely be heard to say that he did not know the particulars of a donor in case of a gift. It was held:-

> "There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessee it should not be

harassed by the Revenues's insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The Company must, however, maintain and make available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of Section 68 and 69 of the Income Tax Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the AO harbours doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company……

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…….Once material to prove these ingredients are produced it is for the Assessing Officer to find out as to whether, on these materials, the assessed has succeeded in establishing the ingredients mentioned above. The Assessing Officer `lift the veil' and enquire into the real nature of the transaction. C.I.T. v. Ruby Traders and Exporters Ltd. : [2003]263ITR300(Cal) , C.I.T. v. Nivedan Vanijya Niyojan Ltd. [2003]263ITR623(Cal) and C.I.T. v. Kundan Investment Ltd. [2003]263ITR626(Cal.) are the other three.

In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished

> to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the assessed. (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without more, against the assessee; and (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/ subscriber the genuineness of the transaction and the veracity of the repudiation."

Decision in the case of ***Lovely Exports Pvt. Ltd. (supra)*** was also considered in ***CIT vs. Nova Promoters & Finlease (P) Ltd.*** [2012] 342 ITR 169 (Del.) and it was explained:

> "38. The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec.68 and the remedy open to the revenue is to go after the share applicants in accordance with law. We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the

> involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre-meditated plan – a smokescreen – conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec.68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary."

Reference in ***N.R. Portfolio Pvt. Ltd.*** (supra) was made to ***CIT vs. Nipun Builders and Developers*** [2013] 350 ITR 470 (Del), and it was held as under:

> "29. In ***CIT v. Nipun Builders and Developers*** [2013] 350 ITR 407 (Del) , this principle has been reiterated holding that the assessee and the Assessing Officer have to adopt a reasonable approach and when the initial onus on the assessee would stand discharged depends upon facts and circumstances of each case. In case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call monies, dividends, warrants etc. have to be sent and the relationship is/was a continuing one. In such cases, therefore, the assessee cannot simply furnish details and remain quiet even when summons issued to shareholders under Section 131 return unserved and uncomplied. This approach would be unreasonable as a general proposition as the

> assessee cannot plead that they had received money, but could do nothing more and it was for the assessing officer to enforce share holders attendance. Some cases might require or justify visit by the Inspector to ascertain whether the shareholders/subscribers were functioning or available at the addresses, but it would be incorrect to state that the assessing officer should get the addresses from Registrar of Companies' website or search for the addresses of shareholders and communicate with them. Similarly, creditworthiness was not proved by mere issue of a cheque or by furnishing a copy of statement of bank account. Circumstances might require that there should be some evidence of positive nature to show that the said subscribers had made a genuine investment, acted as angel investors, after due diligence or for personal reasons. Thus, finding or a conclusion must be practicable, pragmatic and might in a given case take into account that the assessee might find it difficult to unimpeachably establish creditworthiness of the shareholders.
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> 30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and manage them."

11. The respondent assessee is a private limited company. It is not the case of the respondent that their Directors or persons behind the companies, who had purportedly made investment in the shares were

related or known to them. In the present case substantial investment has been made in a private limited company which includes share premium @ Rs.40/- per share amounting to Rs.41,88,000/-. It is not a case of the respondent assessee that they had a proven good past track record justifying a hefty premium, four times the face value. What was placed on record were certain papers which showed that the respondent assessee had taken care to ensure legal compliances. The said evidence is primarily documentary evidence. But, what the tribunal has noticed but not given due credence to are the surrounding circumstances which include a huge premium i.e. four times of the face value of the shares, credit entries in the bank accounts before transfer of money to the assessee, failure of the companies to file details of the inventories and the fact that the assessee company had not charged any premium earlier. Identity, creditworthiness of the shareholders and genuineness of the transaction in all cases is not established by only showing that the transaction was through banking channels or account payee instrument. It would be incorrect to state that the onus to prove genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Surrounding and corroborative factual details are equally important and may justify

further proof or details before it is held that onus is discharged. As held in ***N.R. Portfolio (supra)*** the question of discharge of onus depends upon whether the two parties are related or known to each other, the manner in which the parties approached each other, whether the transaction was entered into through written documents to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment was made etc. These facts are primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Thus, mere reliance on neutral documentary evidence cannot always be regarded as satisfactory discharge of onus.

12. Investment decisions, that too of investing in share capital at a premium in a private limited company, in the normal circumstances, unless there are other peculiar or personal reasons, entails due diligence by both the share applicant and the recipient company. This implies inquiry and verification by the persons behind the artificial entity. There have been a spate of cases where private limited companies have purportedly received share application money from unconcerned, unrelated parties without securing adequate protection of their investment and with other surrounding circumstances clearly

indicative of racket or a scam. We reproduce a portion the ruling in ***Onkar Nath v. Delhi Administration,*** AIR 1977 SC 1108, wherein it was stated:

> "6……The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge…….. ……No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof……"

13. It is important, to segregate cases of bonafide or genuine investments by third persons in a private limited company, from cases where receipt of share application money is only a facade for conversion of unaccounted for money or money laundering. The said question cannot be decided without taking notice of the surrounding facts and circumstances, by merely relying upon paper work which at best in some cases would be a neutral factor. The paper work though important may not be always conclusive or determinative of the final outcome or finding whether the transaction was genuine.

When and under what circumstances onus is discharged, as held in ***N.R. Portfolio (supra)***, cannot be put in a strait jacket universal formula. It will depend upon several relevant factors. Cumulative effect has to be ascertained and understood before forming any objective opinion whether or not onus has been discharged by the assessee. Of course suspicion or doubts may not be sufficient and care and caution has to be taken that the assessee has limitations but this cannot be a ground to ignore contrary incriminating evidence or material which when confronted, meets silence or no answer.

14. Learned counsel for the appellant has relied upon decision dated 22nd November, 2012 in ITA No. 232/2012 titled ***Commissioner of Income Tax – IV vs. Fair Finvest Ltd.*** But the said decision is distinguishable as the assessee had filed affidavits of the present Directors of the share applicant companies affirming the payment made and the fact that the shares were allotted.

15. Similarly reference to ***CIT vs. Gangeshwari Metal (P) Ltd.*** [2013] 30 Taxmann.com 328 (Delhi) is inappropriate as in the said case decision in ***Nova Finlease Pvt. Ltd (supra)*** was distinguished on facts, observing that the Assessing Officer had failed to conduct any enquiry and had proceeded with folded hands as if it was for the assessee to produce all evidence and material.

16. In ITA No. 212/2012 titled ***CIT vs. Goel Sons Golden Estate Pvt. Ltd.***, appeal of the Revenue was dismissed holding that the Assessing Officer had failed to make necessary enquiry at the time of the assessment proceedings. It was specifically observed that the factual findings recorded by the Assessing Officer were incomplete and sparse. In the present case, we find that the Assessing Officer had conducted enquiries and made a reference to the surrounding facts i.e. deposits/credit of the amounts in the bank account of the share applicants; substantial amount of Rs.41,88,000/- paid as premium and referred to the fact that only one Shri R.C. Verma, CA and Power of Attorney holder of M/s Ritika Finance & Investment Pvt. Ltd. had appeared alongwith Shri Dinesh Kumar, the AR of the assessee company during the assessment proceedings and filed the bank statement and copy of the balance sheet but, failed to file schedule of investments made by the said company. Others had failed to appear.

17. Learned counsel for the assessee during the course of hearing had drawn our attention to the order of the CIT (Appeals), wherein he had recorded that the assessing officer had neither conducted any enquiries from the concerned parties nor did he examine the assessment records of the share applicants and despite the request of

the assessee, he did not issue summons under Section 131. Our attention was also drawn to the contentions recorded by the CIT (Appeals) that the assessee in their reply dated 12th December, 2008 had made a specific request to the assessing officer to summon the shareholders. This aspect has been dealt with in the case of ***N.R. Portfolio (supra)*** as well as ***Nipun Builders and Developers (supra)***. However, we refrain from stating or going into further details or matrix, as we find that the tribunal has not adverted to the said fact in affirmative or negative, in the impugned order dated 4th November, 2011. We find that the assessing officer in the assessment order has not mentioned or recorded that the assessee had made any request for summoning of the shareholders or their Directors or principal officers. Whether any such request was made and if it was made whether it amounts to lapse on the part of the Assessing Officer, why and for what reasons the assessee was not able to produce principal officer or Director of shareholder companies etc. are all aspects which were required to be gone into by the Tribunal in detail. In the given case, an order of remand/remand report or additional evidence may be justified or proper. In these circumstances, we feel that it will be appropriate and proper to pass an order of remit to the tribunal for fresh decision wherein the entire issue will be dealt with afresh

without being influenced by the earlier order dated 4th November, 2011.

18. The tribunal will also take into account facts and circumstances noted above but the observations made in this order will not be treated as conclusive and final.

19. Accordingly, we have answered the question of law in favour of the appellant Revenue and against the respondent assessee but with order of remand to the tribunal for fresh decision. To cut delay, parties will appear before the tribunal on 15th January, 2014, when a date of hearing will be fixed. The appeal is accordingly disposed of. No Costs.

(SANJIV KHANNA)
JUDGE

(SANJEEV SACHDEVA)
JUDGE

December 10th, 2013
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