

Questionnaire No. 4 of notice dated 23.10.2019:

1. At point no. 4 of the notice dated 23.10.2019, it has been show caused that why addition to the tune of Rs. 1,87,27,950/- shall be made u/s 68 of the act by considering the share capital/ share premium received from the foreign entities being the same stand unexplained being genuineness of the impugned transaction have not been established vide letters prior issuance of impugned show cause notice. In this regards, our detailed submissions are as under:

1.1. In this regards, we would like to draw your kind attention towards the provisions of section 68 of the act applicable to period under consideration:

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

On legal analysis of the aforesaid provision of law, it is clearly evident that even if the primary onus is upon the assessee to provide a reasonable explanation regarding the sum found to be credited in the books of accounts of the assessee. However, where the initial onus is discharged by the assessee, the assessing officer is under obligation to conduct independent enquiry and investigation in such regards to determine the correctness of the explanation filed by the assessee and thereafter shall decide whether the impugned amount is explained or not. Further, on the basis of nexus of judicial pronouncements, it has been a settled legal premise that the assessee must satisfy the assessing officer on three aspects regarding the impugned transaction i.e. Identity of the payer, creditworthiness of the payer and the genuineness of the transaction.

1.2. In the instant case of appellant company, the appellant company had received share application money from foreign entities during the period under consideration. In this regard, we hereby attach party-wise detail of such entities from whom share application money is received alongwith registered address is attached herewith on page no. Further, to prove the identity of the investor entities, copy of Know Your Customer (KYC) Form in respect of non-resident investor duly filed with Reserve Bank of

India which duly indicates the address, unique identification no. and bank details of the foreign investor company is attached herewith on page no. In order to substantiate the genuineness of the transaction and creditworthiness of the investor, we hereby attach copy of various compliance documents filed with Reserve Bank of India in respect of the investment being received from foreign investor such as FIRC, FC-GPR and Certificate from Practising Companies Secretary on page no., copy of compliances made with MCA such as Form PAS 3 and resolutions passed in such regards on page no., and bank statements duly indicating the impugned receipts were received through proper banking channel on page no. for your kind perusal.

1.3. It is pertinent to note that where the appellant company had duly explained the identity & creditworthiness of the investor and genuineness of the transaction, no addition can be made to the total income of appellant company merely on the ground that allegedly the source of income of investor entity is undisclosed income of any third party whereas it have been admitted by the Ld. AO that actually the impugned amount is nowhere alleged to be undisclosed income of the appellant company. It is pertinent to note that wherein assessee had duly filed satisfactory explanation in respect of the basic three aspects of such credit in the books of account, addition of such amount on the basis of fact that assessee had not explained source of source of such amount is against the spirit of law. In this regards, place our reliance on following judicial pronouncements:

1.3.1. In the case of **CIT vs. Lovely Exports Pvt. Ltd. [2008] 216 CTR 195 (SC)**, Hon'ble Apex Court had held as under:

"We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

In the instant case of assessee company, identity of the investor, its creditworthiness in nowhere under dispute whereas assessee had duly filed necessary supporting evidences indicating genuineness of the transaction. As such,

no additions can be made being the appellant company had duly discharged its onus.

1.3.2. In the case of **CIT vs. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Del.)**, Hon'ble Delhi High Court held as under:

“In the instant case the Tribunal noted that the assessee was a public limited company, which had received subscriptions to the public issue through banking channels and the shares were allotted in consonance with the provisions of the Securities Contract Regulation Act, 1956, as also the Rules and Regulations of the Delhi Stock Exchange. Complete details appeared to have been furnished. The Tribunal further recorded that the Assessing Officer had not brought any positive material or evidence, which would indicate that the shareholders were (a) ‘benamidars’ or (b) fictitious persons or (c) that any part of the share capital represented the company’s own income from undisclosed sources. [Para 19]

Further the Tribunal had categorically held that the assessee had discharged its onus of proving the identity of the share subscribers. Had any suspicion still remained in the mind of the Assessing Officer, he could have initiated ‘coercive process’ , but that course of action had not been adopted. In view of the concurrent finding, pertaining to the factual matrix, there was no merit in those appeals which were, accordingly, to be dismissed. [Para 20]”

In the instant case of assessee company, the Ld. AO had himself mentioned in the impugned show cause notice that he is of the opinion that the impugned sum received from foreign entity pertains to some third party namely Sh. ABC whereas the appellant company is not the owner of such amount. As such, in no manner the said sum can be added to the total income of the appellant company where it is nowhere under dispute that the impugned amount is nowhere related to the appellant company. Thus, the impugned addition deserves to be deleted.

1.3.3. In the case of **CIT vs. Peoples General Hospital Ltd. [2013] 35 Taxmann.com 444 (M.P.)**, Hon'ble High Court of Madhya

Pradesh, following the judgments in case of **CIT vs. Lovely Exports Pvt. Ltd. (Supra)** and **CIT vs. Devine Leasing and Finance Ltd. (Supra)**, held as under:

“in the light of the judgment of Lovely Exports (P.) Ltd.’s (supra) we have to see only in respect of the establishment of the identity of the investor. The Delhi High Court also in Divine Leasing & Finance Ltd.’s case (supra), considering the similar question held that the assessee Company having received subscriptions to the public/rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented company’s own income from undisclosed sources. The similar view has been taken by the other High Courts.

17. As the Apex Court has considered the law in Lovely Exports (P.) Ltd.’s case (supra) and in view of law laid down by the Apex Court, we find that the substantial questions framed in these appeals do not arise for our consideration. Accordingly, all these appeals are dismissed with no order as to costs.”

1.3.4. In the case of **Pr. CIT vs. E Smart Systems Pvt. Ltd. [2019] 105 Taxmann.com 159 (SC)**, Hon’ble Apex Court dismissed the appeal of revenue and upheld the decision of Hon’ble Delhi High Court wherein it was held that where the assessee had discharged its primary onus to prove the identity, genuineness and creditworthiness and the assessing officer had not challenged the veracity of the documents produced in this regards, additions u/s 68 of the act deserves to be deleted.

1.4. In light of the aforesaid submissions and judicial pronouncements, it is submitted that the proposed additions to the tune of Rs. 1,87,27,950/- u/s 68 of the act, being in contradiction to a settled legal position that where it is nowhere disputed that the alleged sum credited in books of assessee is not an undisclosed income of assessee being rerouted into the books through accommodation entry and also the assessee had duly discharged its primary onus to prove beyond doubt the identity of investor, its creditworthiness and genuineness of the transaction by filing necessary documentary

evidences in this regards, no addition can be made to the total income of assessee without bringing on record any evidence which raises question on genuineness of the veracity and authenticity of the documents filed by the assessee. As such, the impugned proposed addition to the tune of Rs. 1,87,27,950/- shall be dropped.