

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT (AS THIRD MEMBER)
& MS. MADHUMITA ROY, JUDICIAL MEMBER**

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No. 4745/Del/2018
Assessment Year: 2010-11**

ACIT, Central Circle-13, New Delhi	Vs.	Double Plus Software Pvt. Ltd., 36A, 10159, Padam Singh Road, Karol Bagh, New Delhi-1100 05 Also at No.1, Zamarudpur Community Centre, Kailash Colony, New Delhi-1100 48
PAN :AABCD3206F		
(Appellant)		(Respondent)

Assessee by	Shri Manoj Kataruka, Adv.
Department by	Ms. Meenakshi Dohare, CIT DR

Date of hearing	15.09.2025
Date of pronouncement	16.09.2025

ORDER

PER MS. MADHUMITA ROY: JUDICIAL MEMBER:

The instant appeal filed by the Department is directed against the order dated 29.03.2018 passed by the Ld. CIT(A)-3, Delhi arising out of the assessment order dated 25.03.2013 issued by the ITO, Ward-10(4), New Delhi under Section 143(3) of the Income-Tax Act,1961 ("the Act")

whereby and whereunder the addition to the tune of Rs.190,00,000 under Section 68 of the Act has been deleted.

2. The brief facts leading to the case are that the assessee before us, filed its return of income for the year under consideration on 11.09.2010 declaring loss of Rs.2214 which was processed under Section 143(1) of the Act. Upon selection of the case for scrutiny under CASS, notice under Section 143(2) of the Act was served upon the assessee.

3. During the previous year, the paid up capital of the appellant company was increased by Rs.190 crores by issuance of 19 lakhs equity shares having face value of Rs.10 each at a premium of Rs.990/- per share. The said share capital was ploughed into investment of an identical amount of share capital of three other corporate bodies namely Blessings Commercial Private Limited, Stephens Financial Services Private Limited and Sayaji Financial Services Private Limited. In fact, during the year under consideration, the assessee company in his audited balance sheet has shown an increase of Rs.1,90,00,000/- towards authorized share capital/issued subscribed and paid up capital and Rs. 188,10,00,000/- towards share premium account. The assessee on or about 05.06.2009 issued Cheque No.012842 drawn on Axis Bank. By way of issuing the said crossed cheque assessee transferred the funds of Rs.65,00,00,000 crores to one M/s. Sayaji Financial Services Private Limited.

4. The said amount of Rs.65,00,00,000 ultimately in turn was returned to the assessee company through other two companies namely M/s. Blessings Commercial Private Limited and M/s Stephens Financial

Services Private Limited respectively. Further amount of Rs.60,00,00,000, initially transferred by the assessee to the said M/s. Stephen Financial Services Pvt. Ltd. by issuing crossed cheque No.012843 dated 05.06.2009 drawn on Axis Bank was in turn returned back to the appellant company through the other two companies namely M/s. Blessings Commercial Private Limited and M/s. Sayaji Financial Services Private Limited. Further amount of Rs.65,00,00,000 as was initially transferred by way of a crossed cheque bearing No.000059 drawn on Kotak Mohindra Bank by M/s. Stephen Financial Services Pvt. Ltd to M/s. Sayaji Financial Services Private Limited. The same was returned to M/s. Stephen Financial Services Pvt. Ltd. after being routed through M/s. Blessings Commercial Private Limited and the appellant company before us. Thus the nature of transactions took place in a manner that the “& Co” crossed cheque issued by one company after a series of endorsement to other companies was finally endorsed to the issuer company whereby the issuer company while making a payment to the endorsee company treated the money as share application paid and when finally the cheque was received, it was treated as share application money received. In view of the endorsement by different companies the entries do not appear in the bank statement. The transactions was carried out in a manner the “& Co.” cross cheque was endorsed from one party to another resulting in share capital as well as investment based on such endorsement of the cheque.

5. The details of a shares application money received on shares allotted to the applicants is tabulated hereunder:

Name of the	Address	PAN details	Date	of	Amount received
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applicant			application	Rs.
Blessings Commercial Pvt. Ltd.,	Landmark, 5 th Floor, 228A, A.J.C. Boss Road, Kolkata-700020	AACCB1349N	05.06.2009	650000000
Stephens Financial Ser. Pvt. Ltd.	Landmark, 5 th Floor 228A, A.J.C. Boss Road, Kolkata-700020	AACGS2740G	05.06.2009	650000000
Sayaji Marketing Pvt. Ltd.	5, Russell Street Ist Floor, Kolkatta-700071	AAGCS0147M	05.05.2009	600000000

6. The shares were allotted on 22. 06.2009, the details whereof are as follows:

Name of the allottee	No. of shares allotted	Amount appropriated against share capital and share premium Rs.
Blessings Commercial Pvt. Ltd.	650000000	650000000
Stephens Financial Ser. Pvt. Ltd.	650000000	650000000
Sayaji Marketing Pvt. Ltd.	600000000	600000000

7. The share applications from the above companies were invested in the following companies by the assessee company before us in the following manner:

Name of the company	No. of shares	Amount invested Rs.
Blessings Commercial Pvt. Ltd.	650000000	650000000
Stephens Financial Ser. Pvt. Ltd.	650000000	650000000
Sayaji Marketing Pvt. Ltd.	600000000	600000000

8. Ld. AO observed that the entire capital received by the appellant company during the year came from three companies i.e. M/s. Stephen Financial Services, M/s. Blessings Commercial Ltd. and M/s. Sayaji Marketing (P) Ltd. In turn, the appellant company also made investments of similar amounts in the equity shares of the same three companies. It was the specific finding by the Ld. AO that these particular three cheques of Rs.65,00,00,000, Rs.60,00,00,000 and Rs.65,00,00,000 respectively were involved in all the transactions and after their issue, the cheques were endorsed repeatedly by the recipients until each of them reached back to the issuing company. Based on these observations, the Ld. AO concluded that the entire chain of transactions were sham and thus the capital introduction of Rs.190,00,00,000 in the appellant company remained unexplained. Treating the same as unexplained cash credits under Section 68 of the Act, the same was added in the hands of the assessee which was in turn deleted by the First Appellate Authority. Hence, the instant appeal before us. By and under the order dated 18.01.2023 the instant appeal preferred by the revenue was disposed of by the Coordinate Bench by passing an ex-parte order since none appeared on behalf of the assessee at the time of hearing of the matter, whereby and whereunder the order passed by the Ld. A.O. making impugned addition has been restored upon quashing the order passed by the Ld. CIT(A) deleting such addition. Being aggrieved by and/or dissatisfied with the order dated 18.01.2023 the assessee preferred an appeal before the Hon'ble High Court. The Hon'ble High Court at Delhi by and under its order dated 03.11.2023 allowed the appeal by setting aside the order passed by the Coordinate Bench and further remanded the matter to the file of the Tribunal for fresh hearing. Hence the second round of litigation before us.

9. The case of the assessee is this that the aforesaid transaction was within the ambit of Companies Act, 1956 and Negotiable Instruments Act, 1881, Law. Further that Section 68 of the Act is not applicable in case of general entries.

10. As per the assessee instead of passing journal entries the cheques have been utilized for directing the other party to make the payment and accordingly the cheque was endorsed under the seal and signature with necessary directions. No cash or legal tender or banking channel was involved. The transaction is perfectly legitimate transaction between the parties by way of contract. The law nowhere says that the share application should be by account payee crossed cheques in the case of Private Limited Companies Ltd. In the absence of involvement of any legal tender there cannot be any cash credit. All the parties have established their identity and the creditworthiness and genuineness of the transaction have also been established by the contract which is in the form of endorsement under the seal and signature.

11. In the instant case share application money, which was later converted into share capital, was not received through any underlying flow of money as a banking transaction but through inter-company settlement of dues whereby cross-holdings were created. The direction for payment from one party to another resulted in a duty binding contract between the parties and in respect of such contractual obligations shares were allotted for consideration other than in cash. The cheques were not deposited in the Bank account and the Bank was not directed to make the payment. The various parties by means of directions and

endorsement under the seal and signature completed the transactions with regard to allotment of shares as well as investment in shares.

12. We have perused the order passed by the La. CIT(A) who deleted the addition on merit.

13. However, at the time of hearing of the instant appeal, Ld. DR relied upon the order passed by the ITAT, Kolkata Bench in the case of ITO, Ward-5, Kolkata Vs. M/s. Blessing(P) Ltd. in ITA No.271/Kol/2014 and in the matter of ITO, Ward-5(2), Kolkata Vs. M/s. Sayaji Marketing (P) Ltd. in ITA No.282/Kol/2014. It is relevant to mention that the same alleged amount of Rs. 190,00,00,000 has also been added in the hands of all the other three companies by the Ld.AO and deleted by the Ld. CIT(A) in the appeals preferred by those companies before the First Appellate Authority on merit.

14. In two matters namely M/s. Blessings Commercial Private Limited and M/s. Sayaji Financial Services Private Limited appeals preferred by the Revenue had been allowed by the ITAT, Kolkata Benches, reversing the orders passed by the Ld. CIT(A). The assessee preferred appeals against the said two orders before the Hon'ble High Court at Kolkata which are pending adjudication. A copy of each of the said two orders passed by the ITAT, Kolkata Benches have been filed before us by the Ld. AR and it was contended by the Ld. AR that once the disputed amount had already been added in the hands of the assessee therein same income cannot be added in the hands of the assessee which tentamounts to double addition and thus, is not sustainable in the eyes of law and thus liable to be deleted.

15. In that view of the matter, ultimately, the deletion of addition made by the Ld. CIT(A) has been sought to be justified by the Ld. AR. In this regard, he has further relied upon the judgment passed in the matter of PCIT vs. Narsingh Ispat Ltd. in ITAT/80/2024 in IA No.GA/2/2024 passed by the Hon'ble High Court at Kolkata, the judgment passed in the matter of PCIT vs. M/s. Lal Baba Seamless Tubes Private Limited in ITAT/71/2024 passed by Kolkata High Court and in the matter of ITO vs. Bachu Lal Kapoor, reported in 60 ITR 74 (SC) passed by the Hon'ble Apex Court.

16. Ld. DR relied upon the submissions made by him before ITAT in the first round of litigation and relied upon the order passed by the Ld. A.O.

17. We have heard the rival submissions made by the respective parties and perused the relevant materials available on record.

18. It is an undisputed fact that three cheques were issued amounting to total Rs.190,00,00,000 circulated amongst the four parties. The Kolkata Bench of ITAT, in the matter of M/s. Blessings Commercial (P) Ltd. (supra) and in the matter of Sayaji Marketing (P) Ltd. by an order dated 28.06.2017 and 05.07.2018 respectively confirmed the addition made by the Ld. AO.

19. We have considered both the orders passed by the Kolkata Bench. However, we find that this particular argument of double taxation has not been advanced by the assessee therein to this effect that tax cannot be levied twice on the same income. Once the disputed amount has been admittedly added in the hands of the three companies herein the same cannot be taxed in the hands of the assessee. We find the addition of

same impugned amount has been made in the case of M/s. Blessings Commercial Private Limited fact of which is discussed at para 11 of the said order passed by the Coordinate Bench. Moreso, the same was recorded in the order passed by the Hon'ble Delhi Court while remitting the matter to the file before us. It is a trite law that when the company who had subscribed to the share of the assessee whose source being receipt of the share capital to other companies has already been held as bogus receipt, the same cannot be added in the hands of the assessee allotted such shares.

20. On this aspect we have considered the judgment passed by the High Court of Kolkata in PCIT vs Narsingh Ispat in ITAT/80/2024 dated 11.3.2024 as relied upon by the Ld.AR. While deciding with the issue the Hon'ble Court has been pleased to observe as follows:-

"This appeal filed by the revenue under Section 260A of Income Tax Act, 1961 (the Act) is directed against the Her dated 26th July, 2023 passed by the Income Tax Appellate Tribunal, B' Bench, Kolkata, in I.T.A No.255/Kol/2023 for the Assessment Year 2012-13. The revenue has raised the following substantial of law for consideration:

a) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to delete the additions under Section 68 of the said Act to the tune of Rs. 19,14,50,500/- despite the fact that the genuineness established, of the as one could capital share not be of the major applicant M/s. Honesty Dealers Private Ltd. had subscribed to the shares of the assessee, whose source being receipt of the share capital from other companies was already held as bogus receipt and added in the hands of M/s. Honesty Dealers Private Ltd. ?

b) Whether on the facts and in the circumstances of the case the Tribunal was justified in law to delete the addition under Section 68 of the said Act ignoring the fact that the creditworthiness of both the applicant companies namely, M/s. Honesty Dealers Private Ltd. and M/s. Seaview Agencies Private Ltd. could not be proven as both the companies, without having any business activities, have received share premium from other companies and in turn subscribed to shares of the assessee company as a premium who is the ultimate beneficiary ?

After elaborately hearing the learned Advocates for the parties and carefully perusing the materials placed on record, we find that while contesting the correctness of the

assessment order passed by the assessing officer under Section 143 (3) of the Act dated 4.3.2015 by which the assessing officer added back the entire share application/allotment money under Section 68 of the Act as undisclosed cash credit, the Commissioner of Income Tax (Appeals) Kolkata 20 [CIT (A)] has done an elaborately factual exercise. There were two companies which were involved one being M/s. Honesty Dealers Private Limited and the other M/s. Seaview Agencies Private Limited. The CIT (A) has examined the factual position in respect of both the companies but in so far as M/s. Honesty Dealers Private Limited the CIT (A) found in the assessment year 2009-10, which is a scrutiny assessment under Section 147 of the Act dated 12.3.2015, the entire receipt of share capital has been added in the hands of M/s. Honesty Dealers Private Limited. Further, on perusal of the balance-sheet of the said company, the CIT (A) found that the major chunk of share capital received in the assessment year 2009-10 has been invested in the shares of the assessee company and has been out of the share capital raised in the assessment year 2009-10 and in the very same assessment year the entire share capital raised by M/s. Honesty Dealers Private Limited has been added back in the hands of the party.

Furthermore, on examining the facts the CIT (A) found that the creditworthiness of M/s. Honesty Dealers Private Limited vis-a-vis the investment in the shares of the assessee company has been established.

There is also a finding that there is a clear link between the raising of the share capital and in the assessment year 2009- 10 by M/s. Honesty Dealers Private Limited and investing the major share capital into the shares of the assessee company for the assessment year 2012-13. The CIT(A) has also done a similar exercise in M/s. Seaview Agencies Private Limited. It noted that in the assessment year 2011-12 information received from the investigation wing of the was department regarding unaccounted income received by M/s. Seaview Agencies Private Limited and accordingly, addition was made treating the same as unexplained cash credit under Section 68 of the Act. Similarly, for the assessment year 2012-13 there was another information from the investigation wing regarding the unaccounted income and this amount was also added to the total income. The CIT(A) perused the assessment orders for those two years which showed that the assessing officer has not made any adverse comment on the entries of the balance-sheet. Furthermore, on facts the CIT (A) found that the investigation wing has not found any adverse comments against share capital raised by M/s. Seaview Agencies Private Limited in the assessment year 2009-10. Thus, it was concluded that there is nothing on record to suggest that the share capital raised by M/s. Seaview Agencies Private Limited in the assessment year 2009-10 was not genuine. Further, the tribunal on facts concluded that the identity and creditworthiness of the investors are not in doubt and the transaction was found to be genuine.

The revenue challenged this order before the tribunal. The tribunal have once again re-appreciated the factual position and more importantly found that the share application money received by the assessee from M/s. Honesty Dealers Private Limited has already been added back in the hands of the share application and as the source has already been added, it upheld the action of the CIT(A).

A similar exercise was also done by the tribunal in so far as M/s. Seaview Agencies Private Limited is concerned. Apart from the fact the tribunal noted that the company is having a huge turnover for the financial year 2012- 13 amounting to Rs.145.38 crores and net profit from continuing operation was Rs.145 crores (approximately) and the total income declared was Rs.1.74 crores. Therefore, the tribunal on facts found that the identity and creditworthiness of the share applicant was established. The tribunal apart from relying upon a decision of the co-ordinate Bench of the tribunal in the case of ITO Va. Dharamvir Merchandise (P) Ltd. reported at [2023] 149 taxmann.com 221 (Kolkata Trib.) took note of the decision of this Court in the case of Principal CIT Vs. Sreeleathers reported in [2022] 448 Income Tax Return 332 (Cal). After taking note of the legal position as set out in the said decisions, the tribunal affirmed the order passed by the CIT(A) by recording a factual finding that the three necessary ingredients, namely, identity creditworthiness of the share applicants and genuineness of the transaction as provided under Section 68 of the Act have been established and there was no ground to interfere with the order passed by the CIT(A) dated 25.1.2023.

Thus, we find no question of law much less substantial question of law is arising for consideration in this appeal.

Hence, the appeal fails and is dismissed.

The stay application GA/2/2024 also stands dismissed."

21. The judgment passed by the High Court at Kolkata in the case of PCIT vs. M/s. Lal Baba Seamless Tubes Private Limited as relied upon by the Ld. AR has been considered by us. The relevant observation on the aspect of double taxation is as follows:-

"We find the Learned Tribunal has done an elaborate exercise to examine the factual position as well as the documents which were filed by the assessee in the form of a paper book. Learned Tribunal records the finding of fact that the assessee has established source of source, even though it was not required for the assessment year under consideration. The documents which were called for by the Assessing Officer were admittedly produced before the Assessing Officer though the investors or director appeared in person. Thus, on appreciation of the factual position the Tribunal has granted the relief. Furthermore, the learned Tribunal has noted that addition has already been made in the hand of the subscribing company and therefore, no further addition is required to be made in the hands of the assessee. The Tribunal also noted that all the companies are active and have invested money from their own resources. Thus, we find no questions of law, much less substantial questions of law, arising for consideration in this appeal. The appeal is thus dismissed."

22. Thus, time and again it has been decided by different judicial forum that where an addition is made in the hands of the share applicant no further addition is required in the hands of the assessee.

23. The order passed by the Hon'ble Apex Court in the matter of Income Tax Officer vs Bachu Lal Kapoor has further being considered by us wherein the concept of double taxation has been elaborately discussed in the following manner.

"11. It was then forcibly brought to our notice that the said view would be subversive of the doctrine of "double taxation". It was said that as the orders of assessment on the individual members of the said family had become final, if the ITO was permitted to assess the HUF for the same assessment year, tax would be imposed on the same income twice over. It is rue that the Act does not envisage taxation of the same income twice over "on one passage of money in the form of one sort of income". It is equally TRUE THAT S. 14(1) OF THE Act expressly debar the imposition of tax on any part of the income of an HUF received by its members. The fact that there is no provision in the Act dealing with a converse position does not affect the question, for the existence of such a converse position is legally impossible under the Act. So long as the HUF exists, the individual thereof cannot separately be assessed in respect of its income. Nonetheless, if, under some mistake, such income was assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment made on the HUF in respect of that income, the Revenue had to make appropriate adjustments, otherwise, the assessment made in respect of that income on the HUF would be contrary to the provisions of the Act, particularly s. 14(1) of the Act. We, therefore, hold that if the assessment proceedings initiated under s. 34 of the Act culminated in the assessment of the HUF, appropriate adjustments have to be made by the ITO in respect of the tax realized by the Revenue in respect of that part of the income of the family assessed on the individuals of the said family. To do so is not to re-open the final orders of assessment, but in reality to arrive at the correct figure of tax payable by the HUF".

24. In this case it has been held that once the addition is made in the hands of individual, the ITO will not be permitted to assess the HUF for the same Assessment Year otherwise, tax would be imposed on the same income twice over.

25. In the case in hand before us, it is an undisputed fact that 3 cheques were issued amounting to Rs.190 crores circulated amongst the

4 companies. The Hon'ble Tribunal in the case of ITO vs Blessing Commercials Pvt Ltd in ITA No. 271/Kol/2014 vide order dated 28.06.2017 has confirmed the addition made by the Assessing Officer of Rs.190 crores and similarly in the case of ITO vs Sayaji Marketing Pvt. Limited in ITA No.282/Kol/2014 vide order dated 5.9.2018 the same has been confirmed by ITAT. The same amount again has been added in the hands of the assessee which is not permissible since tax cannot be levied twice. The addition, therefore, in the hands of the assessee before us on the same income, if at all, is not sustainable in the eyes of law which deserves to be deleted. Thus, respectfully relying on the judgments passed by the Hon'ble High Court at Kolkata and the Hon'ble Apex Court we do not find any reason to interfere with the order passed by the Ld. CIT(A) in deleting the addition made by the A.O. against the assessee.

26. Revenue's appeal is found to be devoid of any merit and thus dismissed.

27. In the result, the appeal filed by the Revenue is dismissed.

PER BRAJESH KUMAR SINGH, AM:

I am unable to persuade myself with the findings of my Ld. Sister regarding her decision of endorsing the order of the Ld. CIT(Appeals) in deleting the addition of Rs.190,00,00,000/- under Section 68 of the Act made by the AO vide assessment order under Section 143(3) of the Act dated 25th March, 2013 as held by her in para nos.25 and 26 of her order which are reproduced as under:

“25. In the case in hand before us, it is an undisputed fact that 3 cheques were issued amounting to Rs.190 crores circulated amongst the 4 companies. The Hon’ble Tribunal in the case of ITO Vs. Blessing Commercial Pvt. Ltd. in ITA No.271/Kol/2014 vide order dated 28.06.2017 has confirmed the addition made by the Assessing Officer of Rs.190 crores and similarly in the case of ITO vs. Sayaji Marketing Pvt. Ltd. in ITA No.282/Kol/2014 vide order dated 5.9.2018 the same has been confirmed by ITAT. The same amount again has been added in the hands of the assessee which is not permissible since tax cannot be levied twice. The addition, therefore, in the hands of the assessee before us on the same income, if at all, is not sustainable in the eyes of law which deserves to be deleted. Thus, respectfully relying on the judgement passed by the Hon’ble High Court at Kolkata and the Hon’ble Apex Court we do not find any reason to interfere with the order passed by the Ld. CIT(A) in deleting the addition made by the AO against the assessee.

26. Revenue’s appeal is found to be devoid of any merit and thus dismissed.”

2. The above amount of Rs.190,00,00,000/- added by the Assessing Officer under Section 68 of the Act in the assessment order in the case of our assessee is on account of an amount of Rs.1,90,00,000/- being share capital received and Rs.188,10,00,000/- being share premium @ Rs.990/- per share received by the assessee company during financial year 2009-10 relevant to Assessment Year 2010-11, the details of which are as under:

S. No.	Name of the share applicant companies	Towards shares	Towards premium	Total	Shares allotted.
1.	Sayaji Marketing Pvt.Ltd.	Rs.600000 0	Rs.5940000 00	Rs.600000 000	600000
2.	Blessings Commercial	Rs.650000	Rs.6435000	Rs.650000	650000

	Pvt. Ltd.	0	00	000	
3.	Stephens Financials Services Pvt.	Rs.650000 0	Rs.6435000 00	Rs.650000 000	650000

2.1 The facts of the case are not repeated for the sake of brevity and there is no dispute with respect to the facts of the case as stated by my Ld. Sister. However, my findings differ from my Ld. Sister in view of the facts as discussed hereinafter.

2.2 My Ld. Sister has considered the above amount of Rs.190 crores as a case of same income being taxed twice in the case of the assessee on the ground that identical addition of Rs.190 crores has also been added by the respective AOs in the case of M/s. Blessings Commercial Pvt. Ltd. and M/s. Sayaji Marketing Pvt. Ltd. (from where share capital and share premium as detailed in the table on the pre-page was received by the assessee company) and the same amount again has been added in the hands of the assessee which is not permissible since tax cannot be levied twice on the same income. She has further held that the addition, therefore, in the hands of the assessee before us on the same income, if at all, is not sustainable in the eyes of law and the same deserves to be deleted. For this view, my Ld. Sister has relied upon the decision cited by the Ld. AR in the case of PCIT, Central-2, Kolkata vs. Lal Baba Seamless Tubes Pvt. Ltd. ITAT/71/2024/IA No: GA/2/2024 (Hon'ble Calcutta High Court), PCIT, Central-1, Kolkata Vs. M/s. Narsingh Ispat Ltd. ITAT/80/2024/IA No: GA/2/2024 (Hon'ble Calcutta High Court) and of

the Hon'ble Apex Court in the case of ITO vs. Bachu Lal Kapoor (1966) 60 ITR 74 (SC).

2.3 The facts and the decision of the Hon'ble Calcutta High Court have been considered very carefully and found that the Hon'ble Calcutta High Court while confirming the order of the Tribunal deleting similar addition of share capital under Section 68 of the Act had taken note of the finding of the Tribunal that a part of the share capital added in the hands of the respective assessee company were also added in the hands of the respective share applicant company.

2.4 However, it is also to be noted that in the case of PCIT, Central-1, Kolkata Vs. M/s. Narsingh Ispat Ltd. (supra), the Hon'ble Court found that the assessee company had received share capital of Rs.19,14,50,500/- from one M/s. Honesty Dealer Pvt. Ltd. which was added in the hands of M/s. Narsingh Ispat Ltd. for Assessment Year 2012-13. The Hon'ble Court took note of the fact that the CIT(A) had examined the factual position in respect of the share applicant M/s. Honesty Dealers Pvt. Ltd. and found that for Assessment Year 2009-10 in a scrutiny assessment under Section 147 of the Act dated 12.03.2015, the entire receipt of share capital has been added in the hands of M/s. Honesty Dealers Pvt. Ltd. The Hon'ble Court further noted that the CIT(A) on examining the facts found that the creditworthiness of M/s. Honesty Dealers Pvt. Ltd. vis-à-vis the investments in the shares of M/s. Narsingh Ispat Ltd. has been established. The Hon'ble Court also took note of the fact that the revenue challenged this order before the Tribunal which once again re-appreciated the factual position and more importantly found that the share application money received by the assessee from

M/s. Honesty Dealers Private Limited has already been added back in the hands of the share applicant and as the source has already been added, it upheld the action of the CIT(A). However, while finally affirming the order of the Tribunal, the Hon'ble Court took note of the fact that the tribunal affirmed the order passed by the CIT(A) by recording a factual finding that the three necessary ingredients, namely, identity, creditworthiness of the share applicants and genuineness of the transaction as provided under Section 68 of the Act have been established and there was no ground to interfere with the order passed by the CIT(A) dated 25.1.2023. In view of the above factual position, the Hon'ble Court held that no question of law much less substantial question of law arises for consideration in this appeal and dismissed the appeal of the Revenue.

2.5 Thus, the Hon'ble Calcutta High Court in the above cited case did not find any question of law in view of the factual finding found by the Tribunal that the three necessary ingredients, namely, identity, creditworthiness of the share applicants and genuineness of the transaction as provided under Section 68 of the Act have been established and not solely on the ground that the share application money invested by M/s. Honesty Dealers Pvt. Ltd. in the case of M/s. Narsingh Ispat Ltd. was also added in the hands of M/s. Honesty Dealers Pvt. Ltd.

2.6 Further, in the case of PCIT, Central-2, Kolkata vs. Lal Baba Seamless Tubes Pvt. Ltd. (supra), the facts of the case and the decision of the Hon'ble Court has been carefully perused. The substantial question of law before the Hon'ble Court and the relevant extracts of the order passed by the Hon'ble Court are as under:

- “i) Whether on the facts and circumstances of the case, the Learned Tribunal has committed substantial error in law by ignoring the fact of creditworthiness of the investor companies as well as genuineness of the transaction was not established by the assessee?
- ii) Whether on the facts and circumstances of the case, the Ld. Tribunal has erred in not appreciating the fact that the assessee failed to produce applicant/investors companies for share allotment for cross examination and thus failed to prove the creditworthiness and genuineness of the share allotment?

X X X

We find the learned Tribunal has done an elaborate exercise to examine the factual position as well as the documents which were filed by the assessee in the form of a paper book. Learned Tribunal records the finding of the fact that the assessee has established source of source, even though it was not required for the Assessment Year under consideration. The documents which were called for by the Assessing Officer were admittedly produced before the Assessing Officer though the investors or director appeared in person. Thus, on appreciation of the factual position the Tribunal has granted the relief. Furthermore, the learned Tribunal has noted that addition has already been made in the hand of the subscribing company and, therefore, no further addition is required to be made in the hands of the assessee. The Tribunal also noted that all the companies are active and have invested money from their own resources.

Thus, we find no questions of law, much less substantial questions of law, arising for consideration in this appeal. The appeal is dismissed.”

2.7 In the above case also, the Hon’ble Court took note of the finding of the fact by the Tribunal that the assessee had established source of source and submitted the documents which were called by the AO and the director of the share applicant company appeared in person. The Hon’ble Court also took note of the fact that the Tribunal had noted that the addition of the share capital added in the hands of the assessee company had already been made in the hands of the subscribing company and, therefore, no further addition was required to be made in the hands of the assessee company. Further, the Hon’ble Court also took

note of the fact regarding the finding of the Tribunal that all the companies (share applicant companies) are active and have invested money from their own resources.

2.8 Thus, it is seen that the Hon'ble Calcutta High Court considered the above finding of the Tribunal that the source of source i.e. the creditworthiness of the share applicant was established and the genuineness of the transaction was established in view of the findings of the Tribunal that all the companies (share applicant companies) are active and have invested money from their own resources.

2.9 Thus, it is seen that the Hon'ble Calcutta High Court in the above two cited cases had taken note of the cumulative facts which included that the creditworthiness of the share applicant M/s. Honesty Dealers Pvt. Ltd. and the genuineness of the transaction was established in the case of PCIT, Central-1, Kolkata Vs. M/s. Narsingh Ispat Ltd. (supra) and not only on the fact that the share capital amount invested in the case of M/s. Narsingh Ispat Ltd. in Assessment Year 2012-13 was already added in the case of M/s. Honesty Dealers Pvt. Ltd. for Assessment Year 2009-10. Similarly, in the case of PCIT, Central-2, Kolkata vs. Lal Baba Seamless Tubes Pvt. Ltd. (supra), the Hon'ble Court took note of the finding of the Ld. Tribunal that the creditworthiness of the share applicant was established and the genuineness of the transaction was established in view of the findings that all the companies (share applicant companies) were active and had invested money from their own resources and not only on the ground that the addition of the share capital added in the hands of the assessee company had already been

made in the hands of the subscribing company and, therefore, no further addition was required to be made in the hands of the assessee.

2.10 In the case of our assessee i.e. Double Plus Software Pvt. Ltd. for Assessment Year 2010-11, the subject matter of present appeal, the Coordinate Bench vide an order dated 18.01.2023 in the case of the assessee company, relying upon the order dated 28.06.2017 of Kolkata Bench of Tribunal in the case of M/s. Blessings Commercial Pvt. Ltd. in ITA No.271/Kol/2014 (wherein identical amount of Rs. 190,00,00,000/- was added under Section 68 of the Act) confirmed the addition of Rs. 190,00,00,000/- made by the Assessing Officer. However, the said order dated 18.01.2023 of the Tribunal in the case of the assessee company has been set aside by the Hon'ble Delhi High Court vide its order dated 03.11.2023 in ITA No.603/2023 in the case of Kanti Commercial Pvt. Ltd. (now known as Double Plus Software Pvt. Ltd.) Vs. CIT to the Tribunal in respect of which the present appeal was heard by us. However, the Hon'ble High Court in para no. 16 observed that it had not examined the merits of the matter and the Tribunal will, thus, be free to arrive at its own conclusion while deciding the matter on merits. In the case of M/s. Blessings Commercial Pvt. Ltd.(supra), the Kolkata Bench of Tribunal in para no. 15 held that the assessee (M/s. Blessings Commercial Pvt. Ltd.), could not prove the genuineness of the above credits of Rs.190,00,00,000/- as well as the creditworthiness of the creditor and held that the addition was rightly made by the AO. Similarly, relying upon the order of Kolkata Bench of Tribunal in the case of M/s. Blessings Commercial Pvt. Ltd. (supra), the Kolkata Bench of Tribunal vide its order dated 05.09.2018 in the case of M/s. Sayaji Marketing Pvt. Ltd. in ITA No.282/Kol/2014 (wherein identical amount of

Rs. 190,00,00,000/- was added under Section 68 of the Act) confirmed the addition of Rs. 190,00,00,000/- made by the Assessing Officer.

2.11 Against the above two orders of the Kolkata Tribunal, the respective assesseees have filed appeals before the Hon'ble Calcutta High Court which are pending as on date. Therefore, the facts in the case of our assessee is distinguishable as the Co-ordinate Bench vide its earlier order dated 18.01.2023 had held that the genuineness of the above credits of Rs.190,00,00,000/- as well as the creditworthiness of the creditor in respect of the cash credits amounting to Rs.1,90,00,00,000/- in the books of accounts of the assessee company and added under Section 68 of the Act was not been established and the present appeal was not heard on merits except on the issue of same income being taxed twice during the course of hearing before us. Therefore, in view of these facts, I do not agree with the findings of my Ld. Sister in deleting the addition of Rs.190,00,00,000/- by placing reliance on the above two case laws of the Hon'ble Calcutta High Court as in the case of our assessee, the genuineness of the transaction and the creditworthiness of the creditor has not been established even though the share capital and share premium received by the assessee company has been added in the case of the share applicant company.

2.12 Further, in the case of ITO vs. Bachu Lal Kapoor (supra), the facts are distinguishable in the present case. In this case, the AO had issued a notice under Section 34 of the Indian Income-Tax Act, 1922 to assess Shri Bachu Lal Kapoor as the Karta of the HUF consisting of himself, his wife and a minor son in respect of income again in the hands of the HUF wherein the orders of assessment on the individual members of the said

family had become final. In this case, the Hon'ble Apex Court also noted the fact that section 14(1) of the Indian Income-Tax Act, 1922 expressly debars the imposition of tax on any part of the income of an HUF received by its members. But, in the case of our assessee, the addition has been made under Section 68 of the Act, where there is no such restriction under Section 68 of the I.T. Act, 1961, prohibiting addition of identical amount in respect of two assessees if the transactions fall within the scope of section 68 of the Act on 'protective basis' wherein the department does not enforce the collection of the demand on such 'protective addition'. Further, even though, in such a situation, the tax is levied twice on the same income but its collection is not enforced by the department till the finalization of the connected 'substantive addition' made in the case of other assessee in the appellate proceedings or otherwise.

2.13 Moreover, it is also a fact in certain situations due to parallel running of the limitation period or for any valid reason, the issue of 'substantive addition' and 'protective basis' cannot be finalized by the respective AOs during the limitation period of passing of the respective assessment orders. On perusal of the records available before us, it is seen that the addition of Rs.190,00,00,000/- was made in the case of our assessee vide order under Section 143(3) dated 25.03.2013 and the same addition was made in the case of M/s. Sayaji Marketing Pvt. Ltd. vide order under Section 143(3) dated 28.03.2013. The information about the date of the passing of the assessment order in respect of M/s. Blessings Commercial Pvt. Ltd. is not available before us. Further, the said addition was made in all the three cases for Assessment Year 2010-11. On perusal of these facts, it is seen that there was a constraint of time as the limitation period was running parallelly/simultaneously in all the

three cases and, therefore, the same being a constraint for not deciding the addition on 'substantive/protective basis' in the respective cases cannot be ruled out. In such a situation, the Tribunal under Section 254(1) of the Act is within its power to set aside the assessment before it to the file of the Assessing Officer to decide the issue of 'substantive/protective addition' in the appropriate case instead of deleting it on the ground of same income being taxed twice. This is particularly more relevant in the present case of our assessee wherein the identical amount/transaction amounting to Rs.1,90,00,00,000/- has been confirmed by the Co-ordinate Bench of Kolkata Tribunal on merits in the two cases i.e. in the case of M/s. Blessings Commercial Pvt. Ltd. and M/s. Sayaji Marketing Pvt. Ltd. and also in the case of our assessee as discussed above.

2.14 Further, as noted above, the fate of the addition of Rs. 190,00,00,000/- in the case of M/s. Blessing Commercial Pvt. Ltd., (the source of share application money and share premium amounting to Rs. 65 crores in the case of the assessee company) and in the case of M/s. Sayaji Marketing Pvt. Ltd. (the source of share application money and share premium amounting to Rs. 60 crores in the case of the assessee company) have not yet been finalized and are still pending in appeals filed by the respective assessees against the order of the Kolkata Tribunal confirming the said addition before the Hon'ble Calcutta High Court. Therefore, in view of the fact that the assessment in the case of M/s. Blessing Commercial Pvt. Ltd. and M/s. Sayaji Marketing Pvt. Ltd. on the identical addition of Rs.190,00,00,000/- are yet to become final, in view of the pending appeals, as stated above, the observations of the Apex Court in the case of ITO Vs. Bachu Lal Kapoor (supra), in para no.11 cannot be relied upon in the case of our assessee as the said observation

by the Hon'ble Apex Court was in view of the fact that the assessment in the case of the individual member of the family had become final and the AO wanted to tax the same income in the hands of the Shri Bachu Lal Kapoor in the capacity as Karta of the HUF i.e. to tax in the hands of the HUF. Here, it is worthwhile to mention that the Hon'ble Apex Court instead of quashing the proceeding initiated by the Assessing Officer under Section 34 of the Indian Income-Tax Act, directed the Assessing Officer to make appropriate adjustment to avoid taxation of the same income twice. The relevant observation of the Hon'ble Apex Court is reproduced as under:

“So long as the HUF exists, the individual thereof cannot separately be assessed in respect of its income. Nonetheless, if, under some mistake, such income was assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment made on the HUF in respect of total income, the Revenue had to make appropriate adjustments, otherwise, the assessment made in respect of that income on the HUF would be contrary to the provisions of the Act, particularly s.14(1) of the Act. We, therefore, hold that if the assessment proceedings initiated under s. 34 of the Act culminated in the assessment of the HUF, appropriate adjustments have to be made by the ITO in respect of the tax realized by the Revenue in respect of that part of the income of the family assessed on the individuals of the said family. To do so is not to re-open the final orders of assessment, but in reality, to arrive at the correct figure of tax payable by the HUF.”

2.15 Therefore, the Hon'ble Apex Court instead of quashing the proceedings initiated by the Assessing Officer under Section 34 on account of possible same income being taxed twice directed the Assessing Officer to make appropriate adjustments to avoid the same and the same can also be done in the case of our assessee by setting it aside to the file of the Assessing Officer instead of deleting the same on the ground of same income being taxed twice.

2.16 Further, as regards the findings of my Ld. Sister that the amount of Rs.190,00,00,000/- was being taxed twice in the case of the assessee company, it is stated that the assessment order in the case of M/s. Blessing Commercial Pvt. Ltd. and M/s. Sayaji Marketing Pvt. Ltd. are yet to become final in view of pending appellate proceedings before the Hon'ble Calcutta High Court, as stated above and till it becomes final it, the taxing of the same income twice has also not become final. Therefore, in view of the above facts, I do not agree with the findings of my Ld. Sister in relying upon the decision of the Hon'ble Apex Court in the case of ITO Vs. Bachu Lal Kapoor (supra) in deleting the addition on the ground of being a case of same income being taxed twice as the assessment regarding the fate of the addition of Rs 190,00,00,000/- in the case of M/s. Blessing Commercial Pvt. Ltd. and M/s. Sayaji Marketing Pvt. Ltd. is yet to become final as on date.

2.17 Moreover, no fact has been furnished about the status of assessment in the case of M/s. Stephens Financial Services Pvt. Ltd. which invested share capital and share premium of Rs. 65 crores towards the share capital and premium amounting to Rs.190,00,00,000/- in the hands of the assessee company. In this regard, the genuineness of transaction and the creditworthiness of M/s. Stephens Financial Services Pvt. Ltd. has to be established by the assessee company as required under Section 68 of the Act which has not done by the assessee company and, therefore, the addition to the extent of Rs.65,00,00,000/- received by the assessee company by M/s. Stephens Financial Services Pvt. Ltd. is not covered as a case of same income being taxed twice as per the provisions of Section 68 of the Act.

2.18 Therefore, in view of the above situation, facts and circumstances of the case, I am of the considered opinion that the deletion of Rs.190,00,00,000/- in the case of assessee company on the ground of same income being taxed twice as held by my Ld. Sister is not justified and, therefore, I do not agree with her findings on the same.

3. Finally, in view of the fact that the case was heard only on the issue of same income being taxed twice and not on merits of the addition as required in terms of Section 68 of the Act, therefore, the case may be refixed for fresh hearing on merits by giving notice to both the parties.

PER MAHAVIR SINGH, VICE PRESIDENT (AS THIRD MEMBER):

By the order of President, ITAT vide U.O. No.F.28-Cent.Jd(AT)/2025 dated 4th March, 2025, the undersigned has been nominated to adjudicate the difference of opinion between the learned Judicial Member and learned Accountant Member on the following question:-

“1. As to whether under the present facts and circumstances of the matter, the addition made in the hands of the assessee before us on the same amount of income which has already been added by the Revenue on two other companies namely M/s Blessing Commercials Pvt.Ltd. and Sayaji Marketing Pvt.Ltd. which was further affirmed by the ITAT, is a case of double taxation and sustainable in the eyes of law or not.

2. As to whether if there is any disagreement on the point of maintainability on the addition on the preliminary ground then without deciding the same by a Third Member the appeal can at all be proceeded with to decide the matter on merit.”

2. At the outset, it is observed that vide letter dated 30th April, 2019, M/s Kanti Commercials Pvt.Ltd. has informed the Tribunal that M/s Double Plus Software Pvt.Ltd. i.e., the assessee which originally filed this appeal, has now been merged with it, having address at '1, Zamrudpur Community Centre, Kailash Colony, New Delhi – 110048'.

3. Brief facts of the case are that during the previous year, the paid up capital of the assessee company was increased by Rs.190 crores by issuance of 19 lakhs equity shares having face value of Rs.10 each at a premium of Rs.990/- per share. The said share capital was ploughed into investment of an identical amount of share capital of three other corporate bodies namely Blessings Commercial Private Limited, Stephens Financial Services Private Limited and Sayaji Financial Services Private Limited. In fact, during the year under consideration, the assessee company in his audited balance sheet has shown an increase of Rs.1,90,00,000/-towards authorized share capital/issued subscribed and paid up capital and Rs.188,10,00,000/- towards share premium account. The assessee on or about 5th June, 2009 issued Cheque No.012842 drawn on Axis Bank. By way of issuing the said crossed cheque, assessee transferred the funds of Rs.65,00,00,000/- to Sayaji Financial Services Private Limited. The said amount of Rs.65,00,00,000/- ultimately in turn was returned to the assessee company through other two companies namely Blessings Commercial Private Limited and Stephens Financial Services Private Limited respectively. Further, an amount of Rs.60,00,00,000/- initially transferred by the assessee to the said Stephen Financial Services Pvt. Ltd. by issuing crossed cheque No.012843 dated 5th June, 2009 drawn on Axis Bank was in turn returned back to the assessee company

through the other two companies namely, Blessings Commercial Private Limited and Sayaji Financial Services Private Limited. Further, amount of Rs.65,00,00,000/- as was initially transferred by way of a crossed cheque bearing No.000059 drawn on Kotak Mahindra Bank by Stephen Financial Services Pvt.Ltd. to Sayaji Financial Services Pvt.Ltd. The same was returned to Stephen Financial Services Pvt.Ltd. after being routed through Blessings Commercial Pvt.Ltd. and the assessee company before me. Thus, the nature of transactions took place in a manner that the ‘& Co’ crossed cheque issued by one company after a series of endorsement to other companies was finally endorsed to the issuer company whereby the issuer company while making a payment to the endorsee company treated the money as share application paid and when finally the cheque was received, it was treated as share application money received. In view of the endorsement by different companies, the entries do not appear in the bank statement. The transactions were carried out in a manner the “& Co” crossed cheque was endorsed from one party to another resulting in share capital as well as investment based on such endorsement of the cheque.

4. The details of a share application money received on shares allotted to the applicants is tabulated hereunder:-

Name of the applicant	Address	PAN details	Date of application	Amount received Rs.
Blessings Commercial Pvt. Ltd.,	Landmark, 5 th Floor, 228A, A.J.C. Boss Road, Kolkata-700020	AACCB1349N	05.06.2009	650000000
Stephens Financial Ser. Pvt. Ltd.	Landmark, 5 th Floor 228A, A.J.C. Boss Road, Kolkata-700020	AACGS2740G	05.06.2009	650000000
Sayaji Marketing Pvt. Ltd.	5, Russell Street Ist Floor,	AAGCS0147M	05.05.2009	600000000

	Kolkatta-700071		
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5. The shares were allotted on 22nd June, 2009, the details whereof are as follows:-

S.No.	Name & Address	Face Value (Rs.)	Share Premium (Rs.)	Total (Rs.)	Shares allotted
1.	Sayaji Marketing Pvt.Ltd.	600000	594000000	600000000	600000
2.	Blessing Commercial Pvt.Ltd.	6500000	643500000	650000000	650000
3.	Stephens Financials Services Pvt.Ltd.	6500000	643500000	650000000	650000
	Total	19000000	1881000000	190000000	1900000

6. The share applications from the above companies were invested in the following companies by the assessee company before us in the following manner:-

Name of the Company	No. of shares	Amount invest (Rs.)
Blessings Commercial Pvt. Ltd.	6500000	650000000
Stephens Financial Ser. Pvt. Ltd.	6500000	650000000
Sayaji Marketing Pvt. Ltd.	6000000	600000000

7. The Assessing Officer observed that the entire capital received by the assessee company during the year came from three companies i.e., Stephen Financial Services, Blessings Commercial Ltd. and Sayaji Marketing (P) Ltd. In turn, the assessee company also made investments of similar amounts in the equity shares of the same three companies. It was the specific finding by the AO that these particular three cheques of Rs.65,00,00,000/-, Rs.60,00,00,000/- and Rs.65,00,00,000/- respectively were involved in all the transactions and after their issue, the cheques were endorsed repeatedly by the recipients until each of

them reached back to the issuing company. Based on these observations, the AO concluded that the entire chain of transactions were sham and thus, the capital introduction of Rs.190,00,00,000/- in the assessee company was unexplained. Treating the same as unexplained cash credits under Section 68 of the Act, the same was added in the hands of the assessee which was, in turn, deleted by the learned First Appellate Authority.

8. The learned Judicial Member, by referring the decision of the Hon'ble Supreme Court in the case of ITO Vs. Bachu Lal Kapoor – [1966] 60 ITR 74 (SC), has observed that once the addition is made in the hands of individual, the ITO will not be permitted to assess the HUF for the same assessment year otherwise, tax would be imposed on the same income twice over. Learned Judicial Member further noted that it is an undisputed fact that the cheques were issued amounting to Rs.190 crores circulated amongst the four companies. The Tribunal in the case of ITO Vs. Blessing Commercials Pvt. Ltd. in ITA No.271/Kol/2014 vide Order dated 28th June, 2017 has confirmed the addition made by the AO of Rs.190 crores and similarly, in the case of ITO Vs.Sayaji Marketing Pvt. Ltd. in ITA No.282/Kol/2014 vide order dated 5th September, 2018, the same has been confirmed by ITAT. The same amount again has been added in the hands of the assessee which is not permissible since tax cannot be levied twice, and addition in dispute is not sustainable in the eyes of law and deserves to be deleted. Thus, learned Judicial Member, by respectfully following the aforesaid precedent, confirmed the order of the learned CIT(A) by dismissing the appeal of the Revenue.

9. The learned Accountant Member has noted the fact that the learned Judicial Member has considered the issue that once the same amount has again been added in the hands of the assessee which is not permissible since tax cannot be levied twice on the same income. The learned AM distinguished the decision of Hon'ble Calcutta High Court in the case of NarsinghIspat Ltd. in ITAT/80/2024 in IA No.GA/2/2024, Order dated 11th March, 2024, by recording a finding that although Hon'ble High Court took note of the fact that the money received by the assessee from Honesty Dealer Pvt.Ltd. has already been added back in the hands of the share applicant, the Hon'ble High Court also took note of the fact that Tribunal affirmed the order of CIT(A) by recording a factual finding that the three necessary ingredients of Section 68 of the Act viz., identity, creditworthiness of the share applicant and genuineness of the transactions have been established. According to learned AM, the Hon'ble High Court has examined the case on merits. Further, similarly, learned AM observed that in the case of Lal Baba Seamless Tubes Pvt.Ltd. in ITAT/71/2024 in IA No.GA/2/2024, Order dated 26th April, 2024, the Hon'ble Calcutta High Court considered the fact that the source of source i.e., creditworthiness of the share applicant was established and genuineness of the transaction was also established because all the companies i.e., share applicant companies are active and have invested money from their own resources. Learned AM also distinguished the case law of Hon'ble Supreme Court in the case of BachuLal Kapoor (supra) and finally held that in case of Blessings Commercial (P) Ltd. and Sayaji Marketing (P) Ltd., the appellate proceedings are pending before Hon'ble Calcutta High Court under Section 260A of the Act, as observed by him in Paragraph 2.16 of his order. But, as regards Stephens Financial Services Pvt.Ltd., he observed

that there is no assessment record available and hence, this plea of double taxation cannot be accepted. Therefore, he has not agreed with the findings of the learned Judicial Member and directed that the case be heard on merits.

10. I have heard rival contentions and gone through the facts and circumstances of the case. The brief facts are that during the previous year, the paid up capital of the assessee Company was increased to Rs.190 crores by issue of 19 lakh equity shares of face value of Rs.10/- each at a premium of Rs.990/- per share. The said share capital was ploughed into investment of an identical amount in share capital of three other corporate bodies. The Assessing Officer observed that the entire capital received by the assessee during the year came from three companies viz. Stephen Financial Services (P) Ltd, Kolkata, Blessing Commercial Pvt.Ltd, Kolkata and Sayaji Marketing Pvt.Ltd. In turn, the assessee also made investments of similar amounts in the equity shares of same three companies. In fact, it was found by the Assessing Officer that three cheques of Rs.65 crores, Rs.60 crores and Rs.65 crores respectively were involved in all the transactions and after their issue the cheques were endorsed repeatedly by the recipients until each of them reached back to the Issuing Company. Based on these observations, the Assessing Officer concluded that the entire claim of transactions was sham. Therefore, according to him the capital introduction of Rs.190 crores in the assessee Company was unexplained.

11 As already discussed above, the amount of share capital and share premium received were invested in the three companies. The manner in which the flow of transactions took place is as follows:-

(a) On 05.06.2009 the assessee issued cheque No.012842 draw on Axis Bank. The cheque being a "& Co" crossed cheque went through a series of endorsements as follows:-

(i) On 05.06.2009 the assessee transferred the fund by issuing "& Co" crossed cheque bearing No.012842 in favour of Sayaji Marketing Pvt.Ltd.

(ii) On 05.06.2009 Sayaji Marketing Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012842 in favour of Blessing Commercial Pvt.Ltd.

(iii) On 08.06.2009 Blessings Commercial Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012842 in favour of Stephen Financial Services Pvt.Ltd.

(iv) On 08.06.2009 Stephens Financial Services Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012842 in favour of the assessee.

(b) On or about 05.06.2009 the assessee issued another "& Co" crossed cheque bearing No.012843 drawn on Axis Bank. The cheque being a "& Co" crossed cheque went through a series of endorsements as follows:-

(i) On 05.06.2009 the assessee transferred the fund by issuing "& Co" crossed cheque bearing No.012843 in favour of Stephens Financial Services Pvt.Ltd.

(ii) On 06.06.2009 Stephens Financial Services Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012843 in favour of Blessing Commercial Pvt.Ltd.

(iii) On 07.06.2009 Blessings Commercial Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012843 in favour of Sayaji Marketing Pvt.Ltd.

(iv) On 08.06.2009 Sayaji Marketing Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012843 in favour of the assessee.

(c) On or about 05.06.2009 Stephen Financial Services Pvt.Ltd. issued a cheque No.000059 draw on Kotak Mahindra Bank and the flow of the fund was as under. The cheque being a "& Co" crossed cheque went through a series of endorsements as follows:-

(i) On 05.06.2009 Stephens Financial Services Pvt.Ltd. transferred the fund by issuing "& Co" crossed cheque bearing No.000059 in favour of Sayaji Financial Services Pvt.Ltd.

(ii) On 05.06.2009 Sayaji Financial Services Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.000059 in favour of Blessing Commercial Pvt.Ltd.

(iii) On 06.06.2009 Blessings Commercial Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.000059 in favour of the assessee.

(iv) On 06.06.2009 the Appellant Company transferred the fund by endorsing "& Co" crossed cheque bearing No.000059 in favour of Sayaji Marketing Pvt.Ltd.

(v) On 08.06.2009 Sayaji Marketing Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.000059 in favour of Stephens Financial Services Pvt.Ltd.

(d) On or about 05.06.2009 Blessing Commercial Pvt.Ltd. issued a "& Co" crossed cheque bearing No.012902 on Axis Bank and the flow of the funds was as under. The cheque being a "& Co" crossed cheque went through a series of endorsements as follows:-

(i) On 05.06.2009 Blessings Commercial Pvt.Ltd. transferred the fund by issuing "& Co" crossed cheque bearing No.012902 in favour of Sayaji Marketing Pvt.Ltd.

(ii) On 06.06.2009 Sayaji Marketing Pvt.Ltd. transferred the fund by endorsing "& Co" crossed cheque bearing No.012902 in favour of the assessee.

(iii) On 06.06.2009 the assessee transferred the fund by endorsing "& Co" crossed cheque bearing No.012902 in favour of Blessing Commercial Pvt.Ltd.

The nature of transactions took place in a manner that the "& Co" crossed cheque issued by one company after a series of endorsements to other companies was finally endorsed to the issuer company whereby the issuer company while making a payment to the endorsee company treated the money as share application paid and when finally the cheque was received, it was treated as share application money received. In view of the endorsement by different companies the entries do not appear in the bank statement. The transactions were carried out in a manner that

“& Co” crossed cheques were endorsed from one party to another resulting in share capital as well as investments based on such endorsement of the cheques.

12. Before me, learned Counsel for the assessee explained the transactions carried out and flow of the transactions. He explained, by an example, that on 5th June, 2009, the assessee company issued cheque No.012842 drawn on Axis Bank. The cheque being a crossed cheque, the flow of fund by way of endorsement was as under:-

Chart-1 (Rs.65,00,00,000/-)

Date	Name of the person
05.06.2009	Assessee Company
06.06.2009	Sayaji
07.06.2009	Blessing
07.06.2009	Stephens
08.06.2009	Assessee company

On or about 5th June, 2009, assessee company issued a crossed cheque bearing No.012843 drawn on Axis Bank and the flow of the transaction is as under:

Chart-2 (Rs.60,00,00,000/-)

Date	Name of the person
05.06.2009	Assessee company
06.06.2009	Stephens
07.06.2009	Blessing
08.06.2009	Sayaji
08.06.2009	Assessee company

On or about 5th June, 2009, Stephen issued a cheque No.000059 drawn on Kotak Mahindra Bank and the flow of the fund was as under:

Chart-3 (Rs.65,00,00,000/-)

Date	Name of the person
05.06.2009	Stephens
05.06.2009	Sayaji
06.06.2009	Blessing

07.06.2009	Assessee company
07.06.2009	Sayaji
08.06.2009	Stephens

13. Learned Counsel stated that in the case of ITO Vs. Blessing Commercials Pvt.Ltd. for the relevant assessment year 2010-11, the Kolkata Tribunal vide order dated 28th June, 2017, confirmed the addition made of the same income of Rs.65 crores as share application money received and the relevant details in the order are reproduced as under:-

Table-2
Particulars of Investment during Asst. Year 2010-11
Date of Allotment : 22-06-2009

Sl.No.	Particulars of the Company in which Investment was made	No. of Share applied for & Allotment received	Amount of share applied for & allotment received (face value : @10/-)	Amount of Share Premium (Value : @990/-)	Total amount of share applied for & allotment received (Total value : @1,000/-)
1	Double Plus Software Pvt.Ltd.	650000	65,00,000	64,35,00,000	65,00,00,000
2	Sayaji Marketing Pvt.Ltd.	650000	65,00,000	64,35,00,000	65,00,00,000
3	Stephens Financial Services Pvt.Ltd.	600000	60,00,000	59,40,00,000	60,00,00,000
		19000000	19,00,00,000	188,10,00,000	190,00,00,000

14. Similarly, the Kolkata Tribunal in the case of Sayaji Marketing Pvt.Ltd. in ITA No.282/Kol/2014 for the relevant assessment year 2010-11 vide Order dated 5th September, 2018 has confirmed the additions. In both the cases, the Revenue's appeals were allowed by the Tribunal. As regards the Stephens Financial Services Pvt.Ltd. (as pointed out by the

learned Accountant Member that the income tax details are not available for the relevant assessment year before the Bench), even now, no income tax details or pendency of litigation for the relevant assessment year 2010-11 was filed by the assessee and even not available on records.

15. Now, the question arises whether the same income can be taxed doubly. This concept was explained by the Hon'ble Supreme Court in the case of Bachu Lal Kapoor (supra), wherein Hon'ble Supreme Court held that the Income-tax Act does not envisage taxation of the same income twice over "on one passage of money in the form of one sort of income". It was stated that the provisions of Section 14(1) of the Income-tax Act, 1922 expressly debar the imposition of tax on any part of income of a HUF received by its members. Hon'ble Supreme Court further held that the fact that there is no provision in the Act dealing with converse position is legally impossible under the Act. Hon'ble Court took the view that so long as the HUF exists, the individual thereof cannot separately be assessed in respect of its income. Learned Accountant Member has made emphasis on this part whereas the meaning of observations of Hon'ble Supreme Court is quite different. Hon'ble Supreme Court has convincingly avoided committing mistake and observed that nonetheless, if under some mistake, such income is assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment made on the HUF in respect of that income. A caution was given by the Hon'ble Court that Revenue had to make appropriate adjustments, otherwise, the assessment made in respect of that income on that HUF would be contrary to the provisions of the Act. It was held that the assessment proceedings initiated under Section 34 of the Income-tax Act, 1922 culminated in the assessment of a HUF,

appropriate adjustments have to be made by the Revenue in respect of tax realized by the Revenue in respect of that part of income of the family assessed on the individuals of the said family. Hon'ble Supreme Court considered the decision of Lahore High Court in the case of Jaikishan Das Vs. CIT – 1951] 20 ITR 540 (Lah) and also of Allahabad High Court in Moti Chandra Vs. ITO – AIR 1962 All 291.

16. Another judgment cited by the learned Counsel for the assessee is of Hon'ble Delhi High Court in the case of Surya Agrotech Infrastructure Limited in ITA No.927/2019, Order dated 6th September, 2023, wherein Hon'ble Delhi High Court considered the issue of double taxation and discussed the facts and principle laid down in Paragraph 20 and 21 as under:-

“20. To recapitulate, in the present case, the material on record reflects that the Assessing Officer throughout the proceedings placed heavy reliance on the statement of Shri Shekhar Aggarwal to the effect that the undisclosed income of Priya Gold Group of Companies was routed in the form of share capital of the respondents/assessee companies by way of accommodation entries from Kolkata based entry provider companies and such share capital is liable to be taxed as income in the hands of the respondents/assessee companies. At the same time, it is also not in dispute that Surya Food & Agro Limited, the flagship company of the group has already offered the said undisclosed income to the tune of Rs.49,12,00,000/- to tax before the Settlement Commission, which income was enhanced by the Commission to Rs.55,77,00,000/- and the final order of the Settlement Commission having not been challenged by either side has attained finality. It is also not in dispute that before the Settlement Commission the flagship company specifically declared that the undisclosed income which was offered before the Settlement Commission had been applied by way of share capital to the group entities, namely the present respondents/assesseees. Further, before the Settlement Commission, the flagship company also explicitly stated that there is no other undisclosed asset found or application of funds by the group, which statement remains unchallenged till this stage.

21. In view of aforesaid, the irresistible conclusion is that since the undisclosed income which is subject matter of the present dispute had already been taxed in the hands of the flagship company Surya Food & Agro Ltd., it cannot be again subjected to tax in the hands of the respondents/assessee companies in the form of application of the said income as their share capital. Accordingly, the question as framed above is answered against the appellants/revenue and in favour of the respondent/assessee.”

17. In the given facts and principle laid down by Hon'ble Supreme Court in the case of BachuLal Kapoor (supra) and Hon'ble Delhi High Court in the case of Surya Agrotech Infrastructure Limited (supra), I noted that the same income is already assessed and has become final at least up to the ITAT level in the case of Blessings Commercial Pvt.Ltd. and Sayaji Marketing Pvt.Ltd. and the matters are pending before Hon'ble High Court for adjudication of appeals under Section 260 of the Act as informed by the learned CIT-DR. I noted that this addition has been affirmed by the Tribunal in these two cases. However, in the case of third company i.e., Stephens Financial Services Pvt.Ltd., information is neither available before me nor in the earlier round before the Bench. Hence, that can be verified by the regular Bench while giving effect to this order. In terms of the above, I agree with the decision of learned Judicial Member in holding that the same cannot be taxed twice in terms of the doctrine of double taxation as the Act does not envisage taxation of the same income twice over on one passage of money in the form of one sort of income.

18. Now, in view of the above discussion and legal position, I answer the questions referred to me as under:-

Questions framed by the Bench	Answer to the Questions
<i>1. As to whether under the present facts and circumstances of the matter, the addition made in the hands of the assessee before us on the same amount of income which has already been added by the Revenue on two other companies namely M/s Blessing Commercials Pvt.Ltd. and Sayaji Marketing Pvt.Ltd. which was further affirmed by the ITAT, is a case of double</i>	In the given facts and circumstances of the case and discussion carried above, I am of the view that this will tantamount to double addition and hence, answered in the affirmative, in favour of the assessee and against the Revenue.

<i>taxation and sustainable in the eyes of law or not.</i>	
<i>2. As to whether if there is any disagreement on the point of maintainability on the addition on the preliminary ground then without deciding the same by a Third Member the appeal can at all be proceeded with to decide the matter on merit.</i>	As the above question is answered in favour of the assessee, this question has become academic and needs no answer.

The matter shall now be placed before the regular Bench for passing appropriate order in accordance with the majority opinion.

PER BENCH:

There was difference of opinion between the Members of the Bench who originally heard the instant Revenue's appeal on the issue of addition in the hands of the assessee as unexplained cash credits u/s 68 of the Act. The Ld. Judicial Member dismissed the Revenue's appeal by affirming the deletion of the impugned addition. The Ld. Accountant Member held otherwise and wrote a separate order. Therefore, a reference was made to the Hon'ble President, ITAT, under Section 255(4) of the Act. The Hon'ble President vide order dated 04.03.2025 nominated the Third Member to decide the reference. The Ld. Third Member vide order dated 03.09.2025 concurred with the view of Ld. Judicial Member.

2. Relevant to mention that the matter relates to addition made in the hands of the assessee which was already been added in 3 other companies namely Blessings Commercial Pvt. Ltd., Stephens Financials Services Pvt. Ltd, and Sayaji Marketing Pvt. Ltd. So far as M/s Blessing Commercial Pvt. Ltd. and M/s Sayaji Markeing Pvt. Ltd. are concerned,

the Hon'ble Vice President accepted the view taken by the Ld. Judicial Member. So far as the same addition made in the hands of the Stephen Financial Services Pvt. Ltd. is concerned he left the issue of double addition in the hands of the Bench. The matter was, thereafter, kept for hearing on 09.09.2025 when non appeared on behalf of the assessee and the same was adjourned to 10.09.2025. On 10.09.2025 we sought for the orders passed by the Ld. AO and the Ld. CIT(A) in the case of Stephen Financial Services Pvt. Ltd. which were ultimately furnished by the Ld. AR. We also asked for the current status of the assessment/addition made in the hands of Stephen Financial Services Pvt. Ltd. as on date.

3. Today we have perused the order passed by the Ld. AO dated 28.03.2013 in the matter of Stephen Financial Services Pvt. Ltd. whereby and whereunder the entire disputed amount of Rs.190,00,00,000/- was added in the hands of the assessee namely Stephen Financial Services Pvt. Ltd. We find that the same was further been upheld by and under the order dated 06.12.2017 issued under the signature of the Commissioner of Income Tax (Appeal) - 6 Kolkata. The addition of Rs.190,00,00,000/- made on account of share capital along with premium by the Ld. AO was found to have been upheld. It was also placed on record that the appeal preferred by the assessee against the said order dated 06.12.2017 passed by the Ld. CIT(A)-6, Kolkata being ITA No. 683/Kol/2018 for Assessment Year 2010-11 is pending before the Hon'ble ITAT, Kolkata Bench. Thus, as on today the impugned addition of Rs.190,00,00,000/- made in the hands of Stephen Financial Services Pvt. Ltd. still survives. Thus, in view of the observation made by the Hon'ble Vice President holding the view of double addition made in the hands of the assessee before us now known as M/s Kanti

Commercials Pvt. Ltd. is not sustainable as the impugned addition has already been made in the hands of 2 other companies namely Blessing Commercial Pvt. Ltd., and Sayaji Marketing Pvt. Ltd. which is also applicable in the case of Stephen Financial Services Pvt. Ltd. as the same has already been added in the hands of the Stephen Financial Services Pvt. Ltd. by and under the Ld. AO's order dated 25.03.2013, further confirmed by the Ld. CIT(A) dated 29.03.2018. Under these facts and circumstances of the matter, the ground of double addition made in the hands of the assessee is found to be acceptable, and the addition is therefore, deleted. Consequent to the opinion of the Ld. Third Member, appeal of the Revenue is dismissed.

4. The appeal of the revenue is dismissed.

Order pronounced in the open court on 16.09.2025

Sd/-
(Brajesh Kumar Singh)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 16.09.2025

Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI