

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 875/Del/2016 : Asstt. Year: 2012-13**

M/s Varrenyam Securities Pvt. Ltd., 2442/10, 1 <sup>st</sup> Floor, Beadonpura, New Delhi-110005	Vs	DCIT, Central Circle-20, New Delhi-110055
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AADCV6176G</b>		

**Assessee by : Sh. P. Roy Chaudhary, Adv.**

**Revenue by : Sh. Satpal Gulati, CIT DR**

**Date of Hearing: 14.07.2021**

**Date of Pronouncement: 24.08.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the orders of Id. CIT (A)-27, New Delhi dated 30.12.2015.

2. Heard the arguments of both the parties and perused the material available on record.

3. The assessee is an India Private Limited company. The assessee has filed its return of income declaring an income of Rs.1,33,04,450/- u/s 139(1) electronically on 19.10.2012. The AO assessed the total income of the assessee at **Rs.25,11,04,450/- on protective basis.**

4. The excerpt from the Assessment Order is as under:

“Return of income declaring total income at Rs.1,33,04,450/- was filed electronically on 19.10.2012. The same was processed under sec. 143(1) of the I.T. Act, 1961. The case was selected and statutory notice under sec. 143(2) of the I.T. Act was issued on 23.09.2013 and served upon the assessee. Due to change in incumbent, notice u/s 143(2) of the I.T. Act was issued on 30.09.2013. Further, notice u/s 142(1) of the I.T. Act along with detailed questionnaire was issued on 11.12.2013. In pursuant to restructuring the Central Circle -16 is restructured as Central Circle-20 vide order No. of The Chief Commissioner of Income Tax (Central), New Delhi vide F.No.33/CCIT(C)/T & P/14-15/4059 dated 15.11.2014, for the same notice u/s. 143(2) was issued on 11.11.2014 along with intimation regarding change in jurisdiction was sent to the assessee.

2. In response to the statutory notices Shri Atul Khandelwal, CA & AR of the assessee attended the assessment proceedings, filed power of attorney and furnished necessary details, information & documents called for from time to time.

3. A survey operation u/s 133A of the Income Tax Act were conducted at following premises of the Varrenyam Securities Pvt. Ltd. on 17.10.2012:

S.No.	Address	Name of the Entity
1.	2442, 1 <sup>st</sup> floor, Gail No. 10, Karol Bagh, New Delhi - 110005	VARRENYAM SECURITY PVT. LTD. (Registered Office) and also office of M/s A.Khandelwal & Co.
2.	A. Khandelwal and Company, 1109, Pearl Besh Height 1, Netaji Subhash Park, Delhi	(CA Office) A. Khandelwal & Co.

M/s Varrenyam Securities Pvt. Ltd. which had obtained accommodation entries in the shape of share premium to the tune of Rs.24.75 crore during the FY 2011-12 from various bogus companies controlled and managed by Sh. Himanshu Verma. M/s Varrenyam Securities Pvt. Ltd., it is worthwhile to mention, was incorporated on 20.04.2011 with a paid up share capital of Rs.26 lakhs. However during the FY 2011-12, the company had issued 250000 equity shares each having a face value of Rs.10 at a premium of Rs.990 each. The so called subscriber companies are merely paper, concerns having no business activity as such, on the contrary they have actively facilitated the rotation of unaccounted income which had been introduced in the books of accounts of M/s Varrenyam Securities Pvt. Ltd. under the guise of share premium. The details of the share premium and the list of allottees as existing in the RoC records are mentioned herein as under:

LIST OF SHARES APPLICATION/ALLOTMENT MADE TO VARRENYAM SECURITIES PVT. LTD.

S.No.	Company	Address	PAN	No. Of shares	Face value (in Rs.)	Prem. Per share (INR)	Total arrears
1.	Citylife Promoters Pvt. Ltd.	2/128, First Floor, Geeta Colony, Delhi	AADCC8143J	26500	10	990	265000
2.	Timely e-Net Solutions Pvt. Ltd.	14A/33, Basement Wea, Channa Market, Karol Bagh, Delhi-5	AADCT4113F	5000	10	990	50000
3.	Fine Tradelink Pvt. Ltd.	A-34, Phase-1, Jai Vihar, Near Solanki PublicSchool, Najafgarh Road, New Delhi.	AABCF1758J	12500	10	990	125000
4.	Grace Exim Pvt. Ltd.	2262/2, 3 <sup>rd</sup> floor Mandir Wali Gali, West Patel Nagar, Delhi	AADCG6021H	16000	10	990	160000

5.	Hope Real Tech Pvt. Ltd.	B1/2, Gurudwara Road, Gali No.13, Mohan Garden, Uttam Nagar, Delhi	AACCH2297M	2100	10	990	21000
6.	Jaguar Soft Tech Pvt. Ltd.	1401, Bazar Sita Ram Opp. Lal Darwaza, Delhi	AACCJ2520M	15000	10	990	150000
7.	Lion infra Con Pvt. Ltd.	A-34, Jai Vihar, Najafgarh, Delhi	AACCL0325J	18000	10	990	180000
8.	Mithilian Chal Investment & Finance Pvt. Ltd.	A-34, Jai Vihar Najafgarh, Delhi	AACCL0325J	23800	10	990	238000
9.	Om Expo Enterprises Pvt. Ltd.	1410, Bazar Sitaram, Opp. Lal Darwaza, Delhi	AAACO8604R	25000	10	990	250000
10.	Panchshee I Portfolio Consultants Pvt. Ltd.	1398, Bazar Sitaram, Opp. Lal Darwaza, Delhi	AAFCP3066R	18100	10	990	181000
11.	Rising Portfolio India Pvt. Ltd.	B-62/11, Second Floor, Naraina Industrial Area, Delhi	AAACR1677D	27000	10	990	270000
12.	Veritable Township Pvt. Ltd.	B-62/11, Second Floor, Naraina Industrial Area, Delhi	AADCV5115H	250000	10	990	2500000
13.	VS Import Pvt. Ltd.	2262/2, 3rd floor Mandir Wali Gali, West Patel Nagar, Delhi	AACCV5762B	17000	10	990	170000
	Total			250000			

4. During the course of search operation and post search proceedings statement of Himanshu verma was taken on oath, in his statement Himanshu Verma has accepted that all the above mentioned entities are manage and controlled by him.

Books of accounts of a number of entities included in the list mentioned above, bank statements etc. were found in his laptop. After going through the bank accounts of the entities manage and controlled by Himanshu verma it is also revealed that the transactions in all the bank accounts are interlinked. Himanshu Verma used bank accounts of the abovementioned entities to deposit cash received from the beneficiaries and for the routing of transaction of the cash and cheque among the above mentioned entities. Statements of directors / partners/ proprietors of concerned entities were also recorded on oath. They all admitted that their entities were solely engaged in providing accommodation entries in the shape of bogus share capital, unsecured loans and bogus sale/purchase. They also admitted that these concerns are managed and controlled by Shri Himanshu Verma only.

5. **Background of the case:** On the basis of enquiries made by the Investigation Wing, as conducted on Sh. Himanshu Verma on 29.03.2012. Sh. Himanshu Verma employee of Sh. S.K. Jain and Sh. Virender Jain in whose case a search was on 14.09.2010 by the Investigation Wing, Sh. S.K. Jain and Sh. Virender Jain were also in the business of providing accommodation entries through various entities and control by them. Sh. Himanshu Verma was also doing business of providing bogus accommodation entries in the shape of share application money, loans, capital gain. Sh. Himanshu Verma has been managing and controlling a number of companies/firms/sole proprietorship concerns and a number of bank accounts in the name of these entities in different banks. All the entities manage and controlled by Sh. Himanshu Verma were paper

entities. The sole purpose of all the entities manage and controlled by Sh. Himanshu Verma was to provide accommodation entries to various outside entities/persons. There was no actual business activities in any of the entity manage and controlled by Himanshu Verma.

5(1) The modus operandi adopted for providing accommodation entries by Himanshu Verma can be divided in to three categories and as follow:

(a) Money received from the beneficiary group company through RTGS or cheque in the shape of loans etc was routed through various bank accounts of the companies managed and controlled by Himanshu Verma, and then the same was transferred to the beneficiary group entity of the concerned company in the shape of share capital and loans. It was usually done to transfer from listed company of beneficiary to other Pvt. Ltd. Company.

(b) Cash received from beneficiary group of companies or individual, the same deposited in the bank account of the firm, proprietary concerns managed and controlled by Himanshu Verma. After routing it through the bank accounts of different firms and companies managed and controlled by Himanshu Verma, the same was transferred to one of the entity of the beneficiary group in the shape of share capital and loans.

(c) Money received from the entities against sale/purchase. Shri Verma was also providing accommodative purchase entries to some of the beneficiaries. In this mode, he used to issue sale bills from some of partnership firms managed and controlled by him. These bills were mostly of clothes and fabrics. In actually,

no goods used to be actually delivered against those bills. The beneficiary party used to make payment through cheque or RTGS. Either this amount was used to be withdrawn immediately or this amount was routed through a number of other entities of Himanshu Verma. In this was ultimately cash was given back to the beneficiary party.

5(2) Statement of Himanshu Verma was taken on oath not only during the search operation but also during the post search proceedings. In his statement during the search operation and during the post search proceedings, he admitted that he was doing business of providing accommodation entries in the shape of share capital, unsecured loans, bogus sale and purchase etc. In the statement taken on oath on 14/4/2012, he clearly stated the modus operandi of his business of providing accommodation entries. The relevant portion of the statement of Himanshu Verma dated 14/4/2012 is reproduced as under:

Q.9 What are the modes of entries provided by you?

Ans. As I stated in my earlier statement taken during the course of search operation dated 29/3/2012. The modes of entries provided by me are as follows.

1) We receive cheques and RTGS from the companies in the shape of loans etc. The same were deposited in different companies account maintained by us. After touting it from our different companies account the same has been transferred to one of the group entities of the concerned company in the shape of share capital and loans etc. from where the fund was transferred in our company account. The name of the companies

through which the funds were routed is M/s Ridhi Siddhi Clothing Co. Pvt. Ltd., M/s Laxmi Narayan Fabrics Pvt. Ltd etc.

2) Cash was received from a particular group, the same was deposited in the bank account of the firm, proprietary concerns manage and controlled by me. After routing It through the account of the different firm, companies manage and controlled by us, the same has been transferred to one of the entity of the group from where the cash was received In the shape of share capital, loans etc. He firm/proprietary concerns through which the money was routed are M/s Girdhari Industries, M/s New Style Fabrics etc.

3) We received cheques and RTGS from the companies against the sale. The same is deposited In the different bank accounts of firms and companies manage and controlled by us. The same has been routed in different bank accounts of the firm and companies manage and controlled by us and then same is transferred back to one of the entities of the group companies from where the fund was received. The companies through which the funds were routed are M/s Radhey Krishna Fabrics Pvt. Ltd. M/s Transmission Merchandise Pvt. Ltd etc.

In order to provide accommodation entries, Himanshu Verma has received brokerage/commission from the beneficiaries. As per the statement taken on oath during the course of search operation, Himanshu Verma has accepted that he has received brokerage/commission from the beneficiary @ 0.75% to 1.50% of the amount of accommodation entries provided by him. The mode of receiving brokerage/commission from the beneficiary



was in the form of cash. The relevant portion of statement dated 29/3/2012 of Himanshu Verma is reproduced as under:

Q.10 Please state how the beneficiary company / entity / flrm / person approaches you getting accommodation entries?

Ans. Whenever any company/concern who wish to take accommodation entries from us approaches us through various C.A. operating In this field. We receive cash from them and give them entries through cheque from any of our controlled company. We receive commission in the range of 0.75% to 1.50%.

Q.12 Please state how the commission was charged by you for providing accommodation entry and how this commission is received by you?

Ans. The commission is charged at the rate which I have already stated in my statement. The commission is charged quarterly or six monthly on all the accommodation entries provided through the particular C.A./middleman in the shape of share capital and after a year on the accommodation entries provided in the shape of unsecured loan. Commission is received always in cash.

6. The CIT(A)-XXVII vide Appeal No.152/14-15 CIT(A)-XXVII/2014-15 dated 26.12.2014 in the case of Himanshu Verma for the A.Y.2012-13 as per para 16 has that:

"16. I have gone through the assessment order and written submissions and considered to them. I have also perused the citations of the case laws referred by the AR. From the material

on record, there is no dispute regarding the appellant being an entry operator who provided accommodation entries to various beneficiaries through various intermediary companies acting as conduits to transfer money to the beneficiaries by way of cheque in lieu of cash. The appellant also brought on record the modus operandi executed by him through these intermediaries controlled and managed by him. In the trail, from beginning to the end, the transactions had many variants and amounts were paid for services rendered. This aspect finds strength from the fact that 23 persons who are dummy directors, proprietors etc. accepted that small amounts were paid by the appellant for executing the transactions and endorsing the documents."

7. As per statement of Shri Himanshu Verma recorded u/s 132(4) during a search Operation conducted on 29.03.2012 having a bearing on you reproduced herein as under:

Q.10. Please state how the beneficiary company / entity / firm/person approaches you for getting accommodation entries.

Ans.: Whenever any company/concern who wish to take accommodation entries front us approaches us through various CA operating in this field. We received cash from them and give them entry through cheque from any of our controlled company. We received commission in the range of 0.75 to 1.5%.

Q.11. please give the details of all the CA (Chartered Accountants) who are working as the middle man between the beneficiary company/entity/firm and you for arranging accommodation entries through you to the beneficiary

companies in lieu of cash. Please also stated how the cash is being delivered to you by these middlemen?

S.No.	Name of the middleman	Address	Contact No.
1.	Kuldeep Chuhan	Laxmi Nagar	9818024242
2.	Prakash Hirawa	Laxmi Nagar	9891253533
3.	Narender Gupta	Faridabad	9810705094
4.	Dinesh Agrawal	Faridabad	9811195852
5.	Dinesh Jain	Panipat	9812025885
6.	Sandeep Garg	Ghaziabad	9899055146
7.	Deepak Agrawal	Nirman Vihar	9811072652
8.	Sameer Agrawal	Faridabad	9811597073
9.	Mahavir Guta	Faridabad	9810484612
10.	Atul Khandelwal	Rohini	9810121160
11.	Mohit Vohra	Delhi	9810020637
12.	Sanjay Gupta	Shalimar Bagh	9871188000
13.	Vijay Gupta	Palam	981174091

Cash is delivered by the concerned middleman a day before the issue of accommodation entry cheque in the name of the beneficiary person by me. The cash was delivered personally by the concerned CA/middleman in our office. After receiving the cash we issue cheques of the same amount from any one of our fifteen to twenty company which are managed and controlled by us for providing accommodation entries. The cheques are delivered to the same CA/middleman who brings the cash. Sometimes instead of issuing the cheques funds are transferred through TRGS from all account of any one of 15-20 companies. The cheques provided to the beneficiaries are kept with us and these are the blank signed cheques duly signed by the Authorized signatory/Director of the relevant company and we only used to fill the name of the beneficiary amount and the date as and when the cheque is used to the namely beneficiary."

8. The above statement clearly indicts Sh. Atul Khandelwal, CA who has played the role of a middleman for arranging accommodation entries in the shape of share premium to the tune of Rs.24 crore during F.Y.2011-12 from various companies owned and controlled by Sh. Himanshu Verma in lieu of commission. Share premium has further been obtained by M/s Varrenyam Securities Pvt. Ltd. in die very first year of incorporation.

Relevant portion of statement of Sh. Atul Khandelwal, CA recorded during the survey and post survey proceedings are reproduced herein as under:-

Q.19. Do you a person by the name of Mr. Himanshu Verma?

Ans. Yes.

Q.20. How do you know him and since when do you know him? Has any person introduced him to you? What are the business dealings with Sh. Himanshu Verma?

Ans. I met Sh. Himanshu Verma at Pind Laluchi, Karol Bagh at 2.00 pm through an acquaintance Mr. Pawan at Nehru Place whom I met through my friend Mr. Ajay who deals in computer hardware at Nehru Place. I have taken bill of Rs.3-4 lakhs in my HUF firm namely Atul Khandelwal & Sons HUF. I have taken this bill to reduce my income tax liability and this bill was taken on 0.15% commission.

There is no business dealing with Mr. Himanshu Verma at present.

Q21. Why there have been call contract with him as indicated by your call records (6<sup>th</sup> October 2012, 5<sup>th</sup> Oct. 2012, 4<sup>th</sup> Oct. 2012 and 1<sup>st</sup> Oct. 2012)?

Ans. These were general contacts and there was no business contacts with him for the last 4-5 months.

Q.22. On perusal of bank statement of M/s Vaikunth Developers, it has been found that you have received money from the company of Mr. Himanshu Verma. Why was this received?

Ans. This is an actual loan taken from the company of Mr. Himanshu Verma and actual project is going on in Indirapuram, Ghaziabad (U.P.)

28. Do you have to say anything about the entry operation of Sh. Himanshu Verma. To what extent are you involved in his activities?

Ans. I have no entry relation business with Varrenyam Securities Pvt. Ltd. but I have knowledge that Mr. Himanshu Verma is engaged in entry operation business.

10. Perusal of various statement of Shri Atul Khandelwal, CA which were recorded during the survey proceedings unambiguously indicates that Sh. Atul Khandelwal had colluded with Mr. Himanshu Verma, an entry operator and was instrumental at arranging the accommodation entries for M/s Varrenyam Securities Pvt. Ltd. from various shell companies owned and controlled by the Himanshu Verma Group in lieu of commission.

11. Further statement of Sh. K.K. Munjal, Director of the M/s Varrenyam Securities Pvt. Ltd. assessee company had repeatedly evaded with the compliance of summons issued by this office, but when his statement was finally recorded by holding camp office at his residence, certain explicit assertions were made by Sh. Munjal concerning the role of Mr. Atul Khandelwal, which brings to bear many intriguing issues.

Relevant portions of the statement of Shri Munjal recorded u/s 131(1A) on 2<sup>nd</sup> February, 2013 are reproduced herein as under:-

Q8. Kindly explain the name of the companies to whom your company lends money on interest. In lieu of the loans so granted what securities are obtained or pledged with the company and in this regard furnish details of any agreement entered into with the borrowers and documentary evidences if any.

Ans. Shri Atul Khandelwal does all the work of money lending with the respective owing companies on behalf of M/s Varrenyam Securities Pvt. Ltd. and he has details of all such borrowers companies. I have no knowledge about the companies/persons who are taking loans on interest from my company and everything in this regard is in the knowledge of Sh. Atul Khandelwal only.

I have no knowledge of the securities pledged with my company in lieu of the loans so granted and the same is again being booked after by Mr. Atul Khandelwal, CA. I have no documentary evidences pertaining to the same.

Q.12. We are showing you the bank statement of Varrenyam Securities Pvt. Ltd. bearing A/c No.629205030989 from 01.04.2011 to 30.04.2012. Kindly explain as to which entries are pertaining to interest so received by your I purportedly told by you.

Ans. I have no knowledge about the details of interest received from various parties as shown in the bank account statement relevant details in this regard can only be furnished by Sh. Atul Khandelwal, CA.

9(1) During the course of survey operation of M/s Varrebtan Securities Pvt. Ltd. the genuineness and the circumstances warranting the receipt of share premium from companies managed and controlled by Himanshu Verma group were examined from various aspects. The following issues have emerged as a result of survey conducted.

(i) No semblance of any worthwhile business activities being performed by M/s Varrenyam Securities Pvt. Ltd. couple with the absence of any employees aiding and assisting the company in its day to day affairs.

(ii) Active participation and collusion of Shri Atul Khandelwal, CA with Shri Himanshu Verma at obtaining the accommodation entries on behalf of M/s Varrenyam Securities Pvt. Ltd.

(iii) Active role played by Sh. Atul Khandelwal, CA in getting M/s Varrenyam Securities Pvt. Ltd. in corporate at the behest of M/s Sidhvandan Enterprises Pvt. Ltd. and de-facto management of the working affairs.

(iv) Setting up of M/s Varrenyam Securities Pvt. Ltd. as a front for transmission of money to another beneficiary concern viz. M/s Sidhvandan Enterprises Pvt. Ltd.

(v) No semblance of any worthwhile business activities being performed by M/s Varrenyam Securities Pvt. Ltd. coupled with the absence of any employees aiding and assisting the company in its day to day affairs.

(vi) The company had shown 2442/10, 1<sup>st</sup> Floor, Beadon Pura, Karol Bagh, New Delhi as its Registered Office in the documents filed with the Ministry of Corporate Affairs. On the date of survey, the survey party could not find a single instance of any worthwhile business activity of the captioned assessee company being performed from its registered office. Through discreet inquiries it was gathered that M/s Varrenyam Securities Pvt. Ltd. had shown its business address which was the office premises of one Chartered Accountant Shri Atul Khandelwal, Proprietor of M/s A. Khandelwal & Co. During the course of inspection u/s 133A of the IT Act, 1961 at the premise, it was found that no semblance of an office activities of the company was available or could be found at the address as furnished to the Ministry of Corporate Affairs. Statutory documents which are mandated to be kept and maintained at the registered office of any company as per the Companies Act, 1965 could not be located.

(vii) On the contrary it was learnt that Sit. Atul Khandelwal, CA had taken the premises bearing No. 10/2442 on lease and had sublet it to M/s Varrenyam Securities Pvt. Ltd. No signboard



indicating the existence of any company or dedicated cabins pertaining to various functional domains co address.

12. The share premium of Rs.24.75 cr. so received by the caption M/s Varrenyam ies Pvt. Ltd. company from dubious companies owned and operated by Shri Himanshu Verma, was included in the total sum ofRs.26 Cr. which was advanced as loan Sidhvandan Enterprises Pvt. Ltd. and therefore in this regard, the statement of Shri Ganesh Gupta, key person looking after the day to day affairs of M/s Sidhvandan Enteiprises Pvt. Ltd. was recorded on oath u/s 131(1A) on 01.03.2013 which he has categorically stated that the loan of Rs.26 cr. was provided by M/s Varrenyam Securities Pvt. Ltd. through the active participation and support of Shri Atul Khandelwal who had used his influence in arranging the said sum of money in the books of M/s Varrenyam Securities Pvt. Ltd. as to enable its further transmission to the beneficiary viz. M/s Sidhvandan Enterprises Pvt. Ltd.

A reasonable inference may therefore be drawn that the company M/s Varrenyam Securities s Pvt. Ltd. was incorporated by Mr. Atul Khandelwal with the help of two dummy Directors namely Shri Kishan Kumar Munjal and Shri Hemant Kumar Yadav who willfully given their name for Directorship without them being actually involved in the knowhow of things and only to fulfill an ulterior objective of incorporating the said company as conduit for the infusion of questionable funds from sources and thereby transmit it to M/s Sidhvandan Enterprises Pvt. Ltd.

13. Further statement of directors of M/s Sidhvandan Enterprises namely Shri Sumit Gupta and Shri Himanshu Gupta were summoned. Statement of Shri Sumit Gupta was recorded u/s 131(1A) of the Income Tax Act, 1961, in which he had categorically stated that he being a director of the company was only knowing about the fact of raising a loan of Rs.8-10 cr. approx from M/s Varrenyam Securities Pvt. Ltd. and that he was not aware about the vital details like names of the directors of the lending company, location o registered office or day to day business activities indulged in by the said company. Any relevant information pertaining to the terms of settlement of loan, date of settlement could only be explained by Sh. Ganesh Gupta, elder brother of Sh. Sumit Gupta and that the role of directors in this company was only confined to signing other pay orders in the capacity of authorized signatories.

Statement of Shri Ganesh Gupta recorded on 01.03.2013 is reproduced as under:

Q14. Whether any agreement has been entered into with M/s Varrenyam Securities Pvt. Ltd. entailing the terms and condition of the rate of interest, date of settlement and penalty provisions, etc.?

Ans. There was no agreement with Varrenyam but there was a verbal commitment of 9% p.a. interest on loan and it agreed that the loan period was three years.

Q.18 As per information available with the ROC M/s Varrenyam Securities Pvt. Ltd. was incorporated on 20.4.2011 and within a week of incorporation, the company has lend Rs.26.85 cr. to

M/s Sidhvandnn Enterprises Pvt. Ltd. In light of this please explain as to how is this transaction possible and secondly whether your company has done due diligence to ascertain the credit worthiness of the lending company. Please explain?

Ans. It was not in our knowledge that when Varrenyam was formed and incorporated in ROC and how they have arranged the funds to Sidhvandan. We never fry to ascertain to know the credit worthiness of M/s Varrenyam Securities Pvt. Ltd.

Q.19. During a survey action conducted at the premises of M/s Varrenyam Securities Pvt. Ltd. on 17.10.2012, it was noticed that said company was set up only with the object of raising funds from bogus companies controlled and managed by Shri Himanshu Verma with the active collusion of Shri Atul Khandelwal, CA and in turn the money so received barely within 10 days of incorporation was transmitted to your company. In light of these facts, why it will not be presumed that M/s Varrenyam Securities Pvt. Ltd. has been establish at the behest of your company only to enable the infusion of unaccounted/black money generated by your company.

Ans. I was not knowing about the survey action carried on 17.10.2012 on M/s Varrenyam Securities Pvt. Ltd. at the office premise and it is not in my knowledge that this fund arranged for M/s Sidhvandan Enterprises Pvt. Ltd. and I don't know any Himanshu Verma and I don't know how they arranged the funds. M/s Sidhvandan Enterprises Pvt. Ltd. taken loan from M/s Varrenyam Securities Pvt. Ltd. and paid the interest of Rs.2,17,00,000/- during last year till now. We have returned all money to M/s Varrenyam Securities Pvt. Ltd. If anyhow, if

anybody convert his money by M/s Varrenyam Securities Pvt. Ltd. this answer will only be given by directors of M/s Varrenyam Securities Pvt. Ltd. we have taken money through RTGS and returned by RTGS.

Q.20. Is M/s Sidhvandan Enterprises Pvt. Ltd. having any business relationship with M/s Varrenyam Securities Pvt. Ltd. presently?

Ans. Except the above stated loan, we didn't have any business relationship with M/s Varrenyam Securities Pvt. Ltd. ever.

14. Assessee AR as per order sheet dated 11.2.2012 was asked to produced Shri K.K. Munjal, Director of company and Himanshu Verma, Entry Operator but failed to produce Shri K.K. Munjal, Director of M/s Varrenyam Securities Pvt. Ltd. and Himanshu Verma, Entry Operator. Assessee was given detailed show cause notice vide letter u/s 142(1) dated 20.3.2015 to prove creditworthiness and genuineness of transaction regarding Rs.24.78 crores taken share premium from 13 companies which are part of Himanshu Verma.

15. I have considered the contention of assessee reply to show cause which hold no ground as the assessee has miserably failed to prove three ingredients of Section 68 viz. (i) identify of the creditor, (ii) creditworthiness of the creditor and (iii) the genuineness of the transaction and is proved beyond doubt that amount of Rs.26.86 crores has been introduced by assessee which has been received from M/s Varrenyam Securities (P) Ltd. from dubious companies owned and operated by Shri Himanshu Verma.

16. In the present case, it is significant that the persons involved in the credits which have been added u/s 68, have been found to be engaged in giving bogus accommodation entries. Specific information was received as a result of inquiries by the investigation Wing, about the bogus accommodation entries taken by the appellant. The appellant has not denied that they received cheques from these persons. The modus operandi in such cases is well known. In the face of this information, a heavy burden lay on the appellant to prove that the credits were genuine. The onus had clearly shifted to the appellant. It is incorrect to say that the burden was on the A.O. to prove that these credits were unexplained. In such matters, the A.O. cannot be asked to prove the impossible and the addition is to be tested on the anvil of 'preponderance of probabilities, and not of 'beyond reasonable doubt'. The information received as a result of inquiries by the Income-Tax Department, the surrounding circumstances and the appellant's failure to discharge their burden of proof, shows that the credits were bogus accommodation entries. The assessee is still required to prove the identity and capacity of the creditors and the genuineness of the transactions. Considering the facts, the appellant has clearly failed to discharge his onus of proof.

17. In view of above facts a reasonable inference can be drawn that M/s Sidhvandan Enterprises Pvt. Ltd. wanted the introduction of its own unaccounted money in the books of accounts under the guise of unsecured loan being received from a newly incorporated company M/s Varrenyam Securities Pvt. Ltd. having no financial leg to stand from dubious channels in the form of accommodation entries provided by shell companies

working under the auspices of Shri Himanshu Verma through the active aid and collusion of Shri Atul Khandelwal.

(i) No semblance of any worthwhile business activities being performed by M/s Varrenyam Securities Pvt. Ltd. couple with the absence of any employees aiding and assisting the company in its day to day affairs.

(ii) Active participation and collusion of Shri Atul Khandelwal, CA with Shri Himanshu Verma at obtaining the accommodation entries on behalf of M/s Varrenyam Securities Pvt. Ltd.

(iii) Active role played by Sh. Atul Khandelwal, CA in getting M/s Varrenyam Securities Pvt. Ltd. in corporate at the behest of M/s Sidhvandan Enterprises Pvt. Ltd. and de-facto management of the working affairs.

18. The fact that the companies which subscribed to the shares were borne on the file of the Registrar of the Companies was again a neutral fact. That these companies were complying with such formalities did not add any credibility or evidentiary value. In any case, it did not ipso facto prove that the transactions were genuine. The section 68 permits the AO to add the credit appearing in the books of account of the assessee if the latter offers no explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. It places no duty upon assessing officer to point to the source from which the money was received by the assessee.

19. Therefore the said amount of Rs.24.78 crores (Rupees twenty four crores Seventy eight lakhs) taken from 13

companies is added to the total income as unexplained cash credit u/s 68 of the Income Tax Act on protective basis in the hands of the assessee company. I am also satisfied for initiating penalty proceedings u/s 271(1)(c) of Income-tax Act for filing inaccurate particulars of income.”

5. The Id. CIT (A) upheld the addition holding that the AO was justified in including the sum of Rs.24.78 Crores being unexplained credit in the books of the assessee by invoking Section 68 of the Income Tax Act, 1961.

6. The Id. CIT (A) categorically held that the proceeds of the share capital arranged through the accommodation entries were used by the appellant legitimately to provide business loans to its borrowers through banking channel and such loans were duly repaid by the appellant’s borrowers through banking channels. The assessee has also received interest and shown the interest in their return of income and also claimed business expenses against that income which was duly assessed by the Assessing Officer.

7. From the order of the Co-ordinate Bench of the ITAT in the case of DCIT Vs. M/s Sidhvandan Enterprises Pvt. Ltd. in ITA No. 1177/Del/2016 vide order dated 12.12.2019, we find that the addition made in the hands of M/s Sidhvandan Enterprises Pvt. Ltd. of the same amount has been deleted after considering the fact that the appeal of the assessee has been dismissed by the Tribunal after considering the fact that M/s Sidhvandan Enterprises Pvt. Ltd. has received loan from the assessee and

the loan repayment has been made leading to an indisputable conclusion that the amount originally belongs to the assessee.

8. The ITAT has also observed that the appeal of the assessee was dismissed whereas at this juncture, it is due to default of the assessee in hearing which has been recalled subsequently and being adjudicated now.

9. For the sake of ready reference, the order of the ITAT in ITA No. 1177/Del/2016 vide order dated 12.12.2019 in the case of M/s Sidhvandan Enterprises Pvt. Ltd. wherein the Id. CIT (A) deleted the addition, the entire part of the order is reproduced as under:

*"3. The brief facts of the case are that assessee is a company duly incorporated under the provision of The Companies Act, 1956. The assessee filed its return on 18.9.2012 and declared an income of Rs. 4,22,650/-. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (in short "Act"). The case of the assessee was selected and statutory notice under section 143(2) of the Act was issued on 10.9.2013 and served upon the assessee. Further a notice under section 142(1) of the Act alongwith a detailed questionnaire was issued on 24.12.2013. The AO assessed the income of the assessee u/s. 143(3) of the Act at Rs. 26,89,22,650/- against the return income and made the addition of Rs. 26,85,00,000/- on account of unexplained credit u/s. 68 of the Act vide order dated 24.03.2015. Against the assessment order dated 24.03.2015, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 30.12.2015 allowed the appeal of the assessee by holding that the AO was not at all justified in including the sum of Rs. 26.85 cores in the total income of the assessee by invoking the provisions of section 68 of the Act and deleted the addition in*



*dispute. Against the impugned order, Revenue is in appeal before the tribunal.*

*4. At the time of hearing, Ld. CIT(DR) relied upon the order passed by the Assessing Officer and stated that Section 68 of the Act permits the AO to add the credit appearing in the books of account of the assessee if the latter offers no explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. She also submitted that it places no duty upon AO to point to the source from which the money was received by the assessee. She also relied upon the decision of the Hon'ble Hon'ble High Court of Delhi in the case of CIT vs. Navodaya Castles (P) Ltd. (2014) 50 taxmann.com 110 (Delhi) and the Hon'ble Supreme Court of India in the case of Navodaya Castle (P) Ltd. vs. CIT (2015) 56 taxmann.com 18 (SC). In view of above, she requested to allow the appeal of the Revenue.*

*5. On the contrary, Ld. Counsel for the assessee relied upon the impugned order passed by the Ld. CIT(A) and stated that Ld. CIT(A) has passed well reasoned order which does not need any interference. In support of his contention, he also filed two paper books i.e. Paper Book-I containing pages 1-54 in which the assessee has attached the documents of M/s Varrenyam Securities Pvt. Ltd. Rs. 26,85,00,000/- i.e. copy of assessment order AY 2012-13 (assessed at Rs. 25,11,04,450/-); copy of audited financial statement; copy of PAN card; copy of bank account statement; certified ledger a/c of Varrenyam in books of assessee; incorporation certificate; ITR Ack. - AY 2012-13 (income declared 1.33 Cr.); submission dated 7.9.2015 to CIT(A) and ITAT order of M/s Varrenyam Securities Pvt. Ltd. and in another Paper Book-II which contained pages 1-108 attaching therewith Paper Book-I filed on 29.3.2019; CIT(A)'s order of Varrenyam Securities Pvt. Ltd AY 2012-13; documents showing Varrenyam filed recovery suit no.*

*CS620958.16 on assessee for recovery of outstanding amount – still pending; ledger account of assessee in books of Varrenyam 1.4.11 to 31.8.16 and Audited Financial Statements of 'A' -AY 12-13. Ld. Counsel for the assessee stated that the addition of Rs. 24.78 Crore has been finally made in the hands of M/s Verrenyam Securities Pvt. Ltd. by the AO; Ld. CIT(A) sustained the addition and ITAT has upheld the action of the Ld. CIT(A) by dismissing the appeal of the assessee and no further appeal has been filed against the order of the ITAT. In support of his contention, he also filed the Brief Synopsis, which read as under:-*

*"Addition of Rs.26,85,00,000/- U/S.68*

*The assessee recd. 26,85,00,000/- loan from Verrenyam Securities Pvt. Ltd.(Verrenyam) in this year i.e. A.Y.12-13*

*Verrenyam had taken share capital from companies operated by one Himanshu Verma entry operator.*

*The said amt. varrenyam loaned on Intt to assessee.*

*Hence the A.O. added the said amt. u/s.68 of the Act as unexplained cash credit CIT(A) confirmed the findings of the A.O.*

*The findings of both the lower authorities are erroneous in law as well as on merits*

#### *Brief Contentions*

##### *ONE - It is a case of double addition*

*The assessee recd. loan of Rs.26.85 Cr. from Verrenyam in this year*

*The A.O. held that Verrenyam recd. accommodation entries in the shape of share capital / premium of Rs.24.78 Cr. in this year from various entry operating companies (as per the list given on Pg.8 & 9*

*of the asstt. order), which amt. has been given to assessee on loan(A.O. Pg.15, Para-12)*

*It is for this reason that the A.O. added Rs.26.85 Cr. the loan reed. from Verrenyam u/s.68*

*The case of Verrenyam of A.Y.12-13 was completed u/s.143(3) (1-18)*

*In the case of Verrenyam, the said amt. Rs.24.78 Cr. taken from 13 companies by Verrenyam has been added u/s.68 (RP - 17-18) CIT(A) in Verrenyam, sustained the said addition ofRs.24.78 Cr. (55-59, RP-59)*

*ITAT dismissed the appeal of Verrenyam, hence the addition of Rs.24.78 Cr. remains sustained in the hands of Verrenyam, which position continuous even as on date (54-55)*

*It is the same 24.78 Cr. which was given by Verrenyam to assessee, which is the part of total addition of Rs.26. 85 Cr. made in the hands of assessee (A.O. Pg.15, Para-12)*

*Hence, Rs.24.78 Cr. since already stands added in the hands of Verrenyam and the same amt. has been reed. by the assessee, therefore in the hands of the assessee, the source of said amt. stands fully explained w.r.t. provisions of Sec.68 of the I.T. Act.*

*Under these facts, to make addition for the same amt. of Rs.24.78 Cr. in the hands of Verrenyam and then again in the hands of assessee will tantamount to double addition of the same amt.*

*Reg. bal. amt. of Rs.2.07 Cr. (26.85 - 24.78), the A.O. of Varrenyam has not doubted the source in the hands of Varrenyam to the extent of Rs.2.0 Cr. therefore he has not made any addition in the hands of Varrenyam u/s.68 (1-18, RP-18)*

*Even in the asstt. of assessee, the A.O. has doubted for only those receipts which have been reed. by Varrenyam from 13 companies operated by Himanshu Verma i.e. totaling Rs.24.78 Cr. and not for bal. Rs.2.07 Cr.*

*Hence, there is actually no cogent reason assigned in the impugned asstt. for making addition to the extent of bal. Rs.2.07 Cr.*

*Thus, the complete addition ofRs.26.85 Cr. is unjustified*

*TWO - On further merits*

*The assessee did not take share capital 1 premium but loan ofRs.26.85 Cr. (40-43)*

*It was intt. bearing loan @9% wherein the following intt. has been paid by assessee which has been allowed to assessee as a deduction after deduction of TDS*

<i>A.Y. Interest paid and allowed TDS deducted and</i>			<i>Pg.No.</i>
<i>deposited</i>			<i>of P /B</i>
<i>2012-13</i>	<i>2,17,42,274/-</i>	<i>21,74,227/-</i>	<i>87</i>
<i>2013-14</i>	<i>83,34,376/-</i>	<i>8,33,438/-</i>	<i>87</i>
<i>2014-15</i>	<i>6,00,075/-</i>	<i>60,008/-</i>	<i>88</i>
<i>2015-16</i>	<i>5,62,870/-</i>	<i>56,287/-</i>	<i>88</i>

*The complete loan of Rs.26.85 Cr. was returned back up to A.Y.2013-14, only some intt. ofRs.94,14,283/- was outstanding as on 31.08.16 (86-88)*

*Varrenyam filed civil suit NO.CS620958116 in Tis Hazari Court for recovery of Rs.94,14,283/- outstanding as on 31.08.16 which is still in progress (60-85, RP-66)*

*The fact that it is a intt. bearing loan, intt. has been allowed, TDS has been deducted, TDS has been deposited, TDS return has been filed, the civil suit has been filed by Varrenyam for the outstanding, proves that the assessee took a genuine loan from Varrenyam and not in the nature of an accommodation entry Further, in this case, the source of the source also stands proved, so far as assessee is concerned.*

*Also, in the case of a loan and that too in A.Y.12-13, source of the source cannot be asked, which can be asked only w.e.f. A.Y.13-14 and that too in the case of receipt of share capital as provided in proviso to Sec.68 inserted w.e.f. A.Y.13-14*

*The assessee, thus has discharged his onus fully W.r.t. Sec.68 of the I.T. Act*

*Income of Varrenyam AY 12-13 - Rs.1.33 Cr.*

*Documents of varrenayam*

- *ITR (45)*
- *PAN (30)*
- *Financial statements (19-29)*
- *Bank statements (31-39)*
- *Ledger A/c (40-43)*
- *Certificate of Incorporation (44)*

#### CASE LAWS

*For - if loan returned, it is an evidence for the loan being genuine*

*DIT VS. MODERN CHARTIABLE FOUNDATION 335 ITR 105 (DEL.)*

*"we may also record the submissions of the Ld. Counsel for the respondent that in so far as un - secured loans are concerned, they*

*were paid back in subsequent years, which shows that these were genuine loans taken by the assessee."*

*CIT VS. KINETIC CAPITAL FINANCE LTD. 202 TAXMAN 548 (DEL.)*

*Held that - Where assessee has furnished details with respect to deposits and investors had acknowledged fact that money has been returned to them, further, interest has been received by the investors and TDS has been deducted, thus, assessee had discharged its initial onus and was not require to prove genuineness of transaction with the creditor and source of income of creditor.*

*CIT VS. AYACHI CHANDRASHEKHAR NARSANGI 221 TAXMAN (GUJ.). (MAGZ.) 146*

*Loans - A.Y. 2006 - 2007 - AO framed Asstt. U/s. 143 (3) wherein he made addition of Rs. 1.45 crores u/s. 68 on ground that loan taken from one 'IA' was not explained satisfactorily - On appeal, CIT (A) was satisfied with respect to genuineness of transaction and creditworthiness of 'IA' and, therefore deleted addition.- It was found that total loan of Rs. 1.60 crores was advanced to assessee, out of which Rs. 15 lakhs was repaid to 'IA' -0 Balance loan amount was repaid by assessee in immediately next financial year - Whether when Deptt. had accepted same, addition made by AO was to be deleted - Held yes.*

*For - source of the source can be asked only from A.Y.13-14 and that too in case of share capital*

*PCIT Vs. VEDHATA TOWER (P) LTD. (Bombay High court order dtd. 17.04.18, ITA No. 819 of 2015)*

*CIT Vs. Gagandeep Infrastructure (P) Ltd. 394 ITR 680 (Born.)*

*Held that - Sec. 68 is not applicable in case assessee is not able to explain source of the source.*

*Further, held that the proviso to section 68 has been introduced by the Finance Act, 2012 with effect from 1-4-2013. Thus, it would be effective only from the assessment year 2013-14 onwards.*

*ACIT VS. PREM ANAND (ITA O. 3514 / D / 2014) (DELHI ITAT ORDER DTD. 13.04.2017)*

*"7.1. It is a settled law that the assessee is not answerable to explain source of source of the fund. In light of the fact that there is no cash deposit in the bank accounts of the three persons for advancing loan and their categorical admission confirming loan during the remand proceedings, we are of the considered view that the loan aggregating to Rs.38,50,000/- cannot be charged to tax in the Assessee's hands U/S 68 particularly in absence of any contrary evidence brought on the record by the AO. Hence, we find that Ld. CIT(A) has rightly observed that the assessee is not required to explain source of source of the fund gets buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013."*

*6. We have heard both the parties and perused the orders passed by the revenue authorities alongwith written submissions filed by the Ld. Counsel for the assessee and the case laws cited by both the parties. We note that M/s Varrenyam Securities Private Limited had filed its return of Income for Assessment year 2012-13 declaring a total income of Rs. 1,33,04,450/- and assessment of M/s Varrenyam Securities Private Limited was framed by DCIT, CC-20, New Delhi (the same AO in the case of the assessee) determining its total income at Rs. 25,11,04,450/ - vide his order u/s 143(3) of the I.T. Act, 1961 dated 24.03.2015 (the date on which AO also framed the assessment order for assessee). It is also noted that the assessee in support of the genuineness of the aggregate of the loans taken had*

*filed the Copy of PAN Card of the Lender; Copy of Bank Statement of the Lender showing all above entries; Confirmation of the Lender in writing for giving the loan; ROC Registration, Lender is filling regular various documents with ROC; Lender name is in ROC record; Copy of ITR of the Lender. Record shows that the Lender filling papers with IT Department regularly and Copy of Audited Final Accounts' of the Borrower.*

***It is also noted that M/s Varrenyam Securities Private Limited is a much bigger company than the assessee company and the loan taken by the assessee company was partly repaid by the assessee to the extent of Rs. 18,25,00,000/- through banking had paid interest at 9% per annum amounting to Rs. 1,95,68,047/- (net of TDS deducted at 10%) and the aforesaid interest was claimed by the assessee and allowed by the AO. It is also noted that the impugned addition of Rs. 26.85 crores clearly is a case of Double Taxation as it has been taxed in the hands of M/s Varrenyam Securities Private Limited as well as the assessee. As stated by the Ld. Counsel for the assessee that the addition of Rs. 24.78 Crore has been finally made in the hands of M/s Verrenyam Securities Pvt. Ltd. by the AO. The Ld. CIT(A) sustained the addition and ITAT has upheld the action of the Ld. CIT(A) by dismissing the appeal of the assessee and no further appeal has been filed against the order of the ITAT, therefore, it has become final. Keeping in view of the facts and circumstances of the present case, we are of the view that addition of Rs. 26.85 Crores was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) and reject the grounds raised by the Revenue. The judicial decisions relied upon by the representatives of both the sides have been duly considered. In our considered view,***



***we do not find any parity in the facts of the decisions relied upon with the peculiar facts of the case in hand.”***

10. From the above order of the Co-ordinate Bench, we find that the Tribunal while dismissing the appeal in the case of M/s Sidhvandan Enterprises Pvt. Ltd. held that the amount has been rightly assessed in the hands of the assessee which is inconsonance with the order of the Id. CIT (A).

11. We find that the revenue filed appeal before the ITAT against deletion of addition made in the hands of M/s Sidhvandan Enterprises Pvt. Ltd. wherein the addition was made by the AO on substantive basis as well as in the case of M/s Varrenyam Securities Pvt. Ltd. wherein the addition was made by the AO on protective basis. The revenue is not very clear as to whom the amounts have been attributed and tax is to be collected. The Id. CIT (A) has also not given in any categorical finding as to which entity is the real owner of the amount. Hence, the matter is being remanded back to the file of the Id. CIT (A) to pass an order by giving a categorical finding on the assessability of the income.

12. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 24/08/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

**Dated: 24/08/2021**

\*Subodh Kumar, Sr. PS\*

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**