

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1030/KOL/2017
[Assessment Year: 2012-13]**

ITO, Ward-6(2), P-7, Chowringhee Square, 6 th Floor, Kolkata.	vs	M/s. Liberty Commodéal Pvt.Ltd., 8, Ramlochan Mullick Street, 2 nd Floor, Kolkata-700007. PAN-AABCL8289D
(Appellant)		(Respondent)
Appellant by	Sh. M.K.Biswas, Addl.CIT	
Respondent by	Sh. V.K.Jain, Ld.AR	
Date of Hearing	06.09.2018	
Date of Pronouncement	05.10.2018	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal by the Revenue against the order dated 28.03.2017 passed by CIT(A)-2, Kolkata for AY 2012-13.

2. The only issue is to be decided as to whether CIT(A) is justified in confirming the addition made by the AO u/s 68 of the Income Tax Act, 1961 (in short "Act") in the facts and circumstances of the case.

3. After hearing both the parties, we find that the AO added an amount of Rs.1,51,30,000/- under the head "cash credit" u/s 68 of the Act. It is noted from the order of CIT(A) at page No.5 that a sum of Rs.1,50,60,000/- was not credited in the year under consideration. Therefore, it is clear that CIT(A) examined the record and found satisfied that the addition made by the AO is not maintainable as it was not credited in the year under consideration. Therefore, in our opinion, when it is not credited in the year under consideration and no addition u/s 68 of the Act is maintainable. The relevant portion in the order of CIT(A) is reproduced hereunder:-

"I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AO made the addition of share application money received of Rs. 1,51,30,000 u/s 68 of the Act as unexplained cash credit.

The AR of the appellate has submitted that the Assessing Officer made the addition of share application money received of Rs. 1,51,30,000 u/s 68 of the Act as unexplained cash credit, without verifying the facts from the records filed that the assessee company had received during the year under consideration only Rs. 11,70,000, out of which, he refunded Rs 11,00,000, thus the net receipt on account of shares was Rs. 70,000 only. The amount money as share application for equity shares were received in immediate preceding previous year, i.e. FY 2010-11 was Rs. 1,50,60,000, The following charts shows the detail of share application money received in earlier year i.e. F.Y. 2010-11.

<i>Name of share subscriber</i>	<i>Date of payment</i>	<i>Cheque No.</i>	<i>Amount</i>
<i>Neelkanth Commercial Pvt.Ltd.</i>	<i>24.03.2011</i>	<i>899231</i>	<i>Rs.85,60,000/-</i>
<i>Skylark Vanijya Pvt.Ltd.</i>	<i>24.03.2011</i>	<i>439785</i>	<i>Rs.65,00,000/-</i>

The provision of the section 68 of the I T Act says 'Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.' The Section 68 stipulates that any unexplained sum found credited in the books of the assessee for any previous year, then the same may be taxed as income of the assessee for that previous year, Thus, section 68 stipulates that sum is

credited, the assessee maintains the books of accounts in which such sum is credited, the assessee fails to explain the same. All such conditions are in place than AO can invoke the provisions of Section 68.

In the case of appellant, the sum of Rs 1,50,60,000 was not credited in this year. The appellant had made the allotment of its equity shares during the year against the monies received in past and small amount received during the year, therefore the question of addition u/s 68 of the Act for the monies received in past, does not arise. The share application monies received. pending allotment in F.Y. 2010-11. is evident from the audited annual accounts of the appellant. Same was shown as share application money pending for allotment under the Note 13: Other Current assets of the Balance sheet as on 31.03.2011 of share subscribers. The bank statement filed by the assessee of self as well as that of the share subscribers gave clear position in the matter.”

4. In view of the above, we find no infirmity in the order of CIT(A). Therefore, Ground No.1 raised by the Revenue is dismissed.
5. Ground No.2 is general, needs no adjudication, hence it is dismissed.
6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 05.10.2018.

**Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

**Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER**

*Date:- 05.10.2018
*Amit Kumar**

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1. Appellant- ITO, Ward-6(2), P-7, Chowringhee Square, 6th Floor, Kolkata.
2. Respondent- M/s. Liberty Commodore Pvt.Ltd., 8, Ramlochan Mullick Street, 2nd Floor, Kolkata-700007.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

Sr.P.S./H.O.O
ITAT, KOLKATA