

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA**  
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य  
 [Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

**I.T.A. No. 2203/Kol/2017**  
**Assessment Year: 2012-13**

Income-tax Officer, Ward-2(2), Kolkata	Vs.	M/s. Aryvarat Construction Pvt. Ltd. (PAN: AAKCA4003A)
Applicant		Respondent
Date of Hearing	07.01.2019	
Date of Pronouncement	23.01.2019	
For the Applicant	Shri Sankar Halder, JCIT, Sr. DR	
For the Respondent	Shri A. K. Tibrewala, FCA & Shri Amit Agarwal, Advocate	

**ORDER**

**Per Shri A.T.Varkey, JM**

This appeal has been filed by the revenue against the order of Ld. CIT(A)-9, Kolkata dated 11.07.2017 for AY 2012-13.

2. The main grievance of revenue is against the action of Ld. CIT(A) in deleting the addition of Rs.85,00,000/- as made by the AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on account of unexplained cash credit.

3. Briefly stated facts are that the assessee is engaged in the business of share trading. According to AO, the assessee during the previous year 2011-12 relating to assessment year under consideration had received share application money along with premium from various resources. According to AO, despite summons u/s. 131 of the Act was served on the director of the assessee company and a final show cause notice was served on the assessee, to explain the nature and source of share application money and complete details of share premium received, no compliance was made on the said date before him. Since no details

have been submitted by the assessee and since no verification of share capital introduced could not be made due to non-compliance on the part of the assessee, the AO added the share application money along with the premium amounting to Rs. 85,00,000/- u/s. 68 of the Act as unexplained cash credit. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who deleted the addition. Aggrieved, revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. At the outset itself, it has been brought to our notice that the AO has made the addition of Rs. 85,00,000/- u/s. 68 of the Act without taking into consideration the fact that the assessee has allotted the shares of the company in exchange for acquisition of shares from those companies (share applicant companies) and thereby, we note that no sum of money/cash was transferred between the assessee and the share subscribers and the Ld. CIT(A) passed the impugned order taking note of the decisions given by this Tribunal in the case of ITO Vs. Anupam Nandi in ITA No. 774/Kol/2012 and the Hon'ble Calcutta High Court in the case of Jatia Investment Co. Vs. CIT 206 ITR 718 and other cases. We note that in this case, the shares subscribers have given shares in exchange of the shares of the assessee and no sum of money has been transferred to the assessee on this score. In similar case, the Tribunal in the case of Anand Enterprises Ltd. in ITA No.1614/Kol/2016 dated 26.09.2018 wherein in similar issue arose and the Tribunal held as under:

*“4.2. It would be pertinent to note that in the instant case, the ld. AO had not doubted the investment made in shares by the assessee company. There is no dispute raised by the ld. AO with regard to number of shares; value thereon invested by the assessee company. We also find that the Co-ordinate Bench decision of Pune Tribunal in the case of Kantilal and Bros. vs. ACIT reported in 52 ITD 412 (Pune Trib.) also supports the case of the assessee.*

*4.3. In view of the aforesaid observations, in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the ld. AO had erroneously invoked the provisions of section 68 of the Act to the facts of the instant case, which, in our considered opinion, are not at all applicable herein. This is a simple case of acquiring shares of certain companies from certain shareholders without paying any cash consideration and instead the consideration was settled through issuance of shares to the respective parties. Moreover, in the balance sheet of the assessee company in the schedule to share capital, it is very clearly mentioned by way of note that the fresh share capital was raised during the year for consideration other than cash. Hence we hold that provision of section 68 of the Act are not applicable in the instant case and accordingly the entire addition deserves to be deleted which has rightly been done by the ld. CIT(A) which*

*does not require any interference. Accordingly, grounds raised by the revenue are dismissed.”*

5. Respectfully following the ratio laid by the Tribunal (supra), and taking note of that facts and law governing the issue were the same and though the Ld. DR vehemently assailed the order of the Ld. CIT(A) could not point out any difference in the facts and law in the case on hand with the aforesaid order, therefore, following the order of the Tribunal cited (supra), we uphold the order of the Ld. CIT(A) and dismiss this ground of appeal of the revenue.

6. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 23rd January, 2019.

Sd/-  
(P. M. Jagtap)  
Vice President

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 23rd January, 2019

Jd.(Sr.P.S.)\

Copy of the order forwarded to:

1. Appellant – ITO, Ward-2(2), Kolkata
2. Respondent – M/s. Aryvarat Construction Pvt. Ltd., 56, Metcalf Street, Kolkata-700 013
3. CIT(A)-9, Kolkata. (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar