

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)  
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. No. 620 /Kol/2017**  
**Assessment Years: 2012-13**

CNG Agrocare Pvt. Ltd. (PAN: AADCC6364K)	Vs.	Income-tax Officer, Ward-9(3), Kolkata
Appellant		Respondent

For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Shri Sankar Halder, JCIT, Sr. DR

Date of Hearing	13.02.2019
Date of Pronouncement	01.05.2019

**ORDER**

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

This appeal of the assessee arises out of order of the Learned Commissioner of Income Tax (Appeals) - 16, Kolkata for AY 2012-13 dated 31.01.2017.

2. The main grievance of the assessee is against the action of Ld. CIT(A) in confirming the addition of Rs.3,70,40,000/- u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. At the outset itself, the Ld. AR drew our attention to the fact that in order to prove the identity, creditworthiness and genuineness of the share capital and share premium received by the assessee company from six shareholders which aggregates to Rs.3,70,40,000/- which is as under:

Sl. No.	Name and Address	PAN	No. of shares	Amount in Rs. (including premium)
1.	Chanda Gupta, 18/1, M D Road, 4 <sup>th</sup> floor, Kolkata-700 007	ADUPG7663C	2000	8,00,000.00
2.	Niraj Gupta, P-143, Lake Town, Block-B, 4 <sup>th</sup> floor, Kolkata-89	AHFPG3605N	750	3,00,000.00
3.	Manoj Agarwal, 18/1, M. D Road, 4 <sup>th</sup> floor, Kolkata-700007.	AFIPA7391B	1100	4,40,000.00
4.	Deepak Agarwal, 18/1, M. D. Road, 4 <sup>th</sup> floor, Kolkata-700007	AEXPA1266K	250	1,00,000.00
5.	R. B. Gupta & Sons (HUF), 18/1, M. D. Road, 4 <sup>th</sup> floor, Kolkata-700007	AAGHR5132N	750	3,00,000.00
6.	Brightstar Vincom Pvt. Ltd. 18/1, M. D. Road, 4 <sup>th</sup> floor, Kolkata-700007	AADCB2082R	87,750	3,51,00,000.00
		Total	92,600	3,70,40,000.00

4. It was brought to our notice that out of the six share applicants the first five are individuals and they altogether have contributed only approximately Rs. 19 lacs and have PAN and they are all income tax assesseees. The balance amount of Rs. 3.51 cr. have been subscribed by M/s. Brightstar Vincom Pvt. Ltd. According to Ld. AR, the AO has drawn adverse inference against the assessee merely because the directors of the share subscribing companies and other individuals did not appear before him. Therefore, he made the addition of the entire share capital and premium. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the order of the AO by a cryptic and non-speaking order. Aggrieved, the assessee is before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. The aforesaid facts as narrated by the Ld. AR are not repeated for the sake of brevity. However, an important fact has been brought to our notice which was not before the lower authorities was that M/s. Brightstar Vincom Pvt. Ltd. had subscribed Rs. 3.51 cr. out of total Rs.3.70 cr. subscribed in the share capital as well as premium in the assessee company. And that assessment of M/s. Brightstar Vincom Pvt. Ltd. for AY 2012-13 was scrutinized by the AO u/s. 143(3) of the Act and the AO was pleased to assess the income of M/s. Brightstar Vincom Pvt. Ltd. at Rs.3,58,75,570/-. The assessment order has been placed before us. The fact of M/s. Brightstar Vincom Pvt. Ltd., which has subscribed Rs.3.51 cr.

out of Rs.3,70 cr. (subscribed by all six), we note that this is an important piece of evidence which is required to have been taken note by the AO. We note that the assessment order for M/s. Brightstar Vincom Pvt. Ltd. has been passed on 23.03.2015 and the assessment of the assessee has been passed on 28.03.2015. So, since this is an import fact which need to be considered by the AO for effective/fair assessment of the assessee, we are inclined to set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO to assess de novo for AY 2012-13 in accordance to law. Therefore, appeal of assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 01/05/2019

Sd/-  
(Dr. A. L. Saini)  
Accountant Member

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

Dated: 1st May, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – C.N.G Agrocare Pvt. Ltd., 18/1, M. D. Road, 4<sup>th</sup> floor, Room 48, Kolkata-700 007.
- 2 Respondent –ITO, Ward-9(3), Kolkata.
- 3 CIT(A)-16, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar