

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

[Before Shri J. Sudhakar Reddy, Accountant Member & Shri S.S. Godara, Judicial Member]

**I.T.A. No. 2102/Kol/2017
Assessment Year: 2012-13**

ITO, Ward-13(2), Kolkata.....Appellant

Vs.

*M/s. Gouri Nandan Real Estate Pvt. Ltd.....Respondent
[PAN: AAECG 2832 R]*

**C.O. No. 120/Kol/2017
Assessment Year: 2012-13**

*M/s. Gouri Nandan Real Estate Pvt. Ltd.....Appellant
[PAN: AAECG 2832 R]*

Vs.

ITO, Ward-13(2), Kolkata.....Respondent

Appearances by:

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.

Sh. S.M. Surana, Adv., appeared on behalf of the Assessee.

Date of concluding the hearing : October 21st, 2019
Date of pronouncing the order : November 29th, 2019

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the Revenue directed against the order of the Commissioner of Income Tax (Appeals)-5, Kolkata ['CIT(A)' for short] dated 13.07.2017 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2012-13.

2. The AO in this case passed an order u/s 144 of the Act on 29.03.2014 determining the total income of the assessee for the AY 2012-13 at ₹4,91,00,000/- inter alia making an addition of ₹4 crore 90 lakhs u/s 68 of the Act being share capital and share premium received by the assessee during the year. The assessee also issued

shares having face value of ₹10/- and premium of 90%. On appeal, the ld. first appellate authority deleted the same.

3. Aggrieved, the Revenue is before us.

4. After hearing rival contentions we find that the ld. CIT(A) at para 1.7 to 1.13 held as follows:

"1.7 As has been pointed out in the A/R's submission reproduced above, the word 'sum' appearing in section-68 of the I. T. Act represents only sums of money being cheque or cash or other equivalent forms. This section is not applicable in cases where any other property is brought in the books of accounts. From the A/R's submission as reproduced in para-1.3 and the cases relied upon in the said submission, it appears that the word 'sum' means sum of money and not any other property movable or immovable or something which can be converted into money. For the said meaning of sum the reliance of the A/R is on the case of H. Rama reported in 187 ITR page-408 wherein the word sum has been defined cash money in section 80G. Various other decisions as cited in the above submission support the view that sum stands for cash money. Case of Komal Kr. Bader (33 SSOT 58) of ITAT Jaipur Bench interpreting the word sum as used in section 56(2)(vii) has also been relied upon. Case of Jatia Investment Company of Calcutta High Court reported in 206 ITR page 7-8 delivered on the provisions of section-68 has also been relied upon wherein sum has been defined as money and has been held that section 68 applies only when cash is received and entered into books of accounts. Some other judgement on definition of sum as appearing in section 68 has also been relied upon by the A/R as noted in the submission reproduced above. From the above decisions it thus becomes clear that section 68 can be applied only when cash or cheque or equivalent is credited in the books of accounts of the appellant. In the present case, all the major contributions have been by way of takeover of advance with the official liquidator, which was paid by the various share allottees through demand drafts as described herein para 1.9 above. In respect of the share allottees whose advances with the official liquidator was taken over by the appellant and in return the shares were allotted at premium section 68 cannot be applied. Though the A.O.'s observation do suggest that at least some of the share allottees are paper entities brought into existence to provide entries for circuitous routing of black money to the beneficiary which may be the appellant itself, but as section 68 has been applied to make the addition and as cash has not been directly introduced in the books of accounts, addition under section 68 may not be legally correct. Thus though the A.O.'s observation may be correct and on merit the share allottees may have been utilized as conduit for black money, I am not able to uphold the A.O.'s action under section 68 in view of the fact that no cash was introduced in the books of accounts by the appellant, which took over debts or advances due to the share allottees in the hands of the official liquidator in connection with purchase of some property which seems to have been acquired or was to be acquired by the appellant.

1.8 From the assessment folder and the A.O.'s observation in para 5(b) it is clear that the A.O. was aware that the money did not come in the books of accounts of the appellant. Rather the share allottees advanced money to the official liquidator, High Court, Kolkata for purchase of certain property and the said debt or advance due to These share allottees were taken over by the appellant and in return the share allottees were allotted shares after charging some premium as noted in the assessment order. From the assessment order page-7 para 5(b), it is seen that the bulk of the money paid to official liquidator was from Rotex Intertrade Pvt. Ltd. The said table lists four share allottees but from Form-2, it is seen that shares were allotted to 7 corporate entities and two individuals. The number of shares and the amounts including share premium against shares are as below:

Name of the allottee	Number of shares allotted	Total amount paid
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Aditya Hydro-chem Pvt. Ltd.	20,000	20,00,000/-
Asha Apartments Pvt. Ltd.	20,000	20,00,000/-
Deserve Trexim Pvt. Ltd.	23,000	23,00,000/-
Rotex Intertrade Pvt. Ltd.	2,90,000	2,90,00,000/-
Siddha Realcon Pvt. Ltd.	70,000	70,00,000/-
Sri Hanuman Mansion Pvt. Ltd.	39,600	39,60,000/-
Sungold Suppliers Pvt. Ltd.	27,000	27,00,000/-
Shyam Lal Agarwal	200	20,000/-
Varsha Agarwal	200	20,000/-

1.9 Mode of payments: The assessment order has not specifically noted how the payments lying with the official liquidator were taken over by the appellant and how the shares were allotted by the appellant. This happened apparently because the A/R perhaps thought that taking over of the debt due from the official liquidator was not material for applicability of section 68 of the I. T. Act. This is the reason the appellant filed copies of share application where payments have been described as having been made in D.D. to the appellant even though the copies of relevant D.Ds available in the A.O.'s folder shows that the payments were made to the official liquidator. The papers in the folder have attempted to show in some cases how the proceeds of D.Ds were immediately -sourced.

The details of the D.Ds are summarized as under [as available in the A.O.'s folder]-

1.	Sungold Suppliers Pvt. Ltd.	-	Rs.	27	lakhs
2.	Siddha Realcon Pvt. Ltd.	-	Rs.	97	lakhs
3.	Rotex Intertrade Pvt. Ltd.	-	Rs.	400	lakhs
4.	Asha Apartments Pvt. Ltd.	-	Rs.	50	lakhs
5.	Deserve Trexim Pvt. Ltd.	-	Rs.	23	lakhs
6.	Sri Hanuman Mansion Pvt. Ltd.	-	Rs.	40	lakhs

Thus in respect of six entities being Sungold Suppliers Pvt. Ltd., Siddha Realcon Pvt. Ltd., Rotex Intertrade Pvt. Ltd., Asha Apartments Pvt. Ltd., Deserve Trexim Pvt. Ltd. and Sri Hanuman Mansion Pvt. Ltd. it can be claimed that the money paid to the official liquidator was taken over by the appellant, who in return allotted/issued shares. Thus as regards the said six allottee companies the appellant appears correct in its claim that the sums of money were not received by it in the books of accounts but it was the debt due to the allottees from the official liquidator which was adjusted to allot/issue shares. Helped by the A/R's submission, the A.O. seems to have glossed over the said material fact.

1.10 As no sum of money was received in the books of accounts by the appellant for issuing shares, rather it was by adjustment, section 68 of the I. T. Act does not apply in respect of issue of shares to the said six allottees. Once section 68 does not apply,; the A.O.'s action of addition u/s.68 in respect of the above six allottees cannot be sustained.

1.11 As regards the shares issued to Shyam Lal Agarwal and Varsha Agarwal being 200 (Rs.20,000/-); and 200 (Rs.20,000/-), they are promoters of the appellant. Their shares allotted earlier was not disputed by the A.O. and in view of no specific adverse finding against these two allottees or allotment in the assessment order the A.O.'s action in respect of the said two persons/individuals cannot be sustained.

1.12 Lastly the allotment to Aditya Hydro-chem Pvt. Ltd. is claimed by the A/R against adjustment of advance from Siddha Realcom. But from the bank statement it appears that Rs. 20 lakhs was received by the appellant in its bank and so applicability of section 68 in respect of shares allotted to Aditya Hydro-chem Pvt. Ltd. cannot be questioned. But the A.O. has not given any specific adverse finding against the said allottee except for the observation that

explanation or evidence for source of fund was not given, whereas the fact is that both the A.O. and the appellant vaguely proceeded in the matter and if at all details and evidences were not produced, the A.O. was also responsible. I, therefore, do not uphold the addition u/s.68 of the amount shown received against allotment of shares to Adidtya Hydro-chem Pvt. Ltd, as the A.O has not based his decision on any material adverse to the appellant.

1.13 The above decision in para - 1.10 has been taken on technical grounds that section 68 does not apply if no money is introduced in the books of accounts. No answer has been attempted of the question whether on merit the money advanced by the respective allottee companies are unexplained or not in terms of source of these advances in the respective hands of the allottees. It is likely that some or all of the advances with the official liquidator may have undisclosed sources but in that case the assessment has to be developed from a different angle or additions may have to be made in the hands of the respective allottee companies. This decision does not offer any comment or observation or findings on the merit of the case as above."

5. The issue, whether Section 68 of the Act can be applied when shares are allotted without the receipt of any cash and only by passing of journal entries in the books of account by transfer entries or by way of adjustments, otherwise than cash, is covered by the following decisions in *ITO, Ward-5(3), Kolkata vs. M/s. Bhagwat Marcom Pvt. Ltd. reported in ITA No. 2236/Kol/2017* which reads as under:

"6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that its shares were issued by the assessee company during the year under consideration at premium to certain companies in lieu of the shares held by the said companies and there was thus no inflow of cash involved in these transactions. The said transactions were entered into in the books of account of the assessee company by way of journal entries and it did not involve any credit to the cash amount. The learned DR at the time of hearing has not brought anything on record to rebut or controvert this position. He however has contended by relying on the decision of Hon'ble Madhya Pradesh High Court in the case of V.I.S.P. (P) Ltd. (supra) as well as the decision of Mumbai Bench of this Tribunal in the case of Panna S. Khatau (supra) that section 68 was still applicable in the present case involving credit to the share capital and share premium amount. It is however observed that the facts involved in the case of V.I.S.P. (P) Ltd. were different in as much as the liability in question in the said case represented trading liability of the assessee accruing as a result of purchases made by the assessee during the relevant year and since the said liability was found to be a bogus liability, addition made by the AO was held to be sustainable by the Hon'ble Madhya Pradesh High Court.

7. In the case of Panna S. Khatau (supra) cited by the learned DR, both section 68 and 56 (2)(vi) were held to be applicable by the Tribunal but no concrete or cogent reasons were given to justify the applicability of section 68 to the credits not involving any receipt or inflow of cash in the relevant year. Moreover, the view taken by the Tribunal in- the said case is contrary to the decision of Hon'ble Calcutta High Court in the case of Jatia Investment Co. (supra) relied upon by the Ld. CIT(A) to give relief to the assessee on issue under consideration in the present case. In the said case, the three NBFCs had taken loans from proprietary concern belonging to the same group. Since the said loans were required to be liquidated as per the RBI guidelines and there was no cash available with the NBFCs to repay the loans, the shares held by the three NBFCs were transferred to a partnership firm namely Jatia Investment Co., and the amount receivable against the said sale of shares was adjusted by the NBFCs against the loan amount payable to proprietary concern. The partnership firm of M/s. Jatia Investment Co. thus received shares from the three NBFCs and also took over the loans payable by the said NBFCs to the proprietary concern. These transactions were entered into in its books of account by the partnership firm through cash book by debiting the investment in shares and crediting the loan amount of the proprietary concern. This credit appearing in the books of account of the

partnership firm, M/s. Jatia Investment Co. was treated by the AO as unexplained cash credit u/s 68 and on confirmation of the same, when the matter reached to the Hon'ble Calcutta High Court, it was held by their lordship that when the cash did not pass at any stage and since the respective parties did not receive cash nor did pay any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise. In our opinion, the ratio of this decision of the Hon'ble Jurisdictional High Court in the case of Jatia Investment Co. (supra) is squarely applicable in the facts of the present case and the Ld. CIT(A) was fully justified in deleting the addition made by the AO u/s 68 by holding that the said provision was not applicable.

8. *In the result, the appeal of the Revenue is dismissed."*

6. This Bench of Tribunal in the case of *ITO, Ward-10(1), Kolkata vs. Kaner Investments Ltd.* reported in ITA No. 2095/Kol/2017 order dated 23.01.2019 held as follows:

"6. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of M/s Anand Enterprises Ltd (supra), on identical facts, vide order dated 26.09.2018. In this order, the Tribunal has inter alia observed as follows:

"4. We have heard the rival submissions. At the outset, we find that the assessee had not raised any share capital by receipt of cash consideration in the instant case. The shares were issued for consideration other than cash in lieu of assessee company making investment in shares in some other company. Effectively, the assessee purchased certain shares from the aforesaid six shareholders and instead of paying cash to them, the assessee company issued shares in its own company to those shareholders. Hence the assessee had made investments in shares of another company for which consideration was settled through issuance of its shares to those shareholders. Now the crucial point is whether the provisions of section 68 could be invoked in the instant case for making investment towards share capital. There was no receipt of any sum as provided u/s 68 of the Act in the instant case. It would be pertinent here to refer to the decision of Hon'ble Supreme Court in the case of Shri H.H. Rama Varma vs. CIT reported in 187ITR 308 (SC) wherein it was held that 'any sum' means 'sum of money'. We find that Id. CIT(A) had deleted the addition by observing as under:

"6. On consideration of the AR's submission, especially the portion reproduced above, it is seen that section 68 of I.T. Act, 1961 does not apply to cases of purchase of share assets and allotment of shares by the appellant when purchase and allotment are under a barter system. The AO has not refuted the appellant's claim that shares were allotted in exchange for acquisition of shares by the appellant from the companies which surrendered such shares to the appellant. Though as per the AO to apply section 68 to make the said addition in the appellant's hand. Transactions purportedly executed by entry operators involve multiple layers and other complexities, introducing delays in introduction of unaccounted cash/money and multiple players being incorporated entities. Measures taken by the AO in the course of the assessment proceeding falls much short of what is required to be done in such case laws, which have evolved on this issue, call for concerted actions on the part of the AO pinpointing utilization of unexplained/unaccounted/untaxed money and the players and the beneficiaries effectively using the weblike scheme to plunder black money. For example introduction and use of black money in the present case may be at a different point of time and in different hands. The AO's action in the present case cannot be upheld in law. I, therefore, delete the additions and grounds of appeal Nos. 3 & 4 are allowed."

4.1. We find that the Hon'ble Allahabad High Court in the case of *CIT vs. Sohanlal Singhania* reported in 235 ITR 616 (All) had held in the context of allowability of donation as deduction u/s 80G of the Act that the expression 'any sum paid' used in the said section denotes 'sum of money paid'. Hence if certain shares were donated by a person, then the same would

not fall eligible for deduction u/s 80G of the Act. We also find that the Hon'ble Jurisdictional High Court in the case of *Jatia Investment Company- (Co.) vs. CIT* reported in 206 ITR 718 (Cal) also supports the case of the assessee herein, wherein it was held as under:

"It is finally emphasised by learned counsel for the assessee that the ultimate result is that the firm becomes a debtor to GB and Co. and the three non-financial companies of the group got discharged. Learned counsel also emphasised that, at the worst, it can be said that the assessee-firm has received valuable assets being the said shares of the equivalent value of the debt taken over by it from the companies, i.e., Rs. 11.20 lakhs.

Therefore, the question of cash credit does not come in, there being no actual passing or receipt of cash. In other words, the transactions are mere book entries. It was contended that the fact that the entries passed through the cash book could not detract from or efface the essential nature of the entries. It was also urged that the entries were passed through the cash book so that the repayment of loans by the said three companies could be established before the Reserve Bank of India. But, according to Shri Bajoria, that does not mean that it amounts to an artifice employed to deceive any authorities, because the transactions showing the amount as received in cash and paid away spontaneously and simultaneously were not actual but only notional. He, however, stated that, as far as the question of section 68 is concerned, the nature of the transactions and the entries clearly show that no cash, in fact, flowed. It was further stressed that the transactions are above board. No outsider is involved. The entries were made in the books of the concerns of the same group. The shares in question were also of the companies of the group. There was no attempt at hiding the transactions. Nor is it the case of any of the parties to the transaction that there was any passing of cash. Every party unequivocally stated that the transactions were carried into effect merely by way of adjustments of the said loans and the share transfers.

Shri A. C. Moitra, the learned advocate for the Revenue, reiterated the grounds on which the Tribunal has affirmed the addition of the amount of Rs.11.20 lakhs as unexplained cash credit. He particularly emphasised that the assessee's contention that the entries are only adjustment entries is not acceptable, because the adjustment entries are not made through the cash book. It is an accepted principle of accounting that book adjustments and the entries in effecting them are made by journal entries and not cash entries. He urged that the purported motive of the entries being the reduction of loans of the three limited companies does not explain the whole matter, because the entries are cash entries. The fact remains that, at every stage, the parties showed the payments and receipts of cash even when there was no cash available for such entries. This quite justifies the addition as sustained by the Tribunal.

We have perused the assessment order carefully. We find that cash did not pass at any stage though entries were made in the cash book showing payments and receipts; but since the entries made a complete round, no passing of cash was necessary for the purpose of making the entries. That there was no passing of cash is also admitted by the Income- tax Officer himself. We have already extracted the observation of the Income- tax Officer in paragraph 14 of his assessment order. The Income- tax Officer has clearly opined that all the respective parties did not receive cash nor did pay cash as none had any cash for the purpose. The only point in the assessment order is that the entries not involving the passing of cash should not have found a place in the cash book, but in the ledger account through journal entries. There is another self-contradiction in the Income-tax Officer's finding that, if there was no real cash entry on the credit side of the cash book, but merely a notional or fictitious cash entry, as admitted by him, there is no real credit of cash to its cash book; the question of inclusion of the amount of the entry as unexplained cash credit cannot arise.

One of the grounds of the Tribunal for disbelieving the assessee's case is that the adjustment entries were made by notional cash entries with a view to bringing down the debt-and-capital ratio, i.e., that while being discharged of the debt the said companies also jettisoned their assets, i.e., the shares held by them of equivalent sum without achieving the avowed purpose. Here the Tribunal certainly misdirected itself. The ratio to be reduced is of the loan in relation to the share capital and the reserves. Jettisoning the shares had the desired effect of reducing

the borrowed capital.

Again, as regards the Tribunal's refusal to take notice of the directions of the Reserve Bank, it is not correct for the Tribunal to hold that the scud document was a new evidence in the true sense of the term. The assessee has been consistently pleading before the lower authorities that the entries had to be made in order to bring the companies in conformity with the said direction. Moreover, the direction of the Reserve Bank is a public document within the meaning of section 74 of the Evidence Act, 1872. Documents of a public nature and public authority are generally admissible in evidence subject to the mode of proving them as laid down in sections 76 and 78 of the Evidence Act.

In our view, the effect and import of the transactions is that the assessee took over the liability of the aforesaid non-financial companies to GB and Co. in exchange for the shares as aforesaid.

In the premises, we answer all the questions, in the affirmative and in favour of the assessee and against the Revenue."

4.2. *It would be pertinent to note that in the instant case, the Id. AO had not doubted the investment made in shares by the assessee company. There is no dispute raised by the Id. 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 Id. 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 Id. CIT(A) which does not require any interference. Accordingly, grounds raised by the revenue are dismissed. "*

7. As the issue is squarely covered in favour of assessee by the judgment of the coordinate Bench in M/s Anand Enterprises Ltd.(Supra) and there is no change in facts and law and the Id. DR for the revenue has not controverted the findings of the order of Tribunal (supra). Therefore, respectfully following the order of the coordinate Bench in M/s Anand Enterprises Ltd.(Supra), we uphold the impugned order of the Id. CIT(A) and dismiss ground nos. 1, 2, 3 & 4 of the revenue's appeal."

7. In the case of *M/s. V.R. Global Energy Pvt. Ltd. vs. ITO, Corporate Ward-3(4), Chennai, Tax Case (Appeal) No. 246 of 2017* held as follows:

"20. Counsel argued, and rightly, that when there was no cash involved in the transaction of allotment of shares, provisions of Section 68 of the said Act treating it as unexplained cash credit are not attracted.

21. Learned counsel for the appellant assessee emphatically argued that inasmuch as the source of credit in which shares were allotted was clearly explainable, the same cannot be treated as unexplained cash credit. Moreover, the identity of the share holders and the liability of the company to shareholders has been established and, therefore, the allotment of shares cannot be treated as unexplained cash credit.

22. In Commissioner of Income Tax v. Electro Polychem Ltd., reported in (2007) 294 ITR 661, cited on

behalf of the appellant, a Division Bench of this Court held that in case of cash credit of share application money, even if it were to be assumed that the subscribers to the increased share capital were not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company.

23. In Commissioner of Income Tax v. Steller Investment Ltd., reported in (2001) 251 ITR 263, also cited on behalf of the appellant, the Supreme Court held that even if the subscribers to the increased share capital of assessee-company were not genuine, the amount could not be regarded as undisclosed income of the company.

24. The question of whether the learned Tribunal erred in confirming the valuation of shares allotted in settlement of the preexisting liability taxable as unexplained cash credit, does not involve any question of law, far less any substantial question of law.

25. However, the second question is answered in favour of the assessee and against the Revenue by the judgment of the Division Bench of this Court in Commissioner of Income Tax v. Electro Polychem Ltd., supra, and Commissioner of Income Tax v. Steller Investment Ltd., supra.

26. This case is distinguishable from the case of C.I.T. v. Lovely Expos Pvt. Ltd., reported in 216 CTR 195, in that the transactions were only book transactions, and there was no cash receipt. The decisions in (i) Commissioner of Income Tax v. Focus Exports Pvt. Ltd., reported in (2014) 90 CCH 0105 (Delhi); (ii) Commissioner of Income Tax v. Globus Securities & Finance Pvt. Ltd., reported in (2014) 264 CTR 481 (Delhi); (iii) Onassis Axles Private Limited v. Commissioner of Income Tax, reported in (2014) 364 ITR 53 (Delhi); (iv) Olwin Tiles India (P) Ltd. v. Deputy Commissioner of Income Tax, reported in (2016) 382 ITR 291 (Gujarat); (v) B.R.Petrochem Pvt. Ltd. v. The Income Tax Officer, (Order dated 24.4.2017 in T.C.(A) No. 1498 of 2007; and (vi) Rajmandir Estates Private Limited v. Principal Commissioner of Income Tax, reported in (2016) 386 ITR 162 (Calcutta), cited on behalf of the respondent are distinguishable, in that the cash credits towards share capital were admittedly only by way of book adjustment and not actual receipts which could not be substantiated as receipts towards share subscription money.

27. The appeal is, thus, allowed and the judgment and order of the learned Tribunal dated 1.9.2016 is set aside, for the reasons discussed above. Additions under Section 68 of the 1961 Act are also set aside. The questions of law are answered against the Revenue. No costs. Consequently, CMP No.9496 of 2017 is closed."

8. In this case the assessee company did not receive any sum or cash for issue of shares from the share holder companies. This fact is clear from the following extract:

"the assessee did not receive any sum or cash for issue of shares but the shareholder companies had their debt due from Official Liquidator Calcutta High Court, since they paid the money direct to the Official Liquidator on 15th July 2011 in connection with sale of a property by the Official Liquidator and the said debt was transferred to the assessee. The assessee took over the said debt, credited the amount in the name of the creditors, and debited the amount to official receiver. Thereafter against the said debt taken over, the assessee partly issued the shares, partly repaid the amount by cheque, and part of the amount was lying credited in the books as unsecured loan or liability payable. It is therefore apparent that the assessee did not receive any sum or money as contribution for issue of share capital but took over the debt and against a part of the debt issued shares. The assessee did not receive any "sum" or "cash" for issue of shares. The ledger copy of account of the parties were duly filed before the AO from which it was evident that the money was paid by those parties to the official liquidator Calcutta High Court which debt was transferred to the assessee and the assessee allotted the its shares by journal entries and also repaid a part of the debt "and retained apart as loan. Further the copy of the drafts issued by their bankers were also filed before the AO along with the copy of bank statement of the parties. The copy of the bank statement of the assessee was also filed before the AO. From the bank statement of the shareholders and assessee it was evident that none of the cheques were received in the bank account of the assessee but all such DD's were issued in the name of Official Liquidator Calcutta High Court. The provisions of section 68 applies only if there is cash credit and any sum is found credited in the books of accounts. No such sum was found credited in the books of accounts of the assessee during the year."

9. The order of the CIT(A) is consistent with the propositions of law laid down in this case by various authorities cited above. In the result, we uphold the same and dismiss the appeal of the Revenue.

10. The C.Os are in support of the order of the Id. CIT(A). In view of our dismissal of the order of the Revenue these are dismissed as infructuous.

11. In the result, the appeal of the Revenue and the C.Os of the assessee are dismissed.

Kolkata, the 29th November, 2019.

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 29.11.2019
Bidhan

Copy of the order forwarded to:

- 1. ITO, Ward-13(2), Kolkata.**
- 2. M/s. Gouri Nandan Real Estate Pvt. Ltd., 51, Dobson Lane, Howrah-711 101.**
- CIT(A)-5, Kolkata. (sent through e-mail)
- CIT-
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