

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(C)', KOLKATA  
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri S.S. Godara, JM]

I.T.A. No. 17/Kol/2020  
Assessment Year: 2012-13

*M/s. Shivratri Energy Products Pvt. Ltd.....Appellant*  
*39, Shakespeare Sarani, 3<sup>rd</sup> Floor,*  
*Kolkata - 700 017.*  
*[PAN: AARCS 1483 P]*

*Vs*

*ITO, Ward 7(3), Kolkata.....Respondent*  
*P-7, Chowringhee Square,*  
*Kolkata - 700 069.*

**Appearances by:**

*Shri Soumitra Choudhury, Advocate appearing on behalf of the Assessee.*  
*Smt. Ranu Biswas, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : February 14, 2020

Date of pronouncing the order : February 14, 2020

**ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 11, Kolkata dated 28.11.2019 passed ex-parte whereby he confirmed the addition of Rs. 4,49,00,000/- made by the AO on account of share application money and share premium amount treating the same as unexplained cash credit u/s 68 of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of trading & investment in shares. The return of income for the year under consideration was filed by it on 01.02.2013 declaring a total income at nil. In order to verify/examine the claim of the assessee of having received share application money together with share premium aggregating to Rs. 4,49,00,000/-, a summons u/s 131 was issued by the AO requiring the director of the assessee

company to appear personally and to produce the directors of the share subscribing companies for examination. Although the assessee company furnished the relevant details and documents to establish the identity and capacity of the concerned share applicants as well as the genuineness of the relevant transactions, neither the director of the assessee company appeared before the AO for examination nor the directors of the share subscriber companies were produced for examination. The AO, therefore, treated the entire amount of share application money and share premium aggregating to Rs. 4.49 crores as unexplained cash credit and addition to that extent was made by him u/s 68 of the Act in the assessment completed u/s 143(3) vide an order dated 10.03.2015.

3. Against the order passed by the AO u/s 143(3) of the Act, an appeal was preferred by the assessee before the Ld. CIT(A) and since there was no satisfactory compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Ld. CIT(A) dismissed the appeal of the assessee vide his appellate order dated 28.11.2019 passed ex-parte and confirmed the addition made by the AO u/s 68. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised by the assessee in this appeal challenging the impugned order passed by the Ld. CIT(A) ex-parte, the learned counsel for the assessee has submitted that none of the notices of

hearings stated to be issued by the Id. CIT(A) was ever received by the assessee and such non-receipt of notices resulted into non-appearance of the assessee when its appeal was called for hearing before the Id. CIT(A). He has also submitted that all the relevant details and documents to explain the relevant cash credit representing share application and share capital amounts were furnished by the assessee before the Assessing Officer during the course of assessment proceedings. He has submitted that the Assessing Officer however ignored this relevant evidence furnished by the assessee and made the addition u/s 68 by treating the share application and share capital amount as unexplained cash credit u/s 68, mainly because the assessee could not produce the directors of the share subscriber companies for examination in response to the summons issued u/s 131. He has contended that the assessee company is in a position to produce the said directors along with the relevant documentary evidence for verification/examination before the AO and urged that one more opportunity may be given to the assessee to do so by sending the matter back to the AO. Keeping in view all the facts and circumstances of the case, we are inclined to accept this request of the learned counsel for the assessee. Even the Id. DR has not raised any objection for sending the matter back to the AO for proper verification. The impugned order passed by the Id. CIT(A) ex-parte is accordingly set aside and the matter is restored to the file of the AO for deciding the same afresh after giving the assessee one more opportunity for producing the directors of the share subscriber companies for examination / verification along with the relevant documentary evidence. As undertaken by the learned

counsel for the assessee, the assessee shall make due compliance before the AO and shall extend all the cooperation in order to enable the AO to complete the assessment afresh expeditiously.

**5. In the result, the appeal of the assessee is treated as allowed for statistical purpose.**

Order Pronounced in the Open Court on 14<sup>th</sup> February, 2020.

Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE PRESIDENT

**Dated: 14/02/2020**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Shivratri Energy Products Pvt. Ltd., 39, Shakespeare Sarani, 3<sup>rd</sup> Floor, Kolkata – 700 017.
2. ITO, Ward – 7(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.  
ITAT, Kolkata