

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA
[Virtual Court Hearing]**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 531/KOL/2019
Assessment Year: 2008-2009**

M/s. H.S. Mercantile Limited,.....Appellant
204, 208, M.G. Road,
Kolkata-700007
[PAN: AAACH9467P]

-Vs.-

Income Tax Officer,.....Respondent
Ward-9(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069

Appearances by:

Shri Manoj Kataruka, Advocate, for the Appellant
Smt. Ranu Biswas, Addl. JCIT, D.R., for the Respondent

Date of concluding the hearing : June 03, 2020
Date of pronouncing the order : June 03, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-3, Kolkata dated 06.03.2019, whereby he upheld the validity of the assessment made by the Assessing Officer under section 147/143(3) of the Act and also confirmed the addition made in the said assessment amounting to Rs.15,00,000/- under section 68 on account of share capital and share premium received by the assessee by treating the same as unexplained.

2. The assessee in the present case is a Company, which is engaged in the business of trading. The return of income for the year under consideration originally filed by it on 29.09.2008 declaring total income of Rs.94,950/- was initially processed by the Assessing Officer under section 143(1) of the Income Tax Act, 1961 on 18.06.2009. During the

year under consideration, the assessee-company had received share capital and share premium aggregating to Rs.15,00,000/- from M/s. Hiteshwari Marketing Pvt. Limited. As per the information received by the Assessing Officer from FIU-IND, the said transaction involving the receipt of share capital and share premium from M/s. Hiteshwari Marketing Pvt. Limited represented an accommodation entry received by the assessee. He, therefore, reopened the assessment and issued a notice under section 148 on 31.03.2015 to the assessee after recording the reasons. In reply, a letter was filed by the assessee stating that the original return filed by it on 29.09.2008 may be treated as return filed in response to notice under section 148. The assessee also filed objections to the reasons recorded by the Assessing Officer for reopening the assessment. The Assessing Officer, however, rejected the said objections and proceeded to complete the assessment under section 147/143(3) of the Act. During the course of assessment proceedings, the assessee-company was called upon by the Assessing Officer to explain the cash credit representing the receipt of share capital and share premium amounting to Rs.15,00,000/- in terms of section 68. In reply, its Bank Statement was furnished by the assessee showing the receipt of Rs.15,00,000/- by cheque from M/s. Hiteshwari Marketing Pvt. Limited on 25.09.2007 alongwith the acknowledgment of income-tax return, Board's Resolution, Certificate of Incorporation and Memorandum of Association of M/s. Hiteshwari Marketing Pvt. Limited. In order to cross verify the said transaction, a notice under section 133(6) of the Act was issued by the Assessing Officer to M/s. Hiteshwari Marketing Pvt. Limited. There was, however, no response received by the Assessing Officer to the said notice. He, therefore, treated the amount of Rs.15,00,000/- in question received from M/s. Hiteshwari Marketing Pvt. Limited as unexplained cash credit and an addition to that extent was made by him under section 68 to the total income of the assessee in the assessment completed under section 147/143(3) vide an order dated 31.03.2016.

3. Against the order passed by the Assessing Officer under section 147/143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the validity of the assessment made by the Assessing Officer as well as disputing the addition of Rs.15,00,000/- made therein under section 68 on merit. The Id. CIT(Appeals) did not find merit in the submissions made on behalf of the assessee challenging the validity of assessment made by the Assessing Officer under section 147/143(3) and rejecting the same, he upheld the validity of the said assessment. He also confirmed the addition of Rs.15,00,000/- made by the Assessing Officer under section 68 by treating the amount of share capital and share premium received from M/s. Hiteshwari Marketing Pvt. Limited as unexplained cash credit for the following reasons given in his impugned order:-

“On perusal of the above order of the Apex Court, it is observed that the appellant has to offer a credible explanation for the share application money along with evidences. In this case, there is no explanation whatsoever as to why application for shares were made at such high rate of premium. The assessee has not even furnished the basis documents to substantiate its claim. Even the audited accounts of the share applicant company are not furnished. Accordingly, the genuineness of the transaction has not been established.

In this case shares of face value of Rs.10/- has been issued at a premium of Rs.90/-. The high premium charged of Rs.90/- has also not been justified. Respectfully applying the propositions of law laid down by the coordinate bench of the Tribunal to the facts of the case, we find that section 68 of the Act applies to the facts of this case as a sum of money was credited, in the books of the assessee and the assessee could not prove the genuineness of these credits as well as the creditworthiness of the creditor. Hence in our informed view the addition has rightly been made by the AO. Accordingly, the appeal of the appellant is hereby dismissed as the factual matrix is more or less similar”.

Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Although as many as eight grounds are raised by the assessee in this appeal challenging the validity of the assessment made by the Assessing Officer under section 147/143(3) of the Act as well as disputing the addition of Rs.15,00,000/- made therein under section 68 on merit, the limited contention raised by the Id. Counsel for the assessee is that the amount of Rs.15,00,000/- in question received by the assessee from M/s. Hiteshwari Marketing Pvt. Limited towards share capital and share premium was treated by the Assessing Officer as unexplained mainly for the reason that there was no reply received by him from the said party to the notice issued under section 133(6) of the Act. He has submitted that when the primary onus under section 68 was discharged by the assessee by filing the relevant documentary evidence in the form the Bank Statement, Income Tax return acknowledgment, Board's Resolution, Certificate of Incorporation, etc., the Assessing Officer should have given an opportunity to the assessee to produce M/s. Hiteshwari Marketing Pvt. Limited for examination. He has submitted that the Id. CIT(Appeals), on the other hand, confirmed the addition made by the Assessing Officer under section 68 on an altogether different ground that the premium charged at a higher rate of Rs.90/- per share was not satisfactorily justified by the assessee. He has contended that no opportunity whatsoever was given by the Id. CIT(Appeals) during the course of appellate proceedings to the assessee to justify the premium of Rs.90/- per share charged by it. He has contended that the assessee-company thus was not given proper and sufficient opportunity of being heard either by the Assessing Officer or by the Id. CIT(Appeals) before making the impugned addition under section 68 and this position clearly apparent from the orders of the authorities below is not disputed even by the Id. D.R. She, however, has contended that if the assessee-company is in a position to produce the concerned shareholder M/s. Hiteshwari Marketing Pvt. Limited for verification before the Assessing Officer along with the relevant documentary evidence and also to justify

the premium of Rs.90/- per share, the matter may be sent back to the Assessing Officer for proper verification. I find merit in this contention of the Id. D.R. and since the Id. Counsel for the assessee has also undertaken to produce M/s. Hiteshwari Marketing Pvt. Limited for examination before the Assessing Officer along with the relevant documentary evidence and also to justify the premium of Rs.90/- per share charged by the assessee-company, I set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after giving the assessee an opportunity to produce M/s. Hiteshwari Marketing Pvt. Limited for examination along with the relevant documentary evidence and to justify the premium of Rs.90/- per share charged by it.

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

Order pronounced in the open Court on June 03, 2020.

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

Kolkata, the 3rd day of June, 2020

- Copies to : (1) **M/s. H.S. Mercantile Limited,
204, 208, M.G. Road, Kolkata-700007**
- (2) **Income Tax Officer,
Ward-9(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069**
- (3) **Commissioner of Income Tax (Appeals)-3, Kolkata;**
- (4) **Commissioner of Income Tax- , Kolkata**
- 5) **The Departmental Representative**
- (6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.