

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 1410/DEL/2020 (A.Y 2016-17)  
(THROUGH VIDEO CONFERENCING)**

Sai Tirupathi Aqua Pvt. Ltd. 39A, LIG Flats, Taimoor Nagar, New Friends Colony, New Delhi AATCS2794K <b>(APPELLANT)</b>	Vs	ITO Ward-22(2) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Adil Mahmood, CA</b>
<b>Respondent by</b>	<b>Sh. Prakash Dubey, Sr. DR</b>

<b>Date of Hearing</b>	<b>08.08.2021</b>
<b>Date of Pronouncement</b>	<b>23.09.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 25/02/2020 passed by CIT(A)-34, New Delhi for assessment year 2013-14.2016-17.

2. The grounds of appeal are as under:-

1. *"The Ld. CIT-A erred in law and on facts in confirming the addition for the sum of Rs. 39,99,900/- under section 68 of the Act as unexplained cash credit without appreciating the facts of the case, such addition is requested to be deleted.*
  
2. *The Ld. CIT-A erred in confirming the addition of Rs. 28,00,000/- of opening balance as unexplained cash credit under section 68 of the Act in the year under consideration, such addition is requested to be deleted.*

*3. The Ld. CIT-A erred in law and on facts not considering the whole Financial Statement to establish creditworthiness of the shareholder; such addition is needs to be deleted.*

*4. On the facts and in the circumstances of the case and in law the Ld. CIT-A erred in charging interest u/s 234A, 234B, 234C.*

*5. On the facts and in the circumstances of the case and in law, the initiation of penalty proceeding under section 271(1)(b) and 271(1)(c) is bad in law keeping in view the grounds mentioned above.”*

3. The assessee Company was engaged in the business of fishing operation of fish hatcheries and fishing farm. Return of income was filed on 17/10/2016 at total income of Rs. 12,55,660/- and revised return was filed on 2/3/2017 at the same income. The Assessing Officer observed that the assessee has issued shares at premium relating to M/s Swarnim Exports Pvt. Ltd. which is one of the Company to whom 3,00,000 shares have been allotted at a premium of Rs. 3.333 with face value of Rs. 10 totalling at Rs. 3.333 per share aggregating to Rs. 39,99,900/-. The assessee Company furnished a copy of record of a private placing offer in which details of profit placing offer is given. A show cause notice was issued on 15/12/2018, but no reply/submissions were furnished by the assessee. Therefore, the Assessing Officer passed the Assessment Order dated 20/1/22018 and made addition u/s 68 to the extent of Rs. 39,99,900/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that a sum of Rs. 39,99,900/- credited to the capital account of the assessee company through allotment of share on premium amount paid through cheque and thus the genuineness of the transactions is established. The Ld. AR further submitted that the balance

sheet which was filed clearly state out that out of total share at premium allotted to M/s Swarnim Export Pvt. Ltd for a sum of Rs. 39,99,000/-, a sum of Rs.28,00,000/- is brought forward from previous Assessment Year i.e. Assessment Year 2015-16 and only Rs. 12,00,000/- through bank transfer was credited in the bank account of the assessee Company on 15/5/2015 which is relating to the current Assessment Year 2016-17. The Assessing Officer as well as the CIT(A) has not taken the cognizance of the evidences produced before the Revenue Authorities and in-fact the Assessing Officer has not called for the Company to whom the shares were allotted which is an existing Company. Thus, the Ld. AR submitted that the matter may be remanded back to the file of the Assessing Officer for proper adjudication of evidences produced by the assessee.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A) and further submitted that no documentary evidence was produced before the Assessing Officer by the assessee despite giving ample opportunity.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the evidences brought on record before the CIT(A) were not at all mentioned in the assessment order. In-fact the Assessing Officer observed that no details were filed by the assessee. The CIT(A) has also not taken proper cognizance of the evidences filed before the Appellate Authority and it deems fit that the proper verification was not at all done in the present case either by the CIT(A) or by the Assessing Officer. Therefore, we are remanding back the entire issue to the file of the Assessing Officer for taking cognizance of the evidences as well as summon the representative/Director of the Company M/s Swarnim Export Pvt. Ltd. to whom the shares were allotted for recording of his statement and after considering all the aspects, pass appropriate order as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. We hold and direct accordingly.

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

**Order pronounced in the Open Court on this 23rd Day of September, 2021.**

**Sd/-**

**Sd/-**

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated : 23/09/2021

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	08.09.2021
Date on which the typed draft is placed before the dictating Member	08.09.2021
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the	

order	
Date of dispatch of the Order	