

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "C", KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2007/Kol/2018  
Assessment Year: 2012-13**

ITO, Ward-1(4), Kolkata	Vs.	M/s. Dhan Laxmi Gold & Jewellers Pvt. Ltd.,  4 <sup>th</sup> Floor, Room No. 22A, 23, C.R. Avenue, Kolkata - 700 072.  <b>PAN: AAECD0894N</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri S.M. Surana, Advocate.  
Revenue by : Shri Biswanath Das, Addl. CIT.

Date of Hearing : 03.01.2022  
Date of Pronouncement : 09.03.2022

**ORDER**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER:**

The present appeal has been preferred by the revenue against the order passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') by the Commissioner of Income Tax(Appeals)-7, Kolkata (hereinafter referred as the 'CIT(A)') relevant to A.Y 2012-13.

2. The only issue is against the order of Ld. CIT(A) deleting the disallowance of Rs. 4,28,00,000/- made by the AO u/s 68 of the Act as unexplained cash credit.

3. The facts in brief are that the assessee filed the return of income on 27.09.2012 declaring total income of Rs. 41,500/-. The case of the assessee was selected for scrutiny under 'CASS' and statutory notices were duly issued and served upon the assessee. During the course of assessment proceeding, the AO observed that

the company has received Rs. 4,84,71,100/- as fresh subscription of share capital including share premium and accordingly issued summons u/s 131 of the Act to the directors of the assessee company to personally appear with all books of account, bills, vouchers and other documents. Similarly, the assessee was also called upon to furnish all the documentary evidences to prove the genuineness of the transactions and identity and creditworthiness of the investors. But despite best effort by the AO none appeared nor any books of accounts / evidences as required by the AO were produced and thus share capital and share premium could not be verified. As a result, the same was added to the income of the assessee as unexplained cash credit in the assessment framed u/s 143(3) of the Act. The aggrieved assessee challenged the assessment order before the Id CIT(A).

4. In The appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after the assessee filed all the evidences/confirmations of the investors before Ld. CIT(A) comprising details as to names, addresses of the investors, their PAN and confirmations etc. The Ld. CIT(A) called for remand report from the AO on the various evidences filed before the CIT(A). The Id CIT(A) finally allowed the appeal of the assessee on the basis of remand report by holding that the assessee has proved to all the three ingredients of section 68 of the Act namely identity, creditworthiness of the investors and genuineness of the transactions. Now the revenue is in appeal before us.

5. After hearing the parties and perusing the material on record including the remand report sought by the Ld. CIT(A) from the AO on the various evidences/documents filed by the assessee and also the appellate order, we note that the assessee

has proved the identity , creditworthiness of the investors and genuineness of the transactions of share capital. We observe from the remand report that all the investors had appeared before the AO and filed the necessary evidences to prove the transactions of share capital. Based on the remand report, the Ld. CIT(A) has given a finding of fact that all investors have filed necessary documents in response to notices issued u/s 133(6). The Ld. CIT(A) also noted that summons u/s 131 of the Act were issued to the directors of the subscribing company M/s. Vasundhara Vinimay Pvt. Ltd. and in compliance thereto Mr. Amit Kumar Agarwal, director of the said company appeared and his statement was recorded on oath. Ld. CIT(A) also noted the share application money has been received from the directors of the assessee-company and their close relative or from group company and identities and creditworthiness of the investors and genuineness of the transactions were duly proved. Therefore keeping in view these facts, we do not find any merit in the contentions of the Ld. DR that Rs. 4,28,00,000/- raised by the assessee by way of share capital and share premium has wrongly been deleted by the Ld. CIT(A) and accordingly the appeal of the revenue is by dismissed.

6. In the result, the appeal of the revenue is dismissed.

**Order pronounced in the open court on 09.03.2022.**

**Sd/-**  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Copy to: The Appellant: ITO, Ward-1(4), Kolkata.  
The Respondent: M/s. Dhan Laxmi Gold & Jewellers Pvt. Ltd.  
The CIT, Concerned, Kolkata  
The CIT (A) Concerned, Kolkata  
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata