

**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.1873/Kol/2019**  
Assessment Year: 2012-13

**ITO, Ward-3(1), Kolkata.....Appellant**

**vs.**

**M/s Kalkut Vinimay Pvt. Ltd.....Respondent**

**9, Jame Hicky Sarani, (2<sup>nd</sup> Floor),**

**"SHROFF BHAWAN",**

**Kolkata- 700069.**

**[PAN: AADCK4958K]**

**Appearances by:**

Shri Manoj Kataruka, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 20, 2022

Date of pronouncing the order : August 18, 2022

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the Revenue against the order dated 08.03.2019 of the Commissioner of Income Tax(Appeals)-17, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The Revenue in this appeal has taken the following grounds of appeal:

*"i. That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.3,00,00,000/- made as un-explained cash credit u/s 68 of the Income Tax Act, 1961.*

*ii) That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.3,00,00,000/- ignoring the provision of sec. 68 of the IT Act where it is clarified that any explanation offered by the assessee company shall be deemed to be not satisfactory, unless such explanation in the opinion of the A.O has been found to be satisfactory.*

*iii) The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."*

2. A perusal of the above grounds of appeal taken by the Revenue would reveal that the Revenue is aggrieved by the CIT(A) in deleting the addition of Rs.3,00,00,000/- made by the Assessing Officer as unexplained cash credit u/s 68 of the Act.

3. The brief facts of the case are that the Assessing Officer during the assessment proceedings noted that the assessee company during the financial year 2011-12 relevant to assessment year under consideration issued shares in favour of different entities against high premium. To verify the identity and creditworthiness of the investors and genuineness of the transaction, the Assessing Officer issued notice u/s 131 of the Act, not only to the director of the assessee company but also to the directors of all the investor companies and individual investors. In response, the assessee company submitted the evidence to prove the identity and creditworthiness of investors and genuineness of the transaction including bank statements, cash book, ledger etc. The directors of the investor companies had also appeared before the Assessing Officer who were subjected to examination/cross-examination. However, the Assessing Officer noted that the assessee had failed to justify the primary source of its capital raised. He accordingly made the addition of the entire share capital as unexplained income of the assessee u/s 68 of the Act.

4. Being aggrieved by the above order of the Assessing Officer, the assessee preferred appeal before the CIT(A). The ld. CIT(A) after considering the evidences and explanation submitted by the assessee observed that the assessee was a genuine company carrying on share business and business of granting loan advances and complying to statutory formalities in accordance with the Companies Act and guidelines of RBI. All the share applicants were group companies of the assessee. The shareholders had filed all the details that the Assessing Officer required in the notice. The audited accounts were filed of the shareholders, wherein, they had sufficient capital and asset based investment made in the assessee company. That all the evidences in the form of share application form, allotment letter, bank statement to prove the genuineness of the investment and source were furnished before the Assessing Officer. The investments were made through account payee cheque and the shareholders were having sufficient funds to make the investment. Even the director of the assessee company appeared before the Assessing Officer and recorded statement justifying the premium charged of Rs.240/- per share. Even the directors of the investors also appeared before the Assessing Officer and recorded their statement justifying their investment made at a premium charged. The ld.

CIT(A) observed that the Assessing Officer could not find any document or material acceptable or which could not be explained. He, therefore, observed that the assessee had discharged its onus to prove the identity, creditworthiness of all the investors and genuineness of the transaction. He also noted that the Assessing Officer without pointing out any discrepancy or defect in the evidences/statement furnished by the assessee as well as shareholders has made the addition which was based on conjectures and surmises, which cannot be justified. The concluding part of the order of the CIT(A) for the sake of ready reference is reproduced as under:

*“In the present case on basis of the documentary evidences submitted before me and that was filed before the assessing officer I find that the appellant is a genuine company carrying on share business and business of granting loans and advances and complying to statutory formalities in accordance to the companies Act and the guidelines of RBI. The appellant have issued shares and the share applicants were all group companies. The shareholders replied to the notices issued and served upon them u/s 133(6) and they filed all the details that the assessing officer required in the notice. The audited accounts were filed of the shareholders wherein they were having sufficient capital, net worth, and asset base for investments made in the appellant company. The shareholders also filed their share application form, allotment letters, bank statement to prove the genuineness of the investment and source. The investments were made by account payee cheque and the shareholders were having sufficient funds to make the investments either from their own source or sources which were explained. The assessing officer could not point out any defect in any of the documents. The director of the appellant appeared before the assessing officer and recorded his statement justifying the premium charged of Rs.240/- per share. The directors of the shareholders appeared before the assessing officer and recorded their statements justifying their investments made at a premium charged. The assessing officer could not find any document or material which was not acceptable or which could not be explained. The responses to notice u/s 133(6) and in response to summons s 131 completely discharges the onus of the appellant and unless the assessing officer could bring out anything contrary to the evidences on record filed by the appellant the addition made by the assessing officer u/s 68 of the Act, on surmises and conjectures do not stand the test of law and cannot be sustained.*

*The appellant discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The appellant had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. Accordingly all the three conditions as required under s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under s. 68 of the Act.*

*Therefore, the additions made by the AO of Rs.3,00,00,000/- /s 68 of the Act stands deleted.”*

5. Before us, the ld. DR could not point out any defect or infirmity in the above order of the CIT(A) which may justify our interference. Even the ld. DR has been fair enough to admit that the impugned assessment order of the Assessing Officer was cryptic. We also note that the Assessing Officer himself noted that the assessee had produced all the details and evidences before him as were called upon by him and even the director of the assessee company and that of investors personally appeared before him who were subjected to examination/cross-examination. The Assessing Officer without pointing out any discrepancy in the evidences furnished by the assessee simply made a one line observation that the assessee had failed to justify the primary source etc. of capital raised. In view of the above discussion, we do not find any infirmity in the order of the CIT(A). This grounds of appeal of the Revenue is hereby dismissed.

6. The Revenue vide Ground No.2 of the appeal has contended that as per the provisions of section 68 of the Income Tax Act, any explanation offered by the assessee company shall be deemed to be not satisfactory, unless such explanation in the opinion of the Assessing Officer has been found to be satisfactory. The above ground of the appeal of the Revenue does not have any basis. There is no such legal provision u/s 68 of the Act. In view of this, we do not find any infirmity in the order of the CIT(A) and the same is upheld. The appeal of the Revenue is hereby dismissed.

7. Ground No.3 is general in nature and does not require any adjudication.

8. In the result, the appeal of the Revenue stands dismissed.

***Kolkata, the 18<sup>th</sup> August, 2022.***

Sd/-  
**[Girish Agrawal]**  
**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Dated: 18.08.2022.

RS

*Copy of the order forwarded to:*

1. ITO, Ward-3(1), Kolkata
2. M/s Kalkut Vinimay Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches