

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA**

आयकर अपीलीय अधीकरण, न्यायपीठ “B” कोलकाता,

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1971/Kol/2018  
Assessment Year: 2012-13**

Income-tax Officer, Ward-6(3) Kolkata.	Vs.	M/s. Gupta Ispat Pvt. Ltd. 7, Thakur Bari Street, Kolkata- 700026. (PAN: AAACG9666K)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri P. P. Barman, Addl. CIT  
Respondent by : Shri Sushil Kumar Pransukha, FCA

Date of Hearing : 10.10.2022  
Date of Pronouncement : 20.10.2022

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the revenue is against the order of Ld. CIT(A)-7, Kolkata vide Appeal No. 120/CIT(A)-7/Kol/Ward-6(3)/16-17 dated 21.06.2018 passed against the assessment order by the ITO, Ward-6(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 30.03.2015.

2. Grounds taken by the revenue are in respect of relief granted by the Ld. CIT(A) for the addition made by the Ld. AO towards share application money and premium claimed as received during the concerned period. Grounds of appeal raised by the revenue are reproduced as under:

*“1) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred to treat that there has been no fresh credit entry made in the books of ale of concerned period. But, it is very much clear from the assessment order that share application*

*money and premium thereon was received during the concerned period. Hence, credit in the particular account of books is a fresh credit.*

*2) Whether on the facts and in the circumstances of the case, Ld. CIT (A) erred to delete the said addition which was made in the assessment order as the identity, creditworthiness of shareholders and the genuineness of the transactions were unexplained at stage of assessment proceedings.*

*3) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred by not calling for any remand report on the above issues which were not verified at stage of assessment proceedings before deleting the addition..”*

3. Brief facts of the case are that assessee filed its return on 03.10.2012 reporting total income at Rs.37,010/-. In the course of assessment, Ld. AO noted from the perusal of Balance Sheet of the assessee that during the year assessee has received share application money and share premium totaling to Rs.2,21,00,000/- for which assessee had issued 27,625 shares having face value of Rs.10/- each with premium of Rs.790/- per share. For the purpose of verifying the genuineness of this transaction and to verify the identity and creditworthiness of the shareholders of the assessee company, Ld. AO issued two summons u/s. 131 of the Act dated 23.02.2015 to the directors of the assessee company who were asked to appear personally and produce details of the documents to support and justify the impugned transaction of issue of shares. Ld. AO noted that there was no compliance in this respect.

3.1. Further, from the analysis of bank statement of the assessee, Ld. AO found that almost similar amount was debited from the account of the assessee almost of same date when this share application money was credited to the account of the assessee. Considering these facts and circumstances, Ld. AO treated the sum so credited of Rs.2,21,00,000/- in the books of the assessee as bogus and made this addition to the total income u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4. In the course of first appeal, assessee submitted that it had accepted an advance of Rs.2,25,00,000/- from a group company viz.,

M/s. Ram Kumar Rajendra Kumar & Co. Pvt. Ltd. during the FY 2008-09. It was submitted that assessee as well as the shareholder company is a group company having common director and having registered office at the same premises. It was also submitted that the entire proceed was received through proper banking channel and to conserve the resources within the company and its group companies, was agreed to issue equity shares to M/s. Ram Kumar Rajendra Kumar & Co. Pvt. Ltd. instead of repaying back the full amount of advance received in earlier years. Thus, assessee issued 27,625/- equity shares of Rs.10/- each with a premium of Rs.790/- per share during the FY 2011-12, capitalizing Rs.2,21,00,000/- and the balance of Rs.3,00,000/- was returned during the FY 2010-11 and Rs.1,00,000/- was returned during the FY 2011-12.

4.1. To corroborate the submissions made assessee placed on record the following documents:

- (i) Share allotment advice,
- (ii) Copy of mutual agreement between two companies,
- (iii) Copy of Income Tax Return Acknowledgment for AY 2012-13,
- (iv) Copy of audited financial statement for the year ended on 31.03.2012.
- (v) Copy of Master Data Status available in MCA Portal.

4.2. It was further contended that Ld. AO has never asked the directors of the assessee to produce the directors of the shareholding company claimed as per the summons issued u/s. 131 of the Act dated 23.02.2015. The said summons had only sought the personal attendance of the directors of the assessee company and not the directors of the shareholding company. Copies of such summons issued to the two directors of the assessee are placed on record (pages 136 and 137 of the paper book). It was also submitted that no separate

and specific summons u/s. 131 of the Act or notice under any other provisions of the Act were issued by the Ld. AO to the directors of the shareholding companies and assessee had complied fully with the requirements of the said summons by way of personal hearing of the directors. Assessee submitted all the details and documents on behalf of the shareholding company to substantiate the creditworthiness of the shareholding company and the genuineness of the transaction.

4.3. It was strongly contended that there was no fresh infusion of funds but the advances received earlier was capitalized as share application and premium during the year under consideration. It was also contended that assessee has not accepted advances from any outsider and stranger company but from one of the group companies which were having a common director namely, Shri Rajendra Kumar Gupta and that there is no fresh credit entry in the financial year under consideration which was in fact made in the FY 2008-09 only. It was also argued by the assessee that the restrictive provisions of barring the issue of equity shares at a price above its fair market value as has been inserted in the Act by the Finance Act, 2013 and is held to be effective from 01.04.2013 i.e. from AY 2013-14 and the year under consideration is AY 2012-13.

4.4. Ld. CIT(A) concluded after considering the submissions made by the assessee and the documents and records furnished during the course of first appellate proceeding as well as perusal of the assessment order that addition has been made u/s. 68 of the Act on two major accounts i.e. (i) non-production of directors of the shareholder company and (ii) no justification supplied by the assessee regarding issue of share at a high premium. After considering the facts on record, Ld. CIT(A) noted that there has been no fresh credit entry made in the books of account of the concerned period of the assessee in respect of

any such advance or otherwise. The credit entry was actually made during the FY 2008-09. Ld. CIT(A) also noted that assessment order is silent regarding these transactions of receipt of advance in earlier year and that the share issue price was agreed by both the parties for which necessary legal compliances were accomplished by the assessee.

4.5. In respect of non-production of directors of the shareholder company, ld. CIT(A) noted that Ld. AO in the summons issued by him, nowhere asked the directors of the assessee to produce the directors of the shareholder company. The only thing that was sought was the personal attendance of the directors of the assessee. He also observed that Ld. AO has not asked for personal attendance of the directors of the shareholder company through any separate notice or summon.

4.6. On the documents and details placed on record, Ld. CIT(A) noted that in the assessment order the Ld. AO nowhere made any observation or given any finding in respect of doubting the integrity of the documents and details. Finally, by observing that the insertion made by the Finance Act, 2013 in the provisions of sec. 68 of the Act are held to be effective from 01.04.2013 without retrospective effect, deleted the addition of Rs.2,21,00,000/- made by the ld. AO and allowed the appeal of the assessee. Aggrieved, the revenue is in appeal before this Tribunal.

5. Before us, Shri P. P. Barman, Addl. CIT represented the revenue and Shri Sushil Kumar Pransukha, FCA represented the assessee.

6. Ld. Sr. DR contended that Ld. CIT(A) has wrongly deleted the addition in respect of share application money and premium. He submitted that credit in the particular account books is a fresh credit for which assessee failed to establish the identity, creditworthiness of shareholders and the genuineness of transaction. He submitted that there is a change in the shareholding

pattern when compared from the preceding year with the year under consideration to demonstrate that these are bogus transactions where such companies resort to shifting of shareholding at regular intervals from person to person. He also submitted that assessee has failed to produce the directors of the shareholder company which also demonstrate that the impugned transaction is a bogus transaction and has been rightfully added by the Ld. AO.

7. Before us, Ld. Counsel for the assessee has placed on record a paper book containing 139 pages. Ld. Counsel reiterated the submissions made before the authorities below which have been narrated above and are not repeated for the sake of brevity. From the audited financial statements of the assessee as well as the shareholder company, ld. Counsel demonstrated that assessee company had accepted an advance of Rs.2,25,00,000/- from one of its group companies i.e. Ram Kumar Rajendra Kumar & Co. Pvt. Ltd. during the FY 2008-09 and that two companies were having common director, agreed to issue equity shares instead of repaying back the full amount of advance of Rs.2,25,00,000/- for which equity shares were issued during the year under consideration for Rs.2,21,00,000/- and the balance Rs. 4 lakh was returned by the assessee company. On the issue relating to non-production of directors, Ld. Counsel pointed to the two summons placed in the paper book to demonstrate that there was no such requirement noted by the Ld. AO in the summons requiring production of directors of the shareholder company. However, all the compliances in respect of the summons issued were complied with by the assessee. He thus, strongly submitted that provisions of section 68 of the Act are not applicable in the present set of facts and circumstances and the addition made by the Ld. AO has been rightly deleted by the Ld. CIT(A).

8. We have heard the rival submissions, carefully perused the material available on record. It is an undisputed fact that assessee had received advance from M/s. Ram Kumar Rajendra Kumar & Co. Pvt. Ltd. of Rs.2.25 Cr. in the FY 2008-09 duly reported in its audited financial statements placed on record. Assessee has issued its equity shares to

the said company against capitalizing the advance of Rs.2,21,00,000/- in the year under consideration and has returned the balance of Rs. 4 lakh. It is also noted from the perusal of the two summons issued u/s. 131 of the Act dated 23.02.2015 that there was no such requirement from the ld. AO to produce the director of the shareholder companies. It was only the director of the assessee who were called for personal attendance and produce the required details and documents which were complied by the assessee. The shareholder company is one of the group companies having a common director namely Shri Raj Kumar Gupta. We note that all these verifiable facts have been duly considered by the Ld. CIT(A) and has granted relief after his due verification and examination. Considering the facts and circumstances of the case and the corroborative material placed on record in the paper book, we do not find any reason to interfere with the findings given by the ld. CIT(A) who upheld the deletion of addition made by the Ld. AO of Rs.2,21,00,000/-. Accordingly, the grounds raised by the revenue are dismissed.

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

Order is pronounced in the open court on 20<sup>th</sup> October, 2022.

Sd/-

Sd/-

**(RAJPAL YADAV)**  
**VICE PRESIDENT**

**(GIRISH AGRAWAL)**  
**ACCOUNTANT MEMBER**

Dated: 20.10.2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(A)-7, Kolkata.
4. ITO, Ward-6(3), Kolkata
5. The DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata