

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.195/Kol/2022
Assessment year: 2012-13

Khushi Infraprojects Pvt. Ltd..... Appellant
25, R.N. Mukherjee Road,
Kolkata-1.
[PAN: AAECK3752A]

vs.

ITO, Ward-4(4), Kolkata Respondent

Appearances by:

Shri Manish Tiwari, FCA, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : September 29, 2022

Date of pronouncing the order : October 31st, 2022

आदेश / ORDER

मनीष बोरड, लेखा सदस्य द्वारा / Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by National Faceless Appeal Centre [in short ld. "CIT(A)"] dated 16.03.2022 which is arising out of the assessment order framed u/s 143(3) of the Act dated 13.03.2015.

2. The assessee is in appeal before this Tribunal raising the following grounds:

"(1) That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of Assessing Officer who considered share capital with premium aggregating to Rs.2,77,00,000/- received from three corporate entities as unexplained cash credit u/s 68 of Income Tax Act, 1961.

(2) That the Ld. CIT(A) having admitted that appellant submitted documents relating to identity, creditworthiness and genuineness of all the three shareholders is erred in confirming the action of Assessing Officer who considered share capital as unexplained cash credit u/s 68 of the Act.

(3) That the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.”

3. Brief facts of the case are that the assessee is a private limited company. Nil income declared in e-return filed in the year 2012-13 on 13.12.12. Case selected for scrutiny through CASS for the reason large share premium received followed by serving notice u/s 143(2) and 142(1) of the Act. The ld. Assessing Officer observed that the assessee company was incorporated on 09.06.2011 and during F.Y 2011-12 issued its shares to primarily different private limited companies against high share premium. During the year, the assessee company received a total sum of Rs.2,77,00,000/- including share capital of Rs.3,76,000/- and share premium of Rs.2,73,24,000/-. The ld. Assessing Officer in the assessment order discussed the decision of this Tribunal in the case of Bishakha Sales Pvt. Ltd. vs. CIT in ITA No.1493/Kol/2013 which dealt with the issue of revisionary proceedings carried out by the ld. CIT(A). Thereafter, the ld. Assessing Officer observed that though the peculiarities mentioned in the decision are not common, yet the core issue of introduction of share capital is common. Further, Ld. Assessing Officer other than dealing with the findings of Tribunal in the case of Bishakha Sales Pvt. Ltd. (supra) without discussing the name of the company came to the conclusion that the alleged sum of Rs.2,77,00,000/- is unexplained cash credit u/s 68 of the Act.

4. Aggrieved, assessee preferred appeal before the ld. CIT(A) filing all necessary details and documents to prove and explain identity of the share applicants, their creditworthiness to apply for the said sum and the genuineness of the transaction but failed to satisfy the ld. CIT(A) who confirmed the view taken by the Assessing Officer. The ld. CIT(A) dealt with the three subscriber companies namely Everfast Infrastructure Pvt. Ltd., Fantastic Highrise Pvt. Ltd. & Silverson Logistics Pvt. Ltd. and held that all these three shareholder companies has the typical characteristics of a shell company which has used for the purpose of layering so that the actual transaction of accommodation entries can be given a semblance of genuineness.

5. Aggrieved, assessee is now in appeal before this Tribunal.

The ld. counsel for the assessee submitted that section 68 of the Act requires the assessee to provide satisfactory explanation about the sum found to be credited in the books of assessee and it is a clearly settled legal position as held by various decisions that if the assessee is able to prove the identity of the share holders, genuineness of the transaction and creditworthiness of the shareholder then addition u/s 68 cannot be made. He further submitted that to prove the three ingredients, the assessee has filed documents for all the alleged three shareholders namely Everfast Infrastructure Pvt. Ltd. (EIPL), Fantastic Highrise Pvt. Ltd. (FHPL) & Silverson Logistics Pvt. Ltd. (SLPL) in the form of Income-Tax Return, audited balance sheet, profit and loss a/c and bank statement. He further submitted that documents were placed before

the ld. Assessing Officer but the Assessing Officer failed to appreciate that all the alleged cash creditors were having sufficient share capital, reserve and surplus making the alleged investment in the share capital of the assessee company. The ld. counsel for the assessee also submitted that one of the reasons for the alleged addition by the Assessing Officer was non-appearance of the director of the assessee company and shareholder company for which it is humbly submitted that failure on the part of the director to appear in person in compliance to notice u/s 131 of the Act may at the best suggest the levy of penalty for non-appearance but the same cannot disregard the documents regarding identity, creditworthiness and genuineness. In this regard, reliance was placed on the judgment of jurisdictional High Court in the case of *Exoimp Resources (India) Ltd. vs. CIT (2005) 276 ITR 87 (Cal)* where it has been held that the inbuilt safeguard provided in section 68 cannot be ignored by the assessing authority. The assessing authority can add the share capital as undisclosed income if no explanation is offered by the assessee. But since the details/explanations were offered, it was incumbent on the assessing authority to examine the same and arrive at a cogent conclusion. Reliance was further placed on the decision of Hon'ble High Court of Bombay in the case of *CIT vs. Creative World Telefilms Ltd. 333 ITR 110*, judgment of Hon'ble Rajasthan High Court in the case of *Shree Barkha Synthetics Ltd. vs. ACIT (2006) 155 Taxman 289* and judgment of Hon'ble Supreme Court in the case of *CIT vs. Lovely Exports Ltd. (2008) 216 CTR 195(SC)*. The ld. counsel for the

assessee further referred to the following documents filed with regard to the three share applicants referred hereinabove:

(A) Everfast Infrastructure Pvt. Ltd.

- (i) Copy of share application
- (ii) Copy of relevant bank statement
- (iii) Copy of PAN card
- (iv) Copy of ITR acknowledgement for A.Y 2012-13
- (v) Copy of Audited Financial Statement for 31.03.2012
- (vi) Copy of Assessment Order u/s 143(3) for A.Y 2013-14

(B) Fantastic Hirise Pvt. Ltd.

- (i) Copy of share application
- (ii) Copy of relevant bank statement
- (iii) Copy of PAN card
- (iv) Copy of ITR acknowledgement for A.Y 2012-13
- (v) Copy of Audited Financial Statement for 31.03.2012
- (vi) Copy of allotment advice

(C) Silverson Logistics Pvt. Ltd.

- (i) Copy of share application and confirmation regarding share application
- (ii) Extract of the minutes of the meeting of the Board of Directors
- (iii) Copy of PAN card
- (iv) Copy of ITR acknowledgement for A.Y 2012-13
- (v) Copy of Audited Financial Statement for 31.03.2012
- (vi) Copy of Assessment Orders for A.Y 2011-12 & 2014-15

6. Per contra, the Departmental Representative vehemently argued supporting the detailed findings of both the lower authorities and stated that the alleged three share applicants are paper/shell companies and the assessee failed to explain the alleged sum and thus, the addition has rightly been made u/s 68 of the Act.

7. We have heard rival contentions and perused the records placed before us. In the Ground No.1 & 2 raised by the assessee, it is stated that the Id. CIT(A) erred in confirming the action of the Assessing Officer considering the share capital and share premium aggregating to Rs.2,77,00,000/- received from three corporate

entities as unexplained cash credit u/s 68 of the Act. During the year under consideration, the assessee company issued 27600 shares of Rs.10/- each at a share premium of Rs.990/- each which was subscribed and allotted to the following three entities:

Sl.	Name	No. of shares	Total receipt including premium
1	Everfast Infrastructure Pvt. Ltd.	10000	1,00,00,000/-
2	Fantastic Hirise Pvt. Ltd.	6300	63,00,000/-
3	Silverson Logistics Pvt. Ltd.	11300	1,13,00,000/-
Total		27600	2,76,00,000/-

8. Further, we find that assessee filed complete details of Income Tax Return, audited balance sheet and Profit & Loss A/c and bank statement (relevant part of the three companies). As per the audited balance sheet as on 31.03.2012, it is noticed that against the share capital and share premium subscribed by these companies, they were having sufficient funds in the form of share capital, reserve & surplus and the details of the same is reproduced below:

Name of share holder companies	Share capital, reserves & surplus	Application money	Percentage (%)
Everfast Infrastructure Pvt. Ltd.	38,99,18,347	1,00,00,000	2.56
Fantastic Hirise Pvt. Ltd.	52,21,58,319	63,00,000	1.21
Silverson Logistics Pvt. Ltd.	26,76,04,551	1,13,00,000	4.22

9. Further, we notice that apart from the various documents evidencing the identity, genuineness of the transaction and creditworthiness of the applicants, the assessee has also filed copy of assessment order framed in the case of Everfast Infrastructure

Pvt. Ltd. u/s 143(3) of the Act assessment year 2013-14 placed at page 53 to 58 of the paper-book and the assessment order for assessment year 2011-12 in the case of Silverson Logistics Pvt. Ltd. placed at page 92 to 102 of the paper-book showing that both these companies are regularly assessed to tax and have not been held to be shell/bogus companies. So *prima facie*, the ld. counsel for the assessee has proved the identity of all the three companies, creditworthiness is proved with the fact that sufficient fund in the form of share capital and reserve and surplus was with the three companies to make the investment in the assessee company and also the genuineness of the transaction since alleged three shareholders are regularly investing into the equity of other companies also as evident from their balance sheets and in the normal course of business, they have invested in the assessee company too.

10. Further, we notice that all these details were very much placed before the Assessing Officer but while framing the assessment, no efforts have been made by the Assessing Officer to examine the correctness of various proof filed by the assessee by carrying out any investigation and merely for non-appearance of the directors, the ld. Assessing Officer disregarded all these documents which have been placed before various statutory authorities including Registrar Of Companies, Income Tax Department and Schedule Banks. The assessee by way of filing all these documents necessary to prove identity, creditworthiness and genuineness of the alleged transaction, has discharged the initial burden casted upon it under the provisions of section 68 of the Act unless and until, the

assessing authority finds any lacuna or adversity or defect in the said documents, the burden to prove remains on the Revenue authorities which is in the instant case, the ld. Assessing Officer failed to discharge and summarily disregarded the documents filed by the assessee by merely referring to some decisions but not going into the facts of the case except referring to the price per share.

Further we observe that provision for examining the source of source under the provisions of section 68 of the Act has been brought in by Finance Act 2012 w.e.f. 01.04.2013 as per which if an assessee company (not being a company in which public are substantially interested) and the sum so credited consists of share application money, share capital and share premium or any such amount by whatever name called any explanation offered by such assessee company shall be deemed to be not satisfactory unless: a) the person being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited and b) such explanation in the opinion of the Assessing Officer has been found to be satisfactory. Since the instant appeal pertains to assessment year 2012-13, and the said amendment brought in by Finance Act 2012 is effective from 01.04.2013 is not applicable on the case before us. Even otherwise it is not in dispute that the assessee has filed all the relevant documents of the share subscriber companies and further in order to prove the source of source, copies of bank statements, audited balance sheets of all the three subscriber companies are placed on records including extracts of meeting of Board of directors filed in the case of Silverson Logistics Pvt. Ltd., copy of assessment

record for assessment year 2014-15 in the case of Fantastic Hirise Pvt. Ltd. and the assessment order u/s 143(3) for assessment year 2013-14 in the case of Everfast Infrastructure Pvt. Ltd. are filed which are sufficient enough to prove that the assessee has furnished necessary details and documents to prove the identity, creditworthiness of the shareholders and genuineness of the transaction and since the alleged sum has been explained therefore, provisions of section 68 of the Act cannot come into play.

Our view is further supported judgment of Hon'ble Jurisdictional High Court in the case of Exoimp Resources (India) Ltd. vs. CIT (supra), wherein it was held as follows:

"It is incumbent upon the Assessing Authority to examine the explanation of the creditor and arrive at a conclusion as to whether the explanation was satisfactory. The conclusion arrived by the Assessing Authority is to be communicated to the assessee if such explanation is not considered satisfactory. If thereupon the assessee submits any comments or furnishes further information, in that event, the Assessing Authority has to examine the same and arrive at his own conclusion. The inbuilt safeguard provided in section 68 cannot be ignored by the Assessing Authority at his sweet will. The Assessing Authority can add the share capital as undisclosed income if no explanation is offered by the assessee. But since the details/explanations were offered, it was incumbent on the Assessing Authority to examine the same and arrive at a cogent conclusion. Assessing Officer having failed to discharge such obligation the addition is not sustainable in law., case of CIT vs. Lovely Exports Ltd. (2008) 216 CTR 195 (SC) that where share application money."

Hon'ble Bombay High Court in the case of CIT vs. Creative World Telefilms Ltd. (supra) wherein it was held as follows:

"In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PA/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the assessing officer to make proper investigation and reach the shareholders. The assessing officer did nothing except issuing summons which were ultimately returned back with an endorsement 'not traceable'. In our considered view, the assessing officer ought to have found out their

details through PAN cards, Bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the assessing officer. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limini with no order as to costs."

Hon'ble Bombay High Court in the case of CIT vs. Creative World Telefilms Ltd. (supra) wherein it was held as follows:

"Wherein the matter concerns money receipts by way of share application from investors through banking channel, the assessee has to prove the existence of the person in whose name the share application is received. Once the existence of the investor is proved, it is not further the burden of the assessee to prove whether that person itself has invested the said money or some other person has made investment in the name of that person. The burden then shifts on to the department to establish that such investment has come from the assessee company itself."

11. As far as decision of Coordinate bench of Kolkata in the case of Bishakha Sales Pvt. Ltd. (supra) referred by the Assessing Officer in making the addition in our view cannot support the addition as the said decision is delivered in the context of proceedings u/s 263 of the Act on the part of the inquiry regarding huge premium received on share application also. The ld. CIT(A) though has referred to various decisions but failed to controvert the fact that the alleged three shareholders are private limited companies registered with Ministry of Corporate Affairs having sufficient base of share capital and reserve and surplus for making the investment in the assessee company.

12. We, therefore, respectfully following the judgment referred hereinabove by the Hon'ble Courts and also considering the facts and circumstances of the case, are of considered view that since the assessee has sufficiently explained the identity and

creditworthiness of the share subscriber companies and the genuineness of the transaction of applying for to the equity shares of the assessee company and since nothing contrary to the evidence filed by the assessee has been placed on record by the Revenue, except the reason that the directors failed to appear to the notice issued u/s 131 of the Act, we fail to find any merit in the finding of the CIT(A). We are thus inclined to hold that the assessee has successfully explained the said transaction of receiving share premium and share capital and therefore provisions of section 68 of the Act cannot be invoked. We accordingly allow the Ground No.1 & 2 raised by the assessee and delete the additions made u/s 68 of the Act at Rs.2,77,00,000/-.

13. Ground No.3 is general in nature which needs not require to be adjudicated.

14. In the result, the appeal of the assessee is allowed.

Kolkata, the 31st October, 2022.

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Sd/-
[डॉक्टर मनीष बोर्ड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Dated: 31.10.2022.

RS

Copy of the order forwarded to:

1. Khushi Infraprojects Pvt. Ltd
2. ITO, Ward-4(4), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches