

ITA No. 493/KOL/2022
Assessment Year: 2009-2010
&
C.O. No. 14/KOL/2022
(in ITA No. 493/KOL/2022)
Assessment Year: 2009-2010
P & P Highrise Pvt. Limited

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 493/KOL/2022
Assessment Year: 2009-2010**

Deputy Commissioner of Income Tax,.....Appellant
Central Circle-1(2), Kolkata,
Aayakar Bhawan Poorva,
3rd Floor, Room No. 310,
110, Shanti Pally, Kolkata-700107
-Vs.-

P & P Highrise Pvt. Limited,.....Respondent
Room No. 44, 3rd Floor,
P-36, India Exchange Place Extension,
Kolkata-700001
[PAN:AADCP9117H]

&
C.O. No. 14/KOL/2022
(in ITA No. 493/KOL/2022)
Assessment Year: 2009-2010

P & P Highrise Pvt. Limited,.....Cross Objector
Room No. 44, 3rd Floor,
P-36, India Exchange Place Extension,
Kolkata-700001
[PAN:AADCP9117H]
-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Central Circle-1(2), Kolkata,
Aayakar Bhawan Poorva,
3rd Floor, Room No. 310,
110, Shanti Pally, Kolkata-700107

Appearances by:

Shri P.P. Barman, Addl. CIT, appeared on behalf of the Revenue
Shri Akkal Dudhwewala, FCA, appeared on behalf of the assessee

Date of concluding the hearing : November 01, 2022
Date of pronouncing the order : November 02, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-20 dated 27.06.2022 passed for assessment year 2009-10.

2. The grounds of appeal taken by the Revenue read as under:-

“(1) Whether on facts of the case and in law Id. CIT(A) erred in deleting the addition of bogus share capital including share premium u/s 68 of the I.T. Act, 1961 completely ignoring the decision of the Jurisdictional High Court in the case of Swati Bajaj 139 taxmann.com 362 (Cal.), which upheld the additions on the basis of the inquiry/findings of Investigation Wing.

“(2) That Department carves leave to add, alter or modify any or all grounds of appeal either before or during course of appellate proceedings”.

3. The facts have been lucidly noticed by the Id. 1st Appellate Authority in paragraph no. 3.1 of the impugned order. Therefore, for the sake of brevity of repetition, we take facts from this paragraph, which reads as under:-

“3.1. Grounds of Appeal No(s). 1,2,3,4,5 and 6 : Assessee had filed its regular return of income on 25.09.2009 declaring total income of Rs.4,60,071/-. Return was processed u/s.143(1) of the Income-tax Act, 1961 on 30.10.2010. Search & seizure action u/s.132(1) was taken against the Dhandhanian Group to which assessee belongs on 19.11.2015. During post search enquiries, it was found that some of the Group companies of Dhandhanian Group had raised bogus share capital during AY: 2009-10. Assessee company is one of such Group companies which had raised share capital of Rs.1,50,00,000/-. This information was passed on to the AO and on the basis of this information assessment proceedings of the assessee for the current year was reopened and notice u/s.148 was issued on 30.03.2016. In response to

notice u/s.148, assessee filed return on 29.04.2016 and asked for reasons for reopening, which was provided to the assessee on 03.05.2016. Thereafter, assessee filed its objections against reopening of the assessment proceedings. During the current year, assessee had issued 3,00,000/- shares of Rs.10/- each at premium of Rs.40 per share and thus it had raised share capital of Rs. 1,50,00,000/-. AO has mentioned that assessee didn't have significant amount of accumulated profit in the preceding years and neither assessee had done any significant business activity during the current year. Under the circumstances, raising share capital by charging Rs.50/- per share which included a premium of Rs.40 per share, didn't seem logical. AO further mentions that the subscribing companies appeared to be paper companies with no real business activity to justify huge investment in assessee company. AO has further mentioned that assessee had invested Rs.54.47 lakhs towards lands and buildings but no documentary evidences were produced. Further, substantial amount, out of the funds raised as share capital, were advanced to other parties which did not justify the business objective of the company. AO is of the opinion that any genuine share holder would object to the giving out of the share capital in such manner. Further relying on the investigation report of DDIT (Inv), Unit-2(1), Kolkata, AO has held that assessee has failed to prove the identity and creditworthiness of the investors and also failed to prove the genuineness of the transactions. On the basis of the facts narrated above, AO has concluded that assessee has brought its own unaccounted money in the garb of share capital (including premium). Hence, AO has added the entire amount of Rs.150,00,000/- u/s.68 of the Income-tax Act, 1961".

4. The Id. Assessing Officer while making the above addition did not record any analytical finding after deliberating on the material. His assessment order is running into 2 pages only and the relevant finding is in paragraph no. 5 as under:-

"5. Nonce u/s 143(2) was issued on 15.07.2016 and Nonce U/s 142(1) along with questionnaire was issued on 14.09.2016 which was duly served. The case was fixed for hearing on 29.tW.2016. In response to the above Shri K. K. Chhaparia, FCA & Shari Amit Soni. ACA and authorised representative of the assessed company appeared from time to time, filed details as asked for and the case was discussed with him.

As per the balance sheet of the assessee company as on 31.03.2008 there are insignificant reserves in form of accumulated profit to command premium of Rs 40/ - per share. Even in the year in which capital was raised there was no significant business activity of tilt company, till it managed to

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raise capital from 10 entities which subscribed to the shares of die assessee company at the rate of Rs. 50/- per share including premium which is five times of the face value, which is not logical. If the creditworthiness of the subscribing company is analysed it is seen that these companies are paper companies with no actual business activity of profit to justify investments of this magnitude in Assessee Company.

On going through the balance sheet of the assessee company it is found that the assessee company has invested Rs. 54,47,150/- towards land & building but no documentary evidence of the same was produced, further the amount which was raised by issue of shares has been advanced to parties without any apparent business objective which further lends credibility to our findings. Any normal company cannot afford to disburse share capital raised in such a wayward manner, as it would invite die ire of investors, if genuine.

In the light of the facts of the case and aforesaid exposition of the position, coupled with the findings of the DDIT(Inv), Unit-2(1), Kolkata with regard to the identity and creditworthiness of the subscriber-companies and the genuineness of die transactions, I am of the opinion that the credit of Rs. 1,50,00,000/- in the books of the assessee company is its own money shown in the grab of Share Capital including premium.

Hence, the entire amount of Rs 1,50,00,000/- winch includes Rs. 30,00,000 - of share capital and Rs 1,20,00,000/- of premium is being added as unexplained credit in the books of the assessee company and added to the total income u/s 65 of the Income Tax Act, 1961.

In view of the above the total income of the assessee is computed as below.

Returned income	Rs.	4,60,071/-
Add.: As discussed above u/s 68	Rs.	<u>1,50,00,000/-</u>
Total Assessed Income:	Rs.	1,54,60,071/-
Total Assessed Income Rounded off:	Rs.	<u>1,54,60,070/-</u>

Assessed u/s. 147/143(3) of die I. T. Act, 1961 at a Total Income of Rs. 1,54,60,070/- Penalty proceeding u/s 271(1)(c) of the I.T. Act, 1961 is initiated separately. Issue necessary forms, demand notice, penalty notice and copy of order to the assessee Give credit to prepaid taxes. Computation of tax is enclosed winch is an integral part of this order.

Sd/-
(SANJAY JHA)
ACIT, CC-1(2), KOLKATA"

5. While impugning this finding, the assessee contended before the ld. 1st Appellate Authority that reopening is bad in the eyes of law because ld. Assessing Officer has acted on the borrowed reasons for issuing notices under section 148. In its next plea, it was contended that ld.

Assessing Officer has not disposed of the objections filed by the assessee and as held by the Hon'ble Supreme Court in the case of GKN Driveshafts India Limited -vs.- ITO [259 ITR 19].

6. On merits, the assessee submitted that the addition under section 68 is not sustainable. The assessee has drawn the attention of the Id. CIT(Appeals) towards the material submitted by it. A paper book running into 202 pages containing the material filed before the authorities below has been filed before us. For making reference about the nature of material, we would deem it appropriate to take note of the Index of this paper book from Serial No. 7, which reads as under:-

“Copies of the relevant documents of the body corporates who had subscribed to the preference shares of the company

<i>Sl. No.</i>	<i>Particulars</i>	<i>Pg. No.</i>
	<i>Summary sheet of Allottee Companies and the relevant documents produced in respect of each of them</i>	73
	<i>Chaturang Commercials Pvt. Ltd.:Rs.15,00,000/-</i>	
	<i>IT Acknowledgment for AY 2009-10</i>	74
	<i>Directors report along with audited financial statements for FY 2008-09</i>	75-89
	<i>Summary sheet of allottee companies and the relevant documents produced in respect of each of them</i>	73
	<i>Chaturang Commercials Pvt. Ltd.:Rs.15,00,000/-</i>	
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	<i>Explanation regarding the source of investments in assessee company.</i>	9
	<i>- Relevant extracts of bank statements evidencing that payments were made through proper banking channel.</i>	91
	<i>Copy of the Share Application</i>	92

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	<i>Form filed with the assessee company.</i>	
	<i>Copy of the Board Resolution authorizing investments.</i>	93
	Vikrant Constructions Pvt Ltd - Rs. 10,00,000/- <i>- IT Acknowledgement for AY 2009-10.</i>	94
	<i>Director's Report along with audited financial Statements for FY 2008-09.</i>	95-108
	<i>Explanation regarding the source of investments in assessee company.</i>	109
	<i>Relevant extracts of bank statements evidencing that payments were made through proper banking channel.</i>	110
	<i>Copy of the Share Application Form filed with the assessee company.</i>	111
	<i>Copy of the Board Resolution authorizing investments.</i>	112
	Destiny Heights Pvt Ltd - Rs. 10,00,000/- <i>- Audited Financial Statements for FY 2008-09.</i>	113-117
	<i>Explanation regarding the source of investments in assessee</i>	118
	<i>- Relevant extracts of bank statements evidencing that payments were made through proper banking channel</i>	119-120
	<i>- Copy of the Share Application Form filed with the assessee company.</i>	121
	<i>- Copy of the Board Resolution authorizing investments. East Coast Realtors Pvt Ltd - Rs. 15,00,000/-</i>	122

	<i>Audited Financial Statements for FY 2008-09.</i>	123-129
	<i>Explanation regarding the source of investments in assessee-company</i>	130
	<i>- Relevant extracts of bank statements evidencing that Payments were made through proper banking channel along with the</i>	131-132
	<i>Copy of the share application form filed with the assessee company</i>	133
	<i>Copy of the Board Resolution authorizing investmens</i>	134
	Sukhsagar Commodities Pvt. Ltd.- Rs.25,00,000/-	
	<i>Audited financial staements for FY 2008-09</i>	135-139
	<i>Explanation regarding the source of investments in assessee compmany</i>	140
	<i>Relevant extracts of bank statements evidencing that payments were made through proper banking channel</i>	141
	<i>Copy of the share application form filed with the assessee company</i>	142
	<i>Copy of the Board Resolution authorizing investments</i>	143
	Oven Commercial Pvt. Ltd.- Rs.10,00,000/-	
	<i>IT Acknowledgment for AU 2009-10</i>	144
	<i>Director's Report along with audited financial Statements for FY 2008-09</i>	145-158
	<i>Explanation regarding the source of investmetns in assessee company</i>	159
	<i>Relevant extracts of bank statements evidencing that payments were made through proper banking channel</i>	160
	<i>Copy of the share application form filed with the assesese compmany</i>	161
	<i>Copy of the Board Resolution authorizing investments</i>	162
	Sarkar Sales Pvt. Ltd. Rs.10,00,000/-	
	<i>Explanation regarding the soruce of investments in assessee company</i>	163
	<i>Relevant extracts of bank sttaements</i>	164

	<i>evidencing that payments were made through proper banking channel</i>	
	<i>Copy of the share application form filed with the assessee company</i>	165
	<i>Copy of the Board Resolution authorizing investments</i>	166
	Kasturi Merchants Pvt. Ltd.- Rs.15,00,000/-	
	<i>Audited financial statements for FY 2008-09</i>	167- 171
	<i>Explanation regarding the source of investments in assessee company</i>	172
	<i>Relevant extracts of bank statements evidencing that payments were made through proper banking channel</i>	173
	<i>Copy of the share application form filed with the assessee company</i>	174
	<i>Copy of the Board Resolution authorizing investments</i>	175
	Goodworth Commodities Pvt. Ltd. Rs.25,00,000/-	
	<i>Audited financial statements for FY 2008-09</i>	176- 180`
	<i>Copy of the share application forms filed with the assessee company</i>	181
	<i>Copy of the Board resolution authorizing investments</i>	182
	Pushker Trading & Holding Pvt. Ltd. Rs.15,00,000/-	
	<i>IT Acknowledgment for AY 2009-10</i>	183
	<i>Director's report along with audited financial statements for FY 2008-09</i>	184- 198
	<i>Explanation regarding the source of investments in assessee company</i>	199
	<i>Relevant extracts of bank statements evidencing that payments were made through proper banking channel</i>	200
	<i>Copies of the share application forms filed with the assessee company</i>	201
	<i>Copy of the Board resolution authorizing investments</i>	202

This is to certify that all the above documents were available before the AO and CIT(A).

*SD/-
(Akkal Dudhwewala)
Authorized Representative".*

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The above details would depict the material submitted by the assessee before the Id. Assessing Officer as well as before the Id. CIT(Appeals).

7. The Id. 1st Appellate Authority has made a reference to all these materials in paragraph no. 3.2 of the impugned order and thereafter recorded a finding in paragraph no. 3.3 vide which it has deleted the addition made by the Id. Assessing Officer. We deem it appropriate to take note of this finding from paragraph no. 3.3, which reads as under:-

“3.3. I have carefully considered the facts of the case and submission of the appellant. In the paper book, appellant has submitted the reasons recorded by the AO for reopening the proceedings. Perusal of the recorded reasons shows that AO has mentioned only about some information being received from the DDIT (Inv), Unit-2(1), Kolkata which was gathered during post-search investigation, which says that some Group companies of Dhandhanian Group have raised bogus share capital during the financial year 2008-09 relevant to AY: 2009-10. AO has mentioned that M/s. P & P Highrise Pvt. Ltd. did not have any significant assets, except investment in unquoted securities amounting to Rs.54,47,150/-. Still, the company received share capital along, with substantial amount of premium and only for these reasons the assessment proceedings have been reopened. The information received from Investigation Wing does not mention the names of the doubtful creditors or the reasons why the share capital received from such parties are considered to be bogus. Even during assessment proceedings, AO has not supplied the contents of the information received from the Investigation Wing which might have enabled the assessee to file its counter comments. After receipt of information, AO does not appear to have made any enquiries to establish the real identity and creditworthiness of the creditors, even though, appellant had submitted the details of all the share holders who had contributed to share capital during the current year. The documents relating to share application forms, copies of the relevant bank statements, copies of Board Resolution authorising issue of shares, financial statements of 10 share applicants along with the IT acknowledgement regarding returns filed by them and other supporting documents were submitted during assessment proceedings along with the letter raising objections against reopening proceedings. However, AO has not made any efforts to verify the genuineness of these documents with field enquiry or enquiry in any other forms. Further, AO does not appear to have disposed the objections of the assessee against reopening proceedings, before concluding the assessment proceedings. It appears that AO has not disposed the same in violation of the directions of the Hon'ble Supreme Court in the case of GKN Driveshafts India Ltd. Vs. ITO, 259 ITR 19 (SC). It

appears that the main reasons for adding the share capital receipt as cash credits is that assessee had charged a premium of Rs.40/- on face value of Rs.10 per share. AO considers the high premium to be abnormality. However, assessee has cited several case laws, as above, where Hon'ble Courts have held that charging or non-charging of premium is no any way connected with proving the genuineness of the money received for the purpose of section 68. Further, in the reasons recorded for reopening, appellant has mentioned that assessee's assets are in the form of investment in the unquoted shares of other companies, amounting to Rs.54,47,150/-. However, assessee has explained that this figure actually represents the investment in land and buildings. Further, AO has raised the issue that the share capital received by the assessee have been given as advances to other parties and this appears to be abnormal. However, this fact in itself does not prove that source of money received by the assessee would be considered as unexplained for the purpose of section 68.

Perusal of the assessment order shows that AO has blindly relied on the report of the investigation but its actual contents are not discussed anywhere so it is difficult to comment on the contents of the investigation report. Apart from the investigation report, AO has considered only the circumstantial evidences/extraneous factors like charging of high premium, giving away share capital raised as advances etc. to conclude that assessee company has brought in its own unaccounted money as share capital. However, this conclusion appears to be pre-mature. AO should have first concentrated on verifying the contentions of the assessee by going for enquiries related to the identity of the share holders, their creditworthiness etc. If there were any doubts in this regard the share holders should have been examined on oath and their statements should have been recorded or any adverse evidences found during those enquiries should have been brought on record to establish that the share capital receipt is not genuine. AO has not made any such enquiries and he has not even shared the contents of the investigation report where some adverse observations might have been made in the report against the share holders. Further, AO does not appear to have followed the due procedure laid down by the Hon'ble Supreme Court regarding the disposal of assessee's objections. Search has taken place on the Dhandhanian Group but there is evidence that the assessee has taken any entry for share capital. Further assessee had submitted all the details along with supporting documents, regarding share subscribers. To build a case AO should have conducted enquiries to find out discrepancies in those details/documents and these discrepancies/evidences should have been elaborately discussed in the order to justify holding the share capital as bogus. However, AO has failed to bring any adverse material on record. Under the circumstances, the additions made by the AO cannot be sustained. Hence, addition of Rs. 1,50,00,000/- is deleted".

8. We have duly considered rival contentions and gone through the record carefully. before we embark upon an inquiry on the facts of the present appeal, in order to find out whether the share capital and share premium money received by the assessee during the year is required to be treated as its unexplained credit and deserves to be added under section 68 of the Income Tax Act, 1961. We deem it appropriate to bear in mind certain basic principles/tests propounded in various authoritative pronouncements of the Hon'ble High Courts and Hon'ble Supreme Court. It is also pertinent to observe that both the sides have made reference to a large number of decisions. We do not deem it necessary to recite and recapitulate them because that would make this order repetitive and bulky. We take cognizance of some of them. It is pertinent to observe that in so far as companies incorporated under Indian Companies Act are concerned, whether private limited or public limited companies, they raise their share capital, through shares though manner of raising share capital in private limited company on one hand and public limited company on other hand, would be different. The share capital and share premium are basically irreversible receipts or credits in the hands of the companies. Share capital is considered to be cost of shares on equivalent amount issued and premium is considered as extra amount charged by the company for issue of that capital. In the case of private limited company, normally shares are subscribed by family members or persons known/close to the promoters. Public limited company, on the other hand, generally raised by public issue inviting general public at large for subscription of these shares. Yet, it is also possible that in the case of public limited company, the share capital is issued in close-circuit. When companies incorporated under the Companies Act raise their capital through shares, various persons would apply for shares and then give share application money. This amount received from such share holder would naturally be credited in the books of accounts of the assessee. Once the alleged share capital is credited to the accounts of the assessee, then role of section 68 would come. It is pertinent to take note of this section. It reads as under:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the officer, satisfactory the sum so credited may be charged to income tax as the income of the assessee of that previous year."

9. A perusal of the section would indicate that basically this section contemplates three conditions required to be fulfilled by an assessee. In other words, the assessee is required to give explanation which will exhibit nature of transaction and also explain the source of such credit. The explanation should be to the satisfaction of the AO. In order to give such type of explanation which could satisfy the AO, the assessee should fulfill three ingredients viz. (a) identity of the share applicants, (b) genuineness of the transaction, and (c) credit-worthiness of share applicants. As far as construction of section 68 and to understand its meaning is concerned, there is no much difficulty. Difficulty arises when we apply the conditions formulated in this section on the given facts and circumstances. In other words, it has been propounded in various decisions that section 68 contemplates that there should be a credit of amounts in the books of an assessee maintained by the assessee, (b) such amount has to be a sum received during the previous year, (c) the assessee offers no explanation about the nature and source of such credit found in the books, or (d) the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory. The Hon'ble Delhi High Court in the case of CIT v. Novadaya Castles (P.) Ltd. 367 ITR 306 has considered a large number of decisions including the decision of Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad [1971] 82 ITR 540 (SC). According to the Hon'ble Delhi High Court basically there are two sets of judgments. In one set of case, the assessee produced necessary documents/evidence to show and establish identity of the share-holder and bank account from which payment was made. The fact that payment was received through bank channels, filed necessary affidavit of the shareholders or confirmations of the directors of the shareholder company. But thereafter no further inquiry was made by the AO. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances.

10. Let us take into consideration observations made by the Hon'ble Delhi High Court in the case of Softline Creations P.Ltd. (supra) while taking note of judgment of Hon'ble Delhi High court in the case of CIT Vs. Fair Finvest Ltd., 357 ITR 146 (Delhi). Hon'ble Delhi High Court made following observations:

"..... This court has considered the concurrent order of the Commissioner of Income-tax (Appeals) as well as the Income-tax

Appellate Tribunal. Both these authorities primarily went by the fact that the assessee had provided sufficient indication by way of permanent account numbers, to highlight the identity of the share applicants, as well as produced the affidavits of the directors. Furthermore, the bank details of the share applicants too had been provided. In the circumstances, it was held that the assessee had established the identity of the share applicants, the genuineness of transactions and their creditworthiness; The Assessing Officer chose to proceed no further but merely added the amounts because of the absence of the directors to physically present themselves before him.

The Income-tax Appellate Tribunal has relied upon a decision of this court in CIT v. fair Finvest Ltd. [2013] 357 ITR 146 (Delhi), where in somewhat similar circumstances, it was stated as follows (page 152) :

"This court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income-tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the directors, Form 2 filed with the Registrar of Companies by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of section 68.

Having regard to the entirety of facts and circumstances, the court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra)"

11. We also deem it appropriate to take note of some of observations of the Hon'ble Delhi High Court from the decision of Fair Finvest Ltd. (supra). The Hon'ble Court has

noticed proposition laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Victor Electrodes Ltd., 329 ITR 271 (Delhi) regarding non-production of share applicants before the AO. The following observations are worth to note:

...In this connection the observation of the jurisdictional High Court in case of Dwarkadhish Investment (Supra) are quite relevant where the court has observed that it is the revenue which has all the power and wherewithal to trace any person. Further in the case of CIT vs. Victor Electrodes Ltd. 329 ITR 271 it has been held that there is no legal obligation on the assessee to produce some Director or other representative of the Director or other representative of the applicant companies before the A.O. Therefore failure on part of the assessee to produce the Directors of the share applicant companies could not by itself have justified the additions made by the AO particularly when the seven share applicant companies through their present Directors have now again filed fresh affidavits confirming the application and allotment of shares with respect to the total amount of Rs.45 Lacs. It is observed that no attempt was made by the AO to summon the Directors of the share applicant companies. Moreover, it is settled law that the assessee need not prove the "source of source". Accordingly it was incumbent upon the department to have enforced attendance of Shri Mahesh Garg or the erstwhile Directors of the share applicant companies and confronted them with the evidences & affidavits relied upon by the appellants and thereupon given opportunity to the assessee to cross examine these applicants."

12. In the light of above, let us examine the facts of the present case. A perusal of the assessment order would indicate that the Id. Assessing Officer has not conducted any enquiry. The assessee has submitted the material in support of its contention, but those materials have not been rebutted by the Id. Assessing Officer. He made reference to the finding of the DDIT (Investigation), Unit-2(1), Kolkata, but that was not an adjudicatory finding. It was a process of collecting incriminating material against the assessee and preparation of a report to consider that material. The opportunity to the assessee is to be given during an assessment proceeding when it can explain this material and Id. Assessing Officer is bound to verify to the contentions of the assessee in the light of that material in an analytical manner. That exercise is totally missing

here. This aspect has been considered by the ld. 1st Appellate Authority in the finding extracted supra.

13. Apart from the above, it is pertinent to note that copy of the reasons for reopening is available on page no. 32 of the paper book. According to the assessee, this is the information supplied by the ld. Assessing Officer, but it does not contain complete copy as well as the approval, if any, granted by the ld. Principal CIT, Kolkata. Though to our mind, it is an irregularity and if we are called upon to test the veracity of impugned order only on this fold of dispute, then we would have remitted the issue back for adjudication of the objections against reopening as well as supply of complete copy of the reasons. But we do not deem it appropriate to explore that procedure because we concur with the finding of the ld. CIT(Appeals) on merit. The ld. Assessing Officer has not conducted any enquiry for pointing out faults in the details submitted by the assessee running into more than 140 pages as discernable from the details mentioned in the Index with the paper book. Therefore, on due consideration of the above facts and circumstances, we do not find any merit in this appeal. **It is dismissed.**

14. As far as the Cross Objection filed by the assessee is concerned, we find that in the grounds of Cross Objection, the assessee has nowhere pointed out its grievances against any part of the impugned order. A Cross Objection under section 253(4) is maintainable *qua* that part of order, which is against the respondent, i.e. Cross Objector. In other words, the respondent in an appeal is authorized to file Cross Objection under section 253(4) against any part of the impugned order. The respondent is required to demonstrate his grievance against any part of the impugned order. In the present case, no such grievance has been

demonstrated. Hence, Cross Objection is not maintainable, accordingly dismissed.

15. In the result, the appeal of the Revenue as well as Cross Objection filed by the assessee both are dismissed.

Order pronounced in the open Court on November 02, 2022.

Sd/-

(Rajesh Kumar)
Accountant Member

Kolkata, the 2nd day of November, 2022

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Copies to : (1) ***Deputy Commissioner of Income Tax,
Central Circle-1(2), Kolkata,
Aayakar Bhawan Poorva,
3rd Floor, Room No. 310,
110, Shanti Pally, Kolkata-700107***

(2) ***P & P Highrise Pvt. Limited,
Room No. 44, 3rd Floor,
P-36, India Exchange Place Extension,
Kolkata-700001***

(3) ***Commissioner of Income Tax (Appeals)-20, Kolkata;***
(4) ***Commissioner of Income Tax- ;***
(5) ***The Departmental Representative***
(6) ***Guard File***

TRUE COPY

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.