

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

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.233/Kol/2021**  
Assessment Year: 2012-13

**DCIT, Circle-11(1), Kolkata..... Appellant**  
vs.

**M/s Iris Health Services Ltd..... Respondent**  
**82/1, Raja Subodh Ch. Mullick Road,**  
**Kolkata-700047.**  
**[PAN: AABC18499M]**

**CO No.18/Kol/2021**  
**(Arising out of ITA 233/Kol/2021)**  
Assessment Year: 2012-13

**M/s Iris Health Services Ltd..... Cross-Objector**  
**82/1, Raja Subodh Ch. Mullick Road,**  
**Kolkata-700047.**  
**[PAN: AABC18499M]**

vs.

**DCIT, Circle-11(1), Kolkata..... Respondent**

**Appearances by:**

Shri Sunil Surana, AR, appeared on behalf of the assessee.

Shri D.K. Sonawal, CIT-DR, appeared on behalf of the Revenue.

Date of concluding the hearing : November 24, 2022

Date of pronouncing the order : January 02, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the Revenue and cross-objection by the assessee against the order dated 24.09.2020 of the Commissioner of Income Tax (Appeals)-4, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The Revenue in this appeal has taken the following grounds of appeal:

"1. "That on the fact and circumstances of the case, the Ld. CIT(A) has erred in granting relief to the assessee on account of addition on undisclosed cash credit u/s 68 of Rs.9,16,20,000/- though the assessee has failed to prove the genuineness of transaction and creditworthiness of the subscribers viz M/s Fort Projects Pvt. Ltd. (Rs.2,44,20,000/-), M/s Nortex Realty Pvt. Ltd. (Rs. 4,33,00,000/-), M/s Poddar Udyog Ltd. (Rs. 2,19,00,000/-) and M/s Hope Enterprises Pvt. Ltd.( 20,00,000/- in respect of share application money received during the year.)

2. "That on the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 9,16,20,000/-made by the Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings/remand proceeding and as such identity & creditworthiness of the share applicants and genuineness of transactions could not be verified."

3. "That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in overlooking the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr.CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), which suggests that the assessee is under a legal obligation to prove the receipt of share capital premium to the satisfaction of the A.O., failure of which, would justify addition of the said amount to the income of the assessee."

4. "That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in ignoring the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr.CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), which also suggests that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name lenders. In the facts of the case, in spite of best efforts made by the assessing officer, he could not verify the same as there was non-appearance of Directors of the companies to whom shares were allotted on private placement basis. Thus, the decision of the Ld. CIT (A) is

*erroneous in holding that the raised share capital not the assessee's own income and it lacked any real profit-making business credence."*

5. *"That on the fact and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 9,16,20,000/- made u/s 68 wherein the identity, genuineness and creditworthiness of investor companies remained unsubstantiated, as the Directors failed to appear before the A.O. against summons issued u/s 131 ignoring the decision of Hon'ble Supreme court in the case of Pr.CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161)."*

6. *"That on the fact and circumstances of the case, the Ld. CIT (A) has erred in ignoring the facts that the creditworthiness of the subscribing companies were not established before the A.O. during the course of the assessment proceedings, though the onus of providing the creditworthiness of share applicants vests solely with the assessee."*

7. *"That on the fact and circumstances of the case, the Ld. CIT(A) has erred in not considering the facts that the real intention of the assessee company for introducing such huge amount in the form of share capital in its business only to introduce its unaccounted money in the form of fresh share capital."*

8. *"That the Department craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or during hearing of this appeal."*

3. The brief facts of the case are that the assessee company filed return of income for assessment year 2012-13 on 29.09.2012 declaring total loss of Rs.12,45,113/-. However, the assessment was completed u/s 144 of the Act determining income of Rs.15,01,33,387/-. In the assessment, the Assessing Officer added a sum of Rs.15,13,78,500/- on account of share capital issued by the assessee company. The addition was made as no compliance was made during the course of assessment proceedings.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A). Before the ld. CIT(A),

the assessee furnished the necessary details for proving the identity, creditworthiness of the share subscribers and genuineness of the transactions. The Id. CIT(A) forwarded the said details to the Id. Assessing Officer for his remand report. The Assessing Officer examined the details and documents furnished by the assessee and sent the remand report , the relevant part of this is reproduced as under:

*“Result emanated from Remand Proceeding: At the outset to discuss this issue, the undersigned is inclined to draw kind attention of the appellate authority towards other long-term liabilities as per the audited books of accounts. From Para No.5 and 5.1 of the audited books of accounts, it is observed that a sum of Rs.5,97,58,500/- and Rs.422800600/- had been shown as other long-term liabilities as 31.03.2011 and 31.03.2012 respectively. From Note 5.1, it is further found that the sum had been shown as advance receipt from promoters and associates against issue of shares and depending upon the capital structure of the company will be adjusted there against final allotment of shares. To verify the shares through limbs of transaction viz. Genuineness, creditworthiness and capacity, notices u/s 131 of the Income Tax Act 1961 have firstly been issued on 13.02.2018, however, none appeared. Thereafter, on account of change in incumbency further enquiry proceedings vide notice u/s 131 of the Income Tax Act 1961 has been initiated on 21.01.2019.*

*Though in the notice u/s 131 of the Act, there is a direction for personal appearance, none appeared physically, however, submissions have duly been made by all the allottee companies which have been carefully gone through and the same are also being forwarded to you for your kind reference. The response has received in pursuance to notice u/s 131 of the Act, is being summed up below for your ready reference:*

Sl No.	Name of allottee		Particulars		Remarks
		Advance given before 01.04.2011, which was	Fund introduced afresh during ASSESSMENT	Total allotment made during	Pendency in allotment if any

		<i>pending for allotment as on 31.03.2011</i>	<i>YEAR 2012-13</i>	<i>A.Y 2012-13</i>	
		<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(a)+(b)-(c)</i>
1	<i>Poddar Udyog Ltd.</i>	<i>29358000</i>	<i>58400000</i>	<i>51258000</i>	<i>36500000</i>
2	<i>Nortex Realty Ltd.</i>	<i>2500500</i>	<i>43300000</i>	<i>45800500</i>	<i>Nil</i>
3	<i>Fort Projects Pvt. Ltd.</i>	<i>Notice u/s 131 of the Income Tax Act, 1961 has been returned being unserved with postal remark not known.</i>			
4	<i>Chandradoya Mercantile Pvt. Ltd.</i>	<i>4400000</i>	<i>Nil</i>	<i>4400000</i>	<i>Nil</i>
5	<i>Hope Enterprises Pvt. Ltd.</i>	<i>1000000</i>	<i>2000000</i>	<i>3000000</i>	<i>Nil</i>
6	<i>Pawan Kumar Poddar (HUF)</i>	<i>1200000</i>	<i>Nil</i>	<i>1200000</i>	<i>Nil</i>

*Though from the submission it is observed that all the corporate and HUF entities barring Fort Project Pvt. Ltd. are ground/subsidiary companies of M/s Iris Health Services Ltd, mere rudimentary submission does not make any sense since the purpose of summoning u/s 131 of the Act is to examine the veracity of the transactions by recording of statement of the person in charge of financial transaction of such entity but here all the corporate entities except Fort Projects Pvt. Ltd have merely deemed it fit to make a paper submission and not present themselves by way of the director of the company for the recording of the statement. Furthermore, from the submission as made during remand proceeding source to source of the investment could not be verified. In this regard, reliance is placed upon the latest order dtd. 05.03.2019 of the Hon'ble Apex Court in the case of Pr. CIT (Central)-1 vs. NRA Iron and Steel Pvt. Ltd. [SLP(Civil) No.29855 of 2018] wherein it has been held that the assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the A.O, so as to discharge the primary onus.*

*Here in this instant case, had the companies, being the subsidiary/group entities, with whom the assessee-company has*

*claimed to have had regular transactions, had any real existence, the assessee would have produced them in person which could have proved the authenticity of the transactions. Furthermore, as aforementioned the subscribing parties have merely made paper submission viz. Audited books of account, copy of ITR, bank statement etc. from where source to source of the alleged transaction in the guise of share application money could not be verified.”*

As against the said remand report, the counsel for the assessee made his rebuttal submissions.

5. The Id. CIT(A), after considering the remand report and the rebuttal submissions of the counsel for the assessee, deleted the impugned additions, observing as under:

“DECISION:

*After considering all the facts, it is noted that the assessee company received share application money from the share applicants in various trenches spread over five years i.e. A.Y 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. The amount received from them was credited to the books of accounts of the assessee company in the respective financial year. For the sake of brevity the details are reproduced as under:*

DETAILS OF SHARE APPLICATION MONEY

Sl No.	Name of allottee	2007-08 (Amount)	2008-09 (Amount)	2009-10 (Amount)	2010-11 (Amount)	2011-12 (Amount)	Total (Amount)
1	Vivek Kr. Kathotia		100000				100000
1	Fort Projects Pvt. Ltd.	8500000	12700000			24420000	45620000
1	Nortex Realty Ltd.			2500500		43300000	45800500
2	Poddar Udyog Ltd			11358000	18000000	21900000	51258000
4	Pavan Kumar Poddar (HUF)				1200000		1200000
5	Chandradoya Mercantile Pvt. Ltd.				4400000		4400000
6	Hope Enterprises Pvt.				1000000	2000000	3000000

	<i>Ltd.</i>						
	<i>Total</i>	8500000	12800000	1385800	24600000	91620000	151378500

DETAILS OF SHARE ALLOTMENT

SL. No.	Name of share holder	Share application money	As on 01.08.2011	As on 07.10.11	Total
1	Vivek Kumar Kathotia	100000	10000		10000
2	Fort Projects (P) Ltd.	45620000	2120000	2442000	4562000
3	Nortex Realty Ltd.	45800500	1350050	3230000	4580050
4	Poddar Udyog Ltd.	51258000	4175800	950000	5125800
5	Pavan Kumar Poddar (HUF)	1200000	12000		120000
6	Chandroday Mercantile Pvt. Ltd.	4400000	440000		440000
7	Hope Enterprises Pvt. Ltd.	300000	100000	200000	300000
	<i>Total</i>	151378500	8315850	6822000	15137850

	Shares	@	Share value
Authorised share	230000000	10/-	2300000000
Share issued	15137850	10/-	151378500
Share subscribed	15137850	10/-	151378500

From the above, it is clear that these amounts were credited to the books of accounts of the assessee in different years and if any addition has to be made, it has to be made in respective financial year. In my considered view, the above assertions of the AO show that the AO made the addition under a belief that the sum of Rs. 15.13 Crores was received by the appellant in the year under consideration which in the present facts of the case is incorrect. This was evident from the annual financial statement of the assessee.

In view of above facts let us examine whether any addition under section 68 for unexplained credits could be made in assessment year 2012-13 especially when the credit entries were made in earlier financial years. In my considered view the Answer is no. This view is supported by following judicial decisions:

*M/s Styntensia Network Security India Put Ltd Vs ITO 11(2)(1) ITA No.2927/Mum/2017* wherein it has been held that no addition u/s 68 is called for where adjustment is made against opening balance brought

forward from earlier years, that is to say, if no sum of money is found credited in the books in the year under consideration then no addition is warranted in the year under consideration, in the said decision, the Hon'ble ITAT Mumbai has relied on the decision of the Hon'ble ITAT Kolkata Bench in DCIT vs. M/s. Global Mercantiles Pvt. Ltd ITA No 1669/1Kol/2009 as well as that of Hon'ble Kolkata High Court in the case of Jatia Investment Co. VS. Commissioner Of Income Tax reported in (1992) 60 CCH 0516(Cal.)

The appellant has also relied upon following judicial pronouncements in support of its above contention:-

(a) V.R. Global Energy (P) Ltd. vs. Income Tax Officer, (2018) 305 CTR (Mad) 228; (2018) 170 DTR (Mad) 412 (2018) 407 ITR 145 (Mad);

(b) Income Tax Officer, Ward-1(1), P-7, Kolkata vs. M/s Dazzle Projects Pvt. Ltd., ITA No.757/Kol/2018, ITAT Kolkata Bench-C, Kolkata;

(c) M/s. Abhijeet Enterprise Ltd. vs. Income-tax Officer, Wd-2(2), Kolkata, 1.T.A. No. 308/Kol/2017, ITAT Kolkata-C Bench, Kolkata;

(d) H.H. Sri Rama Verma vs. Commissioner Of Income Tax, (1991) 187 ITR 308 (SC); (1991) 95 CTR (SC) 26; (1991) 57 TAXMAN 149;

(e) M/s Dharamtar Motor Services vs. Income Tax Officer, Ward 6(1)(4), Ahmedabad, ITA No.1438 & 2534/AHD/2017 dated 21.11.2019;

(f) Commissioners of Income Tax Vs. Usha Stud Agricultural Farms Ltd. (2008) 76 CCH 0398 Del HC;

(g) ITO v. Bhagwat Marcom (P) Ltd., ITA No.2236/Kol/2017 dated 31.07.2019, ITAT Kolkata Bench;

(h) M/s Syntensia Network Security India Pvt. Ltd. vs. ITO-11(2)(4) ITA No. 2927/Mum/2017 dated 27.07.2018 for AY 2012-13;

(i) ITO Vs. Nasir Khan J. Mahadik (2012) 134 ITD 0166 dated 30.11.2011;

(j) Suraj Bhan Bajaj v. Income Tax Officer (2006) 25 CCH 0294 Del Trib dated 21.04.2006;

In view of the above factual and legal position in my considered opinion the AO was not correct to make an addition of entire sum in the

assessment year under consideration as the entire said sum was not received in the year under consideration. The amount received in earlier financial year amounting Rs 5.97 crores is evident from the audited balance sheet. This balance sheet was available before the assessing officer from the beginning of the assessment. Considering the same the addition made by the assessing officer amounting Rs. 5.97 crores is hereby deleted.

Now Coming back to the remaining amount i.e. Rs. 9,16,20,000/-. It is noted that this amount was received from the following:

i) Forte Projects Pvt. Ltd.	Rs. 2,44,20,000 /-
ii) Nortex Reality Ltd.	Rs. 4,33,00,000/-
iii) Poddar Udyog Ltd.	Rs. 2,19,00,000/-
iv) <u>Hope Enterprises Pvt. Ltd.</u>	<u>Rs. 2,00,00,000</u>
Total	Rs.9,16,20,000/-

From the above it can also be seen that all these persons are group entities and money has been received by the appellant on earlier occasion also and their creditworthiness and identity has been accepted by the A.O under the earlier years and no question have been raised against the share application money given by them. During the course of appellate proceedings, the AO was given an opportunity to examine the documentary evidences submitted by the appellant in respect of these entities. In the remand proceedings, the AO has accepted the following:

- i) Summons u/s. 131 of the I. T. Act, 1961 were issued to the share applicants and they were all served,
- ii) All the entities against whom summons were served have responded and furnished replies,
- iii) The reply Constitute documentary evidences regarding the share application money,
- iv) Physical appearance was not made,
- v) Source of source of the investment made could not be verified in remand proceedings,
- vi) Reference of decision of Hon'ble Apex Court in the case of NRA Iron and Steel Pvt. Ltd. was made,

vii) Finally, it is stated that if the share applicants have any real existence the assessee would have produced them in person.

In response to these arguments, the assessee in his rebuttal stated as under:

The appellant has received the copy of the remand report dated 21.10.2019 sent by the AO. In this connection it is reiterated that during the year the assessee issued the following shares:

SL. No.	Name of share holder	Consideration for which share were allotted	Share application money b/f from earlier years	Further amount received during the year
1	Vivek Kumar Kathotia	100000/-	100000/-	Nil
2	Fort Projects (P) Ltd.	45620000/-	2,12,00,000/-	2,44,20,000/-
3	Nortex Realty Ltd.	4,58,00,500/-	25,00,500/-	4,3300,000/-
4	Poddar Udyog Ltd.	5,12,58,000/-	2,93,58,000/-	2,19,00,000/-
5	Pavan Kumar Poddar (HUF)	12,00,000/-	12,00,000/-	Nil
6	Chandroday Mercantile Pvt. Ltd.	44,00,000/-	44,00,000/-	Nil
7	Hope Enterprises Pvt. Ltd.	30,00,000/-	10,00,000/-	20,00,000/-

It is evident that all the shareholders were old and sister concerns and their last years share application money was duly accepted. Out of total allotment of Rs. 15,13,78,500/- fresh amount received during the year was only Rs. 9,16,20,000/-. In the course of assessment proceedings, the assessee submitted the details. In the course of appellate proceedings again it was specifically mentioned that all the details were filed. However, the details were again filed and evidences were produced to show that all the shareholders were either group concerns or individual directors. Evidences were also produced to show that the shareholders are of substantial means having immovable properties of millions of rupees and are having substantial profits/turnover. It was also explained that the money has come from their own resources. Not only that all the shareholders were regular and very old assesses of the department and regular assessments were completed in their cases. In fact, some of the assessment orders viz. Vivek Kumar Kathotia was assessed on an income of Rs. 6 Crores in assessment year 2009-10, Poddar Udyog Ltd on an income of Rs. 73,19,289/- in assessment year 2009-10, Nortex Realty Ltd on an income over Rs. 1 Crore in

*assessment year 2011-12 were submitted. Sri Vivek Kumar Kathotia is the director of Fort Projects Ltd. a renowned builder of Kolkata who also built OASIS building having number of complexes. The balance sheet of all the shareholders were submitted. The Issue was remanded to the AO for his Comments on the submissions.*

*The AO in the remand report examined the submissions. He has nowhere denied or controverted the submissions made by the assessee. The AO has accepted the facts that it is observed that all the corporate and HUF entities barring Fort Projects Put Ltd are group/ subsidiary company of Iris Health Services Ltd. The AO has also not adversely commented on the identity of the shareholders, their creditworthiness and the genuinity of the transactions. The AC has, however, stated that the directors did not appear for personal examination.*

*The assessee has countered this argument by submitting that it is nowhere the requirement of sec. 68 that the directors should personally appear when there is no dispute about the identity, creditworthiness and genuinity of the transactions. The issue is squarely covered by the Judgement of the Hon'ble Calcutta ITAT in the case of Cygnus Developers Put Ltd and Devendra Kumar Sant, a copy of the said decisions has already been filed before your honour.*

*The other reason for not accepting the investment is that the source of source was not proved. Needless to mention that the assessment relates to the assessment year 2012-13. There was no requirement in law to prove source of source in so far as the assessment year 2012-13 is concerned. The amendment in the IT Act came into force from 01.06.2012 i.e. assessment year 2013-14. The issue is covered by the judgment of Hon'ble Jurisdictional ITAT in the case of Bidit Financial Management in ITA No.579/Kol/2017 pronounced on 15.03.2019 which has followed Hon'ble Bombay High Court in the case of Gagandeep Infrastructure reported in 394 ITR 680.*

*The Ld. A.O has further relied on the judgment of the Apex Court in NRA Iron Steel Pvt. Ltd. However, the said judgment is not applicable. In view of the fact that in the said case none of the shareholders were traceable at the given address nor they had any creditworthiness. In fact, the finding is that even their identity could not be proved. In fact, the issue is fully covered in favour of the assessee by the judgment of the Apex Court in the case of Paradise Shipping Company, a copy of the*

said judgment is enclosed herewith. In view of the above, it is humbly requested that the addition is not maintainable and may be directed to be deleted.

From the above, it can be seen that –

i) Coming to the amount of Rs. 9,16,20,000/- it is noted that all the individuals and entities are part of group concerns having substantial creditworthiness. As mentioned earlier the investment received from these very entities has been accepted by the AO in earlier years. The AO has stated that if these entities were real then assessee would have produced them before AO has got no basis as assessment u/s. 143(3) have been framed in their cases and therefore, their identity and creditworthiness cannot be denied. AO can also not say that assessment u/s. 143(3) have been framed on fictitious entities in earlier years.

ii) As far as genuineness of the transaction is concerned none of the transaction is made other than through banking channels and therefore, even genuineness of the transaction is not in question.

iii) Regarding the argument that source of source cannot be verified it is noted that Hon'ble Bombay High Court in the case of CIT vs. Gangadeep Infrastructure Pvt. Ltd. 394 ITR 680 has categorically held that for A.Y. 2012-13 source of source needs not to be approved. Moreover, this exercise was never taken up by the AO as it was not required under the act either as far as A.Y. 2012-13 is concerned. Furthermore, the above judgment of Hon'ble Bombay High Court has been followed in various subsequent decisions by Hon'ble jurisdictional ITAT.

Finally, it is not clear that when identity, creditworthiness and genuineness of the transactions have been accepted from the same person/entity in earlier years why the same is being challenged in the year under consideration and that too when the creditworthiness of these entities has shown much more improvement in terms of Return of Income showing substantial income which have been filed by them. In view of the above, I am of the considered opinion that the additions made by the A.O amounting Rs.9,16,20,000/- cannot be sustained and therefore, I direct the A.O to delete the same. Therefore, this ground is allowed.”

6. Being aggrieved by the said order of the CIT(A), the Revenue has come in appeal before us.

7. We have heard the rival contentions and gone through the record. During the earlier hearings, the counsel for the assessee had produced on record the observations of the Assessing Officer that no director of the share subscriber companies except Fort group had appeared for recording of statement in response to the notices/summons issued u/s 131 of the Act, was factually wrong that, in fact, Sri Pavan Kumar Poddar, managing director of M/s Poddar Udyog Ltd. who is also the director of the assessee company had appeared before the Assessing Officer in response to notice u/s 131 on 21.12.2017 and his statement was also recorded. He had also produced on file the copy of the statement dated 21.12.17 of Sri Pavan Kumar Poddar. However, the ld. DR raised some aspirations about the correctness of the said statement. Therefore, the Tribunal passed the following order dated 21.02.22:

*“The ld. CIT(DR) has casted some aspiration on the correctness of the remand report vis-a-vis the statement purportedly recorded of the director of assessee company by the Assessing Officer (DCIT). Therefore, we direct the Department to produce the assessment records to produce before this Tribunal as well as the Assessing Officer to make a report regarding the veracity of the remand report which is reproduced from page 18 to 20 of the impugned CIT (Appeals) order. The case is adjourned to 28/03/2022.”*

Thereafter, the ld. DR did not file his submission as to the correctness of the remand report/statement recorded of Shri Pavan Kumar Poddar who was not only the director of the assessee company but also director of the share subscriber companies. The Tribunal passed the following order dated 23.05.22:

*“The present appeal is directed at the instance of the Revenue against the order of the ld. Commissioner of Income Tax (Appeals), Kolkata 4, [hereinafter the ld. CIT (A)], dt. 24/09/2020, passed u/s 250 of the Income Tax Act, 1961 (in short the Act”) for the Assessment Year 2012-13.*

*The ld. CIT D/R pointed out that the Tribunal vide order dt. 21/02/2022 has directed the Assessing Officer for production of assessment record. The office of the Departmental Representative has communicated this order to the Assessing Officer but it could not complied with. He seeks more time. The order of the Tribunal dt. 21/02/2022 reads as under:*

*“The ld. CIT(DR) has casted some aspiration on the correctness of the remand report vis-a-vis the statement purportedly recorded of the director of assessee company by the Assessing Officer (DCIT). Therefore, we direct the Department to produce the assessment records to produce before this Tribunal as well as the Assessing Officer to make a report regarding the veracity of the remand report which is reproduced from page 18 to 20 of the impugned CIT (Appeals) order. The case is adjourned to 28/03/2022.”*

*A perusal of this order would indicate that a doubt was raised in the remand report submitted by the Assessing Officer and reproduced in the impugned order. Therefore, it is necessary to ascertain the original copy of the remand report. Faced with this situation, the above direction was given to the revenue. However, it could not be complied with. On the request of the ld. CIT D/R, we adjourn the hearing to 08.08.2022. Copy of this order sheet to be supplied to the administrative CIT having jurisdiction over the Assessing Officer for ensuring the compliance.”*

On the date of hearing i.e. 24.11.22, the ld. DR has come along with the assessment records. He has submitted that there was no copy of the statement recorded u/s 131 in the assessment records. However, he has fairly admitted that the assessment records were not properly maintained at all. There were no file orders after 23.09.2015; whereas, the statement u/s 131 was recorded on 21.12.2017; there was no index or page numbering; even though, there was a copy of the remand report but, there was not file order in that respect. The

assessment records were totally mismanaged. The ld. DR, in this respect, has submitted that the statement was recorded by the earlier Assessing Officer and that the remand report was given by the subsequent Assessing Officer and therefore, the Assessing Officer missed the statement of the director of the assessee company namely Sri Pavan Kumar Poddar who also happens to be the director of the share subscriber company also.

A perusal of the copy of the aforesaid statement recorded u/s 131 of the Act reveals that the same is the photocopy of a certified copy issued by the same Assessing Officer who had issued remand report, in question, namely Shri Sudhanshu S Gautam, IRS, DCIT, Circle-10(1), Kolkata. Since, the certified copy of the statement has been issued by the concerned Assessing Officer who happens to be the same officer who had issued the remand report, therefore, we do not find any reason to disbelieve the aforesaid copy of the statement recorded u/s 131 of the Act.

8. A perusal of the record shows that the assessee not only furnished the requisite details to prove the identity, creditworthiness and genuineness of the transactions but also statement of the director of the assessee company namely Sri Pavan Kumar Poddar was recorded, from which the Assessing Officer could not draw any adverse inference.

The ld. CIT(A) considering the entire details on record observed that all the share subscribers were group entities and that the money was also received by the appellant from them even on earlier occasions also and further that the creditworthiness and identity has been accepted by the Assessing Officer in the earlier years. The ld. CIT(A) has also taken

note of the remand report, wherein, the Assessing Officer himself has observed that all the corporate and HUF entities barring Fort Projects Pvt. Ltd were group/subsidiary companies of the assessee company. Further, that the Assessing Officer had not made any adverse comment on the identity of the shareholders, their creditworthiness and genuineness of the transactions. The only contention raised by the Assessing Officer was that the directors did not appear for personal examination. Though the ld. CIT(A) after examining all the documents and relying upon the judicial decisions observed that merely because the directors did not appear before the Assessing Officer, that itself, was not sufficient enough to hold that the entire transaction was bogus. The ld. CIT(A) considered the relevant documents on record and also considering that the share subscriber companies were having sufficient net worth to invest in the assessee company has deleted the addition so made by the Assessing Officer.

9. The ld. counsel for the assessee has further submitted that even the only contention raised by the Assessing Officer in the remand report stands rebutted by the aforesaid evidence of copy of statement recorded u/s 131 of the Act of the director of the assessee company and managing director of M/s Poddar Udyog Ltd. namely Sri Pavan Kumar Poddar on 21.12.17. That even in respect of the said statement recorded, the Assessing Officer has neither recorded any adverse comment nor could draw any adverse inference in relation to the transaction/share application money received by the assessee. The ld. counsel for the assessee has further submitted that even otherwise, there was no doubt / suspicion raised by the Assessing Officer either about the identity or of the creditworthiness of the share subscribers. He, in this respect, has submitted that the assessee company, during

the year, had received share capital from four companies out of which three companies were group concerns of the assessee company and the fourth company i.e. Fort Projects Pvt. Ltd was a reputed company of Kolkata engaged in the profession of real estate developer/builder. That the said company i.e. Fort Projects Pvt. Ltd had a net worth and profits/turnover in millions of rupees. That even in the earlier years, the share application money was received by the assessee from the said company which was accepted by the Department.

The second company, namely, Nortex Reality Ltd., was group company of the assessee company and the company's net worth and profits/turnover was also in millions of rupees. The company has furnished all the details in respect of notice u/s 133(6) of the Act. That the company was also enjoying bank overdraft facility and that the Assessing Officer in the remand report has not made any adverse comment against the said company.

The ld. counsel has further submitted that the third company was Hope Enterprises Pvt. Ltd. There was no doubt about the identity of the said company. The company has duly filed the response to the notice u/s 133(6) of the Act. The share application money received by the aforesaid group entities by the assessee company in the earlier years has been accepted by the Department.

In respect of Poddar Projects Pvt. Ltd., the ld. counsel for the assessee has submitted that the said company was a renowned company and director of the said company appeared before the Assessing Officer whose statements were recorded, who also happens to be the director of the assessee company. The said company was also an old shareholder of the assessee company. The ld. AR has further

submitted that the assessee is a group company of Poddar Group. That, so far as the identity of the Poddar Group is concerned, the Income Tax Office of the Department was run in the hired building owned by the Poddar Group. He, therefore, has submitted that there was no question of suspicion about the identity and creditworthiness, not only of the assessee company but also its group companies.

10. Considering the above submissions of the Id. AR and considering the observations made by the CIT(A) and other relevant documents on record, we do not find any reason to interfere with the order of the CIT(A) and the same is accordingly upheld. The appeal of the Revenue is hereby dismissed.

11. The Id. counsel, at this stage, has submitted that he had filed cross-objection in support of the order of the CIT(A). However, no specific relief has been sought against the order of the CIT(A), we, therefore, dismiss the cross-objection of the assessee being not maintainable.

12. In the result, the appeal of the Revenue and the cross-objection of the assessee are hereby dismissed.

***Kolkata, the 2<sup>nd</sup> January, 2023.***

Sd/-

**[गिरीश अग्रवाल /Girish Agrawal]**

**लेखा सदस्य/Accountant Member**

Sd/-

**[संजय गर्ग /Sanjay Garg]**

**न्यायिक सदस्य/Judicial Member**

Dated: 02.01.2023.

RS

*Copy of the order forwarded to:*

1. DCIT, Circle-11(1), Kolkata

2. M/s Iris Health Services Ltd

3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches