

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 651/Kol/2020**  
**Assessment Year: 2012-13**

ITO, Ward-6(1), Kolkata	Vs.	Naina Distributors Pvt. Ltd. (PAN: AABCN 0414 D)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	15.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	04.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri Akkal Dudhwewala, A.R
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-7, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 21.09.2020 for the AY 2012-13.

2. The only issue raised by the revenue in the various grounds of appeal is against the deletion of addition of Rs. 4,67,50,000/- by the Ld. CIT(A) as made by the

AO on account of share capital and share premium by treating the same as unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 29.09.2012 declaring total income of Rs. 1,823/-. The case of the assessee was selected for scrutiny under CASS and statutory notice was duly issued and served upon the assessee. The case was selected for scrutiny for the reason of high premium. During the year, the assessee has issued equity shares of face value of Rs. 10/- at a premium of Rs. 490/- per equity share thereby raising a sum of Rs. 4,68,15,000/-. Accordingly the AO called upon the assessee to prove the genuineness of the transactions and also identity and creditworthiness of the shareholders. The AO also issued notice u/s 131 of the Act on 06.02.2015 to the directors of the assessee company calling upon them to produce managing directors of all the shareholding companies. The assessee filed evidences before the AO comprising names, addresses, PAN Nos. of the investors, bank statements, audited balance sheets etc. The AO also issued notice u/s 133(6) of the act to all the subscribers calling upon them to furnish following information:

*“i) Nature and purpose of transaction and copy of ledger accounts of the above mentioned assessee company as it appeared in your books of accounts for the period 01.04.2011 to 31.03.2012, if any.*

*ii) No. of shares applied for and allotted during the year along with detailed payment of share premium, if any.*

*iii) Sources of funds for payment of share application money along with copy of Bank statement reflecting such transaction, if any.*

*iv) Copy of Income Tax Return Acknowledgment along with audited accounts showing shares held in your company.*

*v) Copy of Form No. 18 as proof of address.”*

All the shareholders responded to the said notices and filed requisite information before the AO. However the AO made an addition of Rs. 4,68,15,000/- on the ground that the genuineness and creditworthiness of the investors could not be verified due to non-production of the managing directors of share subscribing companies in the order dated 15.03.2015 framed u/s 143(3) of the Act.

4. The Ld. CIT(A) allowed the appeal of the assessee by giving detailed finding starting from para 4.2 to 4.19 at page no. 19 to 35 in the appellate order. The Ld. CIT(A) while allowing the relief to the assessee has given comprehensive finding to the effect that the assessee has filed all the documents/evidences qua raising the share capital / share premium from ten shareholders/investors amounting to Rs. 4,67,50,000/- and even the AO has carried out independent investigation by calling for details/evidences from these investors by issuing notices u/s 133(6) which were duly responded by them by furnishing details as called for by the AO. The Ld. CIT(A) also noted that the bank statement of the assessee was also requisitioned by the AO for doing verification with the corresponding bank statements of the subscribers. The Ld. CIT(A) also noted that the addition was made by the AO mainly on the ground that the managing directors of the share holder companies were not produced by the directors of the assessee company in terms of summons issued u/s 131 of the Act to the directors of the assessee company. The Ld. CIT(A) also gave detailed findings of facts in respect of each of the share subscribers in para 4.6 discussing the amount of transaction by account payee cheques, the fact of the investors having filed their IT returns, the investors having sufficient capital and free reserves sufficient enough to cover the investments, corresponding entries appearing in the bank statements, the fact of non deposit of cash before the date of investment made and also the assessments framed u/s 143(3) of the Act in the case of each of the investors. Finally the Ld. CIT(A) ,after relying various decisions of various High Courts , deleted the addition on the ground that mere non-compliance to the summons u/s 131 of the Act cannot be a ground for making addition especially when the evidences were called for by issuing notices u/s 133(6) of the Act from the investors which were duly complied with by

these investors by filing all details. The Ld. CIT(A) while allowing the appeal of the assessee also distinguished the decision of Hon'ble Supreme Court in the case of Pr. CIT vs. NRA Iron & Steel Pvt. Ltd. in 412 ITR 161 by observing that in that case AO had made extensive enquiries and even that investor companies were non-existent and also investor companies have failed to furnish the bank statements proving the source for making investment in the assessee company. However in the present case, the Ld. CIT(A) noted that all these evidences were requisitioned by the AO by issuing notices u/s 133(6) of the act which were duly furnished by each of the investors. The Ld CIT(A) also noted that the assessee has discharged its onus by filing necessary evidences before the AO thereby proving the identity and creditworthiness of the investors and genuineness of the transactions but despite that the AO has not pinpointed any defects in evidences filed by the assessee as well as investors as to how these evidences failed the test of proving the identity and creditworthiness of the investors and genuineness of the transactions and thus allowed the appeal of the assessee by directing the AO to delete the addition.

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee has raised a share capital of Rs. 4,67,50,000/- by issuing equity share of face value of Rs.10/- at a premium of Rs. 490/- per share. We observe that during the assessment proceedings, the assessee has furnished all the details in support of share capital and share premium raised by the assessee beside the details of the investors vide written submissions dated 9.6.2014 filed in reply to notice dated 5.5.2014 issued u/s 142 of the Act. We note that the assessee has filed names, addresses PANs of the investors, copies of share allotment advice, copies of share application forms, bank statements, statement giving complete details of share application money received during the year, copy of Form 2 evidencing Return of Allotment and Copy of Form 5 for increase in Authorized capital. We also note that the AO has issued notice u/s 133(6) to all the investors on 11.06.2014 for carrying out independent verification of these transactions which were duly responded by these investors by filing all the requisite details comprising shares subscribed, ledger

accounts, bank statements, explanation for source of funds, ITRs and audited financial statements and also assessment order framed u/s 143(3) in all the cases. The copy of these which are also placed before us at page 15 to 340 in the PB. We also note that the AO has issued summon u/s 131 to the directors of the assessee company to produce managing directors of the share subscribing companies which were not complied with and this is the sole reason for making the addition in the hands of the assessee. The AO has not pointed out any defect or deficiency in the evidences filed by the assessee as well as by the investors. The Ld. CIT(A) has allowed the appeal of the assessee after taking into account all the above facts and has given a detailed findings of fact that AO has not pointed out any defect in the evidences by the assessee as well as by the share subscribers and mainly harped on the non-production of managing directors of the share subscriber companies to make the addition. The Ld. CIT(A) has noted that the assessee has discharged its onus by filing all the details and evidences which were the part of the record and therefore the addition made by the AO was wrong and ordered to be deleted. In view of these facts, we do not find any infirmity in the order of Ld. CIT(A) as the assessee has discharged its onus by filing all the details in the assessment proceedings. Moreover, the assessment framed u/s 143(3)/147/144 of the Act in all the cases of investors were also furnished before both the authorities below and copies of assessment order were also enclosed in the PB as stated hereinabove. Considering these facts, we do not find any infirmity in the order of Ld. CIT(A) which is otherwise a very reasoned and speaking order passed after discussing various factual details about each and every subscribers in para 4.6 such their source of investments, creditworthiness , etc. In our opinion, non-production of directors of the investors cannot be a ground for making addition in the hands of assessee u/s 68 of the Act when the other evidences relating to the raising share capital and also qua the share subscribers are available on record as furnished by the assessee and also the cross-verification done by the AO on the basis of notices issued u/s 133(6) as discussed above. The case of the assessee is squarely covered by the decisions of Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT(Supra) wherein it has held that where all the evidences were

filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

*“We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:*

*“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”*

The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:

“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon’ble Allahabad High Court as well as ITAT, Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.”

In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. The AO simply harped on the non production of managing directors of the share subscribing companies to make the addition which is not correct. The Id CIT(A) has passed a very reasoned and speaking order discussing all facts and satisfaction of all the ingredients of section 68 of the Act while allowing the relief as stated above. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

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

Order is pronounced in the open court on 4<sup>th</sup> January, 2023

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 4<sup>th</sup> January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-6(1), Kolkata
2. Respondent – M/s Naina Distributors Pvt. Ltd., 63, Radha Bazar Street, Kolkata-700001.
3. Ld. CIT(A)-7, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata