

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.589/Kol/2020
Assessment Year: 2012-13**

Income Tax Officer, Ward-13(1), Kolkata	Vs.	Godwad Traders Pvt. Ltd., 104/1, Ground Floor, Foreshore Road, Ramk- rishnapur- 711102, West Bengal. (PAN: AACCG5753H)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Anil Kochar, Advocate
Respondent by : Smt. Ranu Biswas, Addl. CIT, DR

Date of Hearing : 03.11.2022
Date of Pronouncement : 13.01.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-5, Kolkata vide Appeal No. 400/CIT(A)-5/Ward-13(2)/15-16 dated 16.09.2020 passed against the assessment order by ITO, Ward-13(2), Kolkata u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.03.2015.

2. Grounds raised by the assessee are reproduced as under:

“1. Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- made by the AO u/s. 68 on account of unexplained cash credit for non fulfilling the conditions thereof.

2. Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in restricting the estimated expenses to 10% inspite of non compliance of the assessee throughout the assessment proceedings.”

3. Brief facts of the case are that assessee filed its return of income reporting a total income of Rs.37,150/-. Case was selected for scrutiny through CASS for which statutory notices were issued and served on the assessee. Against the said notices, assessee through its Authorised Representative filed documents viz., ROC form 2, ROC Form 18, bank statement, copy of audited accounts and copy of ITR-V as noted by the AO in para 2(a). In the course of the assessment, Ld. AO noted that assessee has raised share capital for an amount of Rs. 2 Cr. by issuing shares of face value of Rs. 10/- each at a premium of Rs.90/- each. Ld. AO sought details and explanation on this amount of share capital of Rs. 2 Cr. from the assessee for which summon u/s. 131 of the Act was issued to the director of the assessee Shri Ranjan Kumar Das which could not be complied with. In the course of hearing, Ld. Counsel for the assessee brought the attention of the bench to the correct fact that the amount of share capital raised during the year is for an amount of Rs.1.60 Cr. and not Rs.2 Cr. as noted and added by the ld. AO. He referred to para 4.10 of the order of Ld. CIT(A) wherein this discrepancy in the fact has been noted which is reproduced as under:

“4.10. It is further submitted that in the course of the assessment proceedings, the subscriber of shares filed all the details, documents and evidences in respect of the subscription of shares and nothing adverse could be found therein. However, the addition of Rs.2,00,00,000/- has been made on account of share capital whereas share capital of Rs.1,60,00,000/- has been raised during the year. Such act of the AO seems to be merely based on the surmises & conjectures.”

3.1. To corroborate this fact, he referred to the notes forming part of the financial statement in note no. 1 placed at page 6 of the paper book wherein the shares issued during the year are noted as 1,60,000 amounting to Rs.1.60 Cr. The table from note no. 1 in this respect is extracted below:

Reconciliation of Number of Shares out standing at the beginning and at the end of the year.

Particulars	As at 31 March, 2012		As at 31 March, 2011	
	Number of shares	Amount	Number of shares	Amount
Issued, Subscribed and Fully Paid				
Shares out standing at the beginning of the year	1,434,700	14,347,000.00	1,434,700	14,347,000.00
Add : Shares issued during the year	160,000	1,600,000.00	-	-
Less : Shares bought back during the year				
Balance out standing at the end of the year	1,594,700	15,947,000.00	1,434,700	14,347,000.00

3.2. By taking this correct fact of Rs.1.60 Cr., as against Rs. 2 Cr. added by the Ld. AO, we deal with the ground raised by the revenue.

3.3. The details of share subscribing companies are tabulated as under:

Sl.	Name, Address & PAN of share applicants	No. of Shares allotted	Share Capital (Rs.)	Share Premium (Rs.)	Total (Rs.)
1.	M/s. Kinetic Vinimay Pvt Ltd, 34,C.R.Avenue Room No.M-5, Kolkata-700 012 PAN: AAECK4426H	20,000	2,00,000	18,00,000	20,00,000
2.	M/s. Shakti Suppliers (P) Ltd, 34, C R Avenue, Room No. M-5, Kolkata-700012. PAN: AAGCS8507H	20,000	2,00,000	18,00,000	20,00,000
3.	M/s Milky Nirman Pvt Ltd, 34, C R Avenue, Room No. M-05, Kolkata-700012. PAN: AAFCM3127O	30,000	3,00,000	27,00,000	30,00,000
4.	M/s. Bloom Enclave (P) Ltd, 34, C R Avenue, Room No. M-05, Kolkata-700012 PAN: AACCB6881H	30,000	3,00,000	27,00,000	30,00,000
5.	M/s. Indico Properties (P) Ltd, 34,Strand Road,Room No.4, Kolkata-700002 PAN: AACCI2120E	25,000	2,50,000	22,50,000	25,00,000
6.	M/s. Ritman Commodities (P) Ltd, 138 Cotton Street, Kolkata-700007. PAN: AAFCR7321D	35,000	3,50,000	31,50,000	35,00,000

3.4. Not convinced by the details and documentary evidence placed on record, Ld. AO by applying the test of human probability made the addition u/s. 68 of the Act. Aggrieved, assessee went in appeal before

the Ld. CIT(A), who after elaborately dealing with the facts of the case on all the three dimensions of section 68 of the Act in respect of identity and creditworthiness of the share subscribing companies and also the genuineness of the transactions, deleted the addition so made. Aggrieved, the revenue is now in appeal before the Tribunal.

4. Before us, Shri Anil Kochar, Advocate represented the assessee and Smt. Ranu Biswas, Addl. CIT, DR represented the department.

5. Ld. Counsel for the assessee submitted that to establish the identity and creditworthiness of the shareholders and genuineness of the transactions, assessee has submitted all the relevant details and documents in the course of assessment proceedings, details of which are tabulated in the order of Ld. CIT(A) in para 7.7 and is extracted below for the ease of reference:

Sl N.	Particulars of documents	Page No.
A	Submission to Appeal	1-23 ✓
B	Documents- M/s.Godwad Traders (P) Ltd.	
1.	Copy of ITR-V for the AY 2012-13	24 ✓
2.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	25-37
3.	Copy of Bank Statement for the period from 01-04-2011-31-03-2012	38-41

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4.	Copy of intimation for allotment of Equity Shares	42-47
5.	Copy of Form No.2 & Form No. 5 filed with ROC	48-55
6.	Copy of share certificates	56-61
7.	Copy of form-35,statement of facts and ground of appeal	62-70
8.	Copy of Assessment order passed u/s 144 for the AY 2012-13	71-78
9.	Copy of Trade Licence of the Company	79
10.	Copy of ledger for salary debited during the F Y 2011-12	80-85
11.	Copy of rent debited during F Y 2011-12	86-87
12	Copy of the P/L and Balance Sheet as at 31-03-2012 along with IT Acknowledgement for the A Y 2012-13 of all the directors of the companies who subscribed in the share capital of the assessee company	88-110
C	Documents- M/s. Kinetic Vinimay (P) Ltd(shareholder)	
1.	Copy of Share application form	111
2.	Copy of bank statement	112
3.	Copy of order dt.23.03.2015 u/s.143(3) for the AY 2012-13	113-117
4.	Copy of ITR-V (2012-13)	118
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	119-129
6.	Copy of I T Acknowledgements up to date(ITR-V)	130-136
7.	Copy of notice issued u/s 133(6) of the I T Act,1961	137
8.	Copy of reply submitted in response to notice u/s.133(6)	138
9	Copy of intimation order for the A Y 2019-20	139-143
D	Documents: M/s. Shakti Suppliers (P) Ltd(Shareholder)	
1.	Copy of Share application form	144
2.	Copy of bank statement	145
3.	Copy of ITR-V for the AY 2012-13	146
4.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 12-13	147-151
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	152-162
6.	Copy of I T Acknowledgements up to date(ITR-V)	163-169
7.	Copy of notice issued u/s 133(6) of the I T Act,1961	170
8.	Copy of reply submitted in response to notice u/s.133(6)	171
9.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 19-20	172-176
E	Documents: M/s. Milky Nirman (P) Ltd(Shareholder)	
1.	Copy of Share application form	177
2.	Copy of bank statement	178
3.	Copy of ITR-V for the A Y 2012-13	179
4.	Copy of order dt.23.03.2015 u/s.143(3) for the AY 2012-13	180-184
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	185-195
6.	Copy of I T Acknowledgements up to date(ITR-V)	196-202
7.	Copy of notice issued u/s 133(6) of the I T Act,1961	203
8.	Copy of reply submitted in response to notice u/s.133(6)	204
9.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 19-20	205-209
F	Documents: M/s. Bloom Enclave (P) Ltd(Shareholder)	
1.	Copy of Share application form	210
2.	Copy of bank statement	211
3.	Copy of ITR-V for the A Y 2012-13	212
4.	Order passed u/s.143(3) for the AY 2012-13	213-215
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	216-226

6.	Copy of I T Acknowledgements up to date(ITR-V)	227-233
7.	Copy of notice issued u/s 133(6) of the I T Act,1961	234
8..	Copy of reply submitted in response to notice u/s.133(6)	235
9.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 19-20	236-240
G	Documents: M/s. Indigo Properties (P) Ltd (Shareholder)	
1.	Copy of Share application form	241
2.	Copy of bank statement	242
3.	Copy of ITR-V for the A Y 2012-13	243
4.	Order u/s.143(3)/147 for the AY 2012-13	244
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	245-255
6.	Copy of I T Acknowledgement up to date (ITR-V)	256-262
7.	Copy of reply submitted in response to notice u/s.133(6)	263
8.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 19-20	264-268
H	Documents: M/s. Ritman Commodities (P) Ltd	
1.	Copy of Share application form	269
2.	Copy of bank statement	270
3.	Copy of ITR-V for the A Y 2012-13	271
4.	Order u/s.143(3)for the AY 2012-13	272-278
5.	Audited Balance Sheet & Profit/Loss Account for the year ended 31.03.2012	279-286
6.	Copy of I T Acknowledgement up to date (ITR-V)	287-293
7.	Copy of intimation u/s 143(1) of the I T Act,1961 for A Y 19-20	294-298

5.1. Ld. Counsel reiterated that the share subscribing companies are body corporate, registered with ROC and are assessed to income tax for the last several years. He further stated that these subscribing companies had confirmed the transactions, filed relevant papers and documents and also explained the source of funds. He thus, emphasized that assessee had discharged its primary onus casted upon it u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. AO to disprove the material placed before him. Without doing so, the addition made by the Ld. AO is based on conjectures and surmises and, therefore, cannot be sustained.

5.2. Ld. Counsel also emphasized on the fact that in addition to other evidence, assessee has submitted letter from the subscribers, confirming the investment made in the share capital of the assessee. He submitted that when a confirmation letter is submitted, it cannot be ignored. The confirmations made in the confirmation letter are to

be *prima facie* considered as correct unless evidence is brought on record to falsify the claim made therein. According to him, even in the submissions including ITRs, audit reports, share application details etc. as listed above, the Ld. AO has not found fault in any of the details submitted and simply proceeded to make addition in respect of the amount of share capital and premium.

5.3. On the three basic ingredients for any cash credit viz., identity, creditworthiness of the subscribers and the genuineness of the transactions, Ld. Counsel submitted that all of these are fulfilled. In this respect he submitted as under:

(i) On identity : - All the shareholders are regular income tax assesseees and have filed their income tax returns. Out of six shareholders, in five cases except M/s. Shakti Suppliers Pvt. Ltd., income tax assessments were made u/s. 143(3) of the Act by the department, copy of the assessment orders for these five shareholders are placed on record in the paper book. In the case of M/s. Shakti Suppliers Pvt. Ltd., its return was processed u/s. 143(1) of the Act. Ld. Counsel thus emphasized that identity of all the six share subscribers is well established and cannot be doubted. Further, he submitted that these subscribers are body corporate registered under the Companies Act, 1956.

ii) On creditworthiness: To establish the creditworthiness of the six subscribers, details relating to source of fund in the hands of these shareholders were furnished along with their respective bank statements and audited financial statements. The details of source of fund furnished by the assessee are reproduced in the table below:

Name of the shareholders	Source of fund
M/s. Kinetic Vinimay Pvt Ltd	Amount received from Bachat Credit Pvt Ltd against sale of shares of Rs.25,00,000/- .Copy of bank-statement enclosed.
M/s. Shakti Suppliers (P) Ltd	Amount received from Bachat Credit Pvt Ltd against sale of shares of Rs.20,00,000/- .Copy of bank statement enclosed.
M/s. Milky Nirman Pvt Ltd	Amount received from Bachat Credit Pvt Ltd against sale of shares of Rs.30,00,000/- .Copy of bank statement enclosed.
M/s. Bloom Enclave (P) Ltd ,	Amount received from Deserve Merchants Pvt Ltd of Rs.30,00,000/-Copy of bank statement enclosed.
M/s. Indico Properties (P) Ltd	Amount Received from Hi Rise Mercantile P Ltd for as share application money of Rs.25,00,000/- .Copy of bank statement enclosed in this regard.
M/s. Ritman Commodities (P) Ltd	Share application money received of Rs. 50,00,000/- from M/s Parakram S Private Limited. Copy of bank statement enclosed in this regard.

It was thus, submitted that the above table unequivocally testifies and proves that the subscribers had sufficient fund for making investment in the share capital of the assessee.

iii) On genuineness of the transaction: It was submitted that the amounts were invested by the subscribers through proper banking channel which is duly reflected in the respective financial statements of the subscribers. Since the investments reflected in their respective financial statements and the source of such investments by them in the assessee has been accepted by the department in their respective assessments, already referred above, are thus genuine and transaction cannot be doubted.

6. Per contra, Ld. Sr. DR placed reliance on the order of the Ld. AO.

7. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the elaborate observations and findings given by the Ld. CIT(A) while giving relief to the assessee. At the outset, we note that notices u/s. 133(6) of the Act were issued by the Ld. AO to all the six subscribers, who had replied giving all the details and documents required by the Ld. AO along with confirming the transaction of they making investment in the share capital of the assessee. We also take note of the undisputed fact of assessments made by the department for five share subscribers out of six as noted above, which establishes the identity, creditworthiness of the share subscribers and the genuineness of the transactions.

7.1. From the perusal of the paper book and the documents placed therein, it is vivid that all the share applicants are (i) income tax assesseees, (ii) they are filing their income tax returns, (iii) share application form and allotment letter is available on record, (iv) share application money was made by account payee cheques, (v) details of the bank accounts belonging to share applicants and their bank statements, (vi) in none of the transactions there are any deposit of cash before issuing cheques to the assessee, (vii) all the share applicants are having substantial creditworthiness represented by their capital and reserves.

7.2 From the perusal of the order of Ld. CIT(A) in para 4.6, the findings arrived at by the Ld. AO have been distinguished in the light of decision in the case of Pr. CIT Vs. NRA Iron & Steel Pvt. Ltd. in Civil Appeal No. 2463 of 2019 (arising out of SLP (Civil) No. 29855 of 2018 dated 05.03.2019, which is tabulated as under:

AO's finding	Assessee's submission
Summons issued to the assessee company was not complied	The Director of the assessee appeared before the AO in response to the summons issued u/s. 131 but recording of his statement has been denied and also told he has already formed his opinion.
There was no clarification as to whether the due diligence was made by the subscribing companies, there was no arrangement for the protection of fund and there was no reason for the investment in the company having little track record.	The directors of the share subscribing companies are known to the directors of the assessee. As funds were required by the assessee company for the expansion of business the subscribers made investments. In a private limited company such powers are embedded in the board of directors and the board always take the decisions which are in favour of the stakeholders of the company.
There is no justification of premium	The shares were issued at premium to minimize the ROC fees. Moreover, it is prerogative of the company to decide the premium amount and wisdom of the shares holders whether they want to purchase the shares at that premium. The revenue authorities cannot question the decision of the company of such premium unless there is a provision in Income Tax Act, 1961.
Identity of creditors could not be established	The subscribers are body corporate, registered under the Companies Act, 1956 & being assessed to Income tax for the last several years. For the year under consideration, all most of the shareholders were assessed u/s. 143(3) of the I. T. Act, 1961. Only in case of shareholder M/s. Shakti Suppliers Pvt. Ltd., the company was assessed u/s. 143(1) of the Income Tax Act, 1961. Further, the notices issued u/s. 133(6) to the share subscribing companies were served and they replied to the AO confirming the transactions and disclosing the source of funds. The relevant documents were also filed. The fact of reply to the notices issued u/s. 133(6) of the I. T. Act, 1961 is also mentioned in the assessment order of the appellant. There is no finding that the subscribers were not found at the given address or the notices returned unserved.
The onus of proving credits in the books of account lies on the assessee and such proof consists of the identity & capacity	The assessee furnished name, Address & PAN of the subscribers, details of the share application money received and

<p>of the subscribers and genuineness of transactions. The assessee failed to file all the relevant details regarding the receipt of share capital and the directors did not appear to depose.</p>	<p>number of shares allotted . Copies of the return of income, audited financial statement, bank statement and confirmation of the shareholders explaining the source of fund and nature of receipts. Copy of return of allotment filed with ROC. Even the affairs were already been scrutinised by their jurisdictional AO and orders were passed u/s. 143(3) of the I T. Act, 1961 substantiating the sources as well as genuineness of the shareholders.</p>
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7.3. We also take note of the elaborate and well reasoned findings and decisions arrived at by the Ld. CIT(A) by taking into consideration all the details and documents placed on record. The relevant findings and decisions are extracted as under:

“5.1 I have reconciled the submission of the appellant. Having gone through the material on record, I have observed that the subscribers are body corporate, registered under Companies Act,1956 and being assessed to income tax for several years. Hence it is observed that in the instant case, the entire details that is PAN, Bank statements, audited financial statements and income tax return filing acknowledgment of the subscribers were furnished by the appellant. The subscribers are body corporate, registered with the ROC and assessed to the income tax for the last several years .In the course of the assessment proceedings, the subscribers confirmed the transactions, filed relevant details/documents and explained the 'source of fund. Thus the applicant discharged the primary onus cast upon it to prove the identity, creditworthiness of the subscribers of the equity shares and genuineness of the transactions.

5.2 It is further observed that in the course of the assessment proceedings, the subscribes of the share filed all the details, documents and evidences in respect of the subscription of shares and nothing adverse could be found therein. However, the addition of the share capital raised during the year of RS.2,00,00,000/-was made merely based on the surmises and conjectures of the AO where as there was only Rs. 1,60,00,000/- were raised through share capital during the year.

5.3 The appellant also relied on various case laws while filing submissions along with the documentary evidences. In view of the above facts and circumstances the case of the judicial pronouncements discussed in the preceding paragraphs, it is apparent-that there is no doubt over the identity and creditworthiness of the subscribers of the shares and also the genuineness of the transactions as the share application money was paid/received through the banking channel and the same is duly accounted for in the books of the shareholder as well as the appellant company. The AO failed to appreciate that once the Identity of the shareholder is established and the genuineness of the transaction is proved-the sum so paid towards the

subscription of shares can't be held to be unexplained and based on mere surmise and conjecture, made addition of the share capital raised of Rs. 2,00,00,000/- by the appellant. Such action of the AO is unjustified.

5.4 It is observed that the appellant discharged the primary onus cast upon it by establishing the identity of the subscriber of the equity shares, the genuineness of the transaction and the source from which the money came, but the AO miserably failed to prove that the subscriber of the equity shares did not have the creditworthiness or the transactions were not genuine.

5.5 Moreover, it is not in dispute that in addition to the other evidences, the appellant, in the course of assessment proceedings, submitted a letter-Trail the subscriber confirming the investments made in the appellant company. The averments made in the confirmation letters prima facie are to be considered to be correct unless evidence is brought on record to falsify the claim made therein.

5.6. In light of the above discussions and based on the facts of the case and submissions made by the appellant, the ground of the appellant against the addition of Rs.2,00,00,000/- made by the AO considering the same to be unexplained cash credit u/s. 68 of the Act is hereby deleted. This ground of appeal is allowed.”

7.4. Before concluding to give our finding, we place reliance on the following judicial precedents to buttress our observations and conclusions :

i) The decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *CIT v. Dataware Pvt. Ltd. in ITAT No. 263 of 2011 dated 21.09.2011* wherein Hon'ble jurisdictional High Court held that

“After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness” of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.”

ii) Decision of Hon'ble jurisdiction High Court of Calcutta in the case of *CIT Vs. Sagun Commercial P. Ltd. (ITA No. 54 of 2001 dated 17.02.2011)* wherein it was held as under:

“After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the

Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion.

We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income-tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed."

iii) Decision of Hon'ble Madras High Court in the case of *CIT v. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Mad)* wherein it was held as under:

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/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". 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 could not be faulted. No substantial question of law was involved in the appeal."

iv) Decision of Hon'ble Madras High Court in the case of *Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad)* is also referred wherein it was held as under:

"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."

7.5. In the course of assessment proceeding, Ld. AO directed the assessee to produce the director of the assessee and also the directors of the subscriber companies along with relevant documentary evidence and details which was not complied with. Ld. Counsel submitted that mere non-appearance of directors is no basis for invoking provisions of section 68 of the act for which he placed reliance on the decision of Hon'ble Supreme Court in the case of *CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)* wherein it was held as under:

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.

The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”

7.6. Considering the facts and circumstances narrated and analysed above, all the details and documents placed on record corroborating the claim of the assessee, the judicial precedents referred above and detailed and exhaustive exercise undertaken by the Ld. CIT(A), we unhesitatingly uphold the order of Ld. CIT(A) without any interference. Accordingly, the addition made by the Ld. AO towards share capital of Rs.1.60 Cr. is directed to be deleted. Thus, grounds taken by the revenue in this regard are dismissed.

8. Now delving upon ground no. 2 in respect of disallowance of expenses on estimate basis, Ld. CIT(A) has restricted the disallowance of Rs.25,69,418/- made by the Ld. AO on an estimate basis to the tune of 10% by observing the following:

“5.7 For that the A.O. has disallowed expenditure debited in the profit and loss account on account of employee benefit to the tune of Rs. 14,45,870/- and other expenses debited of Rs.11,23,548/- except bank charges of Rs.1,169/-, audit fees Rs.3,500/- and filing fees Rs.1,500/- arbitrary without any basis without any reason assigning to it. The accounts of the company were well audited by a qualified Chartered Accountant. The Auditor of the company verified each and every detail of the expenses while auditing and reported accordingly. The copy of audited profit and loss account was well submitted at the good office of the AO, even if without quoting any reason, he disallowed these expenditures Several cases has been decided by law of lands that disallowance made arbitrary without any strong contention, without backing the reason for the same shall be unlawful and prejudicial to the interest of the assessee. Several cases have been decided by many court of law that disallowance made on estimation basis without backing the reason for the same shall be unlawful and prejudicial to the interest of the assessee.

5.8 Considering the facts of the case and the relevant submissions by the appellant and taking reference of the case laws decided, I disallow the expenditures to the tune of 10% [Rs.2,56,942/-] (10% of Rs.25,69,418/-). This ground of appeal is partly allowed.”

8.1. The finding given by the Ld. CIT(A) as reproduced above, to our mind, does not call for any interference. Accordingly, the ground taken by the revenue in this respect is dismissed.

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

Order pronounced in the open court on 13th January, 2023.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 13th January, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-5, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata