

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH  
KOLKATA**

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

**ITA No.458/Kol/2021  
Assessment Year: 2012-13**

PSD Infra Projects Pvt. Ltd. Block-2, “Lemon Fresh”, 2 <sup>nd</sup> floor, 29/1, Kalabagan Lane, Howrah-711104, West Bengal. (PAN: AAGCP3406Q)	Vs.	Income Tax Officer, Ward-13(3) Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>

**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 assessee is against the order of Ld. CIT(A)-5, Kolkata vide Appeal No. 86/CIT(A)-5/Wd-13(3)/15-16/Kol dated 23.08.2019 passed against the assessment order by ITO, Ward-13(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.03.2015.

2. Assessee has raised as many as six grounds of appeal, all of which relate to addition of Rs.1,11,00,000/- as unexplained cash credit u/s. 68 of the Act towards share capital and share premium. For the sake of brevity, grounds of appeal are not reproduced.

3. Brief facts of the case are that assessee filed its return on 28.09.2012, reporting total income at Rs.2,804/-. Case was selected for scrutiny through CASS for which statutory notices were issued and served on the assessee. In the course of assessment proceeding, Ld. AO noted from the audited accounts of the assessee that it has issued share capital amounting to Rs.1,25,00,000/- for shares with a face value of Re. 1/- each and share premium of Rs.49/- each. Out of total amount of Rs.1,25,00,000/-, assessee had issued shares totalling to 2,22,000 shares for Rs. 1,11,00,000/- to the following three companies, details of which is tabulated as under:

Sl.	Name of the allottee	No. of shares	Amount Rs.	Return Income
1.	Sree Sati Finvest Pvt. Ltd.	62000	31,00,000/-	Rs.35,004/-
2.	Emery Tie Up Pvt. Ltd.	40000	20,00,000/-	Rs.36,021/-
3.	Vista Vision Pvt. Ltd.	120000	60,00,000/-	Rs.43,878/-

3.1. Ld. AO issued notice u/s. 133(6) of the Act to the above three companies. He also issued summon u/s. 131 to the director of the assessee for his personal attendance and also directed to produce the directors of the three allottee companies along with relevant documentary evidence and details. None appeared in person in response to notice u/s. 133(6) of the Act and summon issued u/s. 131 of the Act. By applying the test of human probability, Ld. AO made the addition of Rs.1,11,00,000/- u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed this addition. Aggrieved, assessee 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 all the relevant details and evidence to explain the identity, creditworthiness and

genuineness of the transactions were placed on record and the assessee had fully discharged its initial burden casted u/s. 68 of the Act. Ld. Counsel stated that the nature of these receipts is towards share capital and share premium which is by cheques from allottee companies who are income tax assessees. He further stated that assessee has explained the source and nature of receipts of fund and has brought on record all the documentary evidence in this respect. Ld. Counsel referred to a chart placed in the paper book, giving details of share application money received in the assessment year which is reproduced as under:

**PSD Infra Projects Pvt. Ltd.**  
**Asstt Year: 2012-13**

NAME OF SUBSCRIBER CO.	DATE OF INC.	SHARE CAP. & PREMIUM	NO OF SHARES ALLOTTED	ITR FILED ON	GROSS INCOME	AMOUNT OF TDS	SHARE CAP INCL. SHARE PREMIUM	TOTAL INV. IN SHARE
SHREE SATI FINVEST PVT. LTD.	27/11/1996	31 LAKHS	62000	29/9/12	2.47 CRORE	11,63,312	20.90 CR	5.11CR
EMERY TIE UP PVT. LTD.	8/9/1995	20 LAKH	40000	9/9/12	11.11 CRORE	4,24,491	13.05 CR	6.69CR
VISTA VISION PVT. LTD.	26/9/1991	60 LAKH	120000	30/11/12	0.45 CRORE	45477	19.26 CR	15.80 CR

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*H.E.*

6. Ld. Counsel also referred to various documents and details furnished in respect of each of the investing companies, all of which are placed in the paper book. He referred to document set of one such company to demonstrate detailed documents furnished to establish identity and creditworthiness of the investing companies and the genuineness of the transaction. The documents furnished in respect of each of the investing companies are as under:

<u>(A) M/s. Shree Sati Finvest Pvt. Ltd.</u>	<u>Paper Book Page Nos.</u>
<i>i. Share application &amp; allotment</i>	16 to 19
<i>ii. Company Master Data</i>	20 to 22
<i>iii. ROC Form No. 2</i>	23 to 28
<i>iv. Statement of audited accounts</i>	29 to 42
<i>v. Return Acknowledgment for AY 2012-13</i>	43
<i>vi. Bank Statement</i>	44 to 45
<u>(B) M/s. Emery Tie Up Pvt. Ltd.</u>	
<i>i. Share application &amp; allotment</i>	46 to 48
<i>ii. Company Master Data</i>	49
<i>iii. ROC Form No. 2</i>	50 to 54
<i>iv. Statement of audited accounts</i>	55 to 56
<i>v. Return Acknowledgment for AY 2012-13</i>	67
<i>vi. Bank Statement</i>	68
<u>(C) M/s. Vista Vision Pvt. Ltd.</u>	
<i>i. Share application &amp; allotment</i>	69 to 71
<i>ii. Company Master Data</i>	72
<i>iii. ROC Form No. 2</i>	73 to 77
<i>iv. Statement of audited accounts</i>	78 to 91
<i>v. Return Acknowledgment for AY 2012-13</i>	92
<i>vi. Copy of Bank Statement</i>	93 to 94

7. Ld. Counsel further submitted that Ld. AO in his order has concluded merely on the basis of non-production/attendance of the director of the assessee and share subscribers in the assessment

proceedings and without finding any fault or deficiency with the exhaustive material placed on record. He also submitted that though none attended to the summon issued u/s 131 of the Act, all the details and documents were placed on record which have not been controverted by the authorities below in any manner, whatsoever. As per him, since ld. AO was not impressed with these submissions and resorted to making addition of the entire share application money along with share premium, totalling to Rs.111 lacs, on the sole ground that compliance u/s. 131 & 133(6) of the Act by the directors of the assessee and share applicant companies was not done by way of their personal appearance.

7.1 He also referred to the copies of bank accounts of the respective share applicant companies to demonstrate the genuineness of the transaction so also their audited financial statements wherein these investment transactions have been duly recorded and reflected. He thus, strongly submitted that Ld. AO had not brought anything contrary to undisputable facts and has merely acted on whims and fancies.

7.2. To buttress his submissions, Ld. Counsel placed reliance on 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.”*

7.3. He placed further reliance on the 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.”*

7.4. Reliance was also placed on the 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.”*

7.5. 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."*

8. It was also submitted that audited Balance Sheet of each of the share applicant companies reflected the amount of investment made by them in the assessee as against their respective net worth for which he also referred to the chart extracted above. He thus, contended that Ld. AO has made the addition with a predetermined mind set. Further, according to him, they are all registered companies under the Companies Act, 1956 and are active companies on the MCA portal.

9. Ld. Counsel also 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.”*

9.1. Ld. Counsel submitted that instead of pointing out any defect or discrepancy in the evidence and the details furnished by the assessee, Ld. AO proceeded to take adverse inference only on the ground that the directors of the subscriber companies and the assessee did not appear personally before him. In this respect he placed reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *Crystal Networks Pvt. Ltd. v. CIT in ITA 158 of 2002 dated 29.07.2010*.

9.2. Ld. Counsel has also relied upon the decision of the Coordinate Kolkata Bench of the Tribunal in the case of *Satyam Smertex Pvt. Ltd. vs. DCIT, in ITA No.2445/Ko1/2019* vide order dated 29.05.2020, wherein the coordinate bench of the tribunal, while further relying upon the decision of the Hon'ble Allahabad High Court in the case of *CIT Vs. Raj Kumar Agarwal* vide *ITA No.179/2008* dated 17.11.2009 has held that non production of the director of the company, which is regularly assessed to income Tax having PAN, on ground that the identity of the subscriber is not proved, cannot be sustained.

10. Per contra, ld. Sr. DR placed reliance on the order of the authorities below and submitted that assessee's own income has been infused in the guise of share capital through the allottee companies by layering the transactions to make appear a non-genuine transaction as a genuine one.

11. We have heard the rival contentions and gone through the material placed on record. We note that Ld. AO without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office and also as to get further investigation was needed by him by way of recording of statement of the directors of the assessee and the subscriber companies. We draw our force from the decision of the Hon'ble Bombay High court in the case of *PCIT v. Paradise Inland Shipping Pvt. Ltd.* [2017] 84 taxmann.com 58 (Pan) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *Crystal Network Pvt. Ltd. v. CIT (supra)* which held as under:

*"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 CIT(Appeals) 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 produce of the assessee or not. When it was found by the CIT (Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."*

11.1. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee of the share subscribing companies. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has simply added the amount of share capital and share premium on the ground that assessee has not produced the directors/shareholders. Thus, going by the records placed by the assessee of all the share subscribing companies, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement and chart extracted above that all the investing companies have sufficient own funds available with them to make investment in the assessee.

11.2. A perusal of the impugned order of the Ld. CIT(A) shows that the Ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details

furnished by the assessee but simply cited certain case laws even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the Ld. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

12. 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.

13. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies and the genuineness of the transactions towards sum of Rs.111 lacs received during the impugned year. Accordingly, considering these facts and in the light of the judicial precedence referred above, we set aside the order of the ld. CIT(A) and direct the ld. AO to delete the addition made towards share

capital and share premium u/s. 68 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

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

Sd/-

(Sonjoy Sarma)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 13<sup>th</sup> 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