

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

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

**ITA No.351/Kol/2019
Assessment Year: 2012-13**

Manju Credit Pvt. Ltd. 48/1, Ved Apartment, 4 th Floor, Flat No. 405, Rose Mary Lane, Howrah-711101 (PAN: AACCM0947K)	Vs.	Income Tax Officer Ward-13(3) Kolkata
(Appellant)		(Respondent)

Present for:

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

Date of Hearing : 02.11.2022
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. 132/CIT(A)-5/Wd-13(23)/15-16/Kol dated 14.03.2018 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 the following three grounds:

“1. For that Ld. CIT(A) erred in sustaining the addition of Rs.2,30,00,000/- consisting of Rs.46,00,000/- as share capital and Rs.1,84,00,000/- as share premium under section 68 of the Act.

2. For that Ld. CIT(A) ought to have appreciated that assessment order passed by the Ld. AO lacked application of mind and hence, was bad in law.

3. For that Ld. AO ought to have held that out of Rs.230 lacs, a sum of Rs.110 lacs was received in preceding year and hence, cannot be added u/s. 68 in the year under appeal.”

3. Brief facts of the case are that assessee filed its return on 28.09.2012, reporting total income at Rs.2,06,404/-. Case was selected for scrutiny through CASS for which statutory notices were issued and served on the assessee. In the assessment proceeding, Ld. AO noted that assessee had introduced Rs.230 lacs in the form of share capital including share premium for which it has issued 4,60,000 shares at a face value of Rs.10/- each with a premium of Rs.40/- each to eighteen different share subscribing companies. Ld. AO in the course of assessment proceedings directed the assessee to produce the director of the assessee and also the directors of the allottee companies along with relevant documentary evidence and details. By applying the test of human probability, ld. AO made an addition of Rs.230 lacs u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A) who confirmed this addition made by the Ld. AO. Aggrieved, assessee is now in appeal before the Tribunal.

4. Shri Anil Kochar, Advocate represented the assessee and Smt. Ranu Biswas, Addl. CIT represented the revenue.

5. At the outset, ld. Counsel for the assessee submitted that out of Rs.230 lacs, an amount of Rs.118.50 lacs is received by the assessee in the preceding accounting year relevant to AY 2011-12 as share application money. No allotment was made in that year for receipt of these funds which was reported in the audited balance sheet as on 31.03.2011 as “share application money pending allotment”. In the impugned assessment year i.e. AY 2012-13, assessee received fresh funds towards share capital and share premium of Rs.121.50 lacs. In the impugned AY 2012-13, shares were allotted to eighteen different

allottee companies towards share application money of Rs.118.50 lacs received in the preceding year and Rs.121.50 lacs received during the impugned year, totalling to an amount of Rs.230 lacs. Ld. Counsel also pointed the fact that out of the total receipt of Rs.118.50 lacs in the immediately preceding year, one share applicant namely, JDL Investment Consultants Pvt. Ltd. who had contributed Rs.10 lacs, took back its investment and which was refunded by the assessee. He thus, contended that since the amount of Rs.118.50 lacs has not been received in the accounting year relevant to AY 2012-13, Ld. AO has wrongly treated it as unexplained cash credit received during the year for the purpose of making addition u/s 68 of the Act. According to him, the addition made in this respect is bad in law and is ought to be deleted.

5.1. In respect of the balance of Rs.121.50 lacs received during the impugned year, Ld. Counsel 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 two financial years, relevant to AY 2011-12 and AY 2012-13, which is reproduced as under:

MANJU CREDIT PVT. LTD.

CIN : U67120WB1996PTC077153
 48/1 ROSE MARY LANE
 4TH FLOOR, FLAT NO.405
 HOWRAH - 711 101

Details of Share Application Money Received during F.Y.2010-2011 and F.Y.2011-2012 relating to A.Y.2011-12 and 2012-13

Sl.No.	Name	F.Y.2010-11	F.Y.2011-12	Total	Allotted on 19.09.2011	Allotted on 31.03.2012	Refunded	Total Allotted
1	Damodar Sales Pvt. Ltd.	10,00,000.00	-	10,00,000.00	10,00,000.00	-	-	10,00,000.00
2	Diwansh Enclave Pvt. Ltd.	14,00,000.00	-	14,00,000.00	14,00,000.00	-	-	14,00,000.00
3	JDL Investment Consultants Pvt. Ltd.	10,00,000.00	-	10,00,000.00	-	-	10,00,000.00	-
4	Maa Ambay Tradelink Pvt. Ltd	10,00,000.00	-	10,00,000.00	10,00,000.00	-	-	10,00,000.00
5	Marutinandan Commodities Pvt. Ltd.	3,00,000.00	10,00,000.00	13,00,000.00	3,00,000.00	10,00,000.00	-	13,00,000.00
6	Prospect Tie-Up Pvt. Ltd.	11,00,000.00	-	11,00,000.00	11,00,000.00	-	-	11,00,000.00
7	Sankatmochan Properties Pvt. Ltd.	26,50,000.00	-	26,50,000.00	26,50,000.00	-	-	26,50,000.00
8	Vaikunth Vintrade Pvt. Ltd.	19,00,000.00	-	19,00,000.00	19,00,000.00	-	-	19,00,000.00
9	Vighanharan Vyapaar Pvt. Ltd.	5,00,000.00	12,00,000.00	17,00,000.00	5,00,000.00	12,00,000.00	-	17,00,000.00
10	Vigneshwara Dealmark Pvt. Ltd.	10,00,000.00	10,00,000.00	20,00,000.00	10,00,000.00	10,00,000.00	-	20,00,000.00
11	Chandrachur Vanijya Pvt. Ltd.	-	10,00,000.00	10,00,000.00	10,00,000.00	-	-	10,00,000.00
12	Diyabhanu Mercantile Pvt. Ltd.	-	13,00,000.00	13,00,000.00	-	13,00,000.00	-	13,00,000.00
13	Jaguar Housing Private Limited	-	50,000.00	50,000.00	-	50,000.00	-	50,000.00
14	Mukesh Lifestyle Pvt. Ltd.	-	6,50,000.00	6,50,000.00	-	6,50,000.00	-	6,50,000.00
15	Neelkunj Commercial Pvt. Ltd.	-	10,00,000.00	10,00,000.00	-	10,00,000.00	-	10,00,000.00
16	Pashupati Dealcom Pvt.Ltd.	-	34,50,000.00	34,50,000.00	-	34,50,000.00	-	34,50,000.00
17	Reward Mercantile Pvt. Ltd.	-	10,00,000.00	10,00,000.00	-	10,00,000.00	-	10,00,000.00
18	Sanskriti Housing Pvt. Ltd.	-	5,00,000.00	5,00,000.00	-	5,00,000.00	-	5,00,000.00
		1,18,50,000.00	1,21,50,000.00	2,40,00,000.00	1,08,50,000.00	1,21,50,000.00	10,00,000.00	2,30,00,000.00

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 company and the genuineness of the transaction. The documents furnished in respect of each of the investing companies are listed as under:

- (i) Copy of share application,
- (ii) Allotment of share certificate,
- (iii) Copy of Form 2 filed with ROC,
- (iv) Audit report and audited financial statement for AY 2012-13,
- (v) Copy of ITR Acknowledgment for AY 2012-13,
- (vi) Copy of bank statement reflecting the transaction undertaken with the assessee.

7. Ld. Counsel further submitted that the observations made by the Ld. CIT(A) that Ld. AO has arrived at conclusions after empirical analysis of the balance sheet of the assessee and the share subscribers is grossly incorrect devoid of merit. He stated 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 which required personal attendance of director of the assessee as well as the directors of the share subscribers companies, 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.230 lacs on the sole ground that compliance u/s. 131 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 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 on record 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. 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 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 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*.

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. Admittedly, it is a fact on record that out of the total amount of Rs.230 lacs, Rs.118.50 was received by the assessee in the preceding year which was duly accounted and reported in its audited balance sheet as on 31.03.2011 as "*Share application money pending allotment*". The same is extracted below for ease of reference:

MANJU CREDIT PRIVATE LIMITED 48/1 ROSE MARY LANE, 4TH FLOOR FLAT NO : 405, HOWRAH-711 101 BALANCE SHEET AT 31ST MARCH 2012			
Particulars	Note No.	2012 (₹)	2011 (₹)
EQUITY LIABILITIES			
Shareholder's Fund			
(a) Share Capital	1	7,480,000.00	2,880,000.00
(b) Reserves and Surplus	2	20,354,628.22	1,812,003.22
Share Application Money Pending Allotment		-	11,850,000.00
Current Liabilities			
(a) Trade Payables	3	-	100,000.00
(b) Other Current Liabilities	4	11,676.00	15,176.00
(c) Short-Term Provisions	5	123,349.00	59,953.00
Total Equity & Liabilities		27,969,653.22	16,717,132.22
ASSETS			
Non-Current Assets			
(a) Other Non-Current Assets	6	42,000.00	8,000.00
Current Assets			
(a) Inventories	7	9,722,340.00	6,862,340.00
(b) Trade Receivables	8	345,000.00	1,020,000.00
(c) Cash and Cash equivalents	9	883,609.22	340,900.22
(d) Short-Term Loans and Advances	10	16,976,704.00	8,485,892.00
Total Assets		27,969,653.22	16,717,132.22
NOTES TO ACCOUNTS	19		
<p>The accompanying notes referred to above form an integral part of the Financial Statements. This is the Balance Sheet referred to in our report of even date.</p> <p>For AGARWAL & ASSOCIATES Chartered Accountants</p> <p style="text-align: center;">For and on Behalf of the Board of Directors</p> <p>(RAJ KUMAR AGARWAL) Partner Membership No.052130 F.R.No.353210E</p> <p style="text-align: center;">SANJAY KUMAR BIYALA DIRECTOR</p> <p style="text-align: right;">मंजु बिपाला MANJU BIYALA DIRECTOR</p> <p>Place : Kolkata Dated : 17/8/12</p>			

11.1. Out of this amount of Rs.118.50 lacs received in the preceding year, Rs.10 lacs was returned by the assessee. Shares have been issued and allotted to all the eighteen share subscribing companies on two different dates during the impugned year as per the chart extracted above. We note that ld. AO has made the addition of entire amount of Rs.230 lacs as received during the year, ignoring the verifiable fact that out of this total of Rs.230 lacs, an amount of Rs.118.50 lacs was received during the preceding year. Considering the facts on record and the provisions of section 68 of the Act, no addition is called for in respect of amount received by the assessee during the preceding year which has been duly accounted and reported in its audited balance sheet (*supra*). We direct the ld. AO accordingly to delete the addition so made in this respect.

11.2. In respect of the balance amount of Rs.121.50 lacs received during the impugned year, 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."

11.3. 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 his initial burden and the burden shifted on the AO to enquire further into the matter which he failed to do so. It is also noted that all the investing companies have sufficient own funds available with them to make investment in the assessee.

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.121.50 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 13 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)-7, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata