

**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. Nos. 151 & 613/Kol/2019**  
**Assessment Years: 2012-13 & 2013-14**

Navroop Commercial Pvt. Ltd. (PAN: AADCN 8151 F)	Vs.	ITO, Ward-13(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	01.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11.01.2023
For the Appellant/ निर्धारिती की ओर से	Shri A.K. Tibriwal, FCA Shri Amit Agarwal, Advocate
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-5, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 01.11.2018 and 04.12.2018 for the AYs 2012-13 & 2013-14.

2. First of all we shall adjudicate ITA No. 151/Kol/2019 for AY 2012-13.

3. The only issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the addition of Rs. 56,00,000/- as made by the AO u/s 68 of the Act as unexplained cash credit in respect of share capital and share premium.

4. Facts in brief are that the assessee filed return of income on 26.09.2013. Thereafter the case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. The AO observed that during the year, the assessee has issued 560 equity shares at face value of Rs 10/- and premium of Rs. 9,990/- from three parties namely i) Ramsons Merchants Pvt. Ltd.- 200 Shares, ii) Ramsons Marketing Pvt. Ltd.- 170 shares and iii) Parakh Vintrade Pvt. Ltd.- 190 shares. Accordingly AO called upon the assessee to file the evidences/documents pertaining to the allotment of shares providing the identity, creditworthiness and genuineness of this transactions. The assessee was also directed to produce the directors of the assessee company besides the production of the directors of the allottee companies with certain documents namely proof of identity of the directors, copies of the returns of the Directors in the individual capacity with the Balance sheets and profit and loss accounts for the last of 3 AYs., ROCs details of the said allotted companies, copy of the returns for the last three AYs of the allottee companies, bank account statements for the period 01.04.2011 to 31.03.2012, copies of the AGM meetings, books of accounts viz. cash books/bank books for the FY 2011-12. None appeared on on the appointed date and thereafter again the AO issued summon u/s 131 dated 10.02.2015 to the directors of the assessee company directing him to produce the directors of the allottee company. But the same remained un-complied though the assessee filed the necessary documents called for by the AO. Finally the AO treated the money received by the assessee of Rs. 56,00,000/- as unexplained cash credit u/s 68 of the Act and added the same to the income of the assessee on the ground that the assessee failed to produce the directors of the allottee company and even the assessee failed to comply with the summon issued u/s 131 of the Act dated 3.2.2015.

5. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO by holding the summon issued u/s 131 were not complied with and therefore the condition as stipulated u/s 68 could not be satisfied.

6. After hearing the rival contentions and perusing the material on record including the impugned order passed by the Ld. CIT(A), we observe that though the documents relating to the allotment of the shares and other information/details/evidences namely names and addresses of share subscribers, PANs, audited balance sheets, audited profit and loss accounts, bank statements, returns of allotments were filed by the assessee but the summons issued u/s 131 were not complied with. We also note that the share subscribing companies have responded to the notices issued u/s 133(6) of the Act by the AO and filed all the details/evidences as called for by the AO the copies whereof are attached at page 53 to 176. We note that the AO has discussed a general modus operandi how the layering companies are operating and doing transactions in their bank accounts without commenting on the evidences filed by the assessee or by the investors. The AO simply made addition on the ground that the summons issued u/s 131 neither complied with by the assessee nor by the investor companies. The Ld. CIT(A) simply affirmed the order of AO that due to non-production of directors and assessee pursuant to summons issued u/s 131 the identity, creditworthiness of the investors and genuineness of the transactions could not be verified. We observe that the AO has not commented on the evidences filed by the assessee as well as by the investors. In our considered opinion the addition cannot be made for the reason that there was not compliance to summons issued u/s 131 of the Act when all the evidences and documents relating the share capital and the investors were available on records which were filed by the assessee as well as by the investors in response to notices u/s 133(6) of the Act. We note that both the authorities below have failed to pin point any mistakes or deficiency in the said documents/evidences but harped on the fact of non appearance of directors of the assessee as well as of investor companies. Under these facts and circumstance, the order of the Id CIT(A) is not correct and we are not in a position to sustain the same. The case of the assessee is supported by the following decisions:

i) Decision of Co-ordinate Bench of Kolkata in the case of Mahacoal Tie-up Pvt. Ltd. vs. ITO in ITA No. 2269/Kol/2016 dated 12.10.2022. The relevant finding of the Tribunal are reproduced as under:

*“6. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as reproduced above, has explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon’ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon’ble High Court has 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. Further the jurisdictional Calcutta High Court in the case of “Crystal networks (P) Ltd. vs CIT” (supra) has 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.”*

6.1 Even, as pointed out by the ld. Counsel for the assessee, the share subscribers have been assessed u/s 143(3) on substantive basis. Copies of their assessment orders have been placed

on the file. Even in case of the two share subscribers namely Mahalaxmi Promotion and Nikhar Commodities Pvt. Ltd, the share capital being the source of funds invested in assessee company has already been taxed u/s 68. Hence once any addition made in hands of share subscribers, there cannot be double addition in hand's of Appellant company. Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018 wherein, the Coordinate bench under similar circumstances has made the following submissions:

“We find no merit in the Revenue's instant grievance in the light of relevant facts on record. There is no dispute about the assessee's having declared its share subscription premium from M/s Agrani Credit & Finvest Pvt. Ltd., Crown Mansion Pvt. Ltd., Liberal Infrastructure Pvt. Ltd., Darshan Enclave Pvt. Ltd., Snow Fall Impex Pvt. Ltd. involving corresponding sums of ₹27,60,000/-, ₹55,20,000/-, ₹82,80,000/- in case of third and fourth and ₹48,30,000/- in last entity's case; respectively totalling to ₹3,01,00,000/-. Case file suggests that the assessee has placed on record their income tax acknowledgement of the impugned assessment year 2012-13, directors' report alongwith audited financial statements, explanation regarding source of investments, bank statements, share application forms and board's resolution(s) followed by their respective regular assessment orders pertaining to very assessment year u/s. 143(3) of the Act. Their Assessing Officer(s) made u/s 68 unexplained cash credits additions of share premium amounting to ₹67,03,00,000, ₹44,85,00,000/-, ₹24,42,00,000/- & ₹21,70,00,000/- in case of first four entities and accepted similar credits of ₹20,45,00,000/- to be genuine satisfying all parameters of identity, genuineness and creditworthiness. It can therefore be safely assumed that all these additions sums forming subject-matter of the impugned additions to be accepted as genuine in respective investors entities' end as the source of the amount(s) in issue totalling to ₹3,01,00,000/-. Learned Departmental Representative fails to dispute that the same very amount cannot be added twice in payees and recipients' hands u/s 68 of the Act. We therefore see no reason to accept Revenue's instant former substantive ground. We affirm CIT(A)'s findings under challenge qua the instant former issue.”

6.2. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of “Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata” I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. The Ld. DR before us could not dispute the proposition that since the addition has been made in the hands of the subscriber company, then the same amount cannot be added twice in recipient's hands u/s 68 of the Act.

8. So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of “PCIT v/s NRA Iron & Steel (P) Ltd.” (supra) is concerned, we find that the Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:

“8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):

*Proof of Identity of the creditors;*

*Capacity of creditors to advance money; and*

*Genuineness of transaction*

*This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”*

*Further, in para 9 of the said decision, the hon’ble Supreme Court has observed as under:*

*“9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.*

*In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the shareholders were either non-existent, or lacked credit-worthiness.”*

*Thereafter the Hon’ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:*

*“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness 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.*
- iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

*In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”*

*The Hon’ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer*

*has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, the aforesaid decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., in our humble view, is not applicable to the facts and circumstances of the case in hand.*

*9. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax vs. Manish Build Well (P.) Ltd. reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, 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. The order of the ld. CIT(A) is a non-speaking order. 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.*

*10. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.*

*11. The appeal of the assessee stands allowed."*

ii) Decision of Co-ordinate Bench of Kolkata in the case of ITO vs. M/s Anvil Electricals Pvt. Ltd. in ITA No. 133/Kol/2022 for AY 2013-14. The Co-ordinate Bench has held as under:

*"7. Having heard the rival contentions and perusing the material on record including the appellate order and remand report of the AO, we note that the assessee has produced all the evidences before the AO in the assessment proceedings as well as before Ld. CIT(A) in the appellate proceedings. The AO added this amount as unexplained cash credit reasoning that summon issued u/s 131 of the Act to the director of the assessee company remained uncomplished whereas the AO has not pointed any defect or deficiency in the evidences/details produced qua the said investments by assessee as well as by the investing companies. We also note that the AO has examined the evidences and has not drawn any adverse inference in respect of investing companies after examination of these evidences. Even during the remand proceedings the AO has not drawn any adverse inference on the basis of these evidences and details which were sent to the AO by the ld CIT(A). We note that the Ld. CIT(A) has only followed the remand report of the AO in remand proceedings while allowing*

*the appeal besides giving own independent findings on various issues that the identity and creditworthiness of the investor companies as well as the genuineness of the transactions were duly proved after following the various decisions as cited hereinabove. Before us also the assessee has also produced volume 1 and volume 2 which ran into pg. 1 to 230 and page. No. 231 to 416 respectively comprising various evidences of these investor companies which were examined by us. The case of the assessee is squarely covered by the decision of Hon'ble Calcutta High Court in the case of PCIT vs. Ambition Agencies Pvt. Ltd. (supra), wherein the Hon'ble Court has held that where in the appellate proceedings, the Ld. CIT(A) after calling remand report from the AO on the issue of share application had allowed the appeal of the assessee after following the observations of the AO in the remand report stating therein that transactions of the share holders were duly cross-verified. The Hon'ble Court upheld the view taken by the Tribunal where Tribunal upheld the order passed by the Ld. CIT(A) deleting the addition on the basis of remand report nonetheless the addition was made in the original assessment order by the AO for the want of information/details u/s 68 of the Act. Similarly the case of assessee find support from the decision of Hon'ble Supreme Court in the case of PCIT vs. Paradise Inland Shipping Pvt. Ltd. (supra) wherein the Hon'ble Apex Court has upheld the order of Hon'ble High Court wherein the Hon'ble High Court has taken a view that the assessee has proved genuineness of the transactions after the assessee filed voluminous documents from the public offices and also brought on records the assessment orders passed in the case of said companies. Similarly the case of the assessee finds supports from various other decisions as relied by the ld AR and stated hereinabove namely Tradelink Carrying (P) Ltd Vs ITO (Supra), PCIT Vs Himachal Fibres (Supra) SLP against which was dismissed by the Hon'ble Apex Court and CIT Vs. Nishan Indo Commerce Ltd (Supra). We, therefore, respectfully following the ratio as laid down in the above decisions, uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue."*

iii) Decision of Co-ordinate Bench of Kolkata in the case of ITO vs. Sitka Mercantile in ITA No. 232/Kol/2021 for AY 2009-10 dated 10.11.2022. The Co-ordinate Bench has held as under:

*"10. We have heard the rival submissions and perused the material on record including the appellate order and various documents filed in the paper book from page nos. 58 to 705 comprising share application forms and allotment of shares, bank statements, IT acknowledgments, audited financial statements, explanation qua the source of funds. We observe from the records before us and also from the appellate order that the assessee has furnished all the details/evidences qua the share applicants furnishing the names and addresses, PAN cards, share application forms, share allotment advices, confirmations, audited financial statements and also proof of source of source by furnishing necessary documents of the third parties. We note that even the notices issued u/s 133(6) of the Act were duly complied with by the share applicant and they furnished all the evidences as called for by the AO which proved identity and creditworthiness of the investors and genuineness of the transactions as the source of source was also proved. Even the summons issued to the director of the assessee company was complied with by the personal appearance of Shri Arvind Agarwal before the AO. We also note that all these details were also filed during the reassessment proceedings which were completed by the order dated 30.09.2011 passed u/s 147/143(3) wherein the AO made the addition on the ground that the premium is very high and the assessee has failed to produce directors of the investor companies. In our opinion, the basis of making addition completely devoid of merit and substance. Not only the assessee has proved the identity and creditworthiness of the investors and genuineness of the transactions by furnishing all the evidences which unequivocally proved all these three ingredients of*

*Section 68 of the Act. Besides the issue of shares at a high premium is a management decision taken by the Board and there is no bar in the instant assessment year to issue shares at a high premium. We are also aware of the fact that the Clause (viib) to Section 56(2) of the Act was brought by Finance Act, 2012. In other words, the provisions qua premium received over and above the fair value is to be assessed and is applicable for AY 2013-14 and is not applicable in the instant year under consideration. We have also perused various decisions relied by the Ld. CIT(A) while allowing the appeal of the assessee which have been extracted hereinabove. The Ld. CIT(A) has discussed the individual details of each investor and recorded a finding that how the three ingredients of section 68 of the Act were satisfied on the strength of evidences filed by the assessee as well as by the investors. Considering these facts, we are of the view that the assessee has proved identity and creditworthiness of the shareholders and also the genuineness of the transactions. Therefore, we do not find any infirmity in the order of Ld. CIT(A) who has passed a very reasoned order by following various decisions as discussed therein and therefore we uphold the same by dismissing the appeal of the revenue.”*

iv) Decision of Co-ordinate Bench of Kolkata in the case of M/s Lalbaba Seamless Tubes Pvt. Ltd vs. DCIT in ITA No. 2641/KOI/2019 for AY 2012-13 dated 21.10.2019. The Co-ordinate Bench has held as under:

8. *We note that share subscribers have also filed sworn affidavits confirming the said investments and source of investments copies whereof have been filed at page 109 to 113. We further note that all the companies are active and have invested the money out of their own resources as is apparent from the details filed by the assessee as comprised in from page 58 to 67 of PB. It is also undisputed that a survey was conducted on Shri K.M. Naita who controlled the M/s Clubside Dealcom Pvt. Ltd. and during survey it was revealed that the said company was providing accommodation entries. However the said fact was never brought to the notice of the assessee during the assessment proceedings of the assessee. We also note that Mr. Sushil Kumar Naita has given a sworn affidavit a copy of which is filed at page 110 of PB stating that no accommodation entry was ever provided to the assessee. We note that said affidavit was available before both the authorities below but has remained uncontroverted. Mr. K.M. Naita was neither examined by the AO nor any cross-examination was afforded to the assessee. It is settled legal position that the statement given during survey cannot be used to make addition in the hands of the assessee unless the assessee was allowed to cross-examine the person who gave statement which was used against the assessee to make the addition. The case of the assessee finds support from the decision of Hon'ble Supreme Court in the case of Kishinchand Chellaram (supra) and Hon'ble Allahabad High Court in the case of CCE vs. Shyam Traders (supra). We note that the assessee has proved the source and source of source of all these investors even though the same is not required to be proved in the instant assessment year as the amendment is applicable prospectively as has been held by the Hon'ble Bombay High Court in the case of Gangadeep Infrastructure (supra).*

7. 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 353 ITR 171 (Cal ) 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.”*

8. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012) 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.”

9. Similar ratio has been laid down by the Hon’ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd 397 ITR 136 by holding that provisions of section 68 of the Act cannot be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN ,financial and bank statements showing share application money .

10. 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 as well as CIT(A) have not commented on these evidences filed by the assessee as well by the share subscribers. The AO simply harped on the non production of directors of the assessee and share subscribing companies to make the addition which is not correct. 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 set aside the order of Ld. CIT(A) by allowing the appeal of the assessee.

11. Issue raised in ITA No. 613/Kol/2019 is similar to one as decided by us in ITA No. 151/Kol/2019 wherein we have directed the AO to delete the addition. Following the same, we direct the AO to delete the addition in this appeal as well.

12. In the result, both the appeals of the assessee are allowed.

Order is pronounced in the open court on 11<sup>th</sup> January, 2023

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

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

Dated: 11<sup>th</sup> January, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Navroop Commercial Pvt. Ltd., P-17, New CIT Road, Room No. 7, 1<sup>st</sup> Floor, Kolkata-700073.
2. Respondent – ITO, Ward-13(3), Kolkata
3. Ld. CIT(A) - 5, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata