

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 574/Kol/2020**  
**Assessment Year : 2012-13**

|  |     |                         |
|--|-----|-------------------------|
| M/s. Starland Vinimay Private Limited<br>(PAN: AAQCS 6066 H) | Vs. | ITO, Ward-2(1), Kolkata |
| Appellant  |     | Respondent              |

|                       |  |
|-----------------------|--|
| Date of Hearing       | 30.11.2022   |
| Date of Pronouncement | 24.01.2023   |
| For the Assessee      | Shri Anil Kochar, Advocate &<br>Shri S.L. Kochar, Advocate |
| For the Revenue       | Smt. Ranu Biswas, Addl. CIT/DR                             |

**ORDER**

**Per Shri Sonjoy Sarma, JM:**

This appeal by the assessee pertaining to assessment year 2012-13 is directed against the order passed u/s 250 of the I.T. Act by the Commissioner of Income Tax (Appeals) -1, Kolkata [hereinafter referred to as 'the 'ld. CIT(A)'] dated 23.09.2020 which is arising out of assessment order framed u/s 143(3) of the Act dated 23.09.2020. The assessee has raised the following grounds of appeal:

*"1. That on the facts and circumstances of the case, the ld. CIT(A) erred in confirming the addition of INR 1,71,00,000 towards share capital and share premium money received from the shareholders under the pretext of unexplained cash credit under section 68 of the Act.*

*2. That on the facts and circumstances of the case, the ld. CIT(A) erred to consider that the assessing officer (hereinafter referred to as 'the AO) has not provided any cogent reason before recording his dissatisfaction to the explanation or documents provided to him regarding the sum credited in the books of accounts as share capital and share premium.*

*3. That on the facts and circumstances of the case, the ld. CIT(A) erred to take into consideration that non-appearance of shareholders before the AO in itself cannot lead to dissatisfaction on identity of such shareholders as conferred by the AO when all the details for their identity including permanent account numbers were filed with the AO.*

*4. That in the impugned order, the ld. CIT(A) erred to note, duly appreciate and appropriately take into consideration reasonable and acceptable evidences on record and has made observations which are contrary to the facts of the case.*

*5. That on the facts and circumstances of the case, the ld. CIT(A) erred to take into consideration that the first proviso to section 68 of the Act was applicable from AY 2013-14 and cannot be applied retrospectively to AY 2012-13.*

*6. Without prejudice to the above, the ld. CIT(A) erred to confirm that the appellant has duly shared the source of the funds of the shareholders.*

*7. Without prejudice to the above, though the addition has been made as unexplained credit i.e. under section 68 of the Act, the appellant would like to mention that even section 56(2)(viib) of the Act, requiring companies to offer to tax excess premium received on shares was also inserted with effect from AY 2013-14 and cannot be applied to AY 2012-13.”*

2. Brief facts of the case are that the assessee is a private limited company. The income of Rs. 10,277/- was declared by the assessee in the e-return filed for the assessment year in question. The case of the assessee was selected for scrutiny through CASS followed by serving of notices u/s 143(2) and 142(1) of the Act. The assessee submitted various details as called for by the ld. AO. During the assessment year in question, share capital and share premium of Rs. 1,71,00,000/- was received by the assessee company. While framing assessment, the ld. AO doubted the creditworthiness of the investor company and genuineness of the transaction as to how the investments were made and he issued notices u/s 131 of the Act upon the shareholders of the company and asking them to personally appear to verify the identity and creditworthiness of the transactions. In this regard a show cause notice was issued to the assessee company to produce all the shareholders and it was also stated in the said show cause notice to produce the directors of all shareholder companies before the ld. AO to prove the identity and creditworthiness of the shareholders and genuineness of the transactions. However the assessee did not turn up against such notice, therefore, the ld. AO, by placing reliance on judgement of the Hon'ble ITAT in the case of M/s. Star Griha Pvt. Ltd. vs CIT and M/s. Bisakha Sales

Pvt. Ltd. vs CIT, observed that entire amount of money received on account of issue of shares along with premium on issue of shares was treated as unexplained cash credit and accordingly entire amount received on account of issue of shares along with share premium was added back as unexplained cash credit by making an addition of Rs. 1,71,00,000/- u/s 68 of the Act thereby assessing the income of the assessee at Rs. 1,71,21,077/-.

3. Aggrieved by the above order, assessee preferred an appeal before the Id. CIT(A). During the course of appellate proceeding, it was stated that the director of the assessee as well as subscribing companies had filed necessary details of PANs, ITRs copies, audited balance sheets, copies of allotment advice letters, details of cheques through which payments were made besides proving the source of the fund received by the subscribing companies. The Id. CIT(A) confirmed the order of AO by referring to the judgement of Hon'ble Supreme Court in the case of PCIT vs NRA Iron & Steel Pvt. Ltd. confirmed the findings of the Id. AO by observing and holding as under:

*"After careful consideration of the submission of the appellant, the relevant assessment records, various judicial decisions including that of the Apex Court & Jurisdictional High Court and ITAT, it has to be held that the appellant could not established the genuineness of the transaction and creditworthiness of the shareholders. The addition of Rs. 1,71,00,000/- u/s 68 of the IT Act, is therefore confirmed. The appeal on these grounds fails and is therefore dismissed. In the result, the appeal is treated as dismissed."*

4. Dissatisfied with the above order, assessee is in appeal before the Tribunal. At the time of hearing Id. counsel for the assessee referred to the detailed submissions made before the lower authorities and also took us through various details and documents filed in the paper book which include the audited financial statements of the subscribing companies, income tax returns, copies of bank statements replies to the notices u/s 133(6) of the Act. The AR contended that the subscribing companies had filed their replies in response to notices u/s 133(6) before the Id. AO. However, the Id. AO completely ignored the same and erred in mentioning that no compliances

were made in response to such notices. In such circumstances it showed that it was passed completely in a mechanical manner at the ends of both lower authorities and totally disagreed on all the facts of the case and consequent non-application of mind. The Id. AR also stated that identity of the subscribers have been successfully proved by the assessee as they were regularly assessed to tax and having PANs and genuineness of the transactions were proved from the bank statements of the shareholders as well as the sources of the fund of the shareholders. The creditworthiness of the shareholders was proved from the bank accounts, audited accounts and sufficient bank balance lying in their accounts at the time of issuing cheques for investment in the equity shares of assessee company.

5. On the other hand, the Id. departmental representative vehemently argued and supported the order of Id. CIT(A) and also relied on the judgment in the case of PCIT (Central Circle-1, Kolkata) vs NRA Iron & Steel Pvt. Ltd. 412 ITR 161.

6. We have heard the rival contentions and perused the records placed before us and carefully gone through the judgments referred by both the sides. The addition u/s 68 of the Act at Rs.1,71,00,000/- is under challenge before us. It was made by the A.O by alleging that the assessee failed to explain the identity, creditworthiness of shareholders and genuineness of the transactions and, therefore, added back the share capital and share premium as unexplained cash credit in the hands of assessee. Subsequently, Id. CIT(A) also confirmed the addition made by the AO. It is noticed that the assessee has shown Rs. 1,71,00,000/- as share application money including share premium during the assessment year 2011-12 from 8 different companies. At the time of hearing before the Id. CIT(A), assessee had filed certain facts vide its submissions which is being extracted mentioned below for the sake of ready reference:

*"The A.O. framed order of assessment n s 143(3) of the Act on 03.03.2015 and after discussing facts and making observations he has made an addition of Rs. 1,71,00,000/- to the income returned. Though there are -carious Grounds taken by the appellant but the issue for adjudication by your Honour relates to the correctness of the addition of Rs. 1,71,00,000/- made by the ,A.O. to the income*

*returned It is observed by the A.O. that in response to the proceedings for assessment with reference to Notices u/s 143(2) and u/s 142(1) appearance was made by the AR of the appellant who appeared from time to time and explained the return with reference to the details/documents filed. The A.O has observed that Notices u/s 131 were issued and sent to shareholders asking them to personally appear to verify the identity and creditworthiness of the shareholders and genuineness of the transaction made by them with the appellant company. The AO has observed that none appeared and show cause Notice was issued to the appellant to produce all the shareholders with evidences as to why the transaction with the said parties (shareholders) should not be treated as bogus and sham and why the share application money should not be treated as appellant's undisclosed income. The A.O. also required producing the Directors of all these shareholder companies. Further, due to non- production of the shareholders/Directors genuineness of the transactions could not be verified. Accordingly, the A.O. proceeded to adopt the amount of Rs. 1,71,00,000/- to the total income of the appellant. The appeal by the appellant centers around the correctness or otherwise of this addition.*

*The appellant company had received funds from some corporate entities for the issue of shares to them. These funds were received by cheques and they were deposited in the Bank Ale of the appellant In due course, shares were allotted to the share applicants ,As required under the provisions of the Companies Act necessary information was given to the ROC.*

*At this stage, the appellant submits evidences regarding application for issue of shares, allotment and compliance lo the provisions contained in the Companies Art.*

*These are basic requirements and these would show that the appellant did received funds which passed through banking channel. These finals have been received from corporate entities to whom the Income Tax Dept had allotted PAN and have been in existence. These evidences are to be properly considered in the matter of adjudication of the issue involved.*

*In the course of assessment proceedings, the A.O. had issued Notices u/s 133(6) of the Act to the share subscribers calling for certain information in respect of the appellant for the FY 2011-12 relevant to the AY 2012-13. The share subscriber companies duly replied to the proceedings so initiated by the A.O. u/s 133(6) following subscribers replied to the Notice u/s 133(6):-*

- (a) Fast Flow Merchants Pvt. Ltd.

- (b) *Deserve Merchants Pvt. Ltd.*
- (c) *Godwad Traders Pvt. Ltd.*
- (d) *Premium Towers Pvt. Ltd.*
- (c) *Starson Marketing Pvt. Ltd.*
- (f) *Bloom Carriers Pvt. Ltd.*
- (g) *Militia Tracom Pvt. Ltd.*
- (h) *Milky Nirman Pvt. Ltd.*

*These replies contain the nature of the business, details of the Directors PAN Card and ITR Xerox copy duly attached, audited Balance Sheet and Xerox of PAN Card and ITR, copy of allotment, advise letter with distinctive number, total amount paid by cheques and date and source of fund used by the share subscribing companies*

*The A.O. proceeds to observe that the identity and creditworthiness of shareholders and genuineness of the transaction could not be verified and, therefore the AO proceeding on this observation has made addition of Rs.1,71,00,000/-. The replies to the notice u/s 133(6) of the Act issued by the A.O. to the share subscribers are record with the A.O. and it has to be proceeded with as a fact that no discrepancy been found by the A.O. with regard to the replies submitted by the share subscribers. The A.O. has accepted fact that the share subscribers are on record with the Income Tax Deptt. and that they file their Income Tax Returns, they maintain Bank account funds have moved from their Bank A/c to the Bank A/c of the appellant. These are very vital evidences which have not been assailed or controverted by the A.O and, therefore it is the submission of the appellant that the A.O. erred in adding the amount of Rs. 1,71,00,000/- as the income of the appellant."*

7. From perusal of the above details, which are also placed before us in the paper-book and the facts narrated above including the details filed by the assessee i.e. bank accounts, income tax returns, audited balance sheets of the investor companies at the time of subscribing to the equity shares of the assessee company and the sufficient availability of funds during the year in their hands. In similar type of cases which we are adjudicating, the only basis of addition u/s 68 of the Act for unexplained share capital and share premium is the non-appearance of directors personally before the Id. AO. However, in the instant case, even this aspect has also been taken care of and directors of assessee and investor companies have not only filed complete details

showing financial strength of the investor companies, sufficient funds available to make the investment but had also filed supporting documents. Thus, all the limbs of section 68 as normally accepted by the revenue and judicial authorities required to be fulfilled about the identity and creditworthiness of the share subscribers and genuineness of the transactions have been successfully proved in the instant case.

8. Further, we notice that Ld. D/R has heavily relied on the judgment of the Hon'ble Supreme Court in the case of *NRA Iron and Steel (P) Ltd. (supra)*, 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.”*

8.1. 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 share-holders were either non-existent, or lacked credit-worthiness.”*

8.2. 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.”*

8.3. 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 ld. AO 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 ld. AO 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 transactions, the burden shifted upon the ld. AO 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. (supra)*, in our humble view, is not applicable to the facts and circumstances of the case in hand.

9. We also observe that as per the proviso inserted in section 68 of the Act by Finance Act 2012 that the assessee company receiving share capital and share premium are required to prove the source of source to the satisfaction of the Id. AO has been inserted w.e.f. 01.04.2013 and the same is not applicable in the case of assessee for assessment year 2012-13 and since the assessee has filed sufficient details to our satisfaction to prove the identity, genuineness and creditworthiness of the transaction, we are not in concurrence both the findings of the Id. CIT(A). Our view is further supported by judicial pronouncements:

*i) CIT vs. Gagandeep Infrastructure (P) Ltd. 80 taxmann.com 272 (Bombay) wherein it was held by High Court that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso.*

*ii) PCIT vs. Chain House International (P) Ltd. 98 taxmann.com 47 wherein Madhya Pradesh High Court held that "The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe to shares at such a premium or not and moreover the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants*

*which same has been discharged by the respondent authority and the HIGH COURT OF M.P. BENCH AT INDORE Pg. No.--58-- (ITA No.112/2018 & Other connected matters) same has been accepted by the appellate authorities thus, the same cannot be reconsidered in these appeals as it is a pure question of fact.” SLP preferred by revenue was dismissed by Hon’ble Supreme Court and the same is reported in 103 taxmann.com 435(SC).*

*iii) CIT vs. Kamdhenu Steel & Alloys Limited [ITA No.972 of 2009] dated 23.12.2011 wherein the Delhi High Court in a batch of 11 appeals was required to adjudicate on the very issue of addition made by the AO u/s 68 in respect of share application monies received by the assesseees as alleged unexplained cash credit. In all these cases, the Department had alleged that the share application monies were received from persons who were ‘entry operators’ and the monies received by way of share application was nothing but was routing of unaccounted money of assessee in the form of subscription to share capital. However, in the assessments made the AOs had not brought on record any material or evidence to substantiate such finding. Accordingly, on appeal the appellate authorities had deleted the additions made u/s 68 of the Act.*

*iv) DCIT vs. Rohini Builders 127 Taxman 523 observed that the assessee had discharged its onus of proving the identity of creditors by giving their complete addresses, permanent accounts number and copies of assessment orders. It was further observed that the assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques. The High Court held that only on the ground that some of the creditors could not be served with notice u/s 131 or they failed to appear before Assessing Officer the loans could not be treated as non-genuine and therefore upheld the order of the Tribunal deleting the addition u/s 68 of the I.T. Act 1961.*

*v) CIT vs. Orissa Corpn (P) Ltd. 159 ITR 78 where the Court held that “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 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 is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”*

10. Therefore, respectfully following the judicial precedents and in the light of the facts and circumstances of the case, we are of the considered view that no addition was called for u/s 68 of the Act for the alleged sum of the share capital and premium of Rs.1,71,00,000/- received during the year. Thus, the finding of the ld. CIT(A) is reversed and grounds of the appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 24.01.2023.

Sd/-

Sd/-

(Rajesh Kumar)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 24.01.2023

*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- M/s. Starland Vinimay Private Limited, Room No. M 12, Jabakusum Building, 34, C.R. Avenue, Bowbazar, Kolkata-700012.
2. Respondent – ITO, Ward-2(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata