

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.33/Kol/2021
Assessment Year: 2012-13**

Income Tax Officer, Ward-4(1), Kolkata	Vs.	M/s. Rootstar Developers Pvt. Ltd., 32, Ezra Street, Kolkata-700 001. (PAN: AAFCR5973H)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri G. H. Sema, Addl. CIT, DR

Respondent by : Shri Manoj Kataruka, Advocate

Date of Hearing : 09.11.2022

Date of Pronouncement : 06.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A)-7, Kolkata vide Appeal No. 509/CIT(A)-7/Ward-4(1)/Kol/15-16 dated 28.08.2020 passed against the assessment order by ITO, Ward-4(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 10.03.2015.

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

"1. That on the fact and circumstances of the case, the Ld. CIT(A) has erred in granting relief to the assessee on account of addition on undisclosed cash credit u/s 68 of Rs.10,11,00,000/- though the assessee has failed to prove the genuineness of transaction and creditworthiness of the subscribers.

2. That on the facts and the circumstances of the case, the Ld. CIT(A) has erred in overlooking the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Central)-1, Delhi VS. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), which suggests that the assessee is under a legal obligation to prove the receipt of share capital/premium to the

satisfaction of the A.O., failure of which, would justify addition of the said amount to the income of the assessee.

3. That on the facts and the circumstances of the case, the Ld. CIT(A) was not justified in ignoring the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr.CIT(Central)-I, Delhi VS. NRA Iron & Steel Pvt. Ltd. (412 ITR 161), which also suggests that the Assessing Officer is duty bound to investigate the creditworthiness 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. In the facts of the case, in spite of best efforts made by the assessing officer, he could not verify the same as there was no response from companies to whom shares were allotted on private placement basis. Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital including share premium was not the assessee's own income.

4. That on the facts and the circumstances of the case, the order of the Ld. CIT(A) is erroneous in ignoring the aspect of Section 68 of the Act and giving relief to the assessee. The principle which has been laid down by the Hon'ble Supreme court in the case of Pr. CIT (Central)-I, Delhi Vs. NRA Iron & Steel Pvt. Ltd. {412 ITR 161}, also suggests that 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 transactions would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act., in the facts of the case, the Ld. CIT(A) completely ignored this aspect, thus he has erred in giving relief to the assessee.

5. That on the fact and circumstances of the case, the Ld. CIT(A) was not justified in deleting the addition of Rs.10,11,00,000/- made u/s 68 wherein the identity, genuineness and creditworthiness of investor companies remained unsubstantiated, as they failed to appear before the A.O. against summons issued u/s 131 ignoring the decision of Hon'ble Supreme court in the case of Pr.CIT (Central)-I, Delhi Vs. NRA Iron & Steel Pvt. Ltd. {412 ITR 161}.

6. That on the fact and circumstances of the case, the Ld. CIT(A) was incorrect in granting relief where the assessee failed to discharge its legal obligation to prove the receipt of share capital and share premium money to the satisfaction of the A.O.

7. That on the fact and circumstances of the case, the Ld. CIT(A) was not justified in allowing the appeal without considering the fact that the sources of share application money including share premium were not properly explained by the assessee and it lacked any real profit-making business credence.

8. That on the fact and circumstances of the case, the Ld. CIT(A) was not justified in ignoring the facts that the creditworthiness of the subscribing companies were not established before the A.O. during the course of the assessment proceedings, though the onus of providing the identity of the creditor vests solely with the assessee.

9. That on the fact and circumstances of the case, the Ld. CIT(A) has erred in not considering the facts that the real intention of the assessee company for introducing such huge amount in the form of share capital and share

premium in its business only to introduce its unaccounted money in the form of fresh share capital.

10. That the Department craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or during hearing of this appeal."

3. We note that there is a delay of 35 days in filing the present appeal before the Tribunal. The impugned order by Ld. CIT(A) is dated 28.08.2020 claimed to have been served on 06.11.2020 as per Form 36. Petition for condonation of delay is placed on record by revenue explaining the reasons for delay, owing to Pandemic of Covid-19 during that time. It is noted that the period of delay falls during the time of Pandemic of Covid-19 which has been excluded by the Hon'ble Supreme Court in the case of Suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

4. Brief facts of the case are that assessee filed its return of income on 22.09.2012 reporting a total income of Rs.245/-. Case was selected for scrutiny through CASS with the reason "*large share premium received*". Statutory notices were issued and served on the assessee which were duly complied with as noted in the assessment order. During the year under consideration, assessee raised equity share capital of Rs.2,01,000/- and share premium of Rs.10,08,99,000/- from three corporate investor companies, details of which is tabulated as under:

Sl.No.	Name	Address	Amount (Rs).	No. of Shares Alloted
1.	Apricot Securities Pvt. Ltd	33/1, N.S.Road Kolkata – 700 001	3,20,00,000/-	32000
2.	Mindtrack Securities Pvt. Ltd	41, N.S.Road, Kolkata – 700 001.	3,20,00,000/-	32000
3.	Moonview Conclave Pvt. Ltd	63, Radha Bazar Street, Kolkata – 700 001	3,70,00,000/-	37000
		TOTAL :	10,10,00,000/-	1,01,000

4.1. Assessee is a Private Limited company engaged in business of investment and finance. During the year, assessee raised share capital by issuing 1,01,000 equity shares at face value of Re.1/- per share and share premium of Rs.999/- per share. Ld. AO sought details and explanations by issuing notice u/s. 142(1) of the Act for the share capital so raised by the assessee. In the course of assessment proceedings, assessee filed all the details including the following:

- (i) Audited accounts for AY 2012-13;
- (ii) Details of directors of the assessee;
- (iii) Details of share capital raised in Form no. 2 filed with ROC;
- (iv) Details of bank account wherein the share capital amount was received;
- (v) Copy of Company Mastar data;
- (vi) Copy of allotment letter and application form by the investor companies;
- (vii) ITR acknowledgment along with audited accounts for AY 2012-13 of the investor companies;
- (viii) Relevant assessment orders passed in the case of the three investor companies;

(ix) Relevant bank statement of the investor companies highlighting the bank entries and

(x) Certificate issued by the investor companies explaining their respective sources for making the investment in assessee company.

4.2. Notices u/s. 133(6) of the Act were issued by the Ld. AO to the three shareholder investors which were fully complied with by filing all the details and documents as required by the Ld. AO. Summons issued u/s. 131 of the Act on the directors of the assessee remained non-complied which led the Ld. AO to embark upon the theory of preponderance of human probability to make the addition by treating it as unexplained cash credit u/s. 68 of the Act. While issuing summons u/s. 131 of the Act, Ld. AO required the principal officer of the assessee to furnish details and documents including proof of identity and address, copies of bank statements, copies of relevant ROC returns, sources of funds and utilisation of fund, copies of ITRs filed as well as copies of Balance Sheet, P&L Account and tax audit report in respect of funds raised by way of share capital. Ld. AO also relied on the decision of Coordinate Bench of ITAT, Kolkata in the case of Bishakha Sales Pvt. Ltd. [2014] 52 taxmann.com 305 (Kol) for non-compliance against summons u/s. 131 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A), who after elaborately dealing with the facts of the case on all the three aspects of section 68 of the Act in respect of identity, creditworthiness of the share subscribing companies and also the genuineness of the transactions, deleted the addition so made. Aggrieved, Revenue is now in appeal before the Tribunal.

5. Before us, Shri Manoj Kataruka, Advocate represented the assessee and Shri G. H. Sema, CIT, DR represented the department.

6. Before us, Ld. Sr. DR placed reliance on the order of the ld. AO. He also contended that assessee had not carried out any business activity during the year and the net-worth of the assessee company does not justify charging of huge share premium on the shares issued by the assessee. He thus submitted that addition so made is wrongly deleted by the Ld. CIT(A).

7. Per contra, Ld. Counsel for the assessee submitted that to establish the identity and creditworthiness of the shareholders and genuineness of the transactions, assessee has submitted all the relevant details and documents in the course of assessment proceedings in respect of all the three share subscriber companies, details of which are tabulated in the order of Ld. CIT(A) in para 4.1 and is extracted below for the ease of reference:

<u>Sl No.</u>	<u>Particulars</u>	<u>Pages Nos.</u>
1.	Copy of the written submissions	<u>01 - 15</u>
2.	Copy of the return filing acknowledgement & audited accounts of the assessee for AY 2012-2013	<u>16-29</u>
3.	Copy of the master data of the assessee company along with details of directors.	<u>30</u>
4.	Copy of the receipt along with Form No.2 and details of shareholders with their addresses as filed before AO.	<u>31-36</u>
5.	Copy of the bank statement of the assessee highlighting the share application money received.	<u>37</u>
6.	Copy of the receipt along with Form No.5 filed before the ROC on 19-04-2012 in respect of increase in the share capital of the company.	<u>38-45</u>
7.	Copy of the extracts of the Minutes of the Board Meeting of the assessee company for issue and allotment of shares dated 29-03-2012.	<u>46</u>
8.	Copy of the notice and reply furnished by the assessee.	<u>47-49</u>
9.	Details of mode of payment to shareholders.	<u>50</u>
10.	Copy of the return filing acknowledgement & audited accounts of the assessee for AY 2019-2020	<u>51-64</u>

COPY

11.	COPY OF DOCUMENTS IN SUPPORT OF THE IDENTITY, CREDITWORTHINESS OF SHARE APPLICANTS AND GENUINENESS OF TRANSACTION FILED IN THE COURSE OF HEARING	
	A. Apricot Securities Pvt. Ltd (Rs.3,20,00,000/-)	
	- Master data of the company	<u>65-66</u>
	- Certificate explaining source of funds	<u>67-68</u>
	- Copy of the bank statement highlighting the figures	<u>69</u>
	- Copy of the return filing acknowledgement for AY 2012-13	<u>70</u>
	- Copy of the audited accounts	<u>71-82</u>
	- Details of investments.	<u>83</u>
	- Copy of the assessment order u/s 144 for AY 2012-2013	<u>84-92</u>
	B. Mindtrack Securities Pvt. Ltd.(Rs.3,20,00,000/-)	
	- Master data of the company	<u>93-94</u>
	- Certificate explaining source of funds	<u>95</u>
	- Copy of the bank statement highlighting the figures	<u>96</u>
	- Copy of the return filing acknowledgement for AY 2012-13	<u>97</u>
	- Copy of the audited accounts	<u>98-108</u>
	- Details of investments.	<u>109</u>
	- Copy of the assessment order u/s 143(3)/147 for AY 2012-13	<u>110-116</u>
	- Copy of accounts for AY 2019-2020	<u>117-131</u>
	C. Moonview Conclave Pvt. Ltd (Rs.3,70,00,000/-)	
	- Master data of the company	<u>132-133</u>
	- Certificate explaining source of funds	<u>134</u>
	- Copy of the bank statement highlighting the figures	<u>135-136</u>
	- Copy of the return filing acknowledgement for AY 2012-13	<u>137</u>
	- Copy of the audited accounts	<u>138-149</u>
	- Details of investments.	<u>150</u>
	- Copy of the assessment order u/s 143(3) for AY 2012-13	<u>151-162</u>

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

7.2. Ld. Counsel also emphasized on the fact that in addition to other evidence, assessee has submitted letter from the subscribers, confirming the investment made in the share capital of the assessee. He submitted that when a confirmation letter by way of reply to notice u/s. 133(6) of the Act is submitted, it cannot be ignored. The confirmations made in the said letter are to be *prima facie* considered as correct unless evidence is brought on record to falsify the claim made therein. According to him, even in the submissions including ITRs, audit reports, share application details etc. as listed above, the Ld. AO has not found fault in any of the details submitted and simply proceeded to make addition in respect of the amount of share capital and premium.

7.3. Ld. Counsel further submitted that all the shareholder companies are regular income tax assesseees and had filed their income tax returns. In all the three cases, their respective income tax assessment were completed u/s. 143(3)/144/147 of the Act for AY 2012-13 vide order dated 27.03.2015, 13.12.2019 and 29.03.2015 respectively. It was thus emphasized that identity of all the three share subscribers is well established before the Department and is beyond any doubt.

7.4. To establish the creditworthiness of these three share subscribing companies, details relating to their net-worth and the investment made by them in the assessee were furnished along with their respective bank statement and audited financial statements. The details of sufficiency for net-worth to make investment in the share capital of the assessee are tabulated as under:

Name of the company	Capital	Reserves	Net Worth	Invested in Assessee Company	Percentage of NW
Apricot Securities Pvt. Ltd	1,48,78,700	77,79,22,093	79,28,00,793	3,20,00,000	4.03
Mindtrack Securities Pvt. Ltd	65,24,900	42,44,75,855	43,10,00,755/-	3,20,00,000	7.42
Moonview Conclave Pvt. Ltd	2,35,500	13,53,64,868	13,56,00,368	3,70,00,000	27.28

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

7.6. It was further submitted on the aspect of genuineness of the transactions that the amounts were invested by the subscribers through proper banking channel which is duly reflected in the respective audited financial statements of the subscribers. It was thus contended that since the investment reflected in the respective financial statements and the source of such investment by them in the assessee has been accepted by the department in their respective assessment as referred above, the genuineness cannot be doubted.

7.7. Ld. Counsel also submitted that notice u/s. 131 of the Act was issued to the director of the assessee for personal appearance, who was requested to produce all the directors of the subscriber companies which was not complied with, though all the desired submissions were made during the course of assessment by the assessee. He submitted that non-appearance of directors of the subscriber companies is not fatal to the assessee as it was not within its control. He pointed to the fact that though directors of the subscriber companies did not appear in person but all the relevant compliances were fulfilled against the notices issued u/s. 133(6) of the Act by these share subscribing companies. Ld. Counsel thus stated that it is a fact that assessee filed complete details of share capital raised by it during the year. All the

investors are income tax assesseees and transactions have taken place through banking channel from the accounts held by the investors in their own name and that each of the investors had net-worth many times more than the amount invested by them. The notice and summons issued to the share applicants were duly served and complied with by filing details and evidence as called for and also confirming the investigations made by them explaining the source thereof. The assessee had duly discharged the onus laid upon them u/s. 68 of the Act.

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

8.1. From the perusal of the paper book and the documents placed therein, it is seen 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.

8.2. We also take note of the elaborate and well reasoned findings and decisions arrived at by the Ld. CIT(A) by taking into consideration all the details and documents placed on record. The relevant findings and decisions from para 5.8 are extracted as under:

“5.8. Basically the law requires documentary evidences on record in dealing with the issue of authenticity. It is not the case of the AO that necessary documentary evidences are not on record but the only major reliance placed on his action is based on non attendance of the directors of the subscriber companies before him u/s 131 of the Act. It is no longer res integra that such non attendance should be considered as a factor which should be used by the AO in coming to an adverse conclusion against the appellant. On an overall analysis of the issue, I find that the AO has not made out his case with cogent material on record that the appellant could come under the purview of section 68 of the Act with regard to share capital as reflected in the balance sheet when there is no finding with any cogent material evidence that the same was actually bogus in nature. It is accordingly observed that creditworthiness of the share subscribers to make investment in the share capital of the appellant company cannot be a disputed matter as per material facts on record. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their creditworthiness and source of funds, as well as the genuineness of the transactions being investments in the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant during the year under consideration as clearly evident not only from their respective books of accounts but also from their audited accounts filed with the income tax authorities in relation to their own income tax assessments and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record but acted on his whims and fancies. It is observed that the burden which lay on the appellant, in relation to section 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue. Since the conditions precedent for discharging of burden of proof under the provisions of section 68 of the Act is met with adequate evidence, the addition made under such pretext deserves to be deleted. In this respect it is imperative to refer to the decision of the jurisdictional High Court in the case of CIT vs. Sagun Commercial (P) Lid. [ITA No. 54 of 2001 dated 17.02.2011] wherein it was held as follows:

“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."

8.3. Before arriving at our finding, we refer to the following judicial precedents to buttress our observations and conclusions :

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

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

ii) Decision of Hon'ble 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."

iii) Judgment of Hon'ble Jurisdictional High Court in the case of Exoimp Resources (India) Ltd. vs. CIT (supra), wherein it was held as follows:

“It is incumbent upon the Assessing Authority to examine the explanation of the creditor and arrive at a conclusion as to whether the explanation was satisfactory. The conclusion arrived by the Assessing Authority is to be communicated to the assessee if such explanation is not considered satisfactory. If thereupon the assessee submits any comments or furnishes further information, in that event, the Assessing Authority has to examine the same and arrive at his own conclusion. The inbuilt safeguard provided in section 68 cannot be ignored by the Assessing Authority at his sweet will. The Assessing Authority can add the share capital as undisclosed income if no explanation is offered by the assessee. But since the details/explanations were offered, it was incumbent on the Assessing Authority to examine the same and arrive at a cogent conclusion. Assessing Officer having failed to discharge such obligation the addition is not sustainable in law., case of CIT vs. Lovely Exports Ltd. (2008) 216 CTR 195 (SC) that where share application money.”

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

“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to

the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.

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

8.5. We notice that all the details were very much placed before the Assessing Officer but while framing the assessment, no efforts have been made by the Assessing Officer to examine the correctness of various proof, filed by the assessee by carrying out any investigation. Merely for non-appearance of the directors, the ld. Assessing Officer disregarded all these documents which have been placed before various statutory authorities including Registrar Of Companies, Income Tax Department and Banks. The assessee by way of filing all these documents which are necessary to prove identity, creditworthiness and genuineness of the alleged transaction, has discharged the initial burden casted upon it under the provisions of section 68 of the Act. Unless and until, the assessing authority finds any lacuna or adversity or defect in the said documents, the burden to prove remains on the Revenue authorities. In the instant case, ld. Assessing Officer failed to discharge the burden and summarily disregarded the documents filed by the assessee by merely referring to some decisions and not going into the facts of the case except referring to the price per share.

9. We further observe that provision for examining the source of source under the provisions of section 68 of the Act has been brought in by Finance Act 2012 w.e.f. 01.04.2013 as per which “*where an assessee is a company (not being a company in which*

public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee company shall be deemed to be not satisfactory unless: a) the person being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited and b) such explanation in the opinion of the Assessing Officer has been found to be satisfactory.” Since the instant appeal pertains to assessment year 2012-13, and the said amendment brought in by Finance Act 2012 is effective from 01.04.2013, it is not applicable on the case before us. Even otherwise, it is not in dispute that the assessee has filed all the relevant documents of the share subscriber companies and further, in order to prove the source of source, copies of bank statements, audited balance sheets of all the nine subscriber companies are placed on record.

10. As far as the decision of Coordinate bench of ITAT, Kolkata in the case of Bishakha Sales Pvt. Ltd. (supra) referred by the Assessing Officer in making the addition, in our view, it does not support the addition as the said decision is delivered in the context of proceedings u/s 263 of the Act on the issue of enquiry regarding huge premium received on share application.

11. Further, in respect of ground nos. 3, 4 and 5, reference to the judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (412 ITR 161) is found to be distinguishable on facts in as much as in the said decision, Ld. AO has made extensive enquiries and some of investors were found to be non-existent. Upon going through the facts involved in that judgment, it is noted that, in the

decided case the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent, which is certainly not the case before the undersigned. In the decided case, certain investor companies also failed to produce their bank statements proving the source for making investments in assessee company. In the facts of the present case however not only have the shareholders furnished their bank statements and investment schedules to establish the source of funds but they have also furnished their respective sources of funds in response to notices issued by the AO u/s. 133(6) of the Act.

12. We, therefore, respectfully following the judgment referred hereinabove by the Hon'ble Courts and also considering the facts and circumstances of the case, are of considered view that since the assessee has sufficiently explained the identity and creditworthiness of the share subscriber companies and the genuineness of the transaction of applying for the equity shares of the assessee company and since nothing contrary to the evidence filed by the assessee has been placed on record by the Revenue, except the reason that the directors failed to appear to the summons/notices issued u/s 131/133(6) of the Act, we find no reason to interfere with the meritorious finding of the CIT(A). We accordingly dismiss the grounds raised by the revenue in this respect.

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

Order pronounced in the open court on 06th February, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 06th February, 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