

। आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2437/Kol/2019

Assessment Year: 2012-13

Income Tax Officer, Ward-2(4), Kolkata	Vs	M/s. Vedic Real Estate Pvt. Ltd. 158, Lenin Sarani Kolkata - 700013 [PAN : AACCV6414A]
---	----	---

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	Shri Miraj D. Shah, Advocate
Revenue by :	Shri Vijay Kumar, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 10/11/2022

घोषणा की तारीख/Date of Pronouncement : 06/02/2023

### आदेश/ORDER

#### Per Shri Sanjay Garg, Judicial Member:

The present appeal is directed at the instance of the revenue against the order of the Learned Commissioner of Income Tax (Appeals) - 17, Kolkata (hereinafter the "ld. CIT(A)") dt. 11/03/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2012-13.

2. The revenue has raised the following grounds of appeal:-

*"1. In the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by AO of Rs.3,53,32,000/- u/s. 68 of the I.T. Act as because the assessee has failed to substantiate the genuineness of transaction and creditworthiness of the share holding company and summon u/s 131 of the I.T. Act issued to the assessee company for producing director of the share holding company was not complied with.*

*2. The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."*

3. The brief facts of the case are that the Assessing Officer during the assessment proceedings noted that the assessee company had received share application and share premium amounting to Rs.3,53,32,000/- from its group company, namely, Tara Silk Pvt. Ltd.. Since the summons issued to

the assessee company have not been complied with, therefore, the Assessing Officer held that verification of the share capital introduced during the previous year could not be made due to non-compliance on the part of the assessee. He accordingly treated the aforesaid share application and share premium amounting to Rs.3,53,32,000/- as unexplained income of the assessee and added back the same u/s 68 of the Act into the income of the assessee.

3.1. Aggrieved the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the Id. Counsel for the assessee submitted that, the Assessing Officer had failed to correctly appreciate the facts on the file, that all the required details and documents were furnished which included *interalia* name and address of the share subscribers, PAN of the shareholders, ITR acknowledgements, statement of accounts and bank statements. It was also submitted before the Id. CIT(A) that there was a complete non-application of mind by the Assessing Officer. That the Assessing Officer wrongly noted that the assessee had received share application and share premium from M/s. Tara Silk Pvt. Ltd. of Rs.3,53,32,000/- whereas in fact the total share capital received from the said concern was Rs.29,35,000/- having a premium of Rs. 50/- per share totalling to Rs.1,46,75,000/-. The total amount of share capital and share premium was thus Rs.1,76,10,000/-. However, the Assessing Officer without consulting the record, had taken the figure at Rs.3,53,32,000/-. It was also explained that the share subscriber M/s. Tara Silk Pvt. Ltd. was the group company of the assessee company having common directors. That, there was no suspicion about the identity of the share subscriber. The financial statements of the share subscriber were also submitted to show its

creditworthiness and further the said group company was highly interested in the assessee company having common directors, therefore, there was even no suspicion about the genuineness of the transactions. The Id. CIT(A) after considering the relevant submissions and going through the records, accepted the contentions of the assessee and deleted the additions made by the Assessing Officer, observing as under:-

*“I find that during the relevant assessment year the appellant has allotted 2,93,500 equity shares of Rs 10/- each at a premium of Rs.50/- per share to Tara Silk (P) Ltd. As regards the addition of money received from Tara Silk (P) Ltd I find that the appellant has filed details of Tara Silk (P) Ltd vide its letter dated 15.10.2014. It also filed copy of Form-2 which is return of share allotment filed with the Registrar of Companies. The AR drew my attention to reply dated 16.03.2015 filed by the appellant in course of assessment proceedings. The copy of said letter is placed at page 77 of the paper book filed by the appellant. I find that in this letter the appellant has categorically explained the fact that the share allottee company and the appellant are group companies. The appellant also filed photo copies of PAN Card, passport, voter card, audited accounts along with income tax acknowledgements, bank statement, and status of Directorship of the directors with Ministry of corporate affairs of common director Mr Shri Gopal Jhunjhunwala. Similar details were field in respect of other directors Mr Suresh Banka & Mr Sandeep Jhunjhunwala. In the said letter the appellant had also explained and justified the basis for charging share premium of Rs 50/- per share. The appellant also furnished documents in respect of Tara Silk (P) Ltd to establish the identity and creditworthiness of share applicants as well as genuineness of the whole transaction. The appellant has filed certificate of incorporation, memorandum & articles of association, PAN details, copy of Income Tax Return acknowledgement, copy of bank statement, copy of share application form, payments details through RTGS, share allotment letter and delivery of shares, confirmation from the share applicant explaining the source of making investment, audited accounts of the share applicants. All the documents are forming part of paper book filed before me. It is observed that the AO has independently issued summon w/s 131 to the said Tara Silk Real Estate (P) Ltd. In response to the summon, the said party duly responded vide letter dated 12.11.2014 placed in paper book page 108 & 109. On perusal of such reply, it is found that the said party has furnished the source of funds for making investment in the appellant company, it has also furnished its bank statement maintained with The Federal bank of India from 01/04/2011 to 31/03/2012, Return of Income, Directors Report, auditors*

*Report, Balance Sheet, Profit & loss account, list of investments. I am surprised to find that the AO has not considered any of these documents filed by the said Tara Silk Real Estate (P) Ltd in course of assessment proceedings. There is no adverse findings by the AO in the assessment order on any of these evidences filed. In fact the AO's sole assertion in the entire assessment order is that there was no compliance by the appellant which I decline to agree with. I find that the observation of the AO that there was no compliance by the appellant is not correct. On the contrary I find that the appellant has completely discharged its onus u/s 68 of the Act. I also find that the appellant has given an explanation for charging the share premium which has not been rejected by the AO. Therefore in my considered opinion without rejecting any of the evidences filed by the appellant or without even finding any discrepancy in any of the evidences filed by the appellant the entire share capital including share premium could not have been added as appellant's income more so when the money has been received from the same group company and not from any outsider.*

*It is further observed that the identity of the investor entity M/s. Tara Silk (P) Ltd. is not in dispute and also that both the appellant and the said investor entity are group concerns having common Directors. The first component of identity therefore vis-à-vis Section 68 of the Act duly stands satisfied. It is evident thereafter that the appellant's paper book forming part of record before me contain all necessary details of its copy of return and computation for the impugned assessment year with Auditor's report, audited accounts, its replies to the AO during the course of assessment proceedings, copy of ledger account of the investor entity in its books along with bank statement indicating the money in question to have come through banking channel, reply to AO's summons issued u/s. 131 to appellant as well as to Tara Silk (P) Ltd, details of PAN card, audited accounts, income tax returns, confirmation, share holders' details, sufficiently indicate from the group entity only. The AO observation cannot be accepted particularly in view of the that the appellant has been able to support its case of having received the investment in question made the impugned investment. I do not find any material on record to agree to the AO's plea fact that it is the appellant's group company having common Directors and shareholders who has that the share capital is unexplained. I do not find any cogent material indicating M/s. Tara Silk Pvt. Ltd. to have first deposited cash sums followed by its reinvestment in appellant's equity shares.*

*It is observed that the total net worth of Tara Silk (P) Ltd is Rs. 4,51,08,651/- out of which it has invested in the shares of the appellant company. There is no reason to doubt about the creditworthiness of the said*

*company belonging to the same group. The said share applicant possessed sufficient net worth out of which share subscription amounts were paid through banking channels. It is also observed from page 110 of paper book that the entire transaction were through account payee cheques and had the AO wanted the entire source till the destination of this money could have been verified by him since the payments were from banking channels. The investment made by Tara Silk (P) Ltd is duly recorded as investment in its balance sheet furnished before the AO, thus in my considered opinion the genuineness of the transactions regarding receipt of share capital along with share premium is got to be accepted. It is seen from page 110 of the paper book which is the share application form by Tara Silk (P) Ltd and it contains the entire payment details which match with the appellant's bank statement also. The allotment letter given by the appellant to Tara Silk is also at page 111 of the paper book. From the allotment advice the distinctive number of share certificates, being 487501 to 781000, were also before the AO. I find that page 112 and 113 contains relevant Federal bank statement of Tara Silk (P) Ltd is placed. From the perusal of such bank statement I find that there was no cash deposit before issuing cheques to the appellant. Thus the genuineness of transaction is held to be beyond any controversy. I find that the AO failed to indicate any misappropriation of evidence during the course of assessment proceedings. The AO relied on all the case laws discussed in assessment order which I find without any significance since there is no instance therein dealing with a group entity having invested in concerned appellant's share. Thus the case laws are therefore held to be not relevant to the issue in hand. The A/R has placed reliance upon the decision of Pr.CIT-2 Vs. Gyscoal Alloys Ltd. in R/Tax Appeal No. 180 of 2018 by Gujarat High Court wherein the High Court has upheld the order of ITAT deleting the addition of share capital received from group companies. To conclude in light of all these facts and circumstances that the appellant has been able to prove all three components of identity, and creditworthiness and genuineness of the transaction from its group company M/s. Tara Silk (P) Ltd., the A.O. is not justified in making addition u/s. 68 of the I.T. Act without any cogent material on record and is purely based on his surmises. These grounds of appeal of the appellant are therefore allowed."*

4. Aggrieved the revenue is in appeal before us.
5. We have heard the rival contentions and gone through the record. The Id. Counsel for the assessee has drawn attention to the note put up by the Assessing Officer at the end of the assessment order which for the sake of ready reference is reproduced as under:-

**"NOTE NOT FOR THE ASSESSEE:**

*The case was selected under CASS to examine the large share premium received during the year. Pursuant to CBDT's Restructuring of jurisdiction considerable time and energy have been spent towards transfer in and transfer out of assessment records. On account of this time available for disposal of large number of Time Barring cases is very little. Suitable remedial action will be taken as per law, if any errors and omission detected subsequently."*

6. A perusal of the above note put up by the Assessing Officer, itself , shows that in this case, the Assessing Officer has not properly applied his mind to the facts, details and evidence filed on record, rather, the assessment was framed in a hurried manner as the time limit for framing of the assessment was expiring. However, the Id. CIT(A) has duly taken note of the facts, details and evidence on the file and noted that the share application money was received from one party which was a group company of the assessee company who was substantially interested in the business and development of the assessee company and further the assessee had duly proved the identity, creditworthiness and genuineness of the transactions. The Id. D/R has failed to controvert the factual findings of the Id. CIT(A).

In view of this, we do not find any merit in the appeal of the revenue and the same is accordingly dismissed.

7. In the result, appeal of the revenue stands dismissed.

**Order pronounced in the Court on 6<sup>th</sup> February, 2023 at Kolkata.**

*Sd/-*

**(Girish Agrawal)  
Accountant Member**

Kolkata, Dated 06/02/2023

*\*SC S.P.*

*Sd/-*

**(Sanjay Garg)  
Judicial Member**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**