

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA**  
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 21/Kol/2021**  
**Assessment Year : 2012-13**

ITO, Ward-5(1), Kolkata	vs	M/s. Eurolink Exports Pvt. Ltd.
		PAN: AAACE 5636 K
Appellant		Respondent

Date of Hearing	17.01.2023
Date of Pronouncement	23.02.2023
For the Assessee	Shri Manish Tiwari, FCA
For the Revenue	Shri P.P. Barman, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

The present appeal has been preferred by the revenue against the order of Id. CIT(A) – 7, Kolkata dated 13.07.2020 for assessment year 2012-13. The revenue has taken the following grounds of appeal:

*“1. That on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the deleting the addition of Rs. 2,41.50,000/- made by the Assessing Officer on account of share capital and premium in the course assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transactions.*

*2. That on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the deleting the addition of Rs. 2,41,50,000/- made by the Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings and as such identity & creditworthiness of the creditors and genuineness of transactions could not be verified.*

*3. That on the facts, the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd (412 ITR 161) 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". In the facts and under the circumstances of the case, the assessee company has failed to do so other than submission of mere statements of various kinds. Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital was not the assessee's own income.

4. That on the facts, the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd. (412 TR 161) 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 the companies to whom share were allotted on private placement basis. Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital was not the assessee's own income.

5. That on the facts, the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr. CT(Central)-1, Kolkata 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 of 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 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.

6. That on the facts, on the facts of the present case, clearly the Assessee Company failed to discharge the onus required under section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the income of the Assessee and the Ld. CIT(A) has erred in allowing relief to the assessee.

7. That on the facts, in absence of verification, Ld. CiT(A) should have remanded the matter to A.O. for fresh verification. Thus, he has violated the provisions of Rule 46A of the I. T. Rules.

8. *That on the facts, the appellant craves to add, alter, amend, delete or substitute any of the grounds and/or take additional grounds before or at any time of hearing of this appeal.*

9. *That on the facts, further the Assessing Officer made disallowance of Rs. 90,575/- as u/s. 14A r.w. Rule 8D which has been deleted by the CIT(A)-7, Kolkata. The CIT(A) was not justified denying the findings of the Assessing Officer.”*

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of **Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020**, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. Going through the grounds of appeal, we find that the factual issue raised by the revenue is against the deletion of addition of Rs. 2,41,50,000/- by the ld. CIT(A) is made by the ld. AO in respect of share capital and share premium being unexplained cash credit during the year.

4. Brief facts of the case are that the assessee filed its return of income on 25.03.2013 showing total income at Nil. The return of the assessee was processed u/s 143(1) of the I.T. Act, 1961. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act was issued and duly served upon the assessee. In response to such notice, the ld. AR of the assessee appeared and filed certain document as asked by the ld. AO. During the assessment proceeding, the ld. AO did not satisfy on the submission made by the ld. AR of the assessee and

the ld. AO finally added the entire amount of Rs. 2,41,50,000/- in respect of share capital and share premium during the year under consideration in the hands of assessee. Further, the ld. AO disallowed of Rs. 90,575/- u/s 14A of the I.T. Act and added some income in the hands of assessee.

5. Dissatisfied with the above order, assessee preferred an appeal before the ld. CIT(A) where the ld. CIT(A) allowed the appeal of the assessee. After taking into consideration, the written submission of the assessee which is extracted below:

*4.1. At the appellate stage, the A.R of the appellant discussed the issue and filed counter written submission to the effect that Section 68 of the Act could not have been attracted in the instant case. The written submission in this regard is reproduced as follows:*

**Ground No. 1 to 3.**

*All these grounds are directed against issue viz. the addition of Rs. 2,41,50,000/- towards receipt of share capital as unexplained cash credit u/s 68 of Income Tax Act, 1961 and the relevant arbitrary findings. The addition is not sustainable in law for reasons explained below:*

1. *During the year under consideration the appellant company was engaged in trading of shares as well providing financial accommodation carrying interest income. The gross receipts from above activities of business aggregated to Rs. 7,03,873/- as against such receipt of the immediate preceding year amounting to Rs. 15,34,294/-.*

2. *The management of the company decided to raise additional fund for business exigencies in earlier assessment years as well as during the year. Consequently on personal approach of directors, various shareholders agreed to subscribe 120750 shares of face value of Rs. 10/- each at a premium of Rs. 190/- per share. The appellant after receipt of share application money in earlier years as well as during the relevant assessment year allotted share capital of Rs. 12,07,500/- along with share premium of Rs. 2,29,42,500/- to all the share applicants. Necessary information regarding increase of share capital with premium as well as allotment of share, to various applicants were given to Registrar of Companies by filing Form 5 & Form 2 respectively. Copies of form No. 5 & Form 2 forms part of paper book accompanying this submission.*

3. In fact, during the year under consideration the appellant company allotted 120750 equity shares to four corporate bodies and forty one individuals & HUF for which share application money of Rs. 1,91,00,000/- was received in earlier years. The details are reproduced herein below and the corresponding ledger accounts are enclosed in the paper book filed along with the submissions. Therefore the conclusion of Ld. A.O. that there was cash credit within the meaning of section 68 of the Act during the year to the tune of Rs. 2,41,50,000/- is opposed to fact on record.

4. There is no controversy that in course of scrutiny proceeding the appellant furnished details and documents relating to receipt of share capital with premium from shareholders as well as allotment thereof. This is evident from A.O.'s observations at page 1 & 2 of assessment order. A.O. on the basis of such details issued summons u/s 131 to the directors of shareholder companies as admitted on record.

5. The list of shareholders who contributed to share capital along with Addresses, PAN, No of Shares allotted and total amount contributed including premium by each was -received remained as under:-

Sl.	Name, PAN & Address	Opening Balance	During the year	No. of shares	Total Share capital (including premium)
1	Agri Business Industries Ltd	7,00,000/-	16,00,000/-		(Rs. 23,00,000/- refunded during the year)
2	Bijay Kumar Jajoo [PAN - ACPPJ5793E] 14/21/4, Sanatan Mistry Lane, Oriapara, Howrah-6	5,00,000/-	3,00,000/-	4000	8,00,000/-
3	Dinesh Kumar Jajoo [PAN - ACGPJ3182L] 89/124/1, Pandit Ishan Chandra Road, Rishra, Hooghly-712248	1,00,000/-	2,00,000/-	1500	3,00,000/-
4	Ganpat Lal Gupta [PAN - ADNPG3596R]	6,00,000/-	3,00,000/-	4500	9,00,000/-

	7	Vivekanand Road, Kolkata-7 Gopal Prasad Sahal [PAN - AVZPS3734R] 65, Burtolla Street, Kolkata-7	2,00,000/-	8,50,000/-	5250	10,50,000/-
	6	Indu Sahal [PAN - AWAPS9317G] 65, Burtolla Street, Kolkata-7	3,00,000/-	2,00,000/-	2500	5,00,000/-
	7	Kamla Sikaria [PAN - AKKPS2465D] 80, Shibtala Street, Hooghly- 712233	5,00,000/-	3,50,000/-	4250	8,50,000/-
	8	Kusum Lata Goenka [PAN - ADOPG8603Q] 64, Patharia Ghat Street, Kolkata- 700006	5,00,000/-	5,50,000/-	5250	10,50,000/-
	9	Kusum Lata Sikaria [PAN - AMBPS1668P] 80, Shibtala Street, Hooghly- 712233	5,00,000/-	3,50,000/-	4250	8,50,000/-
	10	Ritu Vinayog & Traders Pvt. Ltd. [PAN - AABCR2109K] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	1,00,000/-	2,00,000/-	1500	3,00,000/-
	11	Sabita Devi Agarwal [PAN - AFWPA4191B] 11, Surendra Nath Chatterjee Lane, Howrah-711102	50,000/-	2,00,000/-	1250	2,50,000/-
	12	Santosh Sharma [PAN - AMIPS8271R] S-5/7 Nisco Housing Govt. Qtrs., Howrah-711106	5,00,000/-	3,00,000/-	4000	8,00,000/-
	13	Sanwar Mal Agarwal [PAN - ACMPA3952F] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	3,00,000/-	4000	8,00,000/-
	14	Shiv Ratan Agarwal [PAN - ACXPA1430B] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	8,00,000/-	1,00,000/-	4500	9,00,000/-
	15	Shyam Sunder Sahal (HUF) [PAN - AAGHS5734K] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	6,50,000/-	1,50,000/-	4000	8,00,000/-
	16	Uma Sharma [PAN - AWAPS9316H] 114/1A, Cullon Street, Kolkata-7	5,00,000/-	3,00,000/-	4000	8,00,000/-
		<b>Total of A</b>	<b>70,00,000/-</b>	<b>39,50,000/-</b>		

B		Opening Balance	During the year	No. of shares	Total Share capital (including premium)
Sl.	Name, PAN & Address				
17	Ace Flora-Tech Ltd. [PAN - AACCA1296R]	--	2,00,000/-	1000	2,00,000

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	2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1				
18	Agro Food Projects Ltd. [PAN - AACGA5600M] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	--	3,00,000/-	1500	3,00,000/-
19	Anjula Jajoo [PAN - AJEPJ6539L] 71/3, Bhairav Dutta Lane, Nandi Bagan, Howrah-711106	--	2,00,000/-	1000	2,00,000/-
20	Anshu Agarwal	--	2,00,000/-	(Rs. 2,00,000/- refunded during the year)	
21	Kamal Sikaria (HUF) [PAN - AAGHK1077F] 80, Shibtala Street, Hooghly-712233	--	3,00,000/-	1500	3,00,000/-
22	Pawan Kumar Jajoo [PAN - ACXPJ3704H] 71/3, Bhairav Dutta Lane, Nandi Bagan, Howrah-711106	--	1,00,000/-	500	1,00,000/-
23	Pawan Kumar Jajoo (HUF) [PAN - AAJHP7312R] 71/3, Bhairav Dutta Lane, Nandi Bagan, Howrah-711106	--	1,00,000/-	500	1,00,000/-
<b>Total of B</b>		--	12,00,000/-		

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Sl.	Name, PAN & Address	Opening Balance	During the year	No. of shares	Total Share capital (including premium)
24	Ajay Shukla Ankur Apartment 4 <sup>th</sup> Floor, Aswani Nagar, Kolkata-59	5,00,000/-	--	2500	5,00,000/-
25	A.K. Poddar (HUF) 333/F, Jessore Road, Kolkata-89	1,00,000/-	--	500	1,00,000/-
26	Anil Kumar Gupta [PAN - ADTPG6331J] 21/B, Canning Street, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
27	Anil Poddar 333/F, Jessore Road, Kolkata-89	7,00,000/-	--	3500	7,00,000/-
28	Anup Kumar Himatsinghka 106/3, Groy Street, Kolkata-5	5,00,000/-	--	2500	5,00,000/-
29	Bhairundan Jajoo (HUF) P-21, Kalakar Street, Kolkata-7	5,00,000/-	--	2500	5,00,000/-
30	Bina Poddar 333/F, Jessore Road, Kolkata-89	6,00,000/-	--	3000	6,00,000/-
31	C.R.A. Raman [PAN - AEWPC5400N] 46/1B, Jyotish Roy Road, New Alipore, Kolkata-53	7,00,000/-	--	3500	7,00,000/-
32	Debrata Deb				

ITA No. 21/Kol					
	[PAN - AGKPD6650M] 24, Hemanta Basu Sarani, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
33	Devdoot Enclave Pvt. Ltd.	7,00,000/-	No allotment - Closing Balance - Rs. 7,00,000/-		
34	Dilip Agarwal 24/1A, Girish Chandra Bose Road, Kolkata-14	5,00,000/-	--	2500	5,00,000/-
35	Foresight Consultant & Investments Pvt. Ltd. [PAN - AAACF4401H] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
36	Gyarsi Lal Agarwal 24/1A, Girish Chandra Bose Road, Kolkata-14	5,00,000/-	--	2500	5,00,000/-
37	Kusum Agarwal 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	6,00,000/-	--	3000	6,00,000/-
38	Madhuri Devi Sahal [PAN - AKUPS8708F] 65, Burtolla Street, Kolkata-7	2,00,000/-	--	1000	2,00,000/-
39	Neha Agarwal [PAN - AELPA8949J] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
40	Prabir Manna [PAN - AKQPM9890E] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
41	Pradip Kumar Goenka 64, Patharia Ghat Street, Kolkata- 700006	5,00,000/-	--	2500	5,00,000/-
42	Punit Agarwal [PAN - AEFPA8602K] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
43	Raj Kumar Jain (HUF) [PAN - AAMHR3070B] AA-20, Deshbandhu Nagar, Baguihati, Kolkata-59	6,00,000/-	--	3000	6,00,000/-
44	Ritu Agarwal 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
45	Rubi Agarwal [PAN - ACSPA0381J] 2D, Haral Das Street, Kolkata-14	5,00,000/-	--	2500	5,00,000/-
46	Santosh Agarwal [PAN - ABCPA4394C] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
47	Sanwar Mal Agarwal (HUF) [PAN - AAEHS6063B] 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No.	5,00,000/-	--	2500	5,00,000/-

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315, Kolkata-1				
Shiv Ratan Agarwal (HUF)	1,00,000/-	(Rs. 1,00,000/- refunded during the year)		
Shyam Sundar Agarwal (HUF) 2, Lal Bazar Street, 3 <sup>rd</sup> Floor, R. No. 315, Kolkata-1	5,00,000/-	--	2500	5,00,000/-
<b>Total of C</b>	<b>1,28,00,000/-</b>	<b>-1,00,000/-</b>		
<b>Total of (A+B+C)</b>	<b>1,98,00,000/-</b>	<b>50,50,000/-</b>	<b>120750</b>	<b>2,41,50,000/-</b>

6) We draw your kind attention to the chart herein above to plead that in respect of most of the parties no fresh sum of money was credited during the relevant year under consideration as the balances of their account represented opening balances. We refer to the ledger accounts of such share applicants filed in the paper book in support of our contentions. As far as applicability of section 68 of the Act is concerned it is submitted that there being no credit entry into the books of accounts during the year, addition cannot be validly made as per provisions of section 68 as they are only applicable in a case where any unexplained credit is found in the books of accounts in that particular previous year. We place reliance upon following decisions :-

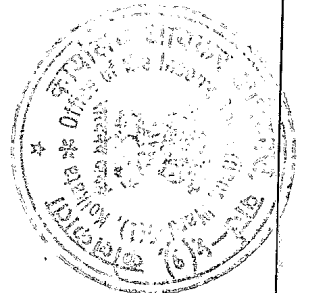
a) *CIT vs Usha Stud Agricultural Farms Ltd* reported in 301 ITR 384 Delhi High Court held that "since it is a finding of fact recorded by the CIT(A) that this credit balance appearing in the accounts of the assessee does not pertain to the year under ; consideration, under these circumstances, the assessing officer was not justified in making the impugned addition u/s 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).

b) *DCIT vs Amod Petrochem Private Limited* reported in 307 ITR 265 Gujarat High Court held that "in other words, what came in the books of accounts of the assessee company for the previous year relevant year to the assessment year in question, The tribunal was, therefore, justified, in holding that the assessee's liabilities to pay tax in respect of unexplained deposits of Rs. 1,61,895/- did not arise.

c) *Shri Vardhman Overseas Ltd* reported in 24 SOT 393 Delhi ITAT held that "since the amounts in question were brought forward balances, they could not be added to income of the assessee for the year under consideration, as the question of genuineness thereof could be examined only in the year in which they were credited to the account of the assessee".

7) Without prejudice to above to establish identity, creditworthiness of share applicants - X and genuineness of transactions the appellant also furnished various documents as specified below;-

S. No	Name of The Company	Documents Furnished.
1	Ace Flora-Tech Ltd.	Source of Funds, Copy of Income Tax Return Acknowledgement, Share certificate,
2	Agro Food Projects Ltd.	
3	Ajay Shukla	
4	A.K. Poddar (HUF)	
5	Anil Kumar Gupta	
6	Anil Poddar	
7	Anjula Jajoo	
8	Anup Kumar Himatsinghka	
9	Bhairundan Jajoo (HUF)	
10	Bijay Kumar Jajoo	
11	Bina Poddar	
12	C.R.A. Raman	
13	Debbbrata Deb	Allotment Advice, Copy of Audited Financial Statement wherever applicable as well as & Relevant Bank Statement / Pass book etc.
14	Dilip Agarwal	
15	Dinesh Kumar Jajoo	
16	Foresight Consultant & Investments Pvt. Ltd.	
17	Ganpat Lal Gupta	
18	Gopal Preasad Sahal	
19	Gyarsi Lal Agarwal	
20	Indu Sahal	
21	Kamla Sikaria	
22	Kamal Sikaria (HUF)	
23	Kusum Agarwal	
24	Kusum Lata Goenka	
25	Kusum Lata Sikaria	
26	Madhuri Devi Sahal	
27	Neha Agarwal	
28	Pawan Kumar Jajoo	
29	Pawan Kumar Jajoo (HUF)	
30	Prabir Manna	
31	Pradip Kumar Gupta	
32	Punit Agarwal	
33	Raj Kumar Jain (HUF)	
34	Ritu Agarwal	
35	Ritu Viniyog & Traders Pvt. Ltd.	
36	Rubi Agarwal	
37	Sabita Devi Agarwal	
38	Santosh Agarwal	
39	Santosh Sharma	
40	Sanwar Mal Agarwal	
41	Sanwar Mal Agarwal (HUF)	
42	Shiv Ratan Agarwal	
43	Shyam Sundar Agarwal (HUF)	
44	Shyam Sundar Sahal (HUF)	
45	Uma Sharma	



8) *It is abundantly clear from the above facts that the appellant had furnished the full*

*details of shareholders with name, address, PAN, etc to whom 120750 shares of Rs. 10/- each with premium of Rs. 190/- per share were allotted during the year after adjustment of share application money of Rs. 1,91,00,000/- received in earlier year and balance of Rs. 50,50,000/- received in the current assessment year. The various documents furnished in respect of the subscriber as furnished on record forms part of paper book accompanying this written submission.*

9) *In the instant case, the shareholders are mostly individuals, HUFs except four shareholders who are corporate entities and duly incorporated under the Companies Act, 1956. The share applicant companies as well as other shareholders who are individuals & HUFs are also independently assessed to tax. Therefore the identities of all the 45 shareholders are verifiable from Departments own record and website.*

*So far as genuineness of the transactions it is stated that share subscriptions received during the relevant previous year amounting to Rs.50,50,000/- were received by account payee cheques through banking channel which' is traceable from the origin to the destination of such payment. The transactions are verifiable from the bank statements of the appellant company and the outgoings from the Bank statements of all the 18 shares subscriber companies as furnished on record. Therefore, the genuineness of the transactions should not be called into question.*

*As far as creditworthiness of the share applicants is concerned it is stated that the entire gamut of transactions was undertaken through banking channel and there was sufficient balance available of enable to invest the necessary fund. In respect of all the share applicants, there were more than enough funds to subscribe to the shares of the appellant as the following facts will unequivocally testify and prove. As regards 41 shareholders who are individual s and HUFs it is submitted that all such non-corporate individuals & HUFs in their letters addressed to the AO confirmed their application for shares including mode and source of payment which were dispatched by post as well as by delivery through messenger in the office of AO copies of all such replies are filed in paper book.*

10) *We place reliance to the decision of Jurisdictional High Court in the case of Exoimp Resources (India) Ltd. -VS- C.I.T. (2005) 276ITR 87 (Cal) wherein it was opined that if the assessee furnishes an explanation in respect of cash credit U/s. 68, it is incumbent upon the Assessing Authority to examine the explanation and arrive at a conclusion as to whether the explanation was satisfactory. In case the explanation of the assessee is considered as not satisfactory, Assessing authority has to communicate his view point in arriving such conclusion. 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 documents furnished on record to establish identity and creditworthiness of the shares subscribers as- well as genuineness of transactions have not been proved to be false by causing any enquiry by A.O. In*

*the absence of any attempt to find fault in these documents, it has to be presumed that the appellant discharged the burden which is cast. U/s; 68-of the Income Tax Act. Hence, the scope of holding that shares capital is unexplained is rare and remote.*

*11) The provisions of section 68 stipulate that any sum found credited in the assessee's books of account of the relevant year and in respect of which the assessee failed to explain the nature and source of such credit shall be assessed as unexplained credit. The facts of the present case as explained at para 5, 6 and 7 of this submission will reveal that both the nature and source of share application money was fully explained by the appellant. The appellant has conclusively proved the identity and creditworthiness of the share applicants as well as genuineness of transactions.-The PAN details, Bank statement, Audited Accounts and I. T. Return acknowledgement of all the share application were placed on A.O. records.*

*12) As per requirement of law, the initial burden lies on the tax payer to explain the nature and source of share application money received by the assessee. It is also clear that the tax payer has to establish satisfactorily the identity and creditworthiness of the shareholders as well as genuineness of transactions to discharge its primary burden as per mandate of section 68 of the Act. The initial burden has been duly discharged by providing the identity, creditworthiness and genuineness by furnishing copies of return along with Audit report and financial statement as well as copies of Bank ' statements of the shareholders as well as the appellant company. These are verifiable from relevant documents which forms part of paper book. None of these documents submitted on record have been proved to be false or bogus by Ld. A.O. by causing enquiry. Ld. A.O. has drawn adverse inference against the appellant merely on the plea that none of the directors of shareholders companies as well as individuals or karta of HUFs attended personally in terms of summons u/s 131.*

*13) Therefore, the onus to disprove the assessee's explanation stands gifted on the revenue. A.O. has failed to find any fault either on such explanations and or various documentary evidences establishing identity, creditworthiness and genuineness of transactions. The impugned order does not show any adverse inference relating to identity by mismatch of PAN and/or non-availability of share applicant at the given address. The order also does not say that capital and reserves of shareholders fall short of their investment with the appellant company. Nor there is any attempt that there was no adequate balance in the share holders bank A/c prior to issue of cheque for investment with the appellant. Therefore the onus which shifted on the revenue cannot be said as reverted back on the taxpayer. Consequently, all the documentary evidences available on records establishing identity, creditworthiness and genuineness have to be acted upon as a valid and genuine one in the absence of any challenge from the Revenue. In the circumstances, it is pointed out that Ld. A.O. has framed assessment in most perfunctory manner and without any objective application of mind to the facts, materials and evidences placed on records.*

14) We have earlier explained that while allotting 120750 shares of Rs. 10/- each at a premium of Rs. 190/- each the appellant adjusted share application money of Rs. 1,91,00,000/- received in earlier years. Hence only a balance amount of Rs. 50,50,000/- i.e. (2,41,50,000 - 1,91,00,000) may be said as cash credit u/s 68 of the Act in the present year. It is settled law that share application money received in earlier year cannot be considered - as unexplained cash credit u/s 68 in the present year merely on the ground that shares were allotted in A. Y 2012-13. Further the remaining sum of Rs. 50,50,000/- was mostly received from same brought forward shareholders and some new shareholders who have furnished all the requisite evidences in support of genuineness of claim.

15) It is evident from assessment order that the only reason for which so-called cash credit has been considered as unexplained is that directors of shareholder companies failed to appear in person in response to summons u/s 131. We invite attention to the decision of Bombay High Court in the case of CIT - Vs - U.M. Shah, Proprietor, Shrenik Trading Co. 90ITR 396 wherein it was held –  
“If the parties had received the summons but did not appear, the assessee could not be blamed.”

16) The other allegation of Ld. A.O. shows that the assessee company was confronted with the non-compliance of summons u/s 131 by directors of Shareholder Companies and was directed to produce the shareholder companies for examination which was not acted upon. It is humbly submitted that Companies Act has not given any power to direct the shareholders companies and/or to enforce attendance before A.O.

17) Case laws relied by A.O.

i.) The allegation of A.O. that the assessee failed to prove all the criteria within the meaning of section 68 of the Act by relying upon the decision in the case of CIT - Vs-Precision Finance Pvt. Ltd. 208 ITR 463 (Kol) is not sustainable in law. It is evident from the relevant part of observations from the said judgement that Kolkata High Court gave their opinion in the context of facts that –  
“The enquiry of ITO revealed that either the assessee was not traceable or there was no such file and accordingly the first ingredient i.e. the identity of the creditors had not been established.”

The facts of the present case do not suggest that any enquiry was caused by A. O. to conclude that any of the 45 shareholders are either not traceable or they have no I.T. file. Therefore the decision relied upon being distinguishable on facts cannot have any applicability.

ii.) The decision in the case of CIT - Vs - Nipun Builders & Developers Pvt. Ltd. as relied upon by A.O. can have hardly any application in the present case. Since facts are completely distinguishable and 41 share allottees were individuals &

*HUFs. No summons u/s 131 was issued in their name and as such the ratio of this case law is not applicable in the appellant's case.*

*iii.) The decisions CIT - Vs - Devi Prasad Vishwanath Prasad 72 ITR 194 (SC) and CIT -Vs - Independent Media Pvt. Ltd. (Delhi HC) appears to be extraneous since there was no failure to prove identity, creditworthiness and genuineness of transactions in respect of 45 shareholders including four shareholders who are corporate bodies, Such documents have not been proved to be false or bogus. There is no adverse inference on this point.*

*iv.) The decision of IT AT Kolkata Bench in the cases of Star Griha Pvt. Ltd. - Vs - CIT and Bisakha Sales Pvt. Ltd. - Vs - CIT refer to revisionary proceeding u/s 263 of Income Tax Act, 1961. Such decisions cannot be imported for the purpose of assessment proceeding u/s 143(3) but should be confined to power of CIT in applying jurisdiction."*

6. We after hearing the rival parties and perusing the material available on record including the impugned order. It is an undisputed fact that during the year under consideration, the assessee allotted equity shares amounting to Rs. 2,41,50,000/- was received in earlier assessment year. The details of the aforesaid money receipt in the earlier years are given in the tables in the order has extracted hereinabove and in this regard, ld. CIT(A) has also given a finding of fact to this effect in the appellate order. We note that the assessee has issued shares to 49 parties amounting to Rs. 2,41,50,000/- comprising of share capital of Rs. 12,07,500/- and share premium of Rs. 2,29,42,500/-.

7. We noticed that out of the alleged sum of Rs. 2,41,50,000/-, the sum of Rs. 1.91 crores was received in the earlier years and has been adjusted against the allotment of shares during the year. Out of the remaining sum of Rs. 39.50 lacs has been received from those parties who have given the advance shares application money to assessee in the earlier years and remaining

Rs. 11 lacs has been received from different parties for the first time during the year to which the assessee has allotted the equity shares.

8. So far as the sum of Rs. 1.99 crores received in the earlier years and equity shares allotted against such sum during the year which are in question before us.

9. We note that the assessee has received above sum in the earlier assessment year and a finding of fact was recorded by the Id. CIT(A) to this effect also. Therefore, the Id. CIT(A) note that allotment of shares against the money which were received in earlier years is concerned, the provision of section 68 of the Act were not attracted. In our opinion, this is a correct proposition of law as money received in the earlier assessment year cannot be termed as received during the year and, therefore, same cannot be considered as cash credit in the books of accounts of the assessee during the year. The Id. CIT(A) in his order discuss each and every party and record a finding of fact that the identity, creditworthiness of the investors and genuineness of the transactions were duly proved.

10. We further note that the assessee filed all the evidences before the Id. CIT(A) in respect of money receipt in earlier years comprising names, address, bank statement etc. which confirmed disinvestment in assessee's company. The case of the assessee finds support from the decisions which are discussed as under:

*a) CIT vs Usha Stud Agricultural Farms Ltd reported in 301 ITR 384 Delhi High Court held that " since it is a finding of fact recorded by*

*the CIT(A) that this credit balance appearing in the accounts of the assess. Does not pertain to the year under consideration, under these circumstances, the assessing officer was not justified in making the impugned addition u/s 68 of the Act and as such no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A).*

*b) DCIT vs Amod Petrochem Private Limited reported in 307 ITR 265 Gujrat High Court held that "in other words, what came in the books of accounts of the assessee company for the previous year relevant year to the assessment year in question, The tribunal was, therefore, justified, in holding that the assessee's liabilities to pay tax in respect of unexplained deposits of Rs. 1,61,895/- did not arise.*

*c) Shri Vardhman Overseas Ltd reported in 24 SOT 393 Delhi ITAT held that "since the amounts in question were brought forward balances, they could not be added to income of the assessee for the year under consideration, as the question of genuineness thereof could be examined only in the year in which they were credited to the account of the assessee".*

*d) The Hon'ble Apex Court in the case of Orissa Corporation Pvt. Ltd. reported in 159 ITR 78 and Hon'ble Gujarat High Court in the case of DCIT Vs. Rohini Builders reported in 256 ITR 360 wherein it was held "Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the 'Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the -alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those*

*creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69”.*

*e) The Hon’ble Jurisdictional High Court in case of Crystal Networks (P)Ltd vs CIT reported in 353 ITR 171 (Cal) had held that when the basic evidences are on record, the mere failure of the creditor to appear before the Assessing Officer cannot be the basis to make addition.*

11. Considering the facts as narrated above and ratio laid down in the above decisions, we are of the considered view that the money received in the earlier years at Rs. 1.91 crores cannot be taxed as unexplained cash credit during the year. Now, so far as, the addition made u/s 68 of the Act at Rs. 39.50 lacs, we find that it has been received from those parties who had given the advance share application money to the assessee in the earlier years. While dealing with the addition of Rs. 1.91 crores, we have already deleted the said addition and since the sum of Rs. 39.50 lacs has been received from the very same party, we find no justification for invocation by provisions of section 68 of the Act on the said sum. Thus the said sum has already been deleted by the party.

12. As far as the remaining sum of Rs. 11 lacs which has been treated as unexplained cash credit by the ld. AO u/s 68 of the Act, The ld. CIT(A) observed that the assessee had filed sufficient documentary evidence to prove the identity of the share applicants, their creditworthiness for making such investment and the genuineness of the transaction and since the ld. DR failed to rebut any of these facts as well as findings of ld. CIT(A). We are

satisfied that the said sum cannot be subjected to the provisions of section 68 of the Act and the ld. CIT(A) has rightly deleted the said addition. No interference is, therefore, called in the findings of ld. CIT(A). Accordingly we uphold the order of ld. CIT(A) by dismissing the appeal of the revenue.

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

Order is pronounced in the open court on 23.02.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 23.02.2023  
*Biswajit, Sr. PS*

Copy of the order forwarded to:

1. Appellant- ITO, Ward-5(1), Kolkata.
2. Respondent – M/s. Eurolink Exports Pvt. Ltd., 315, Todi Chambers, 3<sup>rd</sup> Floor, 2, Lal Bazar Street, Kolkata-700 001.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata