

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

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

**ITA No.2448/Kol/2017
Assessment Year: 2012-13**

M/s. Ajit Vanijya Pvt. Ltd. 14/2, Old China Bazar St., 3 rd Floor, R. No. 308, Kolkata-700001. (PAN: AAICA0359H)	Vs.	Income Tax Officer, Ward-4(3) Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sunil Surana, AR

Respondent by : Shri Subhrajyoti Bhattacharjee, CIT, DR

Date of Hearing : 12.01.2023

Date of Pronouncement : 23.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-13, Kolkata vide Appeal No. 165/CIT(A)-13/Kol/2016-17 dated 29.09.2017 passed against the assessment order by ITO, Ward-4(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 20.03.2015.

2. Assessee has raised as many as six grounds of appeal, all of which relate to addition of Rs.1,74,50,000/- as unexplained cash credit u/s. 68 of the Act towards share capital and share premium. For the sake of brevity, grounds of appeal are not reproduced.

3. Brief facts of the case are that assessee filed its e-return, reporting total income at Rs.3,920/-. Case was selected for scrutiny

through CASS for which statutory notices were issued and served on the assessee and were duly complied with. In the course of assessment proceeding, Ld. AO noted from the audited accounts of the assessee that it has received share application money including premium, amounting to Rs.1,74,50,000/- at a face value of Rs. 10/- each and share premium of Rs.240/- each. Out of total amount of Rs.1,74,50,000/-, assessee had issued shares to the following eleven (11) companies, details of which is tabulated as under:

No.	Name & occupation of Share holders	Address of allottee	PAN	Amount contributed	Capital and reserve of share holder	Ass't u/s	Notice u/s 133(6)
1	GREEN GOLD PLANTATION & NURSERY LTD BUSINESS	14/2, OLD CHINA BAZAR STREET KOLKATA 700001 WEST BENGAL	AABCG3571G	200000	53710000	143(3)	served and complied with
2	JRP HOLDINGS LTD BUSINESS	14/2 OLD CHINA BAZAR STREET KOLKATA 700001 West Bengal	AABCJ3755H	3000000	18521128	143(3)	served and complied with
3	HOTEX MARKETING PVT LTD BUSINESS	50, KALI KRISHNA TAGORE STREET KOLKATA 700007 West Bengal	AACH6463M	2200000	54324280	143(3)	served and complied with
4	NITIN TRADECOM PVT LTD BUSINESS	14/2 OLD CHINA BAZAR STREET KOLKATA 700001 West Bengal	AADCN2862K	1000000	27452756	143(3)	served and complied with
5	BLUE BIRD EQUIPMENT TRADERS P LTD BUSINESS	20,GHOLA ROAD,33 BELGHORIA KOLKATA 700083 West Bengal	AAECB5886G	1000000	78810407	143(3)	served and complied with
6	OASIS AGRO PRODUCTS LTD BUSINESS	14,ARMENIAN STREET KOLKATA 700001 West Bengal	AAACO5857C	1100000	89531093	143(3)	served and complied with
7	ROCKSTAR DISTRIBUTORS P LTD BUSINESS	14,ARMENIAN STREET KOLKATA 700001 West Bengal	AAFCR5613Q	1500000	18051584	143(3)	served and complied with

8	SARBOTTAM ALLOY & FISCAL PVT LTD BUSINESS	2, WATKINS LANE NILGIRI APARTMENTS HOWRAH 711101 West Bengal	AAHCS2686Q	1000000	61470000	143(3)	served and complied wth
9	SECOM MERCHANTS PVT LTD BUSINESS	21,GHOLA ROAD,33 BELGHORIA KOLKATA 700083 West Bengal	AAPCS9604N	2000000	121549826	143(3)	served and complied wth
10	VINDEEP VYAPAAR PVT LTD BUSINESS	50, KALI KRISHNA TAGORE STREET KOLKATA 700007 West Bengal	AAACV8928R	3000000	49570620	143 (1)	served and complied wth
11	SHREENATH HOLDINGS PVT LTD BUSINESS	13 BURNT SALT GOLA LANE HOWRAH 711101 WEST BENGAL	AADC55887P	1450000	79041631	143(3)	served and complied wth
TOTAL				17450000			

3.1. Ld. AO called for details and explanation on the above transaction to which assessee furnished its replies as noted in the assessment order. Also, notice u/s. 133(6) of the Act was issued by the ld. AO to the above eleven share subscriber companies. He also issued summon u/s. 131 to the director of the assessee for his personal attendance and also directed to produce the directors of all the subscriber companies along with relevant documentary evidence and details. None appeared in person; however, they submitted the required details and documents in their reply to notice u/s 133(6) and confirmed having subscribed to the share capital of the assessee company. Further, assessee filed the accounts of nine subscriber companies. Details of documents and evidence placed on record in the course of assessment proceedings are extracted below from the index to paper book placed before the Tribunal.

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No.</u>	<u>Filed per</u>
1.	Copy of Financial Statement as on 31 st March,2012 of M/s. Ajit Vanijya Private Limited	1-9	Ld. C.I.T(A A.O.
2.	Copy of ITR Acknowledgement ,Financial Statements for the Assessment year 2012-13 of M/s Blue Bird Equipment's Traders Private Limited and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares along with assessment order u/s143(3) for the A.Y-2012-13	10-31	Do
3.	Copy of ITR Acknowledgement ✓ Financial Statements for the Assessment Year 2012-13 of M/s Green Gold Plantation and Nursery Ltd and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares along with assessment order u/s143(3) for the A.Y-2012-13	32-51 ✓	Do
4.	Copy of ITR Acknowledgement , Financial Statement for the Assessment Year 2012-13 of M/s Hotex Marketing Private Limited and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares along with assessment order u/143(3) for the A.Y-2012-13	52-71	Do



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| 5. | Copy of ITR Acknowledgement ,
Financial Statement for the
Assessment Year 2012-13 of M/s
Nitin Tradecom Private Limited and
Copy of Bank Statement highlighting
the payment made to assessee in
regards to purchase of shares along
with assessment order u/143(3) for
the A.Y-2012-13 | 72-98 | Do |
| 6. | Copy of ITR Acknowledgement ,
Financial Statement for the
Assessment Year 2012-13 of M/s
Oasis Agro Products Ltd and Copy of
Bank Statement highlighting the
payment made to assessee in regards
to purchase of shares along with
assessment order u/s 147/143(3) for
the A.Y-2012-13 | 99-117 | Do |
| 7. | Copy of ITR Acknowledgement,
Financial Statements for the
Assessment Year 2012-13 of M/s
Rockstar Distributors Pvt Ltd and
Copy of Bank Statement highlighting
the payment made to assessee in
regards to purchase of shares along
with assessment order u/143(3) for
the A.Y-2012-13 | 118-137 | Do |
| 8. | Copy of ITR Acknowledgement ,
Financial Statement for the
Assessment Year 2012-13 of M/s
Sarbotam Alloy & Fiscal Private Ltd
and Copy of Bank Statement
highlighting the payment made to
assessee in regards to purchase of
shares along with assessment order
u/s 147/143(3) for the A.Y-2011-12 | 138-158 | Do |
| 9. | Copy of ITR Acknowledgement ,
Financial Statement for the
Assessment Year 2012-13 of M/s
Shreenath Holdings Private Limited
and Copy of Bank Statement | 159-190 | Do |



highlighting the payment made to assessee in regards to purchase of shares along with assessment order u/143(3) for the A.Y-2012-13

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| 10. | Copy of ITR Acknowledgement , Financial Statement for the Assessment Year 2012-13 of M/s JRP Holdings Ltd and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares. | 191-204 | Do |
| 11. | Copy of ITR Acknowledgement , Financial Statement for the Assessment Year 2012-13 of M/s Seacom Merchants Private Limited and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares. | 205-220 | Do |
| 12. | Copy of ITR Acknowledgement , Financial Statement for the Assessment Year 2012-13 of M/s Vindeep Vyapaar Private Limited and Copy of Bank Statement highlighting the payment made to assessee in regards to purchase of shares. | 221-234 | Do |

highlighting the payment made to assessee in regards to purchase of shares along with assessment order u/143(3) for the A.Y-2012-13 .

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3.2. Moreover, directors of two subscriber companies viz. Rockstar Distributors Pvt. Ltd. and JRP Holdings Ltd. appeared before the Ld. AO and submitted the necessary details to prove the identity, genuineness of the transaction and their creditworthiness. Their statements were also recorded by the ld. AO u/s 131 of the Act from which certain extracts have been reproduced in the assessment order.

3.3. However, Ld. AO made the addition of Rs.1,74,50,000/- u/s. 68 of the Act by observing that *“The nature of activities and features brand it as a paper/shell company which provides entries, of share application/loan to others. Considering the totality of the case, the amount of shareholders fund of Rs.1,74,50,000/- received this year is treated as unexplained cash credit to be added u/s. 68, on protective basis, till the real beneficiaries are identified and taxed in substantive manner.* Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed this addition. Aggrieved, assessee is now in appeal before the Tribunal.

4. Before us, Shri Sunil Surana, AR represented the assessee and Shri Subhrajyoti Bhattacharjee, CIT, DR represented the department.

5. Ld. Counsel for the assessee submitted that Share Capital of Rs.1.74 Crores was raised from eleven companies at premium of Rs.240/- per share. He referred to the details which are annexed with the paper book showing the name and address of the subscribers with their PAN, their net-worth, with the fact of their assessments completed u/s 143(3) and their compliance made u/s 133(6). The same are extracted in the chart above. Complete details of identity and creditworthiness of the shareholders and genuineness of the transactions were filed before the AO as annexed in paper book page 10-234. He also stated that all the eleven share applicants were issued notices u/s 133(6) and in response thereto, compliances were made by all of them vide paper book page 10-234 whereby their financials, bank statement, source of source for funds, ITR, etc. were submitted. Ld. AO made the addition only on the ground that some of the share subscribers did not appear personally in response to notice u/s 131. However, share subscribers duly complied with the summons by filing their /reply. According to him, share subscriber companies had

substantial net worth in comparison to investment made by way of share subscription in appellant company as depicted in their balance sheet which is enclosed in the paper book. Details of net-worth of each shareholder are also furnished forming part of the paper book.

M/S AJIT VANIJYA PRIVATE LIMITED
PAN: AAICA0359H
ASSESSMENT YEAR 2012-13

<u>Serial Number</u>	<u>Subscriber Name</u>	<u>Share Capital plus Reserves and Surplus (Rs.)</u>	<u>PAN</u>	<u>Whether Assessed u/s 143(3)/147</u>	<u>No. of Shares Subscribed</u>	<u>Amount (Rs.)</u>
1	Blue Bird Equipment's Traders Private Limited	7,88,10,406.81	AAECB5886G	Yes. Assessment under Sec 143(3)	4000	10,00,000.00
2	Green Gold Plantation and Nursery Ltd	6,65,46,208.58	AA8CG3571G	Yes. Assessment under Sec 143(3)/147	800	2,00,000.00
3	Hotex Marketing Private Limited	5,43,24,280.00	AAACH6463M	Yes. Assessment under Sec 143(3)	8800	22,00,000.00
4	Nitin Tradecom Private Limited	2,74,52,756.00	AAADCN2862K	Yes. Assessment under Sec 143(3)	4000	10,00,000.00
5	Oasis Agro Products Ltd	8,95,31,092.00	AAACCS5857C	Yes. Assessment under Sec 143(3)/147	4400	11,00,000.00
6	Rockstar Distributors Pvt Ltd	1,80,51,584.00	AAFCR5613Q	Yes. Assessment under Sec 143(3), Director Appeared	6000	15,00,000.00
7	Sarbottam Alloy & Fiscal Private Ltd	6,98,04,864.65	AAHCS2686Q	Yes. Assessment under Sec 143(3)/147	4000	10,00,000.00
8	Shreenath Holdings Private Limited	7,90,41,630.90	AADCS5887P	Yes. Assessment under Sec 143(3)	5800	14,50,000.00
9	JRP Holdings Ltd	1,98,36,127.75	AA8CI3755F	Intimation u/s 143(1), Director Appeared	12000	30,00,000.00
10	Seacom Merchants Private Limited	11,17,15,860.35	AAPCS9604N	Intimation u/s 143(1)	8000	20,00,000.00
11	Vindeep Vyapaar Private Limited	4,95,64,860.00	AAACV8928R	Intimation u/s 143(1)	12000	30,00,000.00
	Total				69800	

5.1. Ld. Counsel further submitted that three share applicants had been assessed u/s 143(3) of the Act on substantive basis for which copies of their assessment orders are placed on record. In case of six shareholders namely, Blue Bird Equipments and Traders Pvt. Ltd, Hotex Marketing Pvt. Ltd, Nitin Tradecom Pvt Ltd, Sarbottam Alloy & Fiscal Pvt. Ltd, Shreenath Holdings Pvt. Ltd and Seacom Merchants Pvt. Ltd., the share capital being the source of funds invested in assessee company were taxed u/s. 68 of the Act. Hence, according to the ld. Counsel, once an addition has been made in the hands of share subscribers, there cannot be double addition in the hands of the assessee. Status of their assessment is also depicted in the above chart.

5.2. To buttress his contentions, ld. Counsel placed reliance on the decisions of Coordinate Bench of ITAT Kolkata in the case of *Happy Structure in ITA No. 1977/Kol/2016*. He also placed reliance on the decision of ITAT Kolkata Bench in the case of *Steelex India Pvt. Ltd. pronounced on 9th September, 2022*.

5.3. Ld. Counsel also stated that all the shareholder companies were 'active' compliant under MCA records not only at the time of allotment but even till today as per MCA database for which relevant documents are placed in the paper book. Ld. Counsel further submitted that although the assessee has explained the source of source of share capital but the same is not required to be explained for AY 2012-13 since amendment brought in the law is effective from AY 2013-14.

5.4. Ld. Counsel reiterated that there is plethora of judgments wherein it has been held that non-appearance of directors cannot be ground to make the additions once all the documentary evidences with respect to identity, genuineness, creditworthiness is furnished on

record. He placed reliance on the decision of Hon'ble jurisdictional Calcutta High Court in the case of *Crystal Networks Pvt. Ltd. v. CIT in [2013] 353 ITR 171 (Cal)*. Ld. Counsel thus urged before the bench to delete the addition made by the AO and confirmed by the Ld. CIT(A).

6. To further buttress his submissions, Ld. Counsel placed reliance on 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."

6.1. He placed further reliance on the decision of Hon'ble jurisdiction High Court of Calcutta in the case of *CIT Vs. Sagun Commercial P. Ltd. (ITA No. 54 of 2001 dated 17.02.2011)* wherein it was held as under:

"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."

6.2. Reliance was also placed on the decision of Hon'ble Bombay High Court in the case of *CIT v. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Bom)* 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."

6.3. Decision of Hon'ble Madras High Court in the case of *Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad)* is also referred wherein it was held as under:

"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."

7. It was also submitted that audited Balance Sheet of each of the share applicant companies reflected the amount of investment made by them in the assessee as against their respective net worth for which he also referred to the chart extracted above. He thus, contended that Ld. AO has made the addition with a predetermined mind set. Further, according to him, they are all registered companies under the Companies Act, 1956 / 2013.

7.1. Ld. Counsel submitted that instead of pointing out any defect or discrepancy in the evidence and the details furnished by the assessee, Ld. AO proceeded to take adverse inference only on the ground that the directors of the subscriber companies and the assessee did not appear personally before him.

7.2. Ld. Counsel also 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."

7.3. Ld. Counsel has also relied upon the decision of the Coordinate Kolkata Bench of the Tribunal in the case of *Satyam Smertex Pvt. Ltd. vs. DCIT, in ITA No.2445/Ko1/2019 vide order dated 29.05.2020*, wherein the Coordinate Bench of the Tribunal, while further relying upon the decision of the

Hon'ble Allahabad High Court in the case of *CIT Vs. Raj Kumar Agarwal vide ITA No.179/2008 dated 17.11.2009* has held that non production of the director of the company, which is regularly assessed to income Tax having PAN, on ground that the identity of the subscriber is not proved, cannot be sustained.

8. Per contra, ld. Sr. DR placed reliance on the order of the authorities below and submitted that assessee's own income has been infused in the guise of share capital through the allottee companies by layering the transactions to make appear a non-genuine transaction as a genuine one.

9. We have heard the rival contentions and gone through the material placed on record. We note that Ld. AO without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office and also as to get further investigation was needed by him by way of recording of statement of the directors of the assessee and the subscriber companies. We draw our force from the decision of the Hon'ble Bombay High court in the case of *PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Pan)* wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue

to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *Crystal Network Pvt. Ltd. v. CIT (supra)* which held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT (Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

9.1. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee of the share subscribing companies. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has simply added the amount of share capital and share premium on the ground that assessee has not produced the directors/shareholders. Thus, going by the records placed by the assessee of all the share subscribing companies, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement and chart extracted above that all the investing companies have

sufficient own funds available with them to make investment in the assessee.

9.2. A perusal of the impugned order of the Ld. CIT(A) shows that the Ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply cited certain case laws even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the Ld. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

9.3. From the perusal of the paper book and the documents placed therein, it is vivid that all the share applicants are (i) income tax assessees, (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. In addition to these submissions, we note that directors of two share subscriber companies appeared before the ld. AO and made their submissions confirming the transaction executed by

them with the assessee, including recording of their statement u/s 131 of the Act.

9.4. It is also undisputed fact that all the share subscriber companies have been assessed u/s 143(3)/147 or their return processed vide intimation u/s 143(1) of the Act by their respective Assessing Officer. It is also a fact on record that in case of six share subscriber companies, additions have been made in their respective hands in their assessments completed by the Department. Also, assessment orders / intimations issued by the department for the share subscriber companies are placed on record in the paper book. Accordingly, identity of these share subscriber companies cannot be doubted.

9.5. As far as the decision of Coordinate bench of ITAT, Kolkata in the case of Bishakha Sales Pvt. Ltd. in ITA No. 1493/Kol/2013 referred by the Id. CIT(A) in sustaining 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.

9.6. 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 eleven subscriber companies are placed on record.

9.7. We also taken note of the conclusion arrived at by the ld. AO wherein the addition has been made on ‘protective basis’ in the hands of the assessee till the real beneficiaries are identified and taxed in substantive manner. This conclusion itself is demonstrative of the extent to which examination and verification exercise has been undertaken by the ld. AO who is unaware of the real beneficiaries and has made the addition on protective basis.

10. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies and the genuineness of the transactions towards sum of Rs.1,74,50,000/- received during the impugned year. Accordingly, considering these facts as stated above and in the light of the judicial precedence referred above, we set aside the order of the ld. CIT(A) and direct the ld. AO to delete the addition made towards share capital and share

premium u/s. 68 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open court on 23rd February, 2023.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 23rd February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-13, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata