

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.155/Kol/2020
Assessment Year: 2012-13**

Balaji Multiplex Pvt. Ltd. 157, Rabindra Sarani, Kolkata-700007. (PAN: AAECB5500H)	Vs	Income Tax Officer, Ward-9(2) Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, AR
Respondent by : Shri Vijay Kumar, Addl. CIT

Date of Hearing : 19.01.2023
Date of Pronouncement : 28.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-16, Kolkata vide ITA No. 705/CIT(A)-16/W-9(2)/2019-20/Kol dated 22.11.2019 passed against the assessment order by ITO, Ward-9(2), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.03.2015.

2. Sole issue involved in this appeal of assessee relates to addition on account of share capital Rs.4,05,50,000/- as unexplained cash credit u/s. 68 of the Act. For the sake of brevity, grounds of appeal are not reproduced.

3. Brief facts of the case are that assessee is a private limited company engaged in manufacturing activities. Assessee filed its return

of income on 12.09.2012 declaring total income Rs.6,19,888/-. Case of the assessee was selected under scrutiny through CASS and notices u/s 143(2) and u/s 142(1) along with requisitions were served on the assessee. In compliance to said notices, the Ld. A/R of the assessee company appeared and submitted documents which were required vide notice u/s 142(1) along with his written submission. The Ld. Assessing Officer during the course of scrutiny proceedings observed that the assessee has raised share capital in the financial year 2011-2012 at high premium. The learned Assessing Officer also issued notice u/s. 131 on the directors of the subscriber company, but no compliance was made. The learned assessing officer has also cited various case laws in assessment order. The Ld. Assessing Officer passed order u/s 143(3) by treating the share application money received amounting to Rs.4,05,50,000/-including premium as unexplained cash credit in the hands of the assessee u/s 68 of the Act, as the assessee has failed to prove the genuineness and creditworthiness of the transaction related to share capital money.

3.1. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who after detailed discussion in his order came to the conclusion that the assessee has not been able to prove the three ingredients of identity, credit worthiness and genuineness of the transaction as mentioned in the assessment order and hence, the addition made was confirmed and dismissed the appeal of the assessee. Aggrieved, assessee is now in appeal before the Tribunal.

4. Before us, Shri Miraj D. Shah, AR represented the assessee and Shri Vijay Kumar, Addl. CIT represented the department.

5. Ld. Counsel submitted details of share allotment as on 31.03.2012 available in paper book page 1 as Table-A and Table-B, reproduced below for ease of reference :

TABLE A

Sl. No	Name of Shareholder	Address of shareholder	PAN	Networth	Amount Paid (Rs.)
1	Astha Commosales Pvt Ltd	181, Rabindra Sarani, Kolkata - 700007	AAHCA7549L	2,53,89,025	55,00,000
2	Excel Commosale Pvt Ltd	159, Rabindra Sarani, Kolkata - 700007	AACCE0915H	4,38,34,125	12,00,000
3	Encord Trading Pvt Ltd	159, Rabindra Sarani, Kolkata - 700007	AACCE1213E	3,69,84,039	50,00,000
4	Jugmug Sales Pvt Ltd	181, Rabindra Sarani, Kolkata - 700007	AACCJ2644C	1,63,96,790	28,50,000
5	Rishikesh Marketing Pvt Ltd	181, Rabindra Sarani, Kolkata - 700007	AAECR6145C	3,60,23,593	39,00,000
6	Salasar Infraproperties Merchants Pvt Ltd	158, Rabindra Sarani, Kolkata - 700007	AAQCS2105K	16,96,01,596	66,50,000
7	Swastik Financial Consultants Pvt Ltd	158, Rabindra Sarani, Kolkata - 700007	AANCS1098N	4,62,61,160	1,13,00,000
8	Sunrise Vintrade Pvt Ltd	202, Jessore Road, Kolkata - 700007	AANCS2606Q	3,80,34,909	36,50,000
Total					4,00,50,000

TABLE B

Sl. No	Name of Shareholder	No. of Shares	Face Value + Premium (Rs.)	Amount (Rs.)	Premium	Total Including Premium (Rs.)
1	Astha Commosales Pvt Ltd	5500	1 + 999 = 1000	5,500	54,94,500	55,00,000
2	Excel Commosale Pvt Ltd	1200	1 + 999 = 1000	1,200	11,98,800	12,00,000
3	Encord Trading Pvt Ltd	5000	1 + 999 = 1000	5,000	49,95,000	50,00,000
4	Jugmug Sales Pvt Ltd	2850	1 + 999 = 1000	2,850	28,47,150	28,50,000
5	Rishikesh Marketing Pvt Ltd	3900	1 + 999 = 1000	3,900	38,96,100	39,00,000
6	Salasar Infraproperties Merchants Pvt Ltd	6650	1 + 999 = 1000	6,650	66,43,350	66,50,000
7	Swastik Financial Consultants Pvt Ltd	11300	1 + 999 = 1000	11,300	1,12,88,700	1,13,00,000
8	Sunrise Vintrade Pvt Ltd	3660	1 + 999 = 1000	3,660	36,46,350	36,50,000
Total		40050		40,050	4,00,09,950	4,00,50,000

5.1. Ld. Counsel submitted that all the relevant details and evidence to explain the identity, creditworthiness and genuineness of the transactions were placed on record and the assessee had fully discharged its initial burden casted u/s. 68 of the Act. Ld. Counsel

stated that the nature of these receipts is towards share capital and share premium which is by cheques from share subscribing companies who are regular income tax assesseees. He further stated that assessee has explained the source and nature of receipts of fund and has brought on record all the documentary evidence in this respect which is reproduced as under:

Sl. No.	Name	Bank Statement (Paper Book)	Source of investment (Paper Book)	Relavant page No. showing capital (Paper Book)	Capital & Reserve as on 31.03.2012	Sum Invested in the assessee company
1	Astha Commosales Pvt Ltd	53 - 54	74	44	2,53,89,025	55,00,000
2	Excel Commosale Pvt Ltd	87 - 88	107	79	4,38,34,125	12,00,000
3	Encord Trading Pvt Ltd	121 - 122	139	112	3,69,84,039	50,00,000
4	Jugmug Sales Pvt Ltd	153	172	144	1,63,96,790	28,50,000
5	Rishikesh Marketing Pvt Ltd	186	205	177	3,60,23,593	39,00,000
6	Salasar Infraproperties Merchants Pvt Ltd	218	237	210	16,96,01,596	66,50,000
7	Swastik Financial Consultants Pvt Ltd	251	270	242	4,62,81,180	1,13,00,000
8	Sunrise Vintrade Pvt Ltd	285 - 286	305	276	3,80,34,909	36,50,000
					TOTAL	4,00,50,000

5.2. Ld. Counsel also referred to various documents and details furnished in respect of each of the investing companies, all of which are placed in the paper book. He referred to document set of one such company to demonstrate detailed documents furnished to establish identity and creditworthiness of the investing companies and the genuineness of the transaction. The documents furnished in respect of each of the investing companies are placed in the paper book on record. Details of the documents furnished are captured from the index of the paper book which is reproduced as under:

Sl No.	Description	Filed before AO	Filed before CIT A	Pages	
				From	To
1	Share Allotment Chart	Yes	Yes	01	01
2	ITR Acknowledgment	Yes	Yes	02	02
3	Audited Accounts	Yes	Yes	03	14
4	Memorandum and Articles of Association			15	32
5	Paper Book index of Share Capital and Reserve & Surplus as on 31.03.2012	Yes	Yes	33	33
6	Return of Allotment (Form 2) with List of Allottees dated 30/03/2012	Yes	Yes	34	39
	<u>Details for Shareholders</u>				
7	Documents of M/s Astha Commosales Pvt Ltd: -	Yes	Yes		
	a) ITR Acknowledgment			40	40
	b) Audited Accounts			41	50
	c) Share Application Form			51	51
	d) Share Allotment Letter			52	52
	e) Bank Statement			53	54
	f) Certificate of Incorporation			55	55
	g) Memorandum and Article of Association			56	72
	h) Reply filed u/s 133 (6) of the IT Act 1961			73	73
	i) Source of Source			74	74
8	Documents of M/s Excel Commosale Pvt Ltd:-	Yes	Yes		
	a) ITR Acknowledgment			75	75
	b) Audited Accounts			76	84
	c) Share Application Form			85	85
	d) Share Allotment Letter			86	86
	e) Bank Statement			87	88
	f) Certificate of Incorporation			89	89
	g) Memorandum and Article of Association			90	105
	h) Reply filed u/s 133 (6) of the IT Act 1961			106	106
	i) Source of Source			107	107

9	Documents of M/s Encord Trading Pvt Ltd:- a) ITR Acknowledgment b) Audited Accounts c) Share Application Form d) Share Allotment Letter e) Bank Statement f) Certificate of Incorporation g) Memorandum and Article of Association h) Reply filed u/s 133 (6) of the IT Act 1961 i) Source of Source	Yes	Yes	108 109 119 120 121 123 124 138 139	108 118 119 120 122 123 137 138 139
10	Documents of M/s Jugmug Sales Pvt Ltd:- a) ITR Acknowledgment b) Audited Accounts c) Share Application Form d) Share Allotment Letter e) Bank Statement f) Certificate of Incorporation g) Memorandum and Article of Association h) Reply filed u/s 133 (6) of the IT Act 1961 i) Source of Source	Yes	Yes	140 141 151 152 153 154 155 171 172	140 150 151 152 153 154 170 171 172
11	Documents of M/s Rishikesh Marketing Pvt Ltd:- a) ITR Acknowledgment b) Audited Accounts c) Share Application Form d) Share Allotment Letter e) Bank Statement f) Certificate of Incorporation g) Memorandum and Article of Association h) Reply filed u/s 133 (6) of the IT Act 1961 i) Source of Source	Yes	Yes	173 174 184 185 186 187 188 204 205	173 183 184 185 186 187 203 204 205
12	Documents of M/s Salasar Infraproperties Merchants Pvt Ltd :- a) ITR Acknowledgment b) Audited Accounts c) Share Application Form d) Share Allotment Letter e) Bank Statement f) Certificate of Incorporation g) Memorandum and Article of Association h) Reply filed u/s 133 (6) of the IT Act 1961 i) Source of Source	Yes	Yes	206 207 216 217 218 219 220 236 237	206 215 216 217 218 219 235 236 237
13	Documents of M/s Swastik Financial Consultants Pvt Ltd :- a) ITR Acknowledgment b) Audited Accounts c) Share Application Form d) Share Allotment Letter e) Bank Statement f) Certificate of Incorporation g) Memorandum and Article of Association h) Reply filed u/s 133 (6) of the IT Act 1961 i) Source of Source	Yes	Yes	238 239 249 250 251 252 253 269 270	238 248 249 250 251 252 268 269 270

14	Documents of M/s Sunrise Vintrade Pvt Ltd :-	Yes	Yes		
	a) ITR Acknowledgment			271	271
	b) Audited Accounts			272	282
	c) Share Application Form			283	283
	d) Share Allotment Letter			284	284
	e) Bank Statement			285	286
	f) Certificate of Incorporation			286	287
	g) Memorandum and Article of Association			288	303
	h) Reply filed u/s 133 (6) of the IT Act 1961			304	304
	i) Source of Source			305	305

A. Swastik Polyplast Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Income Tax Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 3, Pages 21 to 33

B. UP Account law services Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Income Tax Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 4, Pages 34 to 46

C. Up Agro Farm & Export Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 5, Pages 47 to 59

D. Mukta Commosale Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation : In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 6, Pages 60 to 72

E. Baisakhi Commercial Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.

- (ii) Bank Statement
- (iii) Acknowledgement of Return filed
- (iv) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (v) PAN number

The above documents are filed in Paper Book in Sl. No. 7, Pages 73 to 86

F. One Stop Commosale Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Bank Statement
- (iii) Acknowledgement of Return file
- (iv) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (v) PAN number

The above documents are filed in Paper Book in Sl. No. 8, Pages 87 to 102

5.3. Ld. Counsel further submitted that Ld. AO in his order has concluded merely on the basis of non-production/attendance of the director of the assessee and share subscribers in the assessment proceedings and without finding any fault or deficiency with the exhaustive material placed on record. He also submitted that though none attended to the summon issued u/s 131 of the Act, all the details and documents were placed on record which have not been controverted by the authorities below in any manner, whatsoever. As per him, since Ld. AO was not impressed with these submissions and resorted to making addition of the entire share application money along with share premium, totalling to Rs.4,05,50,000/-, on the sole ground that compliance u/s. 131& 133(6) of the Act by the directors of the assessee and share applicant companies was not done by way of their personal appearance.

5.4 He also referred to the copies of bank accounts of the respective share applicant companies to demonstrate the

genuineness of the transaction so also their audited financial statements wherein these investment transactions have been duly recorded and reflected. He thus, strongly submitted that Ld. AO had not brought anything contrary to undisputable facts and has merely acted on whims and fancies.

5.5. To 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."

5.6. He placed further reliance on the decision of Hon'ble jurisdictional 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."

5.7. 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."

5.8. 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."

5.9. 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 and are active companies on the MCA portal.

5.10.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 assessees. 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."

5.11. 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. In this respect he placed reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *Crystal Networks Pvt. Ltd. v. CIT in ITA 158 of 2002 dated 29.07.2010*.

5.12. Ld. Counsel has also relied upon the decision of the Co-ordinate Kolkata Bench of the Tribunal in the case of *Satyam SmertexPvt. 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.

6. 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.

7. 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."

7.1. 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.

7.2. 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.

7.3. From the perusal of the paper book and the documents placed therein, it is vivid that all the share applicants are (i) income tax 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.

7.4. We also note that assessee asserted before the Ld. CIT(A) that all the submissions were made in the assessment proceedings even though it is stated that assessee failed to

comply with the requirements. The claim of the assessee for the submissions made before the assessee is reproduced by the ld. CIT(A) from the reply in para 3 of his order which is contrary to the observation made by him in the order.

8. 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. 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.4,05,50,000/- received during the impugned year.

Accordingly, considering these facts and in the light of the judicial precedence referred above, we set aside the order of the Id. CIT(A). Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open court on 28th February, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 28th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-16, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata