

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
डॉ. मनीष बोर्ड, लेखा सदस्य  
के समक्ष

**Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 493/KOL/2020  
Assessment Year: 2012-13**

***I.T.O., Ward-1(1), Asansol.....Appellant***

***Vs.***

***M/s. Anmol Steel & Power Pvt. Ltd.....Respondent  
[PAN: AAICA 2907 R]***

**Appearances by:**

*Sh. Sushil Kumar Parnsukha, Adv., appeared on behalf of the Assessee.*

*Sh. Vijay Kumar, Addl. CIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : January 3<sup>rd</sup>, 2023

Date of pronouncing the order : March 16<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals), Asansol [in

short ld. "CIT(A)"] dated 03.02.2020 arising out of the assessment order framed u/s 143(3) of the Act dated 31.03.2015.

2. Registry has informed that the appeal filed by the assessee is time barred by 155 days. Perusal of the records shows that the delay is mainly on account of COVID-19 restrictions. We, therefore, in view of the reasoning given in the affidavit and in view of judgment of the Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the assessee falls during this period, the same deserves to be extended, we therefore, condone the delay and admit the appeal for adjudication on merits.

3. The assessee is in appeal before this Tribunal raising the following grounds:

*"1. Whether the Ld. CIT (A) was justified in deleting the addition of Rs. 1,65,00,000/- made u/s. 68 wherein the identity, genuineness and creditworthiness of investor company remained unsubstantiated as it failed to appear before A.O. against summons issued u/s 131 ignoring the decision of Hon'ble Supreme Court in the case of Pr. CIT (Central)-I Verses NRA Iron & Steel Pvt. Ltd. In Civil Appeal No. of 2019 [Arising out of SLP (Civil) No. 29855 of 2018]?"*

*2. Whether the Ld. CIT (A) was justified in deleting the addition of Rs. 1,65,00,000/- without taking into cognizance of the observation of the A.O. based on the report of the departmental Inspector regarding identity, genuineness and creditworthiness of the investor companies failing to follow the law as declared by the Hon'ble Supreme court in the case of Pr. CIT (Central)-I Verses NRA Iron & Steel Pvt. Ltd. In Civil Appeal No. of 2019 [Arising out of SLP (Civil) No. 29855 of 2018]?"*

*3. Whether on the facts and circumstances of the case and law the Ld. CIT(A) was correct in granting relief wherein assessee was under a legal obligation to prove the receipt of share capital/premium to the*

*satisfaction of A.O., failure of which justified the addition of Rs. 1,65,00,000/- as held by Hon'ble Supreme Court in the case of Pr. CIT (Central)-I versus NRA Iron & Steel Pvt. Ltd. In Civil Appeal No. of 2019 [Arising out of SLP (Civil) No. 29855 of 2018]?*

*4. The appellant craved leave to make any amend, addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”*

4. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in business. NIL income declared in the return filed for AY 2012-13. Case selected for scrutiny followed by serving of notices u/s 143(2) & 142(1) of the Act. During the year the assessee has raised share capital including share premium of Rs. 1,71,13,000/-. Ld. AO called for the details for explaining the said share capital and share premium. In compliance thereto the assessee filed the details. Ld. AO thereafter analyzed the balance sheet and profit and loss account of the company and also the details filed with regard to the said share capital and share premium being charged at Rs. 190/- on the face value of Rs. 10/- each. Ld. AO concluded the assessment by making addition u/s 68 of the Act at Rs. 1.65 Cr for unexplained share capital and share premium and assessed the income at Rs. 1.65 Cr.

5. Aggrieved, the assessee preferred appeal before ld. CIT(A) and filed relevant details. Ld. CIT(A) noticed that the assessee had purchased a flat for which an amount of Rs. 1,58,71,524/- was invested and for financing the investment, share capital was raised through group companies M/s. Wholetime Commotrade and M/s. Volgina Finvest Pvt. Ltd. Ld. CIT(A) on the strength of the documentary evidences filed by the assessee was satisfied with the

explanation given by the assessee about the genuineness of the share capital and share premium and identity and creditworthiness of the share applicants.

6. Aggrieved, the Revenue is now in appeal before this Tribunal. Ld. D/R vehemently argued supporting the order of ld. AO and further stated that the share applicant companies are paper companies which do not have sufficient creditworthiness to make such investment.

7. On the other hand, ld. Counsel for the assessee heavily relied on the finding of ld. CIT(A), took us through the written submission made before ld. CIT(A) and also made reference to the details filed in the paperbook as well as placing reliance on various decisions. The index of the paperbook is extracted below:

- 1. Written submissions before the Hon'ble CIT(A), Asansol*
- 2. Copy of Share Application of Volgina Finvest (P) Ltd.*
- 3. Copy of Share Application of Wholetime Commotrade (P) Ltd.*
- 4. Copy of the Bank Statement of the said Volgina Finvest (P) Ltd.*
- 5. Copy of the Bank Statement of the said Wholetime Commotrade (P) Ltd.*
- 6. PAN Card of Volgina Finvest (P) Ltd.*
- 7. PAN Card of Wholetime Commotrade (P) Ltd.*
- 8. Copy of acknowledgement of filing of return of Volgina Finvest (P) Ltd.*
- 9. Copy of acknowledgement of filing of return of Wholetime Commotrade (P) Ltd.*
- 10. Memorandum of Articles of Association of the said Volgina Finvest (P) Ltd.*
- 11. Memorandum of Articles of Association of the said Wholetime Commotrade (P) Ltd.*
- 12. Audited statement of accounts of Volgina Finvest (P) Ltd.*

13. Audited statement of accounts of Wholetime Commotrade (P) Ltd.
- 14 Copy of Form 2 filed with Registrar of companies
15. Photostat copies of the Annual Returns of the said Shivalaya Ispat & Power Private Limited for year ended 31.03.2011
16. Photostat copies of the Annual Returns of the said Shivalaya Ispat & Power Private Limited for year ended 31.03.2012
17. Audited Statement of Accounts of Shivalaya Ispat & Power Private Limited for year ended 31.03.2011
18. Copy of Share Sale Agreement between Real Ispat and Power Limited and Directors of Shivalaya Ispat and Power Private Limited
19. Copy of assessment order of~Shreegopal Concrete Private Limited (PAN: AAJCS2118P)
20. Reply of Volgina Finvest (P) Ltd. to A.O.
21. Reply of Wholetime Commotrade (P) Ltd.
22. Copy of order in the case of Wellman Wacoma Ltd. vs. JCIT (OSD), Circle-8, Kolkata ITA No. 1229/Kol/2012 decided on 13.04.2016
23. Copy of order in the case of I.T.O. Ward.9(3), Kolkata vs. M/s. Cygnus Developers (I) Pvt. Ltd. ITA No. 282/Kol/2012 decided on 02.03.2016
24. Copy of order in the case ITO vs High Growth Exports Pvt. Ltd. in ITA No. 515/Kol/2012 decided on 04.05.2016
25. Copy of order in the case DCIT, Circle.8, Kolkata vs. Zimkele Commodeal Pvt. Ltd.in ITA No. 959/Kol/2011 decided on 24.08.2016
26. Copy of order in the case Commissioner of Income Tax, Kol.Xiii Vs. Jamma Dass Gupta by Calcutta High Court in ITAT No. 20 of 2011
27. Copy of order in the case Commissioner of Income Tax, Kol-11 Vs. Regency Trust Ltd. By Calcutta High Court in ITAT No. 663 of 2004
28. Copy of order in the case Commissioner of Income Tax, Kol-11 Vs. Leonard Commercial P. Ltd. By Calcutta High Court in ITAT No. 114 to 2011
29. Copy of order in the case Commissioner of Income Tax, Kol-11 Vs. Chandela Trading Co (P) Ltd. By Calcutta High Court in ITAT no. 831 of 2004
30. Copy of order in the case Commissioner of Income Tax, Central-I, Calcutta Vs. M/s. Nishan Indo Commerce Ltd. In ITA No. 52 of 2001 (2014) 101 DTR. 413

31. Copy of order in the case Commissioner of Income Tax, Vs. Expo Globe India Ltd. By Delhi High Court in (2014) 361 ITR 147 (Delhi High Court)

32. Copy of order in the case Commissioner of Income Tax, Kol-11 Vs. Gagandeep Infrastructure Pvt. Ltd. by Bombay High Court in INCOME TAX APPEAL NO. 1613 OF 2014

33. Copy of order in the case of Khubchandani Healthparks Pvt. Ltd. vs. ITO, Mumbai

34. Copy of order in the case of DCIT vs. Anshika Investments Pvt. Ltd. the Hon'ble Bombay High Court in ITA No. 523/2014 vide order dated 16th April, 2015.”

8. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of ld. CIT(A) deleting the addition of Rs. 1.65 Cr made by ld. AO u/s 68 of the Act for the share capital including share premium raised from two companies namely M/s. Wholetime Commotrade and M/s. Volgina Finvest Pvt. Ltd. The contention of ld. Counsel for the assessee in short is that the assessee company made investment for purchase of flat and to finance the said investment share capital including share premium was raised from two of its group companies; M/s. Wholetime Commotrade and M/s. Volgina Finvest Pvt. Ltd. Ld. Counsel for the assessee has also contended that the source of source of the said share capital and share premium is also explained as for the said investment M/s. Wholetime Commotrade received Rs. 1.55 Cr from Real Ispat and Power Ltd. in lieu of sale of shares of Shivalaya Ispat & Power Pvt. Ltd., similarly, M/s. Volgina Finvest Pvt. Ltd. received Rs. 10 lakh from Real Ispat and Power Ltd. in exchange of sale of shares of Shivalaya Ispat & Power Pvt. Ltd.

9. Further, we find that ld. CIT(A) after examining the facts of the case gave relief to the assessee observing as follows:

*“The submissions of the appellant and an assessment order have been carefully perused. As stated earlier the appellant had purchase a flat, for which an amount of Rs. 1,58,71,524/- was invested. This investment was financed by way of share capital raised and issued to two group companies, namely M/s Wholetime Commotrade and M/s Volgina Finvest Pvt. Ltd. During the course of the appeal proceeding, the appellant company filed the copies of share application and the copies of the bank statements of M/s Wholetime Commotrade and M/s Volgina Finvest Pvt. Ltd. M/s Wholetime Commotrade Pvt. Ltd. had paid Rs. 1.55 crores to the appellant company on 12-10-2011. as is evidenced from the bank statement of M/s Wholetime Commotrade Pvt. Ltd. On 10-10-2011 M/s Wholelime Commotrade Pvt. Ltd. received Rs. 55,00,000/- from M/s Real Ispat & Power Pvt. Ltd.*

*During the course of the appeal proceeding, it was informed that M/s Shivalay Ispat & Power Pvt. Ltd. was sold to M/s Real Ispat & Power Pvt. Ltd by virtue of a share sale agreement dated 15-07-201 1 for a consideration of Rs 75.31 crores. Out of the total consideration of Rs. 75.31 crores, an adjustment towards SBI term loan of Rs. 35.31 crores was proposed and the balance of Rs. 40 crores was proposed to be paid to the share holders of M/s Shivalay Ispat by M/s Real Ispat & Power Pvt. Ltd. The shares sale agreement dated 15-07-2011 was submitted during the course of the appeal proceeding and the submissions of the appellant were found to be true. M/s Wholetime Commotrade Pvt. Ltd. was a share holder in M/s Shivalay Ispat, holding 41,000 shares. Further, the annual statement in form 2 submitted to the Registrar of companies were also produced evidencing that M/s Wholetime Commotrade Pvt. Ltd. was a share holder in M/s Shivalay Ispat. Thus, from a perusal of the document submitted, it is seen that M/s Wholetime Commotrade Pvt. Ltd. was a share holder in M/s Shivalay Ispat and M/s Shivalay Ispat was sold to M/s Real Ispat & Power Pvt. Ltd. By virtue of this transfer, M/s Real Ispat & Power Pvt. Ltd. had made a part payment of Rs. 55,00,000/- to M/s Wholetime Commotrade Pvt. Ltd. on 10-10-2011, which was utilized by M/s Wholetime Commotrade Pvt. Ltd. for making payment to the appellant company on 12-10-2011 as a consideration of shares of the appellant company issued to M/s Wholetime Commotrade Pvt. Ltd.*

*The balance sheet of M/s Shivalay Ispat was also produced during the course of the appeal proceeding and from the balance sheet of M/s Shivalay Ispat as on 31-03-2012, it is seen that M/s Shivalay Ispat was having revenue from operations amounting to Rs.*

1,31,67,98,124/- during the financial year ending 31-3-2012 and revenue from operation amounting to Rs. 112.59.28.970/- in the immediately preceding financial year ending 31-03-2011. Further, from in the balance sheet, it is observed that M/s Shivalay Ispat was having net plant and machinery of Rs. 26,48,34,817/- and total fixed assets of Rs. 40.12.24,924/- as on 31-03-2012. Thus, from this, it can be concluded that M/s Shivalay Ispat is an actual, genuine and existing entity having turnover of more than Rs. 100 crores and fixed assets of more than Rs. 40 crores.

The balance sheet and the Profit & Loss account of M/s Real Ispat & Power Pvt. Ltd. were also submitted during the course of the appeal proceeding and it was observed that M/s Real Ispat & Power Pvt. Ltd. was having gross revenue from operation amounting to Rs. 471,49,96.116/- during the financial year ending 31-03-2012 and Rs. 419,65,91,120/- during the financial year ending 31-03-2011. Further, the balance sheet reveals that M/s Real Ispat & Power Pvt. Ltd. was having net plant equipment worth 39,35.46.771/- and total fixed assets of Rs. 67,34,36,577/- as on 31-03-2012. Thus, from this, it can be concluded that M/s Real Ispat & Power Pvt. Ltd. is also a genuine and existing entity having a gross turnover of more than Rs. 400 crores and net fixed assets of more than Rs. 60 crores. Thus, M/s Shivalay Ispat & M/s Real Ispat & Power Pvt. Ltd. are two genuine and existing companies, who have entered into an agreement for the sale of the shares of M/s Shivalay Ispat for a total consideration of Rs. 75 crores. No doubt or aspersions can be cast on the genuineness of M/s Shivalay Ispat & M/s Real Ispat & Power Pvt. Ltd. And it cannot be claimed that they are fake and bogus companies and the shares sale agreement had been entered with dubious motives. The creditworthiness of M/s Real Ispat & Power Pvt. Ltd. also cannot be challenged as its balance sheet reveals that it is having a share capital and reserves of Rs. 150 crores approximately as on 31-03-2012. Hence, the creditworthiness of M/s Real Ispat & Power Pvt. Ltd. cannot be doubted.

Under the share transfer agreement between M/s Shivalay Ispat & M/s Real Ispat & Power Pvt. Ltd., M/s Real Ispat & Power Pvt. Ltd. is under the legal obligation to pay to the share holder of M/s Shivalay Ispat the agreed amount for the transfer of its shares. M/s Wholetime Commotrade Pvt. Ltd. is a share holder in M/s Shivalay Ispat & hence M/s Real Ispat & Power Pvt. Ltd. is under the legal obligation to pay the amount of consideration, as per agreement. to M/s Wholetime Commotrade Pvt. Ltd. for the transfer of its share. In view of this, M/s Real Ispat & Power Pvt. Ltd. had transferred Rs. 1 crore on 07-09-

2011 and Rs. 55 lacs on 10-10-2011 to M/s Wholelime Commotrade Pvt. Ltd. as part-payment of the consideration.

These payments are evidenced from the bank statement of M s Wholetime Commotrade Pvt. Ltd. Out of the amount of Rs. 1 crores received by M/s Wholetime Commotrade Pvt. Ltd. from M/s Real Ispat & Power Pvt. Ltd. on 07-09-2011, an amount of Rs. 1 crore was given as a loan to M s Shree Gopal Concrete Pvt. Ltd. on 26-09-2011 and was returned backed by M/s Shree Gopal Concrete Pvt. Ltd. to M/s Wholetime Commotrade Pvt. Ltd on 10-11-2011. Thus, the source of the amount of Rs. 1.55 crore invested by M/s Wholetime Commotrade Pvt. Ltd. in the shares of the appellant company are from the sales consideration received from M/s Real Ispat & Power Pvt. Ltd. for the transfer of shares of M/s Shivalay Ispat.

The balance sheet of M/s Shree Gopal Concrete Pvt. Ltd. was also submitted and it was observed that M/s Shree Gopal Concrete Pvt. Ltd. was having revenue from operation of Rs. 135,03,92,427/- as on 31-03-2012 and was having a net plant and equipment of Rs. 15,00,89,138/- and total fixed asset of Rs. 29,96,68,675/- as on 31-12-2012. Thus, M/s Shree Gopal Concrete Pvt. Ltd. is not a paper entity but is a genuine, existing entity.

Similarly M/s Volgina Finvest Pvt. Ltd. was also a share holder in M/s Shivalay Ispat as is evidenced from the document submitted to the ROC. M/s Volgina Finvest Pvt. Ltd. had received Rs. 10,00,000/- from M/s Real Ispat & Power Pvt. Ltd. on 07-09-2011 for the sale of shares of M/s Shivalay Ispat to M/s Real Ispat & Power Pvt. Ltd. This amount of Rs. 10,00,000/- was paid by M/s Volgina Finvest Pvt. Ltd. to the appellant company on 28-09-2011 for the share subscription. The bank statement of M/s Volgina Finest Pvt. Ltd. was produced during the course of the appeal proceeding and the facts submitted by the appellant were duly verified.

Thus to conclude, it can be stated that M/s Wholetime Commotrade Pvt. Ltd. had paid Rs. 1.55 crores to the appellant companies on 12-10-2011 for the purchase of its shares. The source of this amount of Rs. 1.55 crores paid by M/s Wholetime Commotrade Pvt. Ltd are Rs. 1 crores received from M/s Real Ispat Power Pvt. Ltd. on 07-09-2011 and Rs. 55 lacs received on 10-10-2011 from M/s Real Ispat & Power Pvt. Ltd. in lieu of the sale of shares of M/s Shivalay Ispat to M/s Real Ispat & Power Pvt. Ltd. Similarly, M/s Volgina Finest Pvt. Ltd. had paid Rs. 10,00,000/- to the appellant companies on 28-09-2011 which received by M/s Volgina Finest Pvt. Ltd from M/s Real Ispat &

*Power Pvt. Ltd. on 07-09-2011 in exchange of the sale of shares of M/s Shivalay Ispat to M/s Real Ispat & Power Pvt. Ltd. All these are genuine transaction entered into between genuine entities and all these entities are having the requisite creditworthiness to enter into these financial transaction. Hence, the provision of sec. 68 of the IT Act are not attracted in this case. Hence, the addition of Rs. 1,65,00,000/- is deleted and the appeal is allowed.”*

10. The above finding of ld. CIT(A) stands unrebutted by ld. D/R. We are satisfied that the assessee has properly explained the source of share capital and share premium which is received from its group companies and the reason for raising the said share capital and share premium is also justified from the fact that the assessee wanted to purchase a flat and the same is appearing in the audited balance sheet. Even the source of source has also been explained as the two share applicants namely M/s. Wholetime Commotrade and M/s. Volgina Finvest Pvt. Ltd. have received the funds for making the said investment in equity shares of assessee company by way of selling equity shares of Shivalaya Ispat & Power Pvt. Ltd. to M/s. Real Ispat and Power Ltd. It is also brought to our notice that Real Ispat and Power Ltd. has fixed assets to the tune of Rs. 67.34 Cr and turnover of around 400 Cr. Therefore, Real Ispat and Power Ltd. had sufficient creditworthiness to purchase the shares of Shivalaya Ispat & Power Pvt. Ltd. from M/s. Wholetime Commotrade and M/s. Volgina Finvest Pvt. Ltd. The same fund has been further utilized by the alleged share applicants for making investment in the share capital and share premium of the assessee company. It is also noteworthy that both the share applicants are duly assessed to tax and financial statements are audited, transactions have been carried out through banking channel and both share applicants have replied

to the notices issued by Id. AO confirming the said transactions and also stated that they are part of the same group of companies, that for the transfer of shares of Shivalaya Ispat & Power Pvt. Ltd., a Share Sale Agreement was entered into with Real Ispat and Power Ltd. and by carrying out the sale transactions the sale consideration received has been utilized for making the investment in the share capital and share premium of the assessee company. Reliance placed by the assessee on the various decisions and judgments referred in the paperbook extracted above also supports our view that under the given facts and circumstances, addition u/s 68 of the Act was uncalled for.

11. We, therefore, under the given facts and circumstances of the case are satisfied that the assessee has properly explained the identity and creditworthiness of the share applicants and the genuineness of the alleged transactions and has also explained the source of source of the alleged sum received by the assessee. Thus, we do not find any reason to interfere in the finding of Id. CIT(A). Accordingly, all the grounds of appeal raised by the Revenue are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed.

***Kolkata, the 16<sup>th</sup> March, 2023***

*Sd/-*  
[Sanjay Garg]  
Judicial Member

*Sd/-*  
[Manish Borad]  
Accountant Member

Dated: 16.03.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. I.T.O., Ward-1(1), Asansol.**
- 2. M/s. Anmol Steel & Power Pvt. Ltd., H/o- Sri Ram Kr. Sarda.  
17/3, Goenka Park, Near School More, N.S.B. Road,  
Raniganj, Dist- Burdwan-723347 (WB).**
3. CIT(A), Asansol.
4. CIT-
5. CIT(D/R), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata