

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 60/Kol/2021
Assessment Year: 2012-13

ITO, Ward-4(1), Kolkata	Vs.	Raudramukhi Commerce Pvt. Ltd. (PAN: AAFCR 6446 R)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	24.01.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	28.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri Somnath Ghosh, Advocate
For the Respondent/ राजस्व की ओरसे	Shri Sudipta Guha, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-7, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 23.09.2020 for the AY 2012-13.

2. At the time of hearing, we note that there is a delay of 49 days in filing the appeal. The Ld DR prayed before the bench that the delay in filing the appeal is for bonafide reasons and for reasonable cause and the late filing of appeal has not resulted into any kind of benefit to the revenue. The DR therefore prayed that the delay may be

condoned and the appeal be admitted for adjudication. The Id AR on the other hand left the issue to the wisdom of the bench. We, after hearing the rival contentions and perusing the condonation petition by the revenue, are of the considered view that the delay is for sufficient reasons and accordingly condoned the delay.

3. The only issue raised by the revenue in various ground of appeal is against the deletion of addition of Rs. 7,22,00,000/- by the Ld. CIT(A) as made by the AO u/s 68 of the Act as unexplained cash credit on the ground that the assessee failed to prove genuineness of the transactions and creditworthiness of the subscribers.

4. Facts in brief are that the assessee filed return of income on 25.09.2012 declaring total income of Rs. 1,419/-. The case of the assessee was selected for scrutiny under CASS for the reason that the assessee has received large share premium. The statutory notices were duly issued and served on the assessee. The assessee company was incorporated on 13.01.2012 and during the year itself issued shares to different companies at a high premium. According to the AO issued notice to the assessee to explain these transactions and justify the receipt of share premium. The assessee, in response to the notice ,file memorandum & articles of association , return of allotment of shares filed before ROC, share application forms by allottee companies, share allotment advices, PAN cards, Form 18 and bank statements of assessee as well as allottee companies. Thereafter the AO discussed the modus operandi of shell companies and finally made the addition in respect of share capital and share premium as unexplained cash credit on the ground that the assessee as well as share subscribers did not appear and therefore these transactions remained unexplained. Finally the AO added the amount of Rs. 7,22,00,000/- comprising share capital of Rs. 22,40,200/- and share premium of Rs. 6,99,59,800/- as unexplained cash credit vide order dated 12.03.2015 framed u/s 143(3) of the Act.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding that the assessee has proved all the three ingredients of Section 68 of the Act and thus reversed the assessment order by discussing each and every share

applicant in the light of provisions of section 68 of the Act and relying on various decisions by giving details findings in Para 5 to 10 which are reproduced as under:

"5. I have considered the issue in the assessment order framed by the AO in light of the arguments made by the appellant. The short issue for my consideration is that whether the share application monies along with premium in the aggregate of 7,22,00,000/- disclosed by the appellant invites the mischief of the provisions of S. 68 of the Act or not. The provisions of s. 68 of the Act deal with cash credit which reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year. and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, In the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."

According to this section, if identity, creditworthiness of the creditor and genuineness of the transaction are not proved and the explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as income of the assessee of that previous year. In other words, providing of an opportunity is inherently embedded within the second limb of such provisions. Thus, it is a mandatory duty to call for an explanation in this respect. Admittedly, the AO has never given any opportunity to the appellant to submit an explanation in terms of s. 68 of the Act. The power of the Assessing Officer under section 68 is not an absolute one. It is subject to his satisfaction where explanation is offered. The satisfaction with regard to explanation is in effect an in-built safeguard in section 68 to protect the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the funds. It was pointed out by the A/R that no opportunity was provided to the appellant to meet the assumption conceived in this respect. Admittedly, in the instant case, no opportunity was allowed to the appellant as per the second limb of the provisions of s. 68 of the Act. In the case of Colonizers vs. ACIT (1992) 41 ITD 57 (Hyd) (SB), the issue before the Hon'ble Special Bench was whether the additions made by the Assessing Officer in violation of the principles of natural justice should be set aside as void ab initio and thus deleted or should the case be restored to the ITO with directions for redoing? In this respect, it was held as under:

"In regard to the second point of difference, two segments of it existed. The first segment was as to whether the additions made in violation of the principles of natural justice should be set aside as void ab initio. The second segment was as to whether the addition should be deleted or should the case be restored to the ITO with a direction for re-doing. The rules of natural justice operate as implied mandatory requirement, non observance of which amounts to arbitrariness and discrimination. The principles of natural justice have been elevated to the status of fundamental rights guaranteed in the Constitution as is evident from the decision of the Full Bench of the Supreme Court in the case of Union of India v. Tulsiram Patel AIR 1985 SC 1416 at P. 1460, holding that the principles of natural justice have thus come to be recognised as being a part of the guarantee contained in article 14 of the Constitution because of the new and dynamic interpretation given by the Supreme Court to the Concept of equality which is the subject-matter of that article and that violation of principles of natural justice by a State action is a violation of article 14.

In fact, the principles of natural justice, in the realm of life and liberty, would ipso facto even be read into article 21 because any procedure which affected life or liberty had to be

a just, fair and reasonable procedure which necessarily meant the observance of the principles of natural justice. That is why these principles have been called as part of the universal law, as part of the rule of law and have also been termed as fair play in action.

Audi alteram partem is one of the fundamental principles of natural justice. A quasi judicial or administrative decision rendered or an order made in violation of the rule of audi alteram partem is null and void and the order made in such a case can be struck down as invalid on that Score alone -

Maneka Gandhi v. Union of India AIR 1978 SC 597, Gangadharan Pillai v. ACED [1980] 126 ITR 356 at pp. 365 to 367 (Ker.). In other words, the order which infringes the fundamental principle, passed in violation of audi alteram partem rule, is a nullity. When a competent Court of authority holds such an order as invalid or sets it aside, the impugned order becomes null and void- Nawabkhan Abbaskhan v. State of Gujarat AIR 1974 SC 1471 at p. 1479. In the light of these decisions, the additions made by the Assessing Officer in violation of the principles of natural justice had to be set aside as void only insofar as the additions by way of cash credits alone were concerned, which were separable from the other additions in the order that were not challenged."

In view of such authoritative legal position, I am of the considered view that the well-settled principles of natural justice have not been followed by the AO. The appellant was never given any opportunity to explain the nature and source of the share application monies received by it. In fact, such affording of opportunity to tender an explanation is embraced within the second limb of the provision of s. 68 of the Act which the AO ought to have provided. Most respectfully, following the ratio laid down in the case of Colonizers vs. ACIT (supra as discussed above, the conclusion reached by the AO without adhering to the rule of audi alteram partem is ex-facie null and ab initio void and the same is hereby struck down on this score alone.

6. Be that as it may, on merits also it is observed that the addition was made with the predetermined mindset that share application monies received by the appellant is not genuine as identity and creditworthiness of the shareholders were bogus in nature as it they did not exist and the transactions were an eyewash only for converting its black money into white without paying any tax to the revenue. In the instant case, the appellant had raised share capital in the aggregate sum of ₹7,22,00,000/- by issuing equity shares in two categories. Firstly, 2,00,000 equity shares were issued with the face value of 10 each to one subscriber, Aryavrata Commosales P. Ltd. without any premium. Another lot of 14020 shares were allotted to 14 share subscribers with the face value of 10 each at a premium of ₹4990 per share. In this respect it is observed that the scrutiny was selected on CASS basis for the reason "Large Share Premium received". Therefore, the receipt of ₹20,00,000/- on account of 2,00,000/- equity shares from Aryavrata Commosales P. Ltd. do not come with the scope of such reason. And that being so, the addition made of ₹20,00,000/- out of the total addition of ₹7,22,00,000/- on this account deserves to be deleted and accordingly, the AO is directed to do so.

6.1. In respect of the remaining sum of 7,02,00,000/-, it is observed that the impugned addition was made with the predetermined mindset that share application monies received by the appellant is not genuine as identity and creditworthiness of the shareholders were bogus in nature as they did not exist and the transactions were an eyewash only for bringing its black money into circulation without paying any tax to the revenue. It is found that all the fourteen share applicants are body corporates who had subscribed to the aforesaid share capital raised by the appellant and all the payments were made by each of them through a/c payee cheques drawn on their respective bankers. Each of the fourteen share subscribers are

regularly assessed to income tax and some of the share applicants are Non Banking Financial Companies registered with the Reserve Bank of India; and the investments made by each of them are duly and fully reflected in their audited books of accounts as well as their income tax return. The appellant had duly filed its return of total income u/s 139(1) of the Act in respect of the assessment year 2012-13. In the course of the assessment proceedings, the appellant in response to the requisitions made by the AO, from time to time, produced its audited books of accounts, filed copies of its audited annual accounts including various details and other documents as desired by the AO. The details and documents so produced and filed with the AO included, inter alia, full details of each of the fourteen share applicants, who had subscribed to the aggregate share capital as well as share premium money raised by the appellant during the assessment year under appeal. The AO, on receipt of the aforesaid details from the appellant did not pursue the matter further. He solely doubted the genuineness of the said share capital and the creditworthiness of the share applicants in the teeth of the cast iron evidence to the contrary on mere presumption and added the sum of ₹7,22,00,000/- in respect of the share capital to the total income of the appellant in respect of the assessment year under appeal.

6.2 It is observed that the corporate share applicants are registered under the Companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India and are having independent Permanent Account Numbers. The appellant had provided the copies of the Permanent Account Numbers of the share subscribers along with the acknowledgment of submission of their return of income and audit report and financial statements which in my humble opinion proves their identities to the hilt. It is also observed that each of the share applicants maintained bank accounts; and copies of their respective bank accounts from which they made payments to the appellant for subscribing to the shares issued to them, was filed by each of them before the AO Further, from the balance sheet of the share applicants it is seen that they had subscribed to the shares issued by the appellant; and such transactions were duly reflected therein. It is axiomatic that the criteria mandatorily required to be satisfied by the appellant were categorically fulfilled. These facts, in my opinion, clearly prove the genuineness of the transactions. Thus, the evidence adduced on record by the appellant in respect of the share applicants, in my humble opinion, clearly prove their source of funds, and their capacity for making such payments and accordingly, the criteria of their creditworthiness is proved. The AO has not found any defect and/or deficiency in the evidence adduced on record by the appellant.

6.3. It is also observed that the appellant had provided the copies of the acknowledgments evidencing filing of income tax returns by each of them, copies of their audited accounts including Balance Sheets wherein such investments made by each of the in the subscription of shares issued by the appellant are duly reflected as also copies of their bank statements for the relevant period from which such subscription monies were paid by them respectively and copy of the allotment advise, received by them from the appellant in respect of shares allotted to them in respect of every share applicant. The annual return for the assessment year 2012-13 incorporating the allotments was filed by the appellant with the Registrar of Companies, Ministry of Corporate Affairs, which categorically proves the fact of allotment of shares to the share applicants. It is further observed that the net worth of each of the share applicants, as disclosed in their Balance Sheets, far exceeded the amount of investments made by them in the shares of the appellant which is incorporated in the charts here under: -

Sl No.	Name of the share subscriber	Amounts in Reserve & Surplus as on 31.03.2012	Amount invested with the appellant
1	Gajgamini Commercial P. Ltd.	₹14,97,00,216/-	₹1,05,00,000/-

2	Gyan Mandir Tradecom P. Ltd.	₹18,99,95,458/-	₹43,00,000/-
3	Kronje Suppliers P. Ltd.	₹34,92,90,176/-	₹40,00,000/-
4	Lily Retailers P. Ltd.	₹22,55,66,726/-	₹48,00,000/-
5	Mahadevi Merchants P. Ltd.	₹19,27,31,756/-	₹55,00,000/-
6	Nihon Impex P. Ltd.	₹48,36,03,643/-	₹60,00,000/-
7	Nirvaanam Tie-up P. Ltd.	₹34,83,40,777/-	₹60,00,000/-
8	Nishakar Traxom P. Ltd.	₹10,73,77,362/-	₹15,00,000/-
9	Priyakrit Trading P. Ltd.	₹9,98,00,400/-	₹55,00,000/-
10	Ranisati Mercandise P. Ltd.	₹51,10,20,770/-	₹50,00,000/-
11	Samvritah Vanijya P. Ltd.	₹48,36,03,643/-	₹25,00,000/-
12	Shivarpan Vanijya P. Ltd.	₹42,74,69,170/-	₹50,00,000/-
13	Sonali Suppliers P. Ltd.	₹40,69,29,850/-	50,00,000/-
14	Suchandana Tie-up P. Ltd.	₹17,82,54,523/-	₹45,00,000/-

It is accordingly observed that these facts adequately prove the creditworthiness of the share applicants to make investment in the share capital of the appellant. The aforesaid facts underlined by evidence clearly prove the identity of the share applicants, their capacity and source of funds, as well as the genuineness of the transactions in relation to the share capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant, in the impugned previous year relevant to the assessment year under appeal, as clearly evident from their respective balance sheet adduced on record by the appellant which were filed with the income tax authorities in relation to their own income tax assessments and as such, the genuinity of the sources of such funds are beyond reproach.

6.4. The AO had before him a plethora of evidence adduced on record by the appellant and it is well recognized that if he wished to act in a manner contrary to such proof, he had to disprove them first. At the same time, it is also a well established principle of law that in any matter, the burden is not a static one. The initial burden upon the appellant was duly discharged by it by providing the identity of share applicants by furnishing the copies of their returns along with audited report and financial statements, copies of bank accounts and proving the genuineness of the transactions by showing that money in the banks was debited by account payee cheques, and thereafter, the onus to disprove them shifted to the AO who grievously failed to discharge the same. It is observed that the AO had issued summons u/s 131 of the Act to the share subscribers. He had admitted that some of the directors of subscribers did appear. In some cases, the summons was returned unserved. And in some cases, the directors had sought time. In other words, the compliance was made from the end of the share subscriber companies. And in cases, where Summons were not served, the same was not even communicated to the appellant. It was the bounden duty of the AO to make enquiry about a particular receipt before drawing adverse conclusions to castigate the appellant. However, in the instant case, on receipt of such evidence, the AO did not pursue the issue further. In the case of CIT vs. Orissa Corporation Ltd. (1986) 159 ITR 78 (SC) 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 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 is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”

The ratio laid down in the aforesaid case is squarely applicable to the case at hand. In the instant case, thus, the AO had not controverted these indisputable evidences adduced on record but acted on his whims and fancies in disregarding them. It is observed that the burden which lay on the appellant, in relation to s. 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue. Since the conditions precedent for discharging of burden under the provisions of s. 68 of the Act are met with adequate evidence, the addition made under such pretext deserves to be deleted.

7. In this respect it is relevant to refer to the decision of the jurisdictional High Court 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.”

7.1 Further, the Hon’ble Jurisdictional High Court in the case of CIT vs. Gayatri Portfolio Fund (P) Ltd. [ITA No.664 of 2004 dated 26.08.2014], it was observed as under:

"We find that the learned Tribunal has confirmed the order passed by the CIT who had overturned the order of the Assessing Officer by making the following observation:

".....We find that the identity of the 5 parties investing in the share capital is not in doubt. They are body corporate and their complete addresses are on record. This is the very first assessment in the life of the assessee company. The amounts were deposited by these 5 corporates per account payee cheques. These parties were not shareholders of the assessee company at the time when the case was reopened under section 147 or when the summons were issued to them. We find that the assessee has filed before the A. O. copies of share application forms duly signed along with the complete addresses of the investors along with their I. T. file numbers, account payee cheque numbers and the assessee's bank statements disclosing the deposits of these amounts. In these facts we find that the assessee has discharged its initial onus to prove the identity of the investors as well their

creditworthiness. It is not the case of the Revenue that the investor parties did not exist or that the money was not invested by them through banking channels."

Having found such, the Tribunal had relied on the judgment in Hindusthan Tea Trading Co. Ltd. v. CIT (Cal): 263 ITR 289 (Cal) to uphold the order of the CIT.

In view of the findings above noted, no substantial question of law arises and therefore, the appeal and the application are dismissed."

7.2 Again, the Hon'ble Jurisdictional High Court in the case of CIT vs. Sanchati Projects (P) Ltd. [ITAT 140 of 2011 dated 08.06.2011] it was observed as under:

"It appears from record that the assessee company during the relevant assessment year under appeal raised its share capital by way of receiving share application money against 1,64,000 equity shares aggregating to Rs. 82,00,000/- from 8 different parties. The Assessing Officer, however, treated the share application money of Rs. 45,00,000/- received from five different persons as unexplained cash credit in the hands of the assessee.

According to the Assessing Officer, those parties had the same addresses as that of the assessee and they had no fixed assets and utilized their capitals in share application of the assessee company. The Assessing Officer, therefore, was of the view that the money ultimately went to the beneficiary through these companies and there, was no advertisement even I.T.A. No. 1705/Kol/2016 Assessment Year: 2012-13 M/s. Jai Tara Carriers Pvt. Ltd published by the assessee company inviting share application and no Registrar was engaged for such raising of share capital.

Being dissatisfied the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), however, set aside the said order of assessment and came to the conclusion that all the share applicant /companies were assessed to the tax and their PAN and acknowledgement of I. T. Returns along with their audited balance sheets, bank statements showing transactions etc. were made available to the Assessing Officer. It was pointed out that there was no legal bar of more than one company being registered at the same address and, thus, according to the Commissioner of Income-tax (Appeals), the doubt raised by the Assessing Officer about all those companies at the same address did not hold good.

Being dissatisfied, the Revenue preferred an appeal before the Tribunal below and by the order impugned herein, the said Tribunal has affirmed the order passed by the Commissioner of Income-tax (Appeals).

After hearing Mr. Nizamuddin, learned advocate appearing on behalf of the appellant and after going through the aforesaid materials, we agree with the Tribunal below that the Assessing officer failed to establish that the share applicants did not have the means to make investment and that such investment actually emanated from the coffers of the assessee company. The receipt of share capital money had been duly recorded in the books of the assessee company and the payment of share application money was also duly recorded in the audited account of each of the share applicants.

We, thus, find that both the authorities below on the basis of the aforesaid materials on record were quite justified in deleting the aforesaid addition of Rs. 45,00, 000/-

done by the Assessing Officer. We are of the view that the order impugned does not suffer from any defect whatsoever and question of substantial error of law arises justifying our interference.

The appeal is, thus, summarily dismissed. "

There is no evidence adduced on record to show that the identities of the share applicants are not proved and/or that the subscription made by them to the share capital of the appellant was not genuine and/or the source of investment was not fully explained to the satisfaction of the AO. Further, the Hon'ble Jurisdictional High Court in the case of CIT vs. Dataware Private Ltd. [ITAT No. 263 of 2011 dated 21.09.2011] wherein while examining the issue of addition of share application money received by the assessee therein u/s. 68 of the Act, the 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. The Hon'ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. In the present case also, no evidence was adduced on record that the investments made with the appellant in the shape of share application monies disclosed in the returns of the share applicants were rejected by their respective Assessing Authorities and accordingly, the issue is set at rest by the decision of the jurisdictional High Court on the issue which is applicable in the present context.

7.3. In this respect, the A/R relied on the decision of CIT vs. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Del) wherein it was held as under:

"A distillation of the precedents yields the following propositions of law in the context of [Section 68](#) of the IT Act. The assessed has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessed. (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessed nor should the AO take such repudiation at face value and construe it, without more, against the assessed. (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation."

7.4 Further this decision of the Hon'ble Delhi High Court was approved by the Hon'ble Supreme Court in CIT vs. Lovely Exports Ltd. (2008) 216 CTR 195 (SC) observing that if share application money is received by an assessee from subscribers, whose names are given to the AO, are allegedly bogus, then the Revenue is free to proceed to reopen their individual assessments in accordance with law. It was held that: -

"2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple

reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law."

8. *It is also noted that the Hon'ble Income Tax Appellate Tribunal, Kolkata Benches in several cases has deleted the addition on account of share application in similar circumstances. The relevant portion of the decisions are extracted as under:*

(a) *In the case of DCIT vs. Global Mercantiles (P) Ltd. [2016] 67 taxmann.com 166/157 ITD 924, it was held as follows:*

"3.4. We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed are not reiterated herein for the sake of brevity. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned CITA on the decision of the Hon'ble Apex Court in the case of CIT vs Lovely Exports (P) Ltd reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

3.4.1. We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of CIT vs Roseberry Mercantile (P) Ltd in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated 10.1.2011, wherein the questions raised before their lordships and decision rendered thereon is as under:-

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction."

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT vs M/s Lovely Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

3.4.2. In view of the aforesaid findings and respectfully following the decision of the apex court (supra) and Jurisdictional High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the ground no.2 raised by the revenue is dismissed."

(b) *In the case of ITO vs. R.B. Horticulture & Animal Projects Co. Ltd [IT Appeal No.632 (Kol) of 2011, dated 13.01.2016], it was held as follows:*

"6. We have heard the Learned DR and when the case was called on for hearing , none was present on behalf of the assessee. However, we find from the file that the assessee had filed a detailed paper book and written submissions. Hence the case is disposed off based on the arguments of the Learned DR and written submissions and paper book already available on record. The facts stated in the Learned CIT(A) were not controverted by the Learned DR before us. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned CITA on the decision of the Hon'ble Apex Court in the case of *CIT vs Lovelv Exports (p) Ltd* reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

6.1. We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of *CIT vs Roseberrv Mercantile (P) Ltd* in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated 10.1.2011, wherein the questions raised before their lordships and decision rendered thereon is as under:- -

*"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction." Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of *CIT vs M/s Lovelv Exports Pvt Ltd*, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed."*

6.2. We find that the issue is also covered by the decision of Hon'ble Delhi High Court in the case of *CIT vs Value Capital Services P Ltd* reported in (2008) 307 ITR 334 (Del) , wherein it was held that:

"In respect of amounts shown as received by the assessee towards share application money from 33 persons, the Assessing Officer required the assessee to produce all these persons. While accepting the explanation and the statements given by three persons the Assessing Officer found that the response from the others was either not available or was inadequate and added an amount of Rs. 46 lakhs pertaining to 30 persons to the income of the assessee.

The Commissioner (Appeals) upheld the decision of the Assessing Officer. On appeal, the Tribunal set aside the order of the Commissioner (Appeals) and deleted the additions. On further appeal:

Held, dismissing the appeal, that the additional burden was on the department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers

of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose. "

6.3. We find that the argument of the Learned DR to set aside this issue to the file of the Learned AO for verification of share subscribers would not serve any purpose as the ratio decided in the above cases is that in any case, no addition could be made in the hands of the recipient assessee. In view of the aforesaid findings and respectfully following the decision of the apex court (supra), Jurisdictional High Court (supra) and Delhi High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the grounds raised by the Revenue are dismissed."

(c) *In the case of ITO vs. Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016, it was held as follows:*

"6. On appeal by the assessee the CIT(A) deleted the addition made by the AO observing as follows:

"6) I have considered the submission of the appellant and perused the assessment order. I have also gone through the details and documents filed by the appellant company in the course of assessment: proceedings vide letter dt. 3-10-2007. On careful consideration of the facts and in law I am of the opinion that the AO was not justified in making, the addition aggregating to Rs.54,00,000/- u/s.68 of the Act being the amount of share application money by holding that the appellant company has failed to prove the identity, and creditworthiness of The creditors as well as the genuineness of transactions. It is observed that all the three share applicant companies i.e. M/s. Shree Shyam Trexim Pvt. Ltd., M/s Navalco Commodities Pvt. Ltd. and M/s. Jewellock Trexim Pvt. Ltd. had filed their confirmations wherein each of them confirmed that they had applied for shares of the appellant -company. All the three companies provided- the cheque number, copy of bank statements and their PAN. It is observed that these companies also filed, copies of their return of income and financial statements for as well as copy of their assessment order u/s. 143(3) of the I. T Act for AY 2005-06. In the case of M/s. Jewellock Trexim Pvt. Ltd. the assessment for AY 2005-06 was completed by the ITO Ward 9(3), Kolkata and the assessments in the case of M/s. Navalco Commodities Pvt. Ltd. and M/s. Shree Shyam Trexim Pvt. Ltd. for A. Y.2005-06 and AY.2004-05 respectively were completed by the I TO, Ward 9(4), Kolkata. Under the circumstances, I am of the opinion that the AO was not justified in holding that the share applicant companies were not in existence. The assessment orders were completed on the address as provided by the appellant company in the course of assessment proceedings. It is not known as to how the AO's inspector had reported that the aforesaid companies were not in existence at the given address. Since the appellant company had provided sufficient documentary evidences in support of its claim of receipt of share application money, I am of the opinion that the no addition u/s.68 could be made in the hands of appellant company. On going through the various judicial pronouncements relied upon by the appellant, it is observed that the view taken as above is also supported by them. In view of above the AO is directed to delete the addition of Rs.54,00,000/ -. The ground Nos. 2 and 3 are allowed."

7. Aggrieved by the order of CIT(A) the Revenue is in appeal before the Tribunal.

8. We have heard the submissions of the learned DR, who relied on the order of AO. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs

Raj Kumar Agarwal vide ITA No. 179/2008, dated 17. 11.2009 wherein the Hon 'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of *ITO vs Devinder Singh Shant* in IT A No.20Biko112009 vide order dated 17.04.2009.

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

(d) *In the case of ITO vs. Megasun Merchants (I) P Ltd* [IT Appeal No.1038(Kol) of 2015, dated 29.3.2019, it was held as follows:

“44. To conclude, in this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee, cannot be brushed aside by the AO to draw adverse view, cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance. Applying the propositions laid down in these case laws to the facts of this case, we are inclined to uphold the order of the Ld. Commissioner of Income Tax (Appeals).Section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we confirm the order of ld CIT(A) in deleting the addition of Rs.1,60,00,000/-

45. In the result, the appeal of the Revenue is dismissed.”

9. In the instant case, the doubts expressed in the reasoning of the AO in the instant case is on the premise that the apparent is not real which is based on the decisions of the Apex Court in the cases of *CIT vs. Durga Prasad More (1971) 82 ITR 540* and *Sumati Dayal vs. CIT (1995) 214 ITR 801* wherein it was expounded that Revenue authorities are also supposed to consider the surrounding circumstances and apply the test of human probability. In the case of *Sumati Dayal (Supra)*, the assessee has claimed to have won substantial amount in horse races in two consecutive assessment years. When the matter reached the Settlement Commission, it was held by the majority view that the appellant did not really participate in any of the races, except purchasing the winning tickets after the events. The Chairman of the Settlement Commission expressed dissenting opinion and stated that the assessee has produced the evidence in support of the credits in the form of certificates from Racing Clubs. The Apex Court after considering the ratio of *CIT vs. Durga Prasad More (Supra)* upheld the majority view of the Settlement Commission and held at page 808 of the Report as under:

"The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning tickets is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972, whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn. Similarly, the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering the surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winnings from races is not genuine."

Thus, it is evident that the facts of the instant case are quite different from the facts in the case of *CIT vs Sumat Dayal (supra)*. In that case, there were claims for winning of substantial amounts in horse races in two consecutive years and the Hon'ble Supreme Court rejected the assessee's claim about her winnings from races as genuine and gave finding keeping in view the facts relating to that issue only. While in the case of the appellant, it had received share application monies and share premium monies from various corporates who were duly assessed to tax and have disclosed the transactions in their own records. Therefore, the ratio of decision in the case of *CIT vs. Sumati Dayal (supra)* is not applicable to the case of the appellant. In this respect, it is observed that there was no ground to draw any adverse inference against the appellant, in relation to the provisions contained in s. 68 of the said Act since the appellant had adduced all possible evidence in support of the share capital raised by it and there was nothing more for the director of the appellant to state in that respect. Thus, the justification sought to be construed by the AO in support of his adverse action fails on merit. It is observed that the nature and source of such money received from the share applicants were duly explained by the appellant. Therefore, in my considered opinion, the appellant has discharged its primary onus of proving the identity and creditworthiness of the share applicants and genuineness of the transactions, more so when the share applicants had sufficient funds in their possession from which such investment in share subscriptions were made. Thus, the requirements of the provisions of s. 68 of the Act are duly met by the

appellant and therefore, the AO was entirely in error in resorting to the impugned addition thereunder misconceiving the sweep and scope of the case of CIT vs. Sumati Dayal (supra).

9.1. Further, I am aware of the recent decision of the Hon'ble Apex Court in the case of Principal CIT vs. NRA Iron & Steel (P) Ltd (2019) 412 ITR 161 (SC) wherein the addition made on account of share capital towards cash credit was rendered in favour of the revenue. I have gone through the said judgement and I find in that case, the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before me. Certain investor companies did not produce their bank statements proving the source for making investments in the assessee company, which is also not the case before me. Source of funds were never established by the investor companies in the case before the Hon'ble Apex Court, whereas in the instant case, the entire details of source of source were duly furnished by all the respective share subscribers before the AO and most of the directors appeared before the AO in response to summons u/s 131 of the Act Hence the decision is factually distinguishable and does not advance the case of the AO

9.2 Further in the instant case, the scrutiny selection was made for "Large Share Premium received" During the course of assessment proceedings, the AO has conceived that the share premium received along with share capital to be unexplained without considering into the facts of the instant case. In my considered opinion, the issue of shares at premium is always a commercial decision which does not require any justification. In any case, the premium is a capital receipt which has to be dealt with in accordance with sec.78 of the Companies Act, 1956. In other words, it is a prerogative of the Board of Directors of the appellant to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a heavy premium. It is an accepted position that in case of unlisted companies, it is an undisputed fact that share premium is fixed upon mutual agreement. In this context the Hon'ble Income Tax Appellate Tribunal, Mumbai "G" Bench in the case of ACIT vs. Gagandeep Infrastructure P. Ltd. (ITA No.5784/Mum/11, dated 23.04.2014) has held as under: -

6. After considering the facts and the submissions, the Ld. CIT(A) observed that the AO has not given any reason as to why the investment with a premium is not genuine when the assessee has produced all the details of investors in the form of share application form, bank account details, copies of the return of income alongwith balance sheet. The Ld. CIT(A) further observed that charging of premium is outlook of the investors. If an investor finds that the payment of premium is justified then only he would look to invest otherwise he may not invest in the shares of newly promoted company. The Ld. CIT(A) was of the belief that the department cannot question the charging of premium by the company. The Ld. CIT(A) further observed that the genuineness and the credit worthiness of the investors could have been examined by the AO which he has not made. Drawing support from the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt. Ltd. 216 CTR 195, the Ld. CIT(A) deleted the addition holding that the AO has not justified in adding the increase in share capital alongwith share premium as unexplained cash credit u/s. 68 of the Act."

In fact, this decision was approved by the Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure P. Ltd. (2017) 394 ITR 680 (Bom) as follows: -

"We find that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso

added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in CIT v/s. Lovely Exports (P)Ltd. 317 ITR 218 in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee’s income as unexplained cash credit.

Therefore, charging of share premium cannot be questioned in isolation than that of share capital Once it is established that the share subscribers are genuine, their creditworthiness is established and the genuineness of the transaction is not doubted, the AO cannot justifiably claim to put himself in the arm-chair of the appellant or in the position of the Board of Directors and assume the role to decide how much premium is reasonable in the given circumstances. This is another reason for which the addition on this account will fail the test of reason.

10. *Therefore, considering the totality of the facts and circumstances of the case, I find substance in the argument of the A/R that the appellant has proved its case that the identity of the share applicants are established beyond doubt and there is no adverse finding reached by the AO on this aspect. Admittedly, all the share applicants are existing assesseees under the Act and that some of them were subject to scrutiny assessment during the same period establish the identity and authenticity of the share applicants. About the genuineness of the transactions there is neither any adverse finding in the assessment order nor one which is contrary to the facts brought on record by the appellant during the course of assessment proceeding. The creditworthiness of the share applicants as regards their subscription to the share capital is proved by the source as apparent from their audited balance sheet, return and bank statement The net worth of such subscribers are in excess of the amounts invested by each of them with the appellant. The addition made by AO is based on extraneous parameters not germane for deciding the issue. The AO had not dealt with the issue judiciously and rejected the evidence adduced during the course of the assessment proceedings by the appellant out of hand. Thus, it is held that the investment by the share applicants in the share capital of the appellant do not warrant the inference that such share application along with premium received is unaccounted cash credit. There is no material brought on record to that effect and wild speculation of this genre cannot be passed off as gospel truth. Hence, I am inclined to accept the submissions made by the AR of the appellant in this respect. In view of the above, I have no hesitation to hold that the impugned addition made by invoking the provisions of s. 68 by the AO is not justified in the circumstances and accordingly, direct him to delete such addition of 7,22,00,000/- made on this count. Thus, Ground Nos. 1 to 4 of the appeal is allowed.”*

6. After hearing the rival contentions and perusing the material on record, the undisputed facts as culling out of the records before us and rival contentions are that the assessee has raised Rs. 7,22,00,000/- from various share subscribers during the year by issuing shares at high premium. During the course of assessment proceedings, the details were filed before the AO comprising various evidences proving identity, creditworthiness of the investors and genuineness of the transactions. However the AO came to the conclusion that the verification could not be done qua these investments because neither the directors of the assessee company nor were the share subscribers appeared and therefore the transactions remained unexamined and unexplained, thereby making an addition as unexplained cash credit. Before the Ld. CIT(A), we find that the assessee filed same documents as filed before the AO comprising names, addresses, copies of PAN, applications of share subscribers, bank statements of both the assessee as well as share subscribers, form 18 and various other evidences which have been minutely appreciated and examined by the Ld. CIT(A). The Ld. CIT(A) has examined on page 18 of the appellate order that the net worth of the investors and amount of investment in the assessee company and recorded a finding that the amounts invested were only a fraction of total net-worth of these investor companies. In the present case the assessee has filed all the evidences before the AO and AO in stead of carrying of further investigation only harped on the plea that summons u/s 131 of the Act were not complied with and thus the transactions remained unexplained. The Ld. CIT(A) appreciated all these facts and after discussing and relying on the various decisions allowed the appeal of the assessee. The Ld. CIT(A) also relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Ltd. [2008] 216 CTR 195 (SC) wherein it was held that if the share application money is received from subscribers, whose names and addresses were given to AO, who are allegedly bogus, then the revenue is free to proceed to reopen the assessment in accordance with law of the investors. The Ld. CIT(A) has also distinguished the case of Hon'ble Apex Court in the case of CIT Vs. Durga Prasad More in [1971] 82 ITR 540 (SC) and Sumati Dayal vs. CIT in [1995] 214 ITR 801 (SC) in para 9. We further note that the Ld. CIT(A) has also dealt with the decision of

Hon'ble Apex Court in the case of PCIT vs. NRA Iron & Steel (P) Ltd. [2019] 412 ITR 161 (SC) in para 9.1 and distinguished the same.

7. We note that the Ld. CIT(A) also held in para 9.2 that to issue shares at a high premium is a management decision and the AO cannot step into the shoes of the management by relying on the decision of Co-ordinate Bench of Mumbai in the case of ACIT vs. Gangadeep Infrastructure Pvt. Ltd. in ITA No. 5784/Mum/2011 dated 23.04.2014 which has been affirmed by the Hon'ble Bombay High Court in the case of CIT vs. Gangadeep Infrastructure Pvt. Ltd. in [2017] 394 ITR 680 (Bom) wherein it has been held that proviso to Section 68 of the Act has been introduced by the Finance Act , 2012 w.e.f 01.04.2013 onwards and therefore the year under consideration i.e. AY 2012-13 is outside the scope of the amendment. We observe from the facts before us that all the share applicants were existing assesseees under the Act and in some of the cases assessments were framed u/s 143(3) of the Act and the assessment orders were also placed before us. Therefore the genuineness of these investors cannot be doubted. Considering the facts into totality and decisions relied upon by the Ld. CIT(A) as extracted in the reproduction above and also discussed by us, we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

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

Order is pronounced in the open court on 28th March, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 28th March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-4(1), Kolkata
2. Respondent – Raudramukhi Commerce Pvt. Ltd., 23A, Netaji Subhas Road, Room No. 27A, Kolkata-700001.
3. Ld. CIT(A)-7, Kolkata (Sent through e-mail)
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata