

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

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

**ITA No.442/Kol/2022  
Assessment Year: 2012-13**

Eyelid Mercantiles Pvt. Ltd. 9, Ezra Street, Top Floor, Room No. 47, Kolkat-700017. (PAN: AABCE1505C)	Vs.	Income Tax Officer, Ward- 7(3), Kolkata
<b>(Appellant) (Respondent)</b>		

**Present for:**

Appellant by : Shri Manoj Kataruka, Advocate  
Respondent by : Shri Vijay Kumar, Addl. CIT, Sr. DR

Date of conclusion of Hearing: 22.02.2023  
Date of Pronouncement : 28.03.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2021-22/1040763635(1) dated 15.03.2022 passed against the assessment order by ITO, Ward-7(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 18.03.2015.

2. Grounds raised by the assessee are reproduced as under:

*"1. That the action of the Ld. CIT(A) to confirm the addition made by the A.O. of Rs.2,10,41,580/- u/s 68 of the Act is illegal and bad in law.*

*2. That without prejudice to the above ground the action of the Ld. CIT(A) to confirm the addition made by the A.O. of Rs.2,10,41,580/- u/s 68 of the Act on account of share capital though book entries 1 journal entry is illegal and bad in law.*

*3. That the order of the Ld. CIT(A) confirming the addition made by the A.O. is arbitrary, excessive and illegal.*

*4. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and ground of appeal at or before the time of hearing.”*

4. Brief facts of the case are that assessee is engaged in trading in shares. Return of income was filed on 23.08.2012 reporting a total income of Rs. Nil. During the assessment year under consideration, the assessee had issued share capital with premium for an aggregate amount of Rs.2,10,41,580/- to one private limited company M/s. Dadar Properties & Finance P. Ltd. The case was selected for scrutiny through CASS. In course of assessment proceedings, summons u/s. 131 of the Act was issued to the Director of the Company requesting him to produce the Director of the subscribing company, M/s. Dadar Properties & Finance P. Ltd. for verifying its identity and creditworthiness and genuineness of the transactions. However, neither did the Director of the assessee company attend nor was the Director of the subscribing company Dadar Properties & Finance P. Ltd. produced before the AO. In this connection the AO observed that though the assessee appears to have received summons u/s 131 of the Act, the assessee chose to avoid appearing before the undersigned for the reason best known to them.

4.1. According to Ld. AO, the assessee was a private limited company which cannot issue shares in the same manner in which a public limited company does. He also felt that it is worth mentioning whenever a sum is credited in the books of the assessee, the onus lies on the assessee company to prove three criteria: -

- (i) identity,
- (ii) creditworthiness, and
- (iii) genuineness of the transaction.

4.2. According to Ld. AO, under section 68 of the Act, onus is on the assessee to prove the three ingredients, i.e., identity and creditworthiness of the person from whom the monies were taken and the genuineness of the transaction. According to Ld. AO, with regard to the identity and creditworthiness of the subscriber companies and the genuineness of the transactions remain unexplained, the entire amount of Rs.2,10,41,580/- which includes Rs.4,12,580/- of fresh share capital and Rs.2,06,29,000/- of premium thereon which is shown under the head of share capital and reserve, in the books of the assessee is own money of the assessee company shown in the garb of fresh share capital including premium introduced during the year, is being added as unexplained credit in the books of the assessee and added to the total income u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A).

4.3. On appeal, the Ld. CIT(A) dismissing the appeal of the assessee by observing that no infirmity is found in the action of the AO of making the said addition as unexplained cash credit u/s. 68 in respect of the share capital at a premium received from Dadar Properties & Finance P. Ltd., therefore, in principle the addition made u/s. 68 is upheld. Aggrieved, assessee is now in appeal before the Tribunal.

5. Before us, Shri Manoj Kataruka, Advocate appeared for the assessee and Shri Vijay Kumar, Addl. CIT, Sr. DR appeared for the revenue.

6. We have heard the rival contentions and carefully gone through the material available on record and have given our thoughtful consideration over the matter. We note that assessee is a Private Limited company engaged in business of trading in shares. During the year assessee raised share capital along with premium for an

aggregate amount of Rs.2,10,41,580/-. From the perusal of the order of Ld. CIT(A), we observe that assessee had taken as many as 41 grounds at the first appellate stage which are reproduced in his order. Ld. CIT(A) also observed that no written submission has been uploaded by the assessee during the appellate proceeding before him. He considered the arguments mentioned in the statement of facts and ground of appeal while adjudicating upon the matter.

6.1. From the perusal of statement of facts reproduced in the order of Ld. CIT(A), we take note of the following and observe as under:

(a) Assessee is a wholly owned subsidiary of the Dadar Properties and Finance Pvt. Ltd. as disclosed in Note No. 6(A)(f) of Part-I of Schedule-VI to the Companies Act.

(b) Dadar Properties & Finance Pvt. Ltd. was holding 1,35,500 equity shares as at 31.03.2011 and 1,71,758 shares as at 31.03.2012. During the year, assessee had allotted 41,258 number of equity shares to the said company.

(c) Mode of payment against share application and their subsequent allotment was by cross cheque bearing no. 000741 dated 21.03.2012 for Rs.2,06,29,000/- of Kotak Mahindra Bank, Park Street Branch, Kolkata. The said cheque issued by Dadar Properties & Finance Pvt. Ltd. in favour of the assessee was subsequently endorsed by the assessee in favour of Visage Equipments Pvt. Ltd.

(d) Thus, in respect of the impugned share capital and premium, only journal book entries have been passed by the assessee.

(e) On the above contention of the assessee, Ld. CIT(A) gave his finding in para 5.10 which is reproduced as under:

*"5.10 The appellant contended that "& Co. crossed cheques" were received from the share subscriber which were endorsed to M/s Visage Equipments. Therefore, this payment is not at all reflected in it's bank account and only*

*book entries have been made. Accordingly, it was contended that in respect of such book entries no addition can be made u/s 68. On this contention of the appellant, it is held that there is no distinction for invoking of provisions of section 68 between actual credits in the books and credits by way of journal entry in the books. Therefore, this contention of the appellant is rejected.”*

(f) After the detailed discussion, Ld. CIT(A) dismissed the appeal of the assessee by giving his conclusion in para 5.14 which is reproduced as under:

*“5.14 In view of the above detailed discussion, no infirmity is found in the action of the AO of making the said addition as unexplained cash credit u/s 68 in respect of the share capital at a premium received from M/s Dadar Properties & Finance P. Ltd. Therefore, in principle the addition made u/s 68 is upheld. However, the AO needs to ascertain whether the amount introduced is of Rs.210,41,580/- or Rs.206,29,000/- and adopt the right figure for addition u/s 68. Accordingly, the various Grounds of Appeal raised by the appellant are dismissed.”*

7. From the above stated factual position extracted from the statement of facts filed by the assessee at the first appellate stage, which were also reproduced in the order of Ld. CIT(A), we note that there is no, and there cannot be, any dispute on the fundamental legal position that the onus is on the assessee to prove ‘bonafides’ or ‘genuineness’ of the amount credited in its books of account. This position finds support from the scheme of section 68, which provides that 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 it 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 for that previous year. The burden is thus, on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation

given by the assessee and on how acceptable is the explanation so given by the assessee. The genuineness of the transaction as a whole is thus a very important and the critical factor for deciding this, on the examination of explanation by the assessee, as required under section 68, with respect to the share capital at a premium received by an assessee.

7.1. From the perusal of written submission dated 17.11.2014 filed by the assessee before the ld. AO to establish, *inter alia*, the genuineness of impugned transaction, we take note of the explanation furnished therein at para 23, placed in the paper book at page 25, which is extracted as under:

*“The assessee would like to state that Dadar Properties and Finance Private Limited issued a cheque bearing No.000741 drawn on Kotak Mahindra Bank Limited to the assessee which in turn was accepted by the assessee and endorsed in favour of Visage Equipments Private Limited in settlement of the said account. Visage in turn accepted and endorsed the cheque in favour of Dadar Properties and Finance Private Limited - as per information obtained by us from Dadar Properties & Finance Pvt. Ltd. By this the contract of novation got completed. In this connection it is worthwhile to understand the meaning and purport of novation.”*

8. From the above explanation, we note that to establish the aspect of genuineness of transaction in the present set of peculiar facts as noted above relating to cheque crossed as “& Co.” and subsequently endorsed, assessee has made an attempt to justify its issue of shares by way of journal entries / book entries. Cheque issued by the investor company was endorsed by the assessee in favour of Visage Equipments Pvt. Ltd., which in turn was again endorsed in favour of the investor company *viz.* Dadar Properties and

Finance Pvt. Ltd. The case was re-fixed for clarification in respect of issue of shares by way of book entries since cheque issued by the investor company was endorsed in favour of Visage Equipment Pvt. Ltd. While clarifying the matter, Ld. Counsel submitted the financial statements of the assessee for AYs 2007-08 and 2010-11. From the financial statements of AY 2007-08, Ld. Counsel submitted that assessee had purchased an immovable property as stock-in-trade for Rs. 8 Cr. For the purpose of this purchase, assessee had taken unsecured loan of Rs. 2 Cr. from Visage Equipment Pvt. Ltd. and the balance of Rs. 6 Cr. was raised by way of issuing share capital including premium. From the financial statement of AY 2010-11, Ld. Counsel pointed certain accretion to the stock-in-trade of immovable property as well as to its loan liability. Ld. Counsel also furnished copies of ledger account in its books for Visage Equipment Pvt. Ltd. and Dadar Properties & Finance Pvt. Ltd. to explain the transaction.

8.1. In the present case, Ld. Counsel has furnished certain documents at the time of seeking clarification by the Bench which needs to be verified by the Ld. AO to arrive at a conclusion that shares have been issued by the assessee against its outstanding loan liability for the purchase of immovable property accounted as stock-in-trade. In the given set of facts and circumstances, we find it proper to remit the matter back to the file of Ld. AO for verification of the documents and records to gain a clear understanding on the issue of shares by the assessee against its outstanding loan liability for which relevant book entries/journal entries have

been passed and complete the assessment in accordance with the provisions of law. Needless to say that assessee be given reasonable opportunity of being heard and make any further submission if so required. Further, in the present regime of faceless procedure adopted by the Department for assessments and first appeals, we also direct that office of Id. Jurisdictional Assessing Officer (JAO) should facilitate transmission of case records of the assessee to the appropriate first appellate assessing through National Faceless Assessment Centre (NFAC), for the purpose of efficacious execution of our aforesaid directions. Accordingly, appeal of the assessee is allowed for statistical purposes.

9. In the result, appeal of the assessee is allowed for statistical purposes.

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

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 28th March, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A), National Faceless Appeal Centre (NFAC), Delhi
  4. The Pr. CIT,
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata