

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

डॉ. मनीष बोराड, लेखा सदस्य  
एवं  
श्री संजय शर्मा, न्यायिक सदस्य  
के समक्ष  
**Before**

**DR. MANISH BORAD, ACCOUNTANT MEMBER  
&  
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 26/KOL/2019  
Assessment Year: 2008-09**

***M/s. Hirak Vyapaar Pvt. Ltd.....Appellant  
[PAN: AABCH 9133 M]***

***Vs.***

***ITO, Ward-6(1), Kolkata.....Respondent***

**Appearances by:**

*Sh. S. Jhajharia, A/R, appeared on behalf of the Assessee.*

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

Date of concluding the hearing : February 21<sup>st</sup>, 2023

Date of pronouncing the order : April 13<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2008-09 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)- 17, Kolkata [in

short ld. "CIT(A)"] dated 20.03.2017 arising out of the assessment order framed u/s 143(3)/263/147 of the Act dated 31.03.2014.

2. The assessee has raised the following grounds of appeal:

*"1. That, On fact and under the circumstances of the case, the Commissioner of Income Tax (Appeal) is unjustified and unlawful in confirming the order of the Ld. Assessing Officer vide ex parties order.*

*2. That the Ld. Assessing Officer was not justified in considering the share capital and share premium received from various parties of Rs 10, 60, 50,000/- as unexplained cash credit.*

*3. That the entire addition by the AO is based on mere suspicious and without any material evidence on record and hence liable to be deleted.*

*4. That the addition made by AO is based on a pre-determined and biased mind-set and based on pure guess, surmises and conjecture which does not hold good in law.*

*5. That the assessment has been made without appreciating the documents and explanation produced before the AO and without affording reasonable opportunity to the assessee.*

*6. That the Ld. Assessing Officer was not justified in making addition on account of share capital as same was verified & certified by him in earlier years in detailed assessment.*

*7. That the addition made by Ld. Assessing Officer and upheld by Ld. the Commissioner of Income Tax (Appeal) are liable to be set aside.*

*8. That the appellant may add, alter, delete, withdraw or modify any of the ground at the time of hearing of the matter with the leave of the Hon'ble ITAT."*

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in the business of investment in shares and security. Income of Rs. 630/- declared in the return for AY 2008-09 filed on 21.10.2008. The return was processed u/s 143(1) of the Act. Thereafter, case was reopened by

issuance of notice u/s 148 of the Act and reassessment proceedings were carried out and vide assessment order u/s 147 r.w.s. 143(3) of the Act dated 17.06.2010, income determined at Rs. 34,430/-. Thereafter, ld. CIT(A) invoked the provisions of Section 263 of the Act and carried out the revisionary proceedings and set aside the assessment order dated 17.06.2010 to be framed afresh and in this revisionary order dated 30.03.2013 ld. CIT(A) directed ld. AO to examine the transactions of share capital and share premium of Rs. 10,60,50,000/- received by the assessee.

4. Ld. AO in compliance to the order u/s 263 of the Act carried out the assessment proceedings after serving valid notices. The summons issued u/s 131 of the Act remained uncompiled. Though the assessee filed the details of the share application money of 10.60 Cr duly supported by relevant documentary evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, ld. AO was not satisfied and he completed the assessment making addition u/s 68 of the Act at Rs. 10,60,50,000/- and assessed the income at Rs. 10,60,84,430/-.

5. Aggrieved, the assessee preferred appeal before ld. CIT(A) challenging the addition made u/s 68 of the Act. However, on the dates of hearing none attended and ld. CIT(A) proceeded *ex-parte* and confirmed the addition made by ld. AO u/s 68 of the Act placing reliance on judicial pronouncements.

6. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee submitted that all the share

subscribers are duly assessed to tax and complete details were filed in the first round of reassessment proceedings which ld. AO had examined thoroughly and did not make any addition and again in the assessment proceedings carried out on the direction of ld. CIT(A) u/s 263 of the Act the assessee had furnished all necessary details but without pointing out any specific discrepancy in such details, the addition has been confirmed merely for non-appearance/non-serving of summons u/s 131 of the Act. Reliance placed on the recent decision of this Tribunal in the case of *ITO vs. Mainak Suppliers Pvt. Ltd.* in *ITA No.38/Kol/2021* order dated 28.12.2022 wherein also the facts of the case are almost identical and Hon'ble Tribunal decided in favour of the assessee holding that since the assessee has discharged its onus to prove the identity and creditworthiness of the share subscriber companies and the genuineness of the transaction, addition cannot be sustained merely for non-appearance to the notice issued u/s 133(6) of the Act.

7. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities and stated that all the alleged share subscribers are companies with no regular business activity and are in the nature of accommodation entries/*jama-kharchi* companies and did not have sufficient creditworthiness to invest the alleged sum in the assessee company.

8. We have heard rival contentions and perused the records placed before us. The addition u/s 68 of the Act at Rs. 10,60,50,000/- is in dispute before us. Before us, ld. Counsel for

the assessee has referred to the following documents pertaining to various share subscribers which form part of the paperbook dated 30.01.2023 and the index of the paperbook is reproduced below:

Sl. No.	Particulars
1	Asst Order u/s.147/143(3) dated 17.06.2010 for the Asst. Year 2008-09
2	Notice u/s. 148 dated 19.05.2010
3	Audited Accounts of the Company for the Year ended 31.03.2008
4	ITR Acknowledgement for the A.Y. 2008-09
5	Bank Statement of Vysya Bank from 01.04.2007 to 31.03.2008
6	ITR Asst. Order & Demand Notice of Hirak Vyapaar Pvt. Ltd. u/s 147/143(3) dt.17.6.10
7	Share Application, Resolution & MOA of: i) Bircort Vingon Pvt. Ltd. ii) Daffodil Complex Pvt. Ltd. iii) Kaberi Tie-Up Pvt. Ltd. iv) Keshav Tie-Up Pvt. Ltd. v) Outlook Delcom Pvt. Ltd. vi) Oxide Tie-Up Pvt. Ltd. vii) Pinpoint Tie-Up Pvt. Ltd. viii) Sarathi Vyapaar Pvt. Ltd. ix) Shivangan Dealers Pvt. Ltd. x) Shivangan Goods Pvt. Ltd. xi) TanishqueTradelink Pvt. Ltd. xii) TistaVanijya Pvt. Ltd. xiii) Trishna Vanijya Pvt. Ltd.
8	Share Allotment Advice of: i) Bircort Vingon Pvt. Ltd ii) Daffodil Complex Pvt. Ltd. iii) Kaberi Tie-up Pvt. Ltd. iv) Keshav Tie-up Pvt. Ltd. v) Outlook Dealcom Pvt. Ltd vi) Oxide Tie -up Pvt Ltd. vii) Pinpoint Tie - up Pvt. Ltd. viii) Sarathi Vyapaar Pvt. Ltd ix) Shivangan Dealers Pvt. Ltd. x) Shivangan Goods Pvt. Ltd. xi) TanishqueTradelink Pvt. Ltd. xii) Tista Vaanijya Pvt. Ltd. xiii) Trishna Vanijya Pvt. Ltd.
9	Details of allotment of Shares
10	Notice u/s. 133(6) dated 28.01.2014, response letter, Bank Statement ITR & Audited A/c of: i) Bircort Vincom Pvt. Ltd ii) Daffodil Complex Pvt Ltd. iii) Kaberi Tie-Up Pvt Ltd. iv) Keshav Tie-Up Pvt. Ltd. v) Oxide Tie=Up Pvt Ltd. vi) Pinpoint Tie - up Pvt. Ltd vii) Sarathi Vyapaar Pvt. Ltd

viii)	Shivangan Dealers Pvt. Ltd
ix)	Shivangan Goods Pvt. Ltd
x)	Tanishque Tradelink Pvt. Ltd
xi)	Tista Vanijya Pvt. Ltd
xii)	Trishna Vanijya Pvt. Ltd

9. Further, attention was drawn to the share capital and reserve and surplus of the share subscriber companies and the amount invested by the appellant company and the said details are mentioned below:

Sl.No.	Name of the company	Share Capital (in Rs.)	Reserves & surplus (in Rs.)	Amount invested in appellant (in Rs.)
1	Birtcort Vincom Pvt. Ltd.	1,64,98,000/-	10,62,95,634/-	15,00,000/-
2	Daffodil Complex Pvt. Ltd.	84,90,000/-	7,55,10,000/-	15,00,000/-
3	Kaberi Tie-up Pvt. Ltd.	1,08,40,000/-	9,66,60,000/-	29,00,000/-
4	Kashab Tie-up Pvt. Ltd.	75,30,000/-	6,68,70,662/-	9,50,000/-
5	Oxide Tie-up Pvt. Ltd.	1,73,15,000/-	15,49,35,000/-	1,49,50,000/-
6	Pinpoint Tie-up Pvt. Ltd.	1,16,30,000/-	10,37,70,000/-	1,02,00,000/-
7	Sarathi Vyapaar Pvt. Ltd.	1,16,95,000/-	10,43,56,764/-	1,29,00,000/-
8	Shivangan Dealers Pvt. Ltd.	1,08,20,000/-	9,64,80,479/-	19,00,000/-
9	Tanishque Tradelink Pvt. Ltd.	91,70,000/-	8,16,30,000/-	96,00,000/-
10	Tista Vanijyua Pvt. Ltd.	1,06,25,000/-	9,47,27,418/-	1,12,00,000/-
11	Trishna Vanijya Pvt. Ltd.	1,73,00,000/-	9,66,00,000/-	1,14,00,000/-
12	Outlook Dealcom Pvt. Ltd.	1,41,20,000/-	11,61,80,000/-	1,18,50,000/-
13	Shivangan Goods Pvt. Ltd.	87,00,000/-	7,74,00,801/-	1,60,00,000/-

10. Further, it was also submitted that all the alleged share subscribers are regularly assessed to tax, filing income tax returns, books of accounts are regularly maintained, financial statements are duly audited under the Companies Act, transactions have been carried out through banking channel, all the formalities required by Registrar of Companies for the purpose of issuing share capital has been duly adhered and as on date also all the share subscribers are active companies and their registration details are as follows:

Sl.No.	Name of the subscriber	PAN	CIN
1	Birtcort Vincom Pvt. Ltd.	AABCB0568Q	No.21-69856 of 1995
2	Daffodil Complex Pvt. Ltd.	AACCD4812E	U70101WB2005PTC105607
3	Kaberi Tie-up Pvt. Ltd.	AADCK1628A	U51109 WB2007PTC115706
4	Kashav Tie-up Pvt. Ltd.	AADCK2370F	U51109 WB2007PTC118200
5	Outlook Dealcom Pvt. Ltd.	AAACO9609G	U51109 WB2007PTC114582
6	Oxide Tie-up Pvt. Ltd.	AAACO9530E	U51109 WB2007PTC114502
7	Pinpoint Tie-up Pvt. Ltd.	AAECP3615M	U51109 WB2007PTC114660
8	Sarathi Vyapaar Pvt. Ltd.	AAKCS7743R	U51909WB2007PTC114591
9	Shivangan Dealers Pvt. Ltd.	AALCS1682C	U51109WB2007PTC115705
10	Shivangan Goods Pvt. Ltd.	AAKCS7745K	U51909WB2007PTC114593
11	Tanishque Tradelink Pvt. Ltd.	AACCT7512R	U51109WB2007PTC115698
12	Tista Vanijyua Pvt. Ltd.	AACCT7377A	U51109 WB2007PTC115407
13	Trishna Vanijya Pvt. Ltd.	AACCT7513Q	U51109WB2007PTC115703

11. All the above referred details which are mentioned in the paperbook as well as the details about the PAN and registration with Ministry of Corporate Affairs and the financial data as taken out from the audited financial statements clearly suggests that the assessee has successfully discharged the primary onus casted upon it to explain the alleged sum.

12. At this juncture, we would like to take note of the provisions of Section 68 of the Act which reads as follows:

*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:*

*[Provided that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

*[Provided further] that nothing contained in the first proviso [or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”*

13. So far as the first proviso to Section 68 of the Act as mentioned above are concerned which specifically deals with the share application money, share capital and share premium, the same has been inserted by Finance Act, 2012 w.e.f. 01.04.2013 which is not applicable in the case of assessee since it pertains to AY 2008-09. The second proviso to Section 68 of the Act is also not relevant for the year under appeal since it has been inserted by Finance Act, 2022 w.e.f. 01.04.2023. So, what remains is the main content of Section 68 as per which if 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 ld. AO, satisfactory the sum so credited may be charged to income tax as the income of the assessee of that previous year.

14. Now, examining the facts of the instant case in light of the above provisions, firstly, we notice that the alleged sum was found credited in the books of accounts maintained by the assessee. Second part of the Section is that the assessee offers no explanation about the nature and source thereof but the same is not applicable in the instant case since the assessee has offered the explanation about the nature and source by filing complete documentary evidences to prove the identity and creditworthiness of the share subscribers and the genuineness of the transaction. Now, the third part is that if the explanation offered by the assessee is not satisfactory in the opinion of ld. AO now, for ld. AO has to express his opinion of having not satisfied and the same needs to be supported by specific observation rebutting the explanation offered by the assessee. But the same is completely absent in the instant case. Though the assessee has provided sufficient explanation with all documentary evidences but ld. AO made no efforts to examine those details and found some fault/discrepancy in the same. Ld. AO ought to have appreciated that the share subscribers are private limited companies and were having sufficient share capital, reserve and surplus in their regular books of accounts and out of such available funds the alleged share subscribers have invested in the assessee company. In our considered view, ld. AO failed to cross this hurdle as provided under the provisions of Section 68 of the Act before making the addition. Ld. AO had sufficient mechanism in the form of departmental machinery and other subordinate officers to carry out the investigation and even in case the notices/summons were

not served he ought to have taken the details of directors from the Ministry of Corporate Affairs and also should have taken out necessary details from the income tax database based on the PAN submitted by the assessee. Since no such exercises have been carried out, the assessee cannot be fastened with the addition and tax liability.

15. Recently, this Tribunal in the case of *Mainak Suppliers Pvt. Ltd. (supra)* has adjudicated similar set of facts and circumstances wherein the assessment proceedings were carried out under the directions of ld. CIT(A) u/s 263 of the Act and the issue was also the same i.e. unexplained share application money and share premium and this Tribunal after considering the facts of the case and the documents filed by the assessee and those being regularly assessed to tax, decided in favour of the assessee observing as follows:

*“9. We have heard the rival contentions and gone through the material placed on record. Admittedly, it is a fact on record that notices u/s. 133(6) of the Act were issued by Ld. AO to all the sixteen share subscriber companies and all of them had duly replied directly to the ld. AO, along with relevant documents and details. Copies of the replies duly acknowledged under seal and stamp of the office of the Ld. AO are placed on record. We note that Ld. AO without even going through and discussing these details submitted by the sixteen subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscriber companies and the genuineness of the transactions.*

*9.1. To our mind, ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details received in his office from all the sixteen subscriber companies and also pointing out as to what further investigation was needed by him by way of recording of statement of the directors of the assessee*

*and the subscriber companies. We draw our force from the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Bom) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish its case.*

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

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

*10. We also take note of the fact that all the share subscriber companies have filed their return of income with the department which have been either processed u/s. 143(1) of the Act for which intimations have been issued or have been assessed u/s. 143(3) or 147 on substantive basis, for which the respective intimation/assessment orders are placed on record in the paper book. We also take note of the fact that all the sixteen share subscriber companies have responded to the notice issued u/s. 133(6) of the Act and Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the share subscribing companies. These evidences furnished by them have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has simply added the amount of share capital and*

share premium on the ground that assessee has not produced the directors/shareholders. Ld. AO has ignored the reply given in response to notice issued u/s. 133(6) of the Act which are on record under duly acknowledged seal and stamp of his good office. From the perusal of the order of Ld. CIT(A), we note that Ld. CIT(A) has perused the evidence in the nature of documents and details and on their examination has deleted the addition made by the Ld. AO. Thus, going by the records placed by the assessee and by all the share subscribing companies in response to notices issued u/s 133(6), it can be safely held that the assessee has discharged its initial burden and the burden shifted on the ld. AO to enquire further into the matter which he failed to do so.

10.1. Ld. CIT(A) has elaborately appreciated the evidence and details placed on record and has given his factual findings, crux of which is contained in para 8.1 of his order, which is extracted below for ease of reference:

“8.1. Basically the law requires documentary evidences on record in dealing with the issue of authenticity. It is not the case of the AO that necessary documentary evidences are not on record but the only major reliance placed on his action is based on non-attendance of the directors of the appellant company along with directors of subscriber companies before him u/s 131 of the Act. It is no longer *res integra* that such non-attendance should be considered as a factor which should be used by the AO in coming to an adverse conclusion against the appellant. On an overall analysis of the issue, I find that the AO has not made out his case with cogent material on record that the appellant could come under the purview of section 68 of the Act with regard to share capital as reflected in the balance sheet when there is no finding with any cogent material evidence that the same was actually bogus in nature. It is accordingly observed that creditworthiness of the share subscribers to make investment in the share capital of the appellant company cannot be a disputed matter as per material facts on record. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their creditworthiness and source of funds, as well as the genuineness of the transactions being investments in 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 during the year under consideration as clearly evident not only from

*their respective books of accounts but also from their audited accounts filed with the income tax authorities in relation to their own income tax assessments and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record but acted on his whims and fancies. It is observed that the burden which la on the appellant, in relation to section 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue. Hence, I am inclined to accept the arguments tendered 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 Rs.21,08,00,000/- made on this account. Thus, these grounds of the appeal are allowed.”*

*10.2. Further, we note that ld. CIT(A) has taken into consideration the creditworthiness of all the sixteen subscriber companies by going through the records and the net worth of each of them (refer the details tabulated above). It is also noted that all the investing companies have substantial own funds available with them to make investment in the assessee. In this respect, all the investing companies have also explained their source of funds in their reply to notices issued u/s. 133(6) of the Act.*

*10.3. From the perusal of the paper book and the replies filed by share subscribing companies in response to notice u/s. 133(6) of the Act, it is vivid that all the share applicants are (i) income tax assessees, (ii) they are filing their income tax returns, (iii) share application form and allotment letter is available on record, (iv) share application money was paid by account payee cheques, (v) details of the bank accounts belonging to share applicants and their bank statements are on record, (vi) in none of the transactions, there are any deposit of cash before issuing cheques to the assessee, (vii) all the share applicants are having substantial creditworthiness represented by their capital and reserves.*

*10.4. For expressing our views as aforesaid, we draw our force also from the decision of Hon'ble jurisdictional High Court of Calcutta in the case of PCIT vs. Shree Leathers in ITAT/18/2022 (IA No. GA/02/2022) dated 14.07.2022 wherein Hon'ble High Court succinctly dealt with the aspect whether notices u/s. 133(6) of the Act*

are issued which are duly acknowledged or responded but ignored by the AO leads to perversity in the assessment order. Relevant extract from the said decision is reproduced as under:

*“...Bearing the above legal principles in mind, if we examine the case on hand, it is clear that the assessing officer issued show cause notice only in respect of one of the lender M/s. Fast Glow Distributors. The assessee responded to the show cause notice and submitted the reply dated 22.12.2017. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The assessing officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the assessing officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the assessing officer to enquire further into the matter which he failed to do. In more than one place the assessing officer used the expression "money laundering." We find such usage to be uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the assessing officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Paragraph 5.4 and 5.5 of the assessment order are all personal perception and opinion of the assessing officer which needs to be ITAT 18 OF 2022 ignored. Much reliance was placed on the statement of Shri Ashish Kumar Agarwal, which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the assessing officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making allegations. The assessing officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the assessing officer ignored the basic tenets of law before invoking his power under*

Section 68 of the Act. Fortunately, for the assessee, CIT(A) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the CIT noted that all these companies responded to the notices issued under Section 133 (6) of the Act which fact has not been denied by the assessing officer. On going through the records and the net worth of the lender companies, the CIT has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the assessing officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. We find that there is no discussion on the explanation offered ITAT 18 OF 2022 by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the CIT(A) who had in our view rightly appreciated the facts and circumstances of the case. As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the assessing officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22.12.2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A). The Tribunal re-appreciated the factual position and agreed with the CIT(A). The tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under Section 133 (6) of the Act to the lenders were duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.”

11. In respect of reliance placed by the revenue on the decision of Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 161 (SC), we note that Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:

*"8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.*

*The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P) Ltd. [1995] 82 Taxman 31/[1994]208 ITR 465 (Cal.):*

*Proof of Identity of the creditors;*

*Capacity of creditors to advance money; and*

*Genuineness of transaction*

*This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source."*

11.1. Further, in para 9 of the said decision, Hon'ble Supreme Court has observed as under:

*"9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.*

*In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of*

*the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness."*

*11.2. Thereafter, Hon'ble Supreme Court summed up the principles which emerged by deliberating upon various case laws as under:*

*"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:*

*i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.*

*ii. The Assessing Office is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of namelenders.*

*iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.*

*In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."*

*11.3. Hon'ble Supreme Court, thus, held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then, AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, ld. AO in this case has not made any independent enquiry to verify the genuineness of the transactions. Assessee, having furnished all the details and documents before the ld. AO and the ld. AO has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged its initial burden casted upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, it shifted on the ld. AO to examine the evidences furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee by confronting with the same to the assessee. In view of this, the aforesaid decision of the*

*Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., in our humble view, is not applicable to the facts and circumstances of the case in hand.*

*12. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies and the genuineness of the transactions. Accordingly, considering these facts and in the light of the judicial precedents referred above, we find no reason to interfere with the fact-based findings given by the Ld. CIT(A) and uphold his decision to delete the addition made by the Ld. AO towards share capital and share premium u/s. 68 of the Act. Accordingly, grounds taken by the revenue in this respect are dismissed.*

*13. In the result, appeal of the revenue is dismissed.”*

16. The above finding of this Tribunal wherein plethora of judgments and decisions have been considered including Hon'ble Jurisdictional High Court, we, under the given facts and circumstances of the case most importantly that the year under appeal is AY 2008-09 and the proviso to Section 68 of the Act specifically brought in for examining the share application money/share premium received in the case of the companies has been brought into the Income Tax Act w.e.f. 01.04.2013, are of the considered view that prior to this amendment if the assessee had offered sufficient explanation about the nature and source of the alleged sum credited in the books which in this case is share capital and share premium and has discharged its onus by providing complete documentary evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction and ld. AO failed to record any discrepancy in such details, no addition u/s 68 of the Act at Rs. 10,60,50,000/- called for. We thus, set aside the finding of ld. CIT(A), delete the addition

made u/s 68 of the Act and allow the effective grounds of appeal in ground nos. 1 to 7 raised by the assessee.

17. Ground no. 8 is general in nature which needs no adjudication.

18. In the result, the appeal filed by the assessee is allowed.

***Kolkata, the 13<sup>th</sup> April, 2023***

*Sd/-*

[Sonjoy Sarma]  
Judicial Member

*Sd/-*

[Manish Borad]  
Accountant Member

Dated: 13.04.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. M/s. Hirak Vyapaar Pvt. Ltd., C/o Taraknath Jaiswal, Advocate, Siddha Weston, Unit No. 115, 1<sup>st</sup> Floor, 9 Weston Street, Kolkata-700 012.**
- 2. ITO, Ward-6(1), Kolkata.**
3. CIT(A)-17, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata