

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

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

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

**I.T.A. No.: 1292/KOL/2018  
Assessment Year: 2012-13**

***M/s. Westend Dealers Private Limited.....Appellant  
[PAN: AABCW 1762 F]***

***Vs.***

***ITO, Ward-7(2), Kolkata.....Respondent***

**Appearances by:**

*Sh. Miraj D. Shah, A/R, appeared on behalf of the Assessee.*

*Sh. P.P Barman, Addl. CIT, appeared on behalf of the Revenue.*

Date of concluding the hearing : January 19<sup>th</sup>, 2023

Date of pronouncing the order : April, 18<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income Tax (Appeal)-3, Kolkata [in

short “1d. CIT(A)”] dated 23.03.2018 arising out of the Assessment Order framed u/s 143(3) of the Act dated 27.03.2015.

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

*“1. For that in the facts and circumstances of the case the appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.*

*2. For that the learned CIT (Appeals) erred in dismissing the appeal on merits without considering the facts of submission made by the assessee before the learned CIT (Appeals). Thus order of the CIT (Appeals) be reversed.*

*3. For that the finding made in order passed by the learned CIT (Appeals) is perverse and therefore the same be set aside.*

*4. For that the case laws relied by the learned CIT (Appeals) was not confronted to the assessee and hence the appellate order is bad in law.*

*5. For that the case laws relied by the learned CIT (Appeals) are not applicable to the facts of the case and hence the same be ignored.*

*6. For that the learned CIT (Appeals) erred in holding that the allotment of shares was void as per contract act.*

*7. For that the learned CIT (Appeals) erred in confirming the addition of Rs. 1,46,00,000/- made on account of Share Capital and Premium as unexplained cash credit u/s 68 of the Income Tax Act, 1961. This addition was not justified and thus the same be deleted.*

*8. For that the learned CIT (Appeals) erred in confirming the interest u/s 234 A/B/C of the Income Tax Act, 1961 the same was unjustified and hence the same be deleted or recalculated as per law.*

*9. The appellant craves leaves for filing additional evidences before the Hon’ble Tribunal.*

*10. The appellant craves to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”*

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 trading. Income of Rs. 536/- declared in the e-return filed for AY 2012-13 on 20.08.2012. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. From perusal of the details, ld. AO noticed that during the year under consideration the assessee has received share capital of Rs. 3,90,000/- and share premium charged thereon at Rs. 1,42,10,000/-, in total Rs. 1.46 Cr was received during the year. Ld. AO asked the assessee to discharge its onus by filing various details to explain the source of the alleged sum, in other words, to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. Though certain details were filed and notices issued u/s 131 of the Act but the same was not complied and ld. AO completed the assessment u/s 68 of the Act at Rs. 1.46 Cr and disallowance u/s 14A of the Act at Rs. 1,644/-.

4. Aggrieved, the assessee preferred appeal before ld. CIT(A) and sought adjournment on the dates of hearing but finally could not file the relevant details as called for. However, ld. CIT(A) discussed the issue on merits and after considering the ratios laid down by Hon'ble Courts, confirmed the finding of ld. AO regarding the addition made u/s 68 of the Act and as regards disallowance u/s 14A of the Act since no exempt income earned during the year, ld. CIT(A) deleted the addition.

5. Aggrieved, the assessee is now in appeal before this Tribunal challenging the addition made u/s 68 of the Act at Rs. 1.46 Cr

received towards issue of share capital and share premium. Ld. Counsel for the assessee stated that the written submissions were filed before ld. CIT(A) but he did not consider the same. It was also submitted that all the details required to explain the alleged sum stands duly filed which are sufficient to prove that a genuine transaction of receiving share application money against issue of share capital along with share premium to which share applicants having sufficient creditworthiness have applied thereto and have been allotted. Ld. Counsel for the assessee also took us to the written submissions filed before ld. CIT(A) placed at pages 1 to 58 of the paperbook dated 07.11.2022. Reliance also placed on the decision of this Tribunal in the cases of *M/s. A.J. Mill Store Agency Pvt. Ltd. vs. ITO* in *ITA No. 551 & 552/KOL/2021* order dated 28.11.2022 and in the case of *ITO vs. Naina Distributors Pvt. Ltd.* in *ITA No. 651/KOL/2020* order dated 04.01.2023.

6. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard rival contentions and perused the records placed before us. Ground no. 1 raised by the assessee states that there was violation of principles of natural justice and hence, the impugned order is bad in law and deserves to be quashed. We, however, fail to find any merit in this ground as ld. CIT(A) gave sufficient opportunity to the assessee on 30.01.2017, 17.03.2017, 09.05.2017, 28.02.2018 & 23.03.2018 and on these dates either the assessee failed to appear or sought adjournment. Therefore, it cannot be said that the assessee was not provided sufficient

opportunity. Therefore, this ground raised by the assessee is dismissed.

8. The effective issue raised in ground nos. 2 to 7 is regarding the addition of Rs. 1.46 Cr made u/s 68 of the Act by ld. AO and has been confirmed by ld. CIT(A). Firstly, we notice that the correct amount of share capital and share premium received by the assessee is Rs. 1.45 Cr and not Rs. 1.46 Cr as added by the lower authorities. Therefore, for the purpose of adjudication, we will consider the correct figure of Rs. 1.45 Cr which was received by the assessee on issuing 29,000 equity shares at face value of Rs. 10/- and charging premium of Rs. 490/- per share and the same were subscribed and allotted to the following two companies:

- i) Milestone Iron & Alloys Pvt. Ltd. (AAHCM 4353 J) Rs. 51 lakh*
- ii) Sankatmochan Agency Pvt. Ltd. (AAQCS 4854 B) Rs. 94 lakh*

9. We further notice that the following documents and details of the above stated two share subscriber companies were filed by the assessee before the lower authorities and before us:

- (a) Income Tax Return of the share holders*
- (b) Certificate of incorporation of the share holders*
- (c) Audited Accounts of the share holders*
- (d) Share Application Forms*
- (e) Share Allotment Letters*
- (f) Copy of the bank account of the share holders*
- (g) Transaction with the appellant was duly highlighted in the bank statement*
- (h) Copy of assessment orders of the shareholders*
- (i) Evidences of source of source of the share holders*

10. Further, we observe the following facts from the documents filed by the assessee pertaining to the alleged share subscribers:

*“(a) Milestone Iron & Alloys Private Limited: This Company invested a sum of Rs.51,00,000/- in the appellant company. The share application was made by account payee cheque. This company was incorporated on 14/09/2011 and was having company identification number U27100WB2011PTC167601. This company duly filed its return of income before ITO Ward 1(1), Kolkata and was having PAN AAHCM4453J. This company was having a paid up capital with free reserves and surplus of Rs.25,03,07,931/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. On examination of the bank statement it will be seen that there is no deposit of cash. The copy of the assessment order passed u/s 143(3) of the Act for the AY 2012-13 is also available in the paper book. The details of source of funds from which this company had made the share application are also available in the paper book. All the relevant documents for this company are available on pages 31-55 of the paper book.*

*(b) Sankatmochan Agency Private Limited: This Company invested a sum of Rs.94,00,000/- in the appellant company. The share application was made by account payee cheque. This company was incorporated on 19/10/2011 and was having company identification number U74999WB2011PTC168711. This company duly filed its return of income before ITO Ward 9(4), Kolkata and was having PAN AAQCS4854B. This company was having a paid up capital with free reserves and surplus of Rs.42,86,98,902/- as on 31/03/2012. The copy of the bank statement of the Company is duly available in the paper book. On examination of the bank statement it will be seen that there is no deposit of cash. The copy of the assessment order passed u/s 143(3) of the Act for the AY 2012-13 is also available in the paper book. The details of source of funds from which this company had made the share application are also available in the paper book. All the relevant documents for this company are available on pages 56-80 of the paper book.”*

11. Further, reference was made by ld. Counsel for the assessee to the following details placed in the paperbook from page 59 to 139:

1	<i>Income Tax Return of the assessee for AY 2012-13</i>
2	<i>Computation of income of the assessee for AY 2012-13</i>
3	<i>Audited Accounts of the assessee for AY 2012-13</i>
4	<i>Return of Allotment of shares of the assessee for 2012-13</i>
5	<i>List of share allotment of the assessee for AY 2012-13</i>
6	<i>Notice u/s 142(1) for AY 2012-13 for 143(3) proceedings on 07/11/2014.</i>
7	<i>Copies of reply filed by Share applicants</i>
	<i>(a) Sankatmochan Agency Pvt. Ltd. on 31/10/2014</i> <i>(b) Milestone Iron &amp; Alloys Pvt. Ltd. on 31/10/2014</i>
8	<i>Documents of Share Applicants</i>
9	<i>Name: Milestone Iron &amp; Alloys Pvt. Ltd</i>
	<i>(a) Income Tax Return for AY 2012-13</i> <i>(b) Certificate of incorporation</i> <i>(c) Audited Accounts for AY 2012-13</i> <i>(d) Share Application Form</i> <i>(e) Share Allotment Letter</i> <i>(f) Bank Statement</i> <i>(g) IT Assessment order for any year</i> <i>(h) Source of Source certificate</i>
10	<i>Name: Sabkatmochan Agency Pvt. Ltd</i>
	<i>(a) Income Tax Return for AY 2012-13</i> <i>(b) Certificate of incorporation</i> <i>(c) Audited Accounts for AY 2012-13</i> <i>(d) Share Application Form</i> <i>(e) Share Allotment Letter</i> <i>(f) Bank Statement</i> <i>(g) IT Assessment order u/s 143(3) for AY 2012-13</i> <i>(h) Source of Source certificate</i>

12. We have perused the above details and find that the assessee has successfully its primary onus casted upon it under the Act for the purpose of explaining the source of share capital issued during the year. Ld. AO has not confronted the assessee with any defect in all these details filed before him and the main reason for which Ld. AO was not satisfied with the submissions of the assessee was the non-compliance to the notice issued u/s 131 of the Act which was issued to the directors of the company for personal appearance. We find that it has been consistently held that merely for non-appearance of the directors or the shareholders cannot be the ground to make the addition u/s 68 of the Act. Ld. AO ought to make necessary enquiry based on the documents filed by the assessee which *inter alia* includes the income tax return, the returns filed with the Registrar of Companies, bank statement,

audited financial statement and the assessment order u/s 143(3) of the Act in some cases. We notice that similar issue came for adjudication before this Tribunal in the case of *Naina Distributors Pvt. Ltd. (supra)* wherein also notices issued u/s 131 of the Act could not be complied and additions were made u/s 68 of the Act and considering the facts of the case, this Tribunal decided in favour of the assessee observing as follows:

*“5. After hearing the rival contentions and perusing the material on record, we observe that the assessee has raised a share capital of Rs. 4,67,50,000/- by issuing equity share of face value of Rs.10/- at a premium of Rs. 490/- per share. We observe that during the assessment proceedings, the assessee has furnished all the details in support of share capital and share premium raised by the assessee beside the details of the investors vide written submissions dated 9.6.2014 filed in reply to notice dated 5.5.2014 issued u/s 142 of the Act. We note that the assessee has filed names, addresses PANs of the investors, copies of share allotment advice, copies of share application forms, bank statements, statement giving complete details of share application money received during the year, copy of Form 2 evidencing Return of Allotment and Copy of Form 5 for increase in Authorized capital. We also note that the AO has issued notice u/s 133(6) to all the investors on 11.06.2014 for carrying out independent verification of these transactions which were duly responded by these investors by filing all the requisite details comprising shares subscribed, ledger accounts, bank statements, explanation for source of funds, ITRs and audited financial statements and also assessment order framed u/s 143(3) in all the cases. The copy of these which are also placed before us at page 15 to 340 in the PB. We also note that the AO has issued summon u/s 131 to the directors of the assessee company to produce managing directors of the share subscribing companies which were not complied with and this is the sole reason for making the addition in the hands of the assessee. The AO has not pointed out any defect or deficiency in the evidences filed by the assessee as well as by the investors. The Ld. CIT(A) has allowed the appeal of the assessee after taking into account all the above facts and has given a detailed findings of fact that AO has not pointed out any defect in the evidences by the assessee as well as by the share subscribers and mainly harped on the non-production of managing*

directors of the share subscriber companies to make the addition. The Ld. CIT(A) has noted that the assessee has discharged its onus by filing all the details and evidences which were the part of the record and therefore the addition made by the AO was wrong and ordered to be deleted. In view of these facts, we do not find any infirmity in the order of Ld. CIT(A) as the assessee has discharged its onus by filing all the details in the assessment proceedings. Moreover, the assessment framed u/s 143(3)/147/144 of the Act in all the cases of investors were also furnished before both the authorities below and copies of assessment order were also enclosed in the PB as stated hereinabove. Considering these facts, we do not find any infirmity in the order of Ld. CIT(A) which is otherwise a very reasoned and speaking order passed after discussing various factual details about each and every subscribers in para 4.6 such their source of investments, creditworthiness , etc. In our opinion, nonproduction of directors of the investors cannot be a ground for making addition in the hands of assessee u/s 68 of the Act when the other evidences relating to the raising share capital and also qua the share subscribers are available on record as furnished by the assessee and also the cross-verification done by the AO on the basis of notices issued u/s 133(6) as discussed above. The case of the assessee is squarely covered by the decisions of Hon'ble Calcutta High Court in the case of *Crystal Networks Pvt. Ltd. vs. CIT(Supra)* wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

“We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) 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 product of the assessee or note. When it was found

by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:

*“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”*

*The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:*

*“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. 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 ITA No. 208/Kol/2009 vide order dated 17.04.2009.*

*9. We have considered the rival submissions. We are of the view that order of Ld. 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 share holder. In this regard it is seen that for AY 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 AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 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 ITAT, 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 Ld. CIT(A) and dismiss the appeal of the revenue.”*

*In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. The AO simply harped on the non production of managing directors of the share subscribing companies to make the addition which is not correct. The ld CIT(A) has passed a very reasoned and speaking order discussing all facts and satisfaction of all the ingredients of section 68 of the Act while allowing the relief as stated above. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above, we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.*

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

13. Since the above finding of this Tribunal is squarely applicable on the issue raised before us and ld. D/R being unable to controvert the same by placing any other binding precedence, we are of the considered view that since the assessee on the strength of various documents has successfully proved the identity, creditworthiness of the share subscribers and the genuineness of the transaction and also proved that the share subscribers had sufficient funds to make the said investment, the addition u/s 68 of the Act was uncalled for. Thus, the finding of ld. CIT(A) is reversed and ground nos. 2 to 7 raised by the assessee are allowed.

14. Ground nos. 8 & 9 are general and consequential in nature which need no adjudication.

15. In the result, the appeal filed by the assessee is partly allowed.

***Kolkata, the 18<sup>th</sup> April, 2023***

*Sd/-*  
[Sanjay Garg]  
Judicial Member

*Sd/-*  
[Manish Borad]  
Accountant Member

Dated: 18.04.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. M/s. Westend Dealers Private Limited, 3A, Silpi Netai Paul Lane, Shova Bazaar, Kolkata-700 005.**
- 2. ITO, Ward-7(2), Kolkata.**
3. CIT(A)-3, Kolkata.
4. CIT-
5. CIT(D/R), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata