

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3660/Del/2014  
Assessment Year: 2009-10

<b>ITO Ward-9(2) New Delhi</b>	<b>Vs</b>	<b>M/s. Sri Endarsh Investment &amp; Finance Pvt. Ltd. Room No.209, Bhanot Plaza-II, 3 D.B. Gupta Road, Paharganj, New Delhi PAN No.AABXS6547E</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. H. K. Choudhary, CIT DR
Respondent by	None

Date of hearing:	11/05/2023
Date of Pronouncement:	11/05/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-4, New Delhi dated 28.03.2014 pertaining to A.Y.2009-10.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.18 crores made by the AO on account of unexplained share application money under section 68 of the Act.

3. Our record show that this appeal was first listed for hearing on 05.06.2017 and was adjourned at the request of the Counsel. The appeal was heard on 16.08.2017 but was released on 14.09.2017 thereafter the appeal has been listed for hearing on 07.03.2018, 13.03.2018, 15.03.2018, 12.07.2018, 26.09.2018, 05.02.2019, 02.09.2019, 02.01.2020, 03.03.2020, 04.11.2020, 28.01.2021, 02.04.2021, 07.07.2021, 23.09.2021, 07.12.2021, 02.03.2021, 02.03.2022, 03.03.2022, 18.04.2022, 05.07.2022, 03.08.2022, 22.11.2022, 20.02.2023 and today i.e. 11.05.2023. On each date of hearing either the Counsel took adjournment or none appeared on behalf of the assessee. Even today none appeared on behalf of the assessee and no written application has been made seeking adjournment. In fact on the earlier date of hearing i.e. 20.02.2023 Sh. Dharmesh Kumar attended the proceedings and took adjournment and was well within the knowledge of the date of hearing but did not care to attend the proceedings today. With such playful activity of the assessee we decided to proceed exparte.

4. The DR was heard at length. Case records carefully perused.

5. Briefly stated the facts of the case are that the return of income was electronically filed on 18.09.2009 declaring income at Rs. Nil. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

6. During the course of the scrutiny assessment the AO noticed that the assessee has shown to have received share capital of Rs. 1.80 crores with share premium of Rs.16.20 crores

on sale of 1800000 nos. of shares of face value of Rs.10/- per share with premium of Rs. 90/- per share from two different subscribers namely (a) M/s. Wonder Trading Company (P) Ld. (b) M/s. Carewell Exim (P) Ltd.

7. On enquiries conducted in the case of these two companies the AO observed that these companies were not doing real business and are engaged in the business of providing accommodation entries only and these two companies are just paper companies with dummy directors.

8. The AO was of the firm belief that these companies are just paper companies and this is the money of the assessee which was rooted through the accounts of these two companies and these credits in the books of accounts in the accounts of the assessee in the shape of share capital are unexplained and liable to be added to the total income of the assessee u/s.68 of the Act and completed the assessment by making addition of Rs.18 crores.

9. Assessee carried the matter before the CIT(A) and argued that there are three basic requirements in case of a cash credit :

- (i) The identity of the creditor
- (ii) The creditworthiness of the creditor
- (iii) The genuineness of the transaction

10. In so far as identity of the creditor is concerned the assessee furnished confirmatory letter, PAN details, copy of ITR, copy of share application form and name and addresses of the share applicants. It was strongly contended that the assessee has successfully discharged the onus cast upon it by the provisions of section 68 of the Act.

11. After considering the facts and the submissions the CIT(A) was of the opinion that once the appellant company has established the identity of the share applicant companies no addition can be made in the hands of the assessee company even if the share applicants have been found persons of no means. Referring to the various judicial decisions the CIT(A) concluded that the AO could not prove that the money received by the assessee in the form of share application has come from its own sources. The CIT(A) deleted the entire addition.

12. We have given a thoughtful consideration to the orders of the authorities below. At the very outset we have to say that the first appellate authority grossly erred in deleting the addition solely on the ground that identities of the share applicant companies have been established by the assessee. It is a settled proposition of law that the initial onus is upon the assessee u/s.68 of the Act and unless this initial onus is discharged the AO is not bound to make any enquiry. It is only when the assessee has discharged the initial burden, the AO has to bring cogent material on record to demolish the submissions of the assessee.

13. In our considered opinion the assessee has grossly failed in demonstrating that the share applicant companies had sufficient creditworthiness to subscribe the shares of the applicant company.

14. As mentioned elsewhere the assessee has not appeared before us we are left with no choice but to remit the matter to the files of the AO. The assessee is directed to bring cogent material

evidences on record to show the creditworthiness of the two share applicant companies to show that the share applicant companies had sufficient funds available with them for making the impugned investment in the shares.

15. The AO is directed to examine the same and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

16. In the result, the appeal of the revenue is allowed for statistical purpose.

17. Decision announced in the open court on 11.05.2023.

Sd/-  
**[ASTHA CHANDRA]**  
**JUDICIAL MEMBER**

Sd/-  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: .05.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi