

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "C", KOLKATA**  
**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**  
**AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 547/Kol/2020**  
**Assessment Year: 2012-13**

M/s. Joy Consolidated Pvt. Ltd. C/o. Rajesh Mohan & Associates, Unit No. 18 5 <sup>th</sup> Floor, Bagati House, 34, Ganesh Chandra Avenue. Kolkata-13 <b>PAN: AACCM 0673 Q</b> (Appellant)	Vs.	ITO, Ward-3(1), Kolkata          (Respondent)
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**Present for:**

Appellant by : Shri Sunil Surana, CA  
Respondent by : Shri G. Hukugha Sema, CIT

Date of Hearing : 30.05.2023  
Date of Pronouncement : 12.06.2023

**ORDER**

**PER RAJESH KUMAR, AM:**

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 01.10.2019 passed by the ld. Commissioner of Income-tax (Appeals)-17, Kolkata [hereinafter referred to as 'the ld. CIT(A)'].

2. The only issue raised in the grounds of appeal is against the confirmation of addition of Rs. 2,70,30,857/- by ld. CIT(A) has made by the AO u/s 68 of the Act on account of share application/share premium being unexplained.

3. The facts in brief are that the return was filed electronically on 28.09.2012 declaring loss of Rs. 1,20,129/-. The case of the assessee was selected for scrutiny and the statutory notices were duly issue and served upon the assessee. During the assessment proceeding, the ld. AO called for details/information in respect of

share subscribers who invested in the share capital of the assessee company during the year which were duly filed before the AO by the representative of the assessee Shri N.K. Banka. Besides the AO issued summon u/s 131 to the directors of the assessee company on 04.03.2015 directing upon them to produce the directors of the share subscribing companies and also the individuals in case of individual shareholders with books of accounts and supporting documents. However, there was no compliance on the part of the assessee. The AO noted from the financial statements and evidences furnished by the assessee that the assessee has issued share capital of Rs. 12,87,500/- and share premium of Rs. 2,43,43,357/- and has also taken a loan of Rs. 14,00,000/- from three parties. Finally, the AO added a sum of Rs. 2,70,30,857/- as unexplained cash credit comprising Rs. 14,00,000/- on account of unsecured loans and Rs. 2,56,30,857/- towards share capital/share premium vide order dated 25.03.2015 passed u/s 144/147 of the Act.

4. The appellate proceeding, the ld. CIT(A) dismissed the appeal of the assessee by giving only three lines findings. Thus thus the order passed by the ld CIT(A) lacks reasons and justification for dismissal of appeal.

5. After hearing rival contentions of the parties and perusing the material available on record, we find that the assessee has issued equity shares at a premium thereby collecting by way of share premium/share capital of Rs. 2,56,30,857/- and has also raised Rs. 14,00,000/- as unsecured loans from three parties who happens to be directors and their relatives. During the assessment proceeding, the assessee has furnished before the AO complete details qua the share subscribers/unsecured lenders comprising PANs, audited

financial statements, bank statements and confirmations etc. confirming these transactions. We also observe that the AO has issued summons to directors of the assessee company u/s 131 of the Act to produce the directors of share subscribing companies in case of corporate entities and individuals, in case of individual investors. We note that no notice u/s 133(6) or summon u/s 131 of the Act were issued to the share subscribers/lenders by the AO. We also observe that out of 15 allottees/share subscribers, 6 were individuals and remaining nine were bodies corporate. We note that out of six individuals two were directors of the assessee company and remaining four subscribers were relatives of the directors. Upon going through the paper book filed by the assessee, we observe that in respect of corporate entities, the assessee has filed details/copies of ITRs, financial statements, bank statements, source of funds, documents relating to source of source of fund such as ITRs, bank statements etc. In respect of individual subscribers, the assessee filed ITRs, source of funds and share application forms etc. These details are filed in the paper book from page no. 1 to 266. We also note that in case of two subscribers namely Agarani Credit and Finvest Pvt. Ltd. and C.G. Securities Pvt. Ltd. , the amounts invested by them in the share capital and share premium in the assessee company were added to their income in the assessment framed u/s 143(3) and the copies of the assessment orders are placed at page 290 to 307 of the paper book. In case of five corporate subscribers, the investment has been accepted in the assessments framed u/s 143(3) of the Act and copies of assessment order at page no. 304 to 340.

6. We observe from the orders of authorities below that none of the authorities have commented of the evidences filed by the assessee

proving the sources of investments with the aid of necessary documents as stated above. The case of the assessee finds support from decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78 (SC) which is on the issue of share premium. The relevant extracts of the Hon'ble Apex Court decision is reproduced as under:

*“That in this case the respondent 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 numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, 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 creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”*

7. Similar ratio has been laid down by the Hon'ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd 397 ITR 136 by holding that provisions of section 68 of the Act can not be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the parties such as PAN ,financial and bank statements showing share application money .

8. The case of the assessee is also squarely covered by the decisions of Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT 353 ITR 171 (Cal ) 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.”*

9. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012) 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.”*

10. 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. We also note that the assessee has received unsecured loans from three parties who were either directors or their relatives qua whom filed necessary evidences as in the case of share capital and share premium. Considering the facts and circumstances of the case and the ratio laid in the above decisions, we are inclined to set aside the order of ld. CIT(A) and direct to delete the addition of Rs. 2,70,30,857/-.

11. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 12.06.2023**

**Sd/-**

**(SONJOY SARMA)  
JUDICIAL MEMBER**

**Sd/-**

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated:12.06.2023  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: M/s. Joy Consolidated Pvt. Ltd.
2. The Respondent: ITO, Ward-3(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata