

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2198/Kol/2019
Assessment Year: 2014-15

Subhdhan Financial Advisory Private Limited C/o Sri Jitendra Kaushik, Advocate 19D, Muktaram Babu Street Kolkata - 700007 [PAN : AAMCS7818P]	Vs	Income Tax Officer, Ward-9(4)
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अपीलार्थी/ (Assessee)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, FCA
Revenue by :	Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 16/05/2023
घोषणा की तारीख /Date of Pronouncement: 11/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) - 15, Kolkata (hereinafter referred to as the "ld. CIT(A)"], passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 13/03/2019 for the Assessment Year 2014-15.

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

"1. For that the order of the Ld. Commissioner of Income-tax(A) 15, Kolkata is arbitrary, illegal and bad in law.

2. For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) 15, erred in confirming the action of Income-tax Officer adding a sum of Rs.72,00,000/- under section 68 of the I T Act 1961.

3. For that the appellant craves leave to add, alter or amend any ground before or at the time of hearing of appeal."

3. The sole grievance of the assessee is that the Id. CIT(A) erred in confirming the action of the Id. Assessing Officer while making addition under section 68 of the Act at Rs.72,00,000/-. Facts in brief are that the assessee is a private limited company having rental income and Nil income declared in the return filed on 17/09/2014. Case selected for scrutiny followed by issuance of notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings the assessing officer noticed that the assessee issued equity shares at face value Rs.10/- and charged premium of Rs.350/- per share thereby receiving Rs.2,00,000/- towards share capital and Rs.70,00,000/- towards share premium during the year. Certain details were called for to examine the identity and creditworthiness of the share applicants and genuineness of the transactions. There was no proper compliance by the assessee. Accordingly the Id. Assessing Officer accepted the share capital of ₹ 2,00,000/- but made addition of ₹ 72,00,000/- on account of share premium and made addition u/s 68 of the Act. Income assessed at Rs.72,00,000/-.

3.1. Aggrieved assessee preferred appeal before the Id. CIT(A) but failed to succeed as the Id. CIT(A) observed that assessee has failed to succeed in explaining the nature and source of the share premium and could not discharge the onus of proving the genuineness of the transactions and identity and creditworthiness of the share applicants. The Id. CIT(A) further referred to the judgement of the Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax (Central-1) vs. NRA Iron & Steel Pvt. Ltd. arising out of SLP (Civil) No.*

29855 of 2018) and confirmed the action of the Assessing Officer. Aggrieved, the assessee is now in appeal before this Tribunal.

4. The Id. Counsel for the assessee submitted that the action of the Assessing Officer was not justified since the Id. Assessing Officer was satisfied with the share capital received from the alleged four share applicants and only added the share premium even though total amount of share capital and share premium were received from same share subscribers and same banking channel. He referred to the decision of this Tribunal in the case of *M/s. Advent Commodities Pvt. Ltd. vs. ITO in ITA No. 522/Kol/2020; order dt. 27/01/2021* and in the case of *ITO vs. M/s. Gateway Enclave Pvt. Ltd. in ITA No. 2269/Kol/2016; order dt. 01/05/2019*, wherein it has been held that if certain sum received from a share applicant has been accepted and no addition has been made u/s 68 of the Act and share premium money is received from these share applicants, then addition u/s 68 for the share premium money cannot be held to be justified. Reference made to paper book page 19 to 103, exhibiting various details about the share applicants so as to prove that the share applicants were having sufficient creditworthiness and the genuineness of the transaction.

5. Per contra, the Id. D/R vehemently argued supporting the order of both the lower authorities.

6. We have heard rival contentions and perused the material placed before us. Addition under section 68 of the Act for unexplained share premium is in dispute before us. We notice that during the year assessee issued 20000 equity shares at face value of Rs.10/- each and

charged a premium of Rs.350/-per share and the same were subscribed by the following four share applicants:-

- (i) *M/s. Servoline Vinimay Pvt. Ltd.*
- (ii) *M/s. Goldstar Commosale Pvt. Ltd.*
- (iii) *M/s. Pranam Vyapar Pvt. Ltd.*
- (iv) *M/s. Rajnandini Vanijya Pvt. Ltd.*

7. We notice that during the course of assessment proceedings, the ld. Assessing Officer called for the following details in order to examine the nature and source of alleged sum:-

- “1. *Proof of identity- Voter Card/Passport/Driving License/PAN Card.*
2. *List of companies where you were directors/shareholders from the A.Y. 2014-15 till date with dates of appointment thereto with your DIN.*
3. *Proof of acknowledgement of filing the return of income of the company for the A.Y. 2012- 13,2013-14,2014-15. Also enclose the relevant ledger A/C.*
4. *Declaration of sources of funds for such payments along with copies of relevant bank statement. Details of immediate source of such funds viz names, complete address and PAN of persons concerned should be furnished.*
5. *Details of investments made in the said company along with copy of share applications forms.*
6. *Numbers of shares applied for with details of amounts involved, date modes of payment. Details of premia paid and face value of shares applied for. Reasons for application at premium, if any.*
7. *Copies of allotment letter of shares, if allotted”*

7.1. In response, the assessee filed certain details but they fell short to some extent as observed by the ld. Assessing Officer holding that assessee has not successfully discharged the onus to explain the source of the said share capital in question. However, while completing the assessment, the ld. Assessing Officer made the addition only with regard to the share premium at Rs.72,00,000/-. In other words, out of

the total sum of Rs.74,00,000/-, received from the above stated share applicants, the Id. Assessing Officer accepted the genuineness and credit worthiness of the share capital of Rs.2,00,000/- but only doubted the share premium amount of Rs. 72,00,000/-.

8. Though, in the appellate proceedings, the assessee failed to succeed before the Id. CIT(A), however, before us the Id. Counsel for the assessee, in its contention has referred to the decision of the Coordinate Bench in the case of *M/s. Advent Commodities Pvt. Ltd. (supra)* and *M/s. Gateway Enclave Pvt. Ltd. (supra)*. Perusal of both these orders indicate that in the case of *M/s. Gateway Enclave Pvt. Ltd. (supra)* reliance was placed on the decision of *M/s. Advent Commodities Pvt. Ltd. (supra)* and the finding of this Tribunal was that once the assessee has proved to the identity and creditworthiness of the share applicants as well as the genuineness of the transactions with regard to the share capital, the revenue authorities should not doubt the share premium received from the very same share applicants. Based on this observation itself, the assessee deserves to succeed in the instant appeal as on the one hand the Id. Assessing Officer has accepted the share capital money received during the year from the alleged four share applicants while, on the other hand, has made addition for share premium amount received from the very same share applicants which is in itself a contradictory action and the same cannot be held to be justified and thus, the addition u/s 68 of the Act, is uncalled for.

9. Even otherwise, the second contention of the Id. Counsel for the assessee, that the assessee has successfully discharged the primary onus casted upon it for explaining the said sum, we find force in the

contention of the Id. Counsel for the assessee as the assessee has submitted all relevant details before the lower authorities and the same has been filed in the form of paper book before us, which contains the following:-

M/s. Servoline Vinimay Pvt. Ltd.	Copy of Notice u/s 133(6) and its reply along with enclosures consisting: <ul style="list-style-type: none"> ➤ List of Directors ➤ Income Tax Acknowledgement for Asst Yr 2014-15 ➤ Audited Financial Statements as on 31st March 2014 ➤ Ledger Account ➤ Bank Statements ➤ Share Application Form ➤ Share Allotment Letter (ii) ROC Master Data
M/s. Goldstar Commosale Pvt. Ltd.	Copy of Notice u/s 133(6) and its reply along with enclosures consisting: <ul style="list-style-type: none"> ➤ List of Directors ➤ Income Tax Acknowledgement for Asst Yr 2014-15 ➤ Audited Financial Statements as on 31st March 2014 ➤ Ledger Account ➤ Bank Statements ➤ Share Application Form ➤ Share Allotment Letter (ii) ROC Master Data
M/s. Pranam Vyapar Pvt. Ltd.	Copy of Notice u/s 133(6) and its reply along with enclosures consisting: <ul style="list-style-type: none"> ➤ List of Directors ➤ Income Tax Acknowledgement for Asst Yr 2014-15 ➤ Audited Financial Statements as on 31st March 2014 ➤ Ledger Account ➤ Bank Statements ➤ Share Application Form ➤ Share Allotment Letter (ii) ROC Master Data
M/s. Rajnandini Vanijya Pvt. Ltd.	Copy of Notice u/s 133(6) and its reply along with enclosures consisting: <ul style="list-style-type: none"> ➤ List of Directors ➤ Income Tax Acknowledgement for Asst Yr 2014-15 ➤ Audited Financial Statements as on 31st March 2014 ➤ Ledger Account ➤ Bank Statements ➤ Share Application Form ➤ Share Allotment Letter (ii) ROC Master Data

9.1. A perusal of the above details show that all the share applicants have duly responded to the notice u/s 133(6) of the Act and have filed all relevant documents. The ld. Counsel for the assessee also filed a certificate of the Chartered Accountant dt. 27/01/2015, placed at page 12 of the paper book, to show that the fair market value per share was Rs. 370/- at the time of allotment of the equity shares to the share applicants and, therefore, it was a genuine investment by the share applicants in the assessee company.

10. We find that under the given facts, where the share applicants have duly responded to the notices u/s 133(6) of the Act and all documentary evidences have been filed by the assessee to discharge its primary onus explaining the nature and source of the alleged share premium and the ld. Assessing Officer having failed to find any discrepancy in these details, the decisions of this Tribunal in the case of *M/s. Mahalakshmi Vinimay (P) Ltd. vs. ITO in ITA No. 35/Kol/2020; Assessment Year 2008-09; order dt. 18/05/2023*, holding in favour of the assessee, in application adjudicating similar issue observing as under:-

“7. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually.

However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has 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 their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"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 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."

8. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax vs. Manish Build Well (P.) Ltd. reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the

order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law."

11. Further, we note that the ld. CIT(A) while confirming the additions u/s 68 of the Act has relied on the judgment *PCIT(Central)-1, Kolkata vs. NRA Iron & Steel Pvt. Ltd. (supra)*. We note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "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)* laying down the proposition 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. Thereafter the Hon'ble Supreme court summed up the principles, which emerged after 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 Officer 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 name-lenders.*
- 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."

11.2. The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer 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 initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd.*, impugned additions are not warranted in this case.

12. Our view is further fortified by the decision of the Co-ordinate Bench of the Tribunal in the case of *M/s. Advent Commodities Pvt. Ltd. vs. ITO (supra)*, wherein under identical circumstances, it was held as under:-

"4.2. The legal issue that arises is whether such an addition is sustainable in law as what was brought to tax was only the share premium.

4.3. We now discuss the case law on this issue. The ITAT Kolkata Bench in the case of [ITO vs. M/s. Savera Towers Pvt. Ltd.](#) in ITA No. 2275/Kol/2016 for the AY 2012-13 order dated 05/12/2018 held as follows:

"6. We have heard the rival submissions. The facts stated hereinabove remain undisputed before us by either of the parties and hence the same are not reiterated for the sake of brevity. At the outset, we find that the assessee had received share capital of Rs. 54,200/- from 4 corporate entities and Rs. 2,70,45,800/- from the very same shareholders towards share premium. The share capital received by the assessee has been duly accepted by the ld. AO within the ken of [section 68](#) of the Act. However, share premium component has been doubted by the ld. AO. We find that the assessee in the instant case had duly complied with by furnishing the complete details of share subscribers to prove their identity, genuineness of the transaction and creditworthiness of share subscribers beyond doubt. These are duly supported by the documentary evidences which are enclosed in the paper book. The ld. AO had not found any falsity or any adverse inference of the said documents. We find that the Ld. CIT(A) had placed heavy reliance on these documents and had granted relief to the assessee. All the share subscribers are duly assessed to income tax and the transaction with the assessee company are duly routed through banking channels and are duly reflected in their respective audited balance sheets which are also placed on record before us. In any case, once the receipt of share capital has been accepted as genuine within the ken of [section 68](#) of the Act, there is no reason for the ld. AO to doubt the share premium component received from the very same shareholders as bogus. We held that all the three necessary ingredients of [section 68](#) had been duly complied with by the assessee with proper documentary evidences. We find that notices issued u/s 133(6) have been duly complied with. The only grievance of the ld. AO was that the assessee could not produce the directors of the share subscribing companies. In our considered opinion, for this reason alone, there cannot be any addition u/s 68 of the Act as held by the Hon'ble Supreme Court in the case of [CIT vs. Orissa Corporation Pvt. Ltd.](#) reported in 159 ITR 78 (SC). We find that the decision of Hon'ble Delhi High Court in the case of Novo Promoters and Finelease Pvt. Ltd. reported in 342 ITR 169 (Del) vehemently relied upon by the ld. DR before us, is not applicable in the instant case, as in the facts before the Hon'ble Delhi High Court, the notices u/s 133(6) have not been duly complied with. Hence the decision rendered by the Hon'ble Delhi High Court in the case referred to supra is not applicable to the facts of the instant case and is factually distinguishable.

6.1. We find that the reliance placed by the ld. AR in the decision of Hon'ble Bombay High Court in [Pr. CIT vs. Apeak Infotech](#) reported in 88 Taxmann.com 695 dt 08.06.2017 wherein the question raised before the Hon'ble Bombay High Court are as under:

"A. Whether on the facts and circumstances of the case and in law, the Tribunal was correct to uphold the decision on Commissioner of Income Tax (Appeals) that the share premium received by the assessee-company cannot be taxed u/s 68 of the Act ignoring the ratio laid down by this Court in its decision reported in the case of [Major Metals Ltd. vs. Union of India](#) [2013] 359 ITR 450 (Bom)?

B. Whether on the facts and circumstances of the case and in law, the Tribunal as well as the Commissioner of Income Tax (Appeals) was right in deleting addition made by the AO, by holding that the share premium receipt is capital in nature?"

The Hon'ble Court held as under:

Regarding Question A:

(a) The issue raised by the Revenue in this question is to bring to tax the share premium received u/s 68 of the Act. We find that the issue of bringing the share premium to tax u/s 68 of the Act was not an issue which was urged by the appellant Revenue before the Tribunal. The only issue which was urged before the Tribunal as recorded in para 11 of the impugned order is the addition of share capital and share application money in the hands of the assessee as income u/s 28(iv) of the Act. We find that the Commissioner of Income-tax (Appeals) did consider the issue of applicability of [section 68](#) of the Act and concluded that it does not apply. The Revenue seems to have accepted the same and did not urge this issue before the Tribunal. Mr. Bhoot, ld. counsel appearing for the Revenue also fairly states that the issue of applicability of [section 68](#) of the Act was not urged by the Revenue before the Tribunal.

(b) It is a settled position in law as held by this court in [CIT v. Tata Chemicals Ltd.](#) [2002] 122 Taxman 643/256 ITR 395 (Bom.) that in an appeal u/s 260A of the Act, the High Court can only decide a question if it had been raised before the Tribunal even if not determined by the Tribunal. Therefore, no occasion to consider the question as prayed for arises.

(c) In any case, we may point out that the amendment to [section 68](#) of the Act by the addition of proviso thereto took place with effect from April 1, 2013. Therefore, it is not applicable for the subject assessment year 2012-13. So far as the pre-amended [section 68](#) of the Act is concerned, the same cannot be invoked in this case, as evidence was led by the respondents-assessee before the AO with regard to identity, capacity of the investor as well as the genuineness of the investment. Therefore, admittedly, the AO did not invoke [section 68](#) of the Act to bring the share premium to tax. Similarly, the Commissioner of Income-tax (Appeals) on consideration of facts, found that [section 68](#) of the Act cannot be invoked. In view of the above, it is likely that the Revenue may have taken an informed decision not to urge the issue of [section 68](#) of the Act before the Tribunal.

(d) We may also point out that decision of this court in [Major Metals Ltd. v. Union of India](#) [2012] 19 taxmann.com 176/207 Taxman 185/[2013] 359 ITR 450 Bom. proceeded on its own facts to uphold the invocation of [section 68](#) of the Act by the Settlement Commission. In the above case, the Settlement Commission arrived at a finding of fact that the subscribers to shares of the assessee company were not creditworthy inasmuch as they did not have financial standing which would enable them to make an investment of Rs. 6,00,00,000 at premium at Rs. 990 per share. It was I.T.A. No. 522/Kol/2020 Assessment Year: 2012-13 M/s. Advent Commodities Pvt. Ltd.

this finding of the fact arrived at by the Settlement Commission which was not disturbed by this court in its writ jurisdiction. In the present case the person who have subscribed to the share and paid share premium have admittedly made statement on oath before the AO as recorded by the Tribunal. No finding in this case has been given by the authorities that shareholder/share applicants were unidentifiable or bogus.

(e) In the above view Question No. A is not being entertained in view of the decision in Tata Chemical Ltd. (supra). Accordingly, the question (A) is not entertained.

Regarding Question B:

(a) We find that the impugned order of the Tribunal upheld the view of the Commissioner of Income-tax (Appeals) to hold that share premium is capital receipt and therefore, cannot be taxed as income. This conclusion was reached by the impugned order following the decision of this court in Vodafone India Services (P.) Ltd. (supra) and of the apex court in G. S. Homes and Hotel (P.) Ltd. (supra). In both the above cases the court has held that the amount received on issue of share capital including premium are on capital account and cannot be considered to be income.

(b) It is further pertinent to note that the definition of income as provided u/s 2(24) of the Act at the relevant time did not define as income any consideration received for issue of share in excess of its fair market value. This came into the statute only with effect from April 1, 2013 and thus, would have, no application to the share premium received by the respondent/assessee in the previous year relevant to the assessment year 2012-13. Similarly, the amendment to [section 68](#) of the Act by addition of proviso was made subsequent to previous year relevant to the subject assessment year 2012-13 and cannot be invoked. It may be pointed out that this court in [CIT v. Gagandeep Infrastructure \(P.\) Ltd.](#) [2017] 80 taxmann.com 272/247 Taxman 245/394 ITR 680 (Bom.) has while refusing to entertain a question with regard to [section 68](#) of the Act has held that the proviso to [section 68](#) of the Act introduced with effect from April 1, 2013 will not have retrospective effect and would be effective only from the assessment year 2013-14.

(c) In view of the above, question No. B as proposed also does not give rise to any substantial question of law as it is an issue concluded by the decision of this court in Vodafone India Services (P.) Ltd. (supra) and in the apex court in G. S. Homes and Hotels (P.) Ltd. (supra). Thus not entertained.

Therefore, all the six appeals are dismissed. No order as to costs." 6.2. We find that the issue under dispute was the subject matter of adjudication on exactly similar facts by this tribunal in the case of [ITO vs Trend Infra Developers Pvt Ltd](#) in ITA No. 2270/Kol/2016 dated 26.10.2018 for Asst Year 2012-13, wherein the addition made towards share premium was deleted. The findings given therein are not reiterated for the sake of brevity."

4.4. The ITAT in the above case has held that share premium cannot be brought to tax. The judgement of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra) relied on by the ld. D/R is not applicable to the facts of this case, as in that case the share applicant companies were not traceable nor they appeared before the authorities.

4.5. The assessee justified the share premium by referring to the turnover of the assessee company and the profit declared. The AO has not stated the reason as to why he is of the opinion that the share premium charge is excessive.

5. In view of the above discussion, we are of the considered opinion that the assessee has proved the identity and creditworthiness of the creditors as well as the genuineness of the transaction. Moreover, the Tribunal has held that no addition can be made of share premium only, in the case of M/s. Gateway Enclave Pvt. Ltd. in ITA No. 2269/Kol/2016 order dated 01.05.2019 and in the case of M/s. Savera Towers Pvt. Ltd. (supra). Consistent with the view taken therein, we delete the addition u/s68 of the Act and allow the appeal of the assessee."

11. We, thus, respectfully following the decision of this Tribunal in the case of Mahalakshmi Vinimay (P) Ltd. (supra) reverse the finding of the Id. CIT(A), delete the addition made u/s 68 of the Act and allow all the effective grounds raised by the assessee.

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

Order pronounced in the Court on 11th July, 2023 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 11/07/2023

SC Sarma

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata