

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.4760/Del/2017
Assessment Year: 2012-13

ITO Ward- 6 (3) New Delhi	Vs	Conventional Traders Pvt. Ltd. Shop No.3, A-5, Ground Floor, Madhu Vihar, New Delhi PAN No.AAEECC6582G
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. T. James Singson, CIT DR
Respondent by	None

Date of hearing:	11/07/2023
Date of Pronouncement:	14/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-2, Delhi dated 28.03.2017 pertaining to A.Y.2012-13.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the addition of Rs.151750000/- on account of unexplained cash credit u/s.68 of the Act.
3. This appeal was first listed for hearing on 02.01.2020 and the appeal was adjourned, since then the appeal was listed for hearing 14 times and on each occasion none appeared on behalf of the assessee.
4. Considering the past history we decided to proceed exparte.
5. The DR was heard at length. Case records carefully perused.
6. Briefly stated the facts of the case are that during the course of the scrutiny assessment proceedings the AO noticed that the assessee had issued 19 lacs shares of Rs.1 /- out of which 17.50 lacs shares were issued at par whereas 1.50 shares were issued at premium of Rs.999/- equivalent to Rs.14,98,50,000/- . On perusal of the details the AO found that the assessee has received shares premium/ share application money from following companies :-

	Name & Address of Subscriber	PAN	No. of shares purchase			Total amount of investment (Rs.)
				Cost	Premium	
1	Aggressive Vincom Pvt. Ltd., 20, Malanga Lane, 2 nd Floor, Kolkata	AAKCA1913H	10000	1/-	999/-	1,00,00,000/-
2	Anantnath Exports Pvt. Ltd., 11, Brabourne Road, 5 th Floor, Kolkata	AAKCAO503D	4000	1/-	999/-	40,00,000/-
3	Keynote Commercial Pvt. Ltd., 16-B, Madan Chatterjee Lane, 2 nd Floor, Kolkata.	AAECK2370E	2500	1/-	999/-	25,00,000/-
4	Kinetic Commosale Pvt. Ltd., 23, Pollock, St. Kolkata	AAECK4523F	5000.	1/-	999/-	50,00,000/-
5	Merin Commosale Pvt. Ltd., 23, Pollock St. Kolkata..	AAHCM3743N	2500	1/-	999	25,00,000/-
6	Newedge Vinimay Pvt. Ltd., 1, Muktaram babu street 2 nd Floor Kolkata	AADCN0586A	1500	1/-	999	15,00,000/-
7	Ranishti Creation Traders Pvt. Ltd., 7 Grant Lane 3 rd Floor, Kolkata	AAFRCR5368E	5000	1/-	999	50,00,000/-
8	Salvation Developers Pvt. Ltd.	AAQCS2390Q	2500	1/-	999	25,00,000/-
	C-106, Shanti Ganga Apartment Opp. Railway Station Bhayander (E) Thane					
9	Slender Taxfab Pvt. Ltd., Shop No. 3, A-5, Ground Floor, Madhu Vihar, New Delhi	AAPSC9376M	117000	1/-	999	11,70,00,000/-
		TOTAL				15,00,00,000

7. To examine the genuineness of the transaction the AO issued notices u/s. 133 (6) of the Act. However, in following cases the notices were received back:-

1. M/s. Salvation Developers Pvt Ltd.
2. Newedge Vinimay Pvt. Ltd.
3. Keynote Commercial Pvt. Ltd.

4. Anantnath Exports Pvt. Ltd.

5. Aggressive Vimcom Pvt. Ltd.

8. The assessee was asked to show cause why the share capital / premium amount received from these companies should not be treated as unexplained cash credit u/s. 68 of the Act.

9. In response the assessee filed new addresses of two companies namely Aggressive Vimcom Pvt. Ltd. and Keynote Commercial Private Limited. The AO noticed that the new address is also the same as the pervious one.

10. After referring to various judicial decisions the AO came to the conclusion that the assessee has failed to discharge the initial onus cast upon it by the provisions of section 68 of the Act and made the addition of Rs.151750,000/-.

11. Assessee challenged the addition before the CIT(A). It was strongly contended that the assessee has filed all the necessary evidences in support of its transaction of share premium/ capital and has successfully discharged the initial burden cast upon it by the provision of section 68 of the Act.

12. The CIT(A) was satisfied with the reply of the assessee. In fact the CIT(A) while deleting the addition observed that he has recorded statement on oath of the Directors of M/s. Slender

Taxfab Pvt. Ltd. / Atrocious Soft Solutions Pvt. Ltd. and Roadbook Traveles Pvt. Ltd. who confirmed the transaction.

13. The CIT(A) further observed that he had also called for the copies of the form No.2 of allotment of shares. The CIT(A) went on to delete the addition made by the AO.

14. We have given a thoughtful consideration to the orders of the CIT(A). In our considered opinion the CIT(A) has accepted the submission of the assessee as it is. Though the CIT(A) has mentioned that he has examined the Directors of few companies but nowhere it is coming out from the order that he has given sufficient opportunity of cross examination to the AO which is gross violation of principle of natural justice. In the interest of justice and fair play we restore the issue to the files of the CIT(A). The CIT(A) is directed to allow the AO to cross examine the Directors examined by the CIT(A).

15. The CIT(A), therefore, is directed to decide the appeal 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.

Order pronounced in the open court on 14.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

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

Dated: .07.2023

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Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi