

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

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

**I.T.A. No. 405/Kol/2023**  
**Assessment Year: 2012-13**

|   |    |   |
|---|----|---|
| <b>M/s. Angel Infrabuild Private Limited</b><br>14, 3 <sup>rd</sup> Floor, Netajee Subhash Road<br>Dalhousie<br>Kolkata - 700001<br><b>[PAN : AAJCA7353G]</b> | Vs | <b>Income Tax Officer, Ward-1(1), Kolkata</b> |
|---|----|---|

|                        |                          |
|------------------------|--------------------------|
| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|

|               |                                      |
|---------------|--------------------------------------|
| Assessee by : | Shri Sunil Surana, C.A.              |
| Revenue by :  | Shri Vijay Kumar, Addl. CIT, Sr. D/R |

सुनवाई की तारीख/Date of Hearing : 08/07/2023  
घोषणा की तारीख /Date of Pronouncement: 28/07/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dt. 28/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13, on the following grounds:-

- "1. For that the assessment order passed by Ld. AO and confirmed by Ld. CIT (A) is arbitrary, illegal and bad in law.*
  
- 2. For that the Assessment order being served after 31.03.2015 is barred by limitation For that the Ld. CIT (A) erred in confirming the action of Ld. AO in assessing the share capital and premium of 1,51,00,000/- as unexplained cash credit merely for the reason of non-appearance of the share applicants whereas otherwise there were sufficient evidences on records in support of the identity, capacity of the share applicants and genuineness of the transactions and all the share*

*applicants duly complied with Notice issued u/s 133(6) of the IT Act, 1961.*

3. *For that even otherwise, the share applicants are income tax assessee and assessment of the all the share applicants companies for the Assessment Year 2012-213 are already been completed u/s 143(3) of the act.*

4. *For that under the facts and circumstances of the case, the Ld. CIT(A) erred in Confirming the addition of share capital and premium as unexplained cash credit merely based upon his own surmises and conjectures and contrary to the evidences on record.*

5. *For that on the facts and in the circumstances of the case the order passed by the Ld. CIT(A) is not maintainable.*

6. *For that the order of the AO be modified and the assessee be given relief prayed for.*

7. *For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal."*

2. Brief facts of the case are that the assessee is private limited company. Income of Rs.18,587/- declared in the e-return filed for Assessment Year 2012-13 on 20/09/2012. Case selected for scrutiny followed by serving of notice u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings, ld. Assessing Officer observed that the assessee has raised fresh share capital of Rs.16,00,000/- and also received share premium of Rs.1,35,00,000/- on the said share capital. Notice under section 133(6) of the Act was sent to the share allottees, to which replies were received along with

relevant documents including financial statements, bank statement, confirmations etc.. Further, the ld. Assessing Officer issued summons u/s 131 of the Act to the directors of the assessee company asking to produce the directors of the shareholding companies to which there was no compliance. For this very reason the ld. Assessing Officer was of the view that the assessee has failed to explain the alleged sum of Rs.1,51,00,000/- along with other minor additions/disallowances at Rs.1,62,905/-. Income assessed at Rs.1,52,81,492/-. Aggrieved the assessee preferred appeal before the ld. CIT(A) filing relevant details as were placed before the ld. Assessing Officer but failed to succeed on the issue of addition u/s 68 of the Act.

3. Aggrieved the assessee is now in appeal before this Tribunal.

4. The ld. Counsel for the assessee referring to the paper book containing 236 pages contended that in this case, the assessee had filed all evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transactions including the addresses, PAN details, board resolution and forms filed with the Registrar of Companies, audited financial statements, income tax return and copy of bank statement of the allottee companies, to substantiate the payment of the entire amount of share capital and share premium. It was further submitted that all the notices under

section 133(6) of the Act, were duly complied along with filing of requisite documents directly to the Id. Assessing Officer.

4.1. The Id. Counsel for the assessee also submitted that the assessee has provided sufficient details to prove the identity and creditworthiness of the share applicants and genuineness of the transactions and also that the alleged share applicants have passed through income tax scrutiny proceedings u/s 143(3) of the Act for the Assessment Year 2012-13 and, therefore, the share subscribers are not paper companies and are not involved/engaged in the business of providing accommodation entries. The Id. Counsel for the assessee, also contended that the Id. Assessing Officer instead of examining the relevant documents insisted on the personal appearance of the assessee company as well as the share subscribers without pointing out any defect or discrepancy in the evidence/documents filed by the assessee in order to explain the alleged sum. He further submitted that the Id. Assessing Officer proceeded to draw an adverse inference only on the ground that the directors of the assessee company did not appear personally before him. Reliance was placed on the judgement of the Hon'ble Jurisdictional High Court in the case of *Crystal Networks P. Ltd. v. CIT (2013) 353 ITR 171 (Cal.)(HC)*, as well as on the decision of the Tribunal in the case of *Satyam Smertex Pvt. Ltd. vs. DCIT in ITA No.2445/Kol/2019; AY 2012-13, order dt. 29/05/2020* and also on the

judgment of the Hon'ble Jurisdictional High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal). Reference was also made to the judgment of the Hon'ble Allahabad High Court in the case of *Commissioner Of Income Tax -I Vs. Shri Raj Kumar Agarwal* in *Income Tax Appeal No. 179 of 2008; judgment dt. 17/11/2009*, wherein it was held that, non-production of the directors of the company which is regularly assessed to tax, having PAN, on the ground that the identity of the subscriber is not proved, cannot be sustained.

On the other hand, the ld. D/R, vehemently argued supporting the order of the ld. CIT(A).

5. We have heard rival contentions and perused the material placed before us. The assessee's aggrieved with the addition made under section 68 of the Act of Rs. 1,51,00,000/-, which the assessee had received against the issue of fresh share capital of Rs.16,00,000/- and share premium of Rs.1,35,00,000/-. The said sum was received from the following share applicants:-

| <b>Sl. No.</b> | <b>Name of the share applicants</b>  |
|----------------|--------------------------------------|
| 1              | <i>Vedik Mercantile Pvt. Ltd.</i>    |
| 2              | <i>Wellplan Dealer Pvt. Ltd.</i>     |
| 3              | <i>Baghbann Tieup Pvt. Ltd.</i>      |
| 4              | <i>Surkshit Vincome Pvt. Ltd.</i>    |
| 5              | <i>Subhdisti Marketing Pvt. Ltd.</i> |
| 6              | <i>Sukriti Vinimay Pvt. Ltd.</i>     |
| 7              | <i>Vishal Deepak Sanghai</i>         |

6. Further, we notice that when the assessee was asked to place the relevant documents to explain the nature and source of the alleged sum and also when the notices u/s 133(6) of the Act, were directly sent by the Assessing Officer to all the share subscribers, there was proper compliance by each one of them. We also notice that following documents were placed before the lower authorities by the assessee in order to explain the nature and source of the alleged sum and also to explain the identity and creditworthiness of the share subscribers as well as the genuineness of the transactions:-

| <i>Sl. No.</i> | <i>Name of the share applicants</i> | <i>Documents filed before the lower authorities</i>  |
|----------------|-------------------------------------|--|
| 1              | <i>Vedik Mercantile Pvt. Ltd.</i>   | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul> |
| 2              | <i>Wellplan Dealer Pvt. Ltd.</i>    | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> </ul>  |

|   |                                   |  |
|---|-----------------------------------|--|
|   |                                   | <ul style="list-style-type: none"> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul>  |
| 3 | <i>Baghbann Tieup Pvt. Ltd.</i>   | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul> |
| 4 | <i>Surkshit Vincome Pvt. Ltd.</i> | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> </ul>   |

|   |                                       |  |
|---|---------------------------------------|--|
|   |                                       | <ul style="list-style-type: none"> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul>   |
| 5 | <i>Subhdristi Marketing Pvt. Ltd.</i> | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul> |
| 6 | <i>Sukriti Vinimay Pvt. Ltd.</i>      | <ul style="list-style-type: none"> <li>• <i>Notice issued u/s 133(6)</i></li> <li>• <i>reply filed in response to notice u/s 133(6)</i></li> <li>• <i>latest company master data</i></li> <li>• <i>certificate of incorporation</i></li> <li>• <i>board resolution</i></li> <li>• <i>Copy of PAN card</i></li> <li>• <i>allotment advice</i></li> <li>• <i>acknowledgement of return of income</i></li> </ul>  |

|   |                              |  |
|---|------------------------------|--|
|   |                              | <ul style="list-style-type: none"> <li>• <i>audited financial statements</i></li> <li>• <i>list of investments</i></li> <li>• <i>bank statement</i></li> <li>• <i>assessment order</i></li> </ul>              |
| 7 | <i>Vishal Deepak Sanghai</i> | <ul style="list-style-type: none"> <li>• <i>Receipt of return of income</i></li> <li>• <i>balance sheet and profit and loss</i></li> <li>• <i>copy of passport</i></li> <li>• <i>bank statement</i></li> </ul> |

7. Further, we notice that all the share applicants were having sufficient capital and reserves in order to justify and explain the said investments. In the impugned order, following chart has been placed at page 10 and the same is reproduced below:-

| <i>Name of Company</i>               | <i>Capital</i> | <i>Reserves</i> | <i>Net Worth</i> | <i>Invested in 'a'</i> | <i>% age to NW</i> |
|--------------------------------------|----------------|-----------------|------------------|------------------------|--------------------|
| <i>Baghban Tie Up Pvt. Ltd.</i>      | 1,116,000      | 100,574,079     | 101,690,079      | 1,000,000              | 0.98               |
| <i>Subhdrsti Marketing Pvt. Ltd.</i> | 1,610,770      | 112,541,386     | 114,152,156      | 3,800,000              | 3.33               |
| <i>Sukriti Vinimay Pvt. Ltd.</i>     | 1,598,100      | 108,294,195     | 109,892,295      | 2,100,000              | 1.91               |
| <i>Surakshit Vincom Pvt. Ltd.</i>    | 2,144,650      | 125,585,421     | 127,730,071      | 3,500,000              | 2.74               |
| <i>Vedik Mercantile Pvt. Ltd.</i>    | 2,028,300      | 107,884,365     | 109,912,665      | 2,200,000              | 2                  |
| <i>Vihal Deepak Sanghai</i>          | 8,741,603      | -               | 8,741,603        | 400,000                | 4.58               |
| <i>Wellplan Dealers Pvt. Ltd.</i>    | 2,179,750      | 123,877,413     | 126,057,163      | 2,000,000              | 1.59               |

8. All the above stated details, documents and evidences filed by the assessee stands uncontroverted by both the lower authorities by way of observing any defect or discrepancy in the same, which thus proves that the assessee has primarily discharged the onus casted upon it under the provision under section 68 of the Act, explaining there the nature and source of the alleged sum. The only ground on which the Assessing Officer has made the impugned addition is that the summons u/s 131 of the Act were not honoured and the directors of the assessee company as well as the investor companies did not appear personally. We observe that it has been consistently held in plethora of decisions of this Tribunal as well as by various Hon'ble high Courts that merely for non-appearance against the summons issued u/s 131 of the Act cannot be taken as a sole ground to make addition under section 68 of the Act. We observe that recently 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*, while adjudicating similar issue of addition under section 68 of the Act, wherein also all details were filed in which no discrepancies were noticed by the revenue authorities and addition was purely made for nonappearance against the summons u/s 131 of the Act, held in favour of the assessee, 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."*

9. Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal) wherein it was held as follows:

*"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the*

*Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction. Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."*

10. We, therefore, respectfully following the ratio of law laid down in the above case laws and consistent with the view taken in the above referred decision of the ITAT and also observing the fact that sufficient details have been placed to explain the alleged sum and also all the share subscribers have passed scrutiny proceedings for the assessment year 2012-13, all notices under section 133(6) of the Act have been



complied to, fail to find any justification in the action of the Assessing Officer of making the alleged addition u/s 68 of the Act. Therefore, since the assessee has successfully proved the identity and creditworthiness of the share applicants and genuineness of the transactions, addition u/s 68 of the Act is uncalled for and is hereby deleted.

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

Order pronounced in the Court on 28<sup>th</sup> July, 2023 at Kolkata.

*Sd/-*

(SONJOY SARMA)  
JUDICIAL MEMBER

*Sd/-*

(DR. MANISH BORAD)  
ACCOUNTANT MEMBER

Kolkata, Dated 28/07/2023

*SONJOY 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