

**आयकर अपीलिय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 58/Kol/2021**  
**Assessment Year: 2012-13**

ITO, Ward-6(2), Kolkata	Vs.	M/s Goodpoint Estates Pvt. Ltd. (PAN: AAECG 5515 F)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

**C.O. No. 19/Kol/2022**  
**(Arising out of I.T.A. No. 58/Kol/2021)**  
**Assessment Year: 2012-13**

M/s Goodpoint Estates Pvt. Ltd. (PAN: AAECG 5515 F)	Vs.	ITO, Ward-6(2), Kolkata
Cross-objector		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.07.2023
For the Appellant/ निर्धारिती की ओर से	Shri Vinod Jain, FCA
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. DR)

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the revenue and the cross objection by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-7,

Kolkata (hereinafter referred to as the Ld. CIT(A) ”] dated 09.09.2020 for the AY 2012-13.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon’ble Supreme Court in the case of Miscellaneous Application No. 665 of 2021 in SMW(C ) No. 3 of 2020, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The only issue raised by the revenue in the various ground of appeal is against the deletion of addition of Rs. 3,20,00,000/- by Ld. CIT(A) as made by the AO on account of share capital/share premium received being unexplained cash credit u/s 68 of the Act.

4. Facts in brief are that the assessee filed return of income on 22.09.2012 declaring total income of Rs.535/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. The assessee accordingly furnished the details/evidences before the AO. During the course of assessment proceedings, the AO also issued notice u/s 131 of the Act to the directors of the assessee company which remained non-complied. The AO observed from the records that the assessee has issued equity shares of face value of Rs. 1/- each at a share and premium of Rs. 999/- thereby receiving aggregate amount of Rs. 3,20,00,000/-. However all these notices remained non-complied and finally the AO added the entire sum of Rs. 3,20,00,000/- as unexplained cash credit u/s 68 of the Act to the income of the assessee in the assessment framed u/s 144 of the Act dated 11.03.2015.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee. While allowing the appeal, the Ld. CIT(A) noted that the assessee has proved identity, creditworthiness of the investor M/S Evernew Securities Pvt Ltd. and also genuineness of the transactions. The Ld. CIT(A) also noted that even in the case of share subscriber

the assessment u/s 143(3) of the Act was framed and therefore no adverse inference could be drawn against the share subscriber/investor. The Ld. CIT(A) noted that the assessee has filed all the evidences before the AO and also referred to the reply filed by the share applicant a copy of which is filed at page 28 to 44 of PB. The Ld. CIT(A) while allowing the appeal also called for the remand report from the AO. The Ld. CIT(A) even noted and recorded a findings that all these papers/documents were available in assessment folder and the AO without doing any verification in the matter has simply stated in the assessment order that the assessee has not filed any documents and that summons issued u/s 131 of the Act were not complied with. The Ld. CIT(A) observed that no adverse inference could be drawn due to non-compliance of summons u/s 131 of the Act by relying on the decision of 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 Ld. CIT(A) held that the issuance of share premium at higher amount is a management decision only and in absence of any statutory provisions in the Act to the contrary and there being no bar on issue of share at high premium, the same cannot be questioned. Further the Ld. CIT(A) in para 4.5 noted that the assessee's subscriber company M/S Evernew Securities Pvt Ltd. is a holding company having sufficient net worth to make the investments and was even subjected to scrutiny u/s 143(3) of the Act. Finally the Ld. CIT(A) allowed the appeal of the assessee by following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Dataware Private Ltd. ITA 263 of 2011 dated 21.09.2011.

6. After having heard the rival contentions and perusing the material on record, we find that the assessee has complied with various notices/questionnaires issued and also filed various replies in response thereto. We note that notice u/s 143(2) dated 24.09.2013 was replied on 5.12.2013. Similarly questionnaire issued u/s 142(1) on 20.10.2014 was replied to on 12.02.2015. Summon issued to share subscriberu/s 131 of the Act was complied with by filing reply on 21.03.2015 and summon issued to the assessee company u/s131 on 6.2.2015 was also replied with necessary evidences though the personal appearance could not be recorded before the AO. We note that the

share subscriber in this case is holding company of the assessee having sufficient net worth to invest in the assessee company and was also subjected to scrutiny and assessment order u/s 143(3) of the Act was passed on 29.09.2014 copy of which is placed at page 54 to 58 of the paper book wherein that the investment by the said subscribing company into assessee company has been accepted by the revenue. We note that the assessee has filed all the evidences before the authorities below which have been correctly appreciated by the First Appellate Authority after calling for the assessment folder from the AO and giving a findings that reply filed by the assessee with the evidences were duly found in the assessment folder. Under these circumstances, we are of the view that the Ld. CIT(A) has passed very speaking and reasoned order which does not require any interference at our end. So far as the issue of non-appearance in compliance to summons u/s 131 of the Act are concerned, the Ld. CIT(A) has relied on the decision of Orissa Corporation Ltd. (supra). In our considered view non compliance to summons issued u/s 131 of the Act or non appearance of the directors of the subscribing companies before the AO can not be basis for making addition as the assessee has filed all the necessary documents before the authorities below proving the identities, creditworthiness of the investors and genuineness of the transactions. The case of the assessee also find support from the following decisions of the coordinate benches i) *ITO vs. M/s Kemex Engineering Pvt. Ltd. in ITA No. 75/Kol/2021 for AY 2012-13 dated 01.02.2023*, ii) *M/s Starland Vinimay Pvt. Ltd. vs. ITO in ITA No. 574/Kol/2020 for AY 2012-13 dated 24.01.2023*, iii) *M/s Lucky Agencies Pvt. Ltd. vs. ITO in ITA No. 2501/Kol/2019 for AY 2012-13 dated 23.02.2023*, iv) *M/s Lalbaba Seamless Tubes Pvt. Ltd. vs. DCIT in ITA No. 2641/Kol/2019 for AY 2012-13 dated 21.10.202* and v) *ITO vs. M/s Coxis Finance & Investment Pvt. Ltd. in ITA No. 649/Kol/2020 for AY 2012-13 dated 10.11.2022*. 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.”*

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."*

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 cannot 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 party such as PAN ,financial and bank statements showing share application money .

7. 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. Besides the investor has which a holding company of the assessee also furnished complete details/evidences before the AO which proved the identity , creditworthiness of investor and genuineness of the transactions. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

8. Cross objection filed by the assessee in CO NO. 19/Kol/2022 which is in support of the order of Ld. CIT(A) and is dismissed.

9. In the result, the appeal of the revenue and cross objection of the assessee are dismissed.

Order is pronounced in the open court on 31<sup>st</sup> July, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 31<sup>st</sup> July, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-6(2), Kolkata
2. Respondent- M/s Goodpoint Estates Pvt. Ltd., 86, Canning Street, Kolkata-700001
3. Ld. CIT(A)- 7, Kolkata (sent through e-mail)
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata