

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**  
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 1931/Kol/2018**  
**Assessment Year : 2013-14**

|                                                       |     |                           |
|-------------------------------------------------------|-----|---------------------------|
| Aahar Suppliers Pvt. Ltd .<br><br>(PAN: AAJCA 2363 E) | Vs. | ITO, Ward-9(1), Kolkata   |
| Appellant / (अपीलार्थी)                               |     | Respondent / (प्रत्यर्थी) |

|                                                 |                                     |
|-------------------------------------------------|-------------------------------------|
| Date of Hearing / सुनवाई<br>की तिथि             | 18.05.2023                          |
| Date of Pronouncement/<br>आदेश उद्घोषणा की तिथि | 01.08.2023                          |
| For the Appellant/<br>निर्धारिती की ओर से       | Shri Saumitra Choudhury, Advocate   |
| For the Respondent/<br>राजस्व की ओर से          | Shri Vijay Kumar, Addl. CIT, Sr. DR |

**ORDER / आदेश**

**Per Shri Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-3, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 24.07.2018 for the AY 2013-14.

2. The only issue raised in various grounds of appeal is against the confirmation of addition of Rs. 2,24,28,434/- by the Ld. CIT(A) as made by the AO on account of share capital/ share premium being unexplained u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 21.01.2014 declaring a total income of Rs. 3,235/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served on the assessee. During the course of assessment proceedings, the AO observed on the basis of details furnished by the assessee that the assessee has issued equity shares during the year thereby raising share capital/share premium to the tune of Rs. 2,24,28,434/-. The AO also issued notices u/s 133(6) of the Act to various share subscribers which were duly responded by the share subscribers by filing necessary documents and confirming the transactions of purchase of shares in the assessee company. Besides the summons u/s 131 of the Act were also issued to the directors of the share subscribing companies for their personal appearance, however no one complied with the same. Thereafter the AO after discussing the decision of Hon'ble Apex Court in the case of Sumati Dayal vs. CIT in 214 ITR 801 (SC) and CIT vs. Durga Prasad More 82 ITR 540 (SC) came to the conclusion that the assessee has failed to establish the identity, creditworthiness of the investors and genuineness of the transactions and finally added the same to the income to the assessee as unexplained investments in the assessment framed u/s 143(3) of the Act dated 10.03.2016.

4. In the appellate proceeding, the Ld. CIT(A) dismissed the appeal of the assessee that though the assessee has filed the details of investors with the AO and AO has issued notices u/s 133(6) of the Act which were duly responded but the summons u/s 131 of the Act issued to the directors of the share subscribers were not complied with. The Ld. CIT(A) finally held that since the assessee has failed to prove the identity, creditworthiness of the investors and genuineness of the transactions, therefore the AO has rightly made the addition.

5. The Ld. A.R submitted before the Bench that despite the assessee having furnished all the evidences before the AO and notices u/s 133(6) of the Act issued by the AO were responded/replied by all the share subscribers confirming the investments having been made in the assessee company. The Ld AR has argued that the AO has not pointed out any defects or deficiency in the documents furnished by

the assessee or by the subscribers. The Id AR contended that the Ld. CIT(A) has also upheld the addition on the ground that summons u/s 131 were not complied with. The Id AR argued that the addition made, without carrying out any investigation into the issue on the basis of the information/details filed by the assessee, merely for the reason that the summons were not complied with by the subscribers is unsustainable. In defense of his arguments the Id AR relied on series of decisions namely CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78(SC) , Crystal Networks Pvt. Ltd. vs. CIT 353 ITR 171 (Cal) and ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012). The Id AR therefore prayed that the addition as sustained by the Id CIT(A) may kindly be deleted.

6. The Ld. D.R. on the other hand relied on the orders of authorities below by submitting that the transactions of raising share capital/share premium remained unverified due to non presence of the share subscribers as mere furnishing of documents either by the assessee or by the subscribers would not suffice. The Id DR therefore submitted that the order of Id. CIT may be affirmed by dismissing the appeal of the assessee.

7. After hearing the rival contentions and perusing the material on record, we find that the assessee during the year has issued 1,18,800 equity shares of Rs. 10/- each at a premium of Rs. 179 per share. These shares were issued to the following share holders:

| SN           | Name                                  | Address                                                     | PAN        | Total Amount       |
|--------------|---------------------------------------|-------------------------------------------------------------|------------|--------------------|
| 1            | Blockdeal Advisory Services Pvt. Ltd. | 2B, Grant Lane, Room No.303, Kolkata-700001                 | AAECB8504B | 39,87,900          |
| 2            | Evergreen Barter Pvt. Ltd.            | P-41, Princep Street, 5 <sup>th</sup> Floor, Kolkata-700072 | AABCE5515E | 49,89,600          |
| 3            | Nirvaanam Properties Pvt. Ltd.        | 2B, Grant Lane, Room No.303, Kolkata-700001                 | AADCN8752E | 34,96,500          |
| 4            | Rosewood Mercantile Pvt. Ltd.         | 9/12, Lal Bazar Street, Kolkata-700001                      | AAECR6249M | 49,89,600          |
| 5            | Terminal Sales Pvt. Ltd.              | P-41, Princep Street, 5 <sup>th</sup> Floor, Kolkata-700072 | AADCT3616R | 49,89,600          |
| <b>TOTAL</b> |                                       |                                                             |            | <b>2,24,53,200</b> |

We note that during the course of assessment proceedings, the AO, besides calling upon the assessee to furnish the evidences to prove the identity, creditworthiness of the subscribers and genuineness of the transactions, also issued notices u/s 133(6) of the Act to the share holders who had duly replied the said notices by filing the necessary details as called for by the AO and thus confirmed the transactions. We note that though summons issued u/s 131 of the Act to the directors of the subscribing companies were not complied with, the assessee as well as share subscribers have filed the details /documents as called for by the AO. The assessee furnished the copy of names and addresses of the subscribers, besides its bank statement ,return of allotment etc. the subscribers also furnished replies to response to notices u/s 133(6) of the Act filing the following documents:

- a) Income Tax Return of the share holders
- b) Certificate of incorporation of the share holders
- c) Audited Accounts of the share holders
- d) Share Application Forms
- e) Share Allotment Letters
- f) Copy of Memorandum & Articles of Association
- g) Copy of Board Resolution
- h) Copy of Bank Statement
- i) Transaction with the appellant was duly highlighted in the bank statement
- j) Copy of assessment orders of the share holders
- k) Evidences of source of source of the share holders etc

We have also examined the financial position of each of the share subscribers on the basis of documents furnished by the Counsel of the assessee and find that these subscribers had sufficient sources to invest in the assessee company's equity shares. We note that the AO has not pointed out any deficiency in the documents filed by the assessee as well as by the subscribers but merely harped on the fact that the summons u/s 131 of the Act were not complied with. Under these circumstances, we are of the view that mere non-compliance to summons cannot be the ground for making addition

in the hands of the assessee without pointing out any defects in documents filed by the assessee. The case of the assessee finds support from the decision of the Hon'ble Apex Court in the case of Orissa Corporation Pvt. Ltd. (supra), the the Hon'ble Apex Court has held 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.”*

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 (supra) 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.”*

Besides the case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) 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.”

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 all the investors have also furnished complete details/evidences before the AO which proved the identity , creditworthiness of investors 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 set aside the order of Ld. CIT(A) and direct the AO to delete the addition by allowing the appeal of the assessee.

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

Order is pronounced in the open court on 1<sup>st</sup> August, 2023

Sd/-  
(Sanjay Garg /संजय गर्ग)  
Judicial Member/न्यायिक सदस्य

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

Dated: 1<sup>st</sup> August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Aahar Suppliers Pvt. Ltd., 3, Ratan Sarkar Garden Street, Kolkata-700007
2. Respondent – ITO, Ward-9(1), Kolkata
3. Ld. CIT(A)- 3, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata