

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 22/KOL/2021
Assessment Year: 2012-2013**

***Income Tax Officer,.....Appellant
Ward-5(1), Kolkata
AayakarBhawan,
P-7, Chowringhee Square,
Kolkata-700069***

-Vs.-

***Shreen Hire Purchase (P) Limited,.....Respondent
89, N.S. Road, Kolkata-700001
[PAN: AAMCS4023L]***

Appearances by:

*Shri Manoj Kataruka, Advocate, appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, Sr. D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing :June 09, 2023

Date of pronouncing the order :8th August, 2023

O R D E R

Per Rajesh Kumar, Accountant Member:-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-7, Kolkata dated 19.08.2020 passed under section 250 of the Income Tax Act, 1961 for A.Y. 2012-13.

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

“(1) That on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the deleting the addition of Rs.85,61,00,000/--made by the Assessing Officer on account of share capital and premium in the course assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transactions.

(2) That on the facts and in the circumstances of the case, Ld, CIT(A) was justified in the deleting the addition of Rs.85,61,00,000/-made by the Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings and as such identity & creditworthiness of the creditors and genuineness of transactions could not be verified.

(3) That on the facts, the principles which has been laid down by the Hon'bleSupremet Court in the case of Pr. CIT(Central)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd(412 ITR 161) suggests that "the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the A.O., failure of which, would justify addition of the said amount to the income of the assessee". In the facts and under the circumstances of the case, the assessee company has failed to do so other than submission of mere statements of various kinds. Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital was not the assessee's own income.

(4) That on the facts, the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central) -1, Kolkata vs NRA iron & Steel Pvt. Ltd. (412 ITR 161) also suggests that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor /subscriber, verify the identity of the subscribes, and ascertain whether the transaction is genuine, or these are bogus entries of name lenders,. In the facts of the case, in spite of best efforts made by the assessing officer, he could not verify the same as there was no response from the companies to whom share were allotted on private placement basis. Thus, the decision of the Ld. CIT(A) is

erroneous in holding that the raised share capital was not the assessee's own income.

- (5) That on the facts, the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Kolkata vs NRA Iron & Steel Pvt. Ltd. (412 ITR 161) also suggests that 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 transactions would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section of the act, In the facts of the case, the Ld. CIT(A) completely ignored this aspect, thus he has erred in giving relief to the assessee.*
- (6) That on the facts of the present case, clearly the Assessee Company failed to discharge the onus required under section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the income of the Assessee and the Ld. CIT(A) has erred in allowing relief to the assessee.*
- (7) That on the facts, in absence of verification, Ld. CIT(A) should have remanded the matter to A.O. for fresh verification. Thus, he has violated the provisions of Rule 46A of the I. T. Rules*
- (8) That on the facts, the appellant craves to add, alter, amend, delete or substitute any of the grounds and/or take additional grounds before or at any time of hearing of this appeal.*
- (9) That on the facts, further the Assessing Officer made disallowance of Rs. 4,50,892/- as u/s. 14A r.w. Rule 8D which has been deleted by the CIT(A)-7, Kolkata. The CIT(A) was not justified denying the findings of the Assessing Officer.*

3. At the time of hearing, we observe that the Registry has pointed out that there is a delay of 12 days in filing the appeal and the assessee has not filed any petition for condonation of delay. We observe that the order of ld. CIT(Appeals) was received on November, 2020, whereas

the appeal was filed on February, 2021, which is covered by the decision of the Hon'ble Supreme Court in Miscellaneous Writ Petition vide order dated 10.01.2022, whereby the period of limitation is extended from 15.03.2020 to 28.02.2020. Since the above period falls within the period as mentioned in the above order, the Revenue's appeal is deemed to have been filed within the due date.

4. The common issue raised by the Revenue in various grounds of appeal from ground Nos. 1 to 7 is against the deletion of addition of Rs.85,61,00,000/- by the ld. CIT(Appeals) as made by the ld. Assessing Officer on account of share capital/ share premium being unexplained under section 68 of the Act.

5. The facts in brief are that the assessee filed its return of income on 21.09.2012 showing total income of Rs.7,818/-, which was processed under section 143(1) of the Act. The case of the assessee was selected for scrutiny assessment under CASS and statutory notices were duly issued and served upon the assessee. In compliance to the said notice, Shri V.K. Jain, A.R. of the assessee appeared and filed various details as called for alongwith the books of accounts, which were test checked by the ld. Assessing .Officer during the assessment proceedings. On perusal of the balance-sheet of the assessee, the ld. Assessing Officer observed that the

assessee had issued 4,28,050 equity shares at the rate of Rs.1/- each and a premium of Rs.1,999/- and thereby received Rs.85,61,00,000/- as share capital and share premium. The ld. Assessing Officer, in order to verify the genuineness of the said transactions and to verify the identity and creditworthiness of the shareholders of the assessee-company, issued notices under section 131 of the Income Tax Act to the Directors of all the shareholder/share subscribers companies in the assessee and they were asked to appear personally before the ld. Assessing Officer and to produce/furnish necessary details/ documents in support of the investments made in the assessee-company. However, none of them appeared before the ld. Assessing Officer. Thereafter the ld. Assessing Officer issued show-cause notice to the assessee on 13.03.2015 informing the assessee that the summons issued under section 131 of the Act were not complied with and accordingly issued show-cause as to why share application money received should not be treated as bogus and unexplained under section 68 and added to the income of the assessee. Accordingly the ld. Assessing Officer held that the assessee has failed to furnish any plausible explanation and, therefore, the entire money received amounting to Rs.85,61,00,000/- was treated as unexplained and added to the income of the assessee in the assessment framed under section 143(3) of the Act dated 29.03.2015.

6. Aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals) challenging the addition made by the ld. Assessing Officer. The ld. CIT(Appeals) in the appellate proceedings allowed the appeal of the assessee after taking into consideration the contentions and submissions made by the assessee and also after examining the evidences furnished in support of the money received from 31 shareholders. The ld. CIT(Appeals) while allowing the assessee on this issue observed and held as under:-

4.2. I have considered the submission of the AR of the appellant in the backdrop of the assessment order. I have also considered the various judicial decisions referred to by the AO as well as the AR in support of their respective stands in the matter. I have also considered the relevant materials on record in deciding the matter. The brief facts of the issue in the case are that the AO treated the entire share capital raised by the appellant to the extent of ₹85,61,00,000/- to be assessable u/s 68 of the Act. On the other hand the AR of the appellant contested on the action of the AO to the effect that section 68 was not applicable to the appellant's

case for the year under consideration for the following reasons: (a) that identities of the share subscribers stood proven as per documentary evidences (supra) (b) that creditworthiness of the share subscribers stood proven (supra) (c) that the genuineness of the transactions stood proven (supra) and (d) that the share applicants have been regularly assessed to tax by the respective AOs. In such view of the matter, I find the AO cannot abruptly come to the conclusion that section 68 of the Act was applicable in the appellant's case just for the allegations as launched by the AO. I find that all relevant documentary evidences were before the AO who could have decided the case on merit but however this did not happen. The copies of summons and replies filed by the share applicants appear at **Page Nos. 119-1199** of the paper book submitted by the appellant. As such the contention of the AO that the summons were not served or not complied with is factually incorrect. Since in the instant case, the share applicants in response to the summons issued upon them had filed their written submission and no defect whatsoever was found therein, there was no reason for drawing any adverse inference merely for the reason of non-appearance of the directors of the share applicant companies. The appellant has submitted several judicial pronouncements to the effect that mere non-appearance of the share applicant is no basis for invoking provisions of Sec. 68 which includes the decision of the Hon'ble Supreme Court in the case of **CIT vs. Orissa Corpn. (P) Ltd.** [1986] 159 ITR 78 (SC) wherein the Hon'ble Supreme Court held as follows: *In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, 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 credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, 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 could arise.*

The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed."

In view of the foregoing discussion as well as the judicial precedents pertinent to the

issue at hand (supra); I do not find any premise to endorse the action of the AO in making the impugned addition of ₹85,61,00,000/- as unexplained cash credit u/s 68 of the Act.

4.3. Further I find the share subscribers have sufficient net worth of their own to make investments as elucidated below:

Name of the company	Capital	Reserves	Net Worth	Invested in Assessee Company	Percentage of NW
Amity Hirise Pvt Ltd	1,45,57,200	45,67,43,636	47,13,00,836	1,84,00,000	3.90
Duke Securities Pvt. Ltd	1,46,58,100	55,75,42,671	57,22,00,771	7,13,00,000	12.46
Elffin Securities Pvt. Ltd	1,45,68,700/-	46,82,31,813/-	48,28,00,513	3,68,00,000	7.62
Ranbhumi Securities Pvt. Ltd	1,45,92,700	49,22,07,662	50,68,00,362	3,68,00,000	7.26
Amazing Steels Pvt. Ltd	4,38,900	33,85,61,468	33,90,00,368	5,25,00,000	15.48
Amritvani Exim Pvt. Ltd	1,22,40,700	40,14,70,236	41,37,10,936	50,00,000	1.20
Arpan Securities Pvt. Ltd	1,45,21,500	42,10,78,995	43,56,00,995	4,80,00,000	11.01
Longrange Securities Pvt. Ltd	65,17,700/-	41,72,82,699	42,38,00,399	3,60,00,000	8.49
Mindtrack Securities Pvt. Ltd	65,24,900	42,44,75,855	43,10,00,755	1,80,00,000	4.17
Neoworthy Vyapaar Pvt. Ltd	60,05,000	16,84,72,788	17,44,77,788	10,00,000	0.57
Arrowspace Hirise Pvt. Ltd	4,26,800	32,64,73,500	32,69,00,300	3,00,00,000	9.17
Goldsmith Securities Pvt. Ltd	1,45,37,100	43,66,63,470	45,12,00,570	6,45,00,000	14.29
Compaq Solutions Pvt. Ltd	8,36,000	1,76,64,949	1,85,00,949	64,00,000	34.59
Highrank Securities Pvt. Ltd	1,45,26,800	42,63,73,847	44,09,00,647	3,00,00,000	6.80
Simplex Dealtrade Pvt. Ltd	4,12,500	1,12,69,409	1,16,81,909	40,00,000	34.24
Blockdeal Realtors Pvt. Ltd	4,64,300	36,39,36,270	36,44,00,570	3,00,00,000	8.23
Intime Stock Broking Pvt. Ltd	12,21,600	27,92,84,039	28,05,05,639	40,00,000	1.42
Startree Securities Pvt. Ltd	2,65,500	16,53,35,082	16,56,00,582	3,00,00,000	18.11
Lakeside Projects Pvt. Ltd	1,33,100	33,06,71,64	33,20,02,64	3,20,00,000	96.38
Silkdhan Tradelink Pvt. Ltd	2,67,500	16,73,32,691	16,76,00,191	3,20,00,000	19.09
Subhvani Realcon Pvt. Ltd	2,35,500	13,53,64,769	13,56,00,269	3,20,00,000	23.59
Mangalrashi Highrise Pvt. Ltd	2,35,500	13,53,64,674	13,56,00,174	3,20,00,000	23.59
Outcome Buildcon Pvt. Ltd	2,35,500	13,53,64,975	13,56,00,475	3,20,00,000	23.59

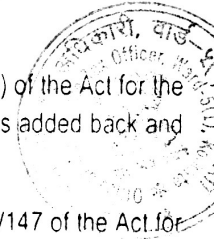
ITA No. 22/KOL/2021
Assessment Year: 2012-2013
Shreen Hire Purchase (P) Limited

Ltd						
Rootstar Developers Pvt Ltd	2,01,000	10,08,99,168	10,11,00,168	3,20,00,000	31.65	
Sayonara Fashions Trade Pvt. Ltd	2,03,500	10,33,96,806	10,36,00,306	3,20,00,000	30.88	
Gajgami Financial Consultants Pvt. Ltd	2,03,500	10,33,96,818	10,36,00,318	3,20,000	30.88	
Glitter Softech Pvt. Ltd	10,12,000	21,88,9,197	22,90,1,197	1,24,00,000	54.14	
Silverline Tradecomm Pvt Ltd	10,78,000	2,25,94,372	2,36,72,372	30,00,000	12.67	
Capable Dealers Pvt. Ltd	1,74,000	73,92,6,300	7,41,00,300	3,70,00,000	49.93	
Prime Vyapaar Pvt. Ltd	1,33,41,700	41,54,13,644	42,87,55,364	5,00,000	0.11	
Cap Vanijay Pvt. Ltd	1,49,21,200	35,37,65,665	36,86,86,865	5,00,000	0.13	
Gravity Computech Pvt. Ltd	10,96,000	7,82,08,515	7,99,04,515	20,00,000	2.50	
Topstar Builders Pvt. Ltd	14,72,500	5,35,29,940	55,00,2,440	25,00,000	4.54	
Sapphire Suppliers Pvt. Ltd	2,24,7,500	8,28,32,550	85,08,00,50	44,00,000	5.17	
Overall Realtors Pvt. Ltd	17,06,000	39,98,98,073	40,16,04,073	10,00,000	0.24	
Gemini Infra Properties Pvt Ltd	15,30,800	35,62,72,784	35,78,03,584	15,00,000	0.41	

4.4. That, as evident from the 36 (thirty six) share subscriber's information on record, all of them were either subjected to scrutiny assessments u/s 147/143(3) of the Act or the returns accepted by the AO. That the profiles of the assessment status of the subscriber companies are as follows:

- a) Amity Hirise Pvt. Ltd.: Assessment order was passed by the AO u/s 144 of the Act for the AY 2012-2013 vide order dated 27.3.2015 and the amount of ₹4,71,30,00,000/- was added back and brought to tax. Further assessment order u/s 143(3) dated 28.3.2019 for AY 2017-2018 is also on record and as such identity of the share applicant is established beyond doubt.
- b) Duke Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 16.3.2015 and the amount of ₹5,10,00,000/- was added back and brought to tax.
- c) Elfin Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 25.3.2015 and the amount of ₹46,87,00,000/- was added back and brought to tax.
- d) Ranbhumi Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 which was revised by the order passed u/s 263 of the Act.
- e) Amazing Steels Pvt. Ltd.: Assessment order was passed by the AO u/s 144 of the Act for the AY

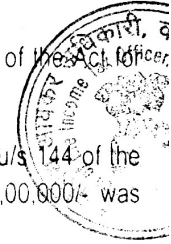
- 2012-2013 vide order dated 24.3.2015 and the amount of ₹33,85,61,100/- was added back and brought to tax.
- f) Amritwani Exim Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2009-2010 as per return and summary assessment was framed for AY 2012-13
- g) Arpan Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 144 of the Act for the AY 2012-2013 vide order dated 27.3.2015 and the amount of ₹42,15,00,000/- was added back and brought to tax.
- h) Longrange Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 30.07.2014 which was as per return.
- i) Mindtrack Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 31.3.2015 which was as per return.
- j) Neoworth Vyapar Pvt. Ltd.: Summary assessment was framed.
- k) Arrowspace Hirise Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 23.3.2015 and the amount of ₹32,69,00,000/- was added back and brought to tax.
- l) Goldsmith Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 26.3.2015 and the amount of ₹45,12,00,862/- was added back and brought to tax.
- m) Compaq Solutions Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3)/147 of the Act for the AY 2012-2013 vide order dated 29.11.2019 which was as per return.
- n) Highrank Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 28.3.2015 and the amount of ₹44,08,00,000/- was added back and brought to tax.
- o) Simplex Dealtrade Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3)/147 of the Act for the AY 2012-2013 vide order dated 20.12.2019 which was as per return.
- p) Blockdeal Realtors Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 04.3.2015 and the amount of ₹36,43,08,174/- was added back and brought to tax.
- q) Intime Stock Broking Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2011-2012 vide order dated 14.3.2013 which was as per return. For AY 2012-2013 summary assessment was framed.
- r) Startree Securities Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 23.3.2015 and the amount of ₹16,56,00,000/- was added back and brought to tax.
- s) Lakeside Projects Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the



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- AY 2012-2013 vide order dated 24.3.2015 and the amount of ₹3,32,00,000/- was added back and brought to tax.
- t) Silkdhan Tradelink Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 27.3.2015 and the amount of ₹16,76,00,000/- was added back and brought to tax.
- u) Subhvani Realcom Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 16.12.2014 which was as per return
- v) Magalrashi Hirise Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 29.3.2015 and the amount of ₹13,57,35,500/- was added back and brought to tax.
- w) Outcome Buildcom Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 15.3.2015 and the amount of ₹13,56,60,000/- was added back and brought to tax.
- x) Rootstar Developers Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 10.3.2015 and the amount of ₹10,11,00,000/- was added back and brought to tax.
- y) Sayonara Fashions Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2013-2014 vide order dated 21.11.2015 which was as per return.
- z) Gajgami Financial Consultants Pvt. Ltd.: Assessment order was passed by the AO u/s 144 of the Act for the AY 2012-2013 vide order dated 16.3.2015 and the amount of ₹10,36,00,000/- was added back and brought to tax
- aa) Glitter Software Pvt. Ltd.: Summary assessment was framed for AY 2012-2013.
- bb) Silverline Tradecom Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3)/147 of the Act for the AY 2012-2013 vide order dated 17.12.2019 which was as per return.
- cc) Capable Dealers Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 15.07.2014 which was as per return.
- dd) Prime Vyapaar Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2009-2010 vide order dated 30.09.2011 which was as per return. For AY 2012-2013 summary assessment was framed.
- ee) Cap Vaniya Pvt. Ltd.: Summary assessment was framed for AY 2012-2013
- ff) Gravity Computech Pvt. Ltd.: Summary assessment was framed for AY 2012-2013.
- gg) Topstar Builders Pvt. Ltd.: Summary assessment was framed for AY 2012-2013
- hh) Sapphire Suppliers Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2012-2013 vide order dated 27.3.2015 which was as per return



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- ii) Overall Realtors Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2011-2012 vide order dated 09.12.2013 which was as per return. Summary assessment was framed for AY 2012-2013.
- iii) Gemini Infra Projects Pvt. Ltd.: Assessment order was passed by the AO u/s 143(3) of the Act for the AY 2011-2012 making addition of ₹35,77,00,000/- which was deleted by the CIT(A). Summary assessment was framed for AY 2012-13.

4.5 The AO has further relied upon the decision in the case of **M/s Bisakha Sales Pvt. Ltd. v CIT [2014] 52 taxmann.com 305 (Kolkata- Trib.)**. In this case, it was held that where assessee-company received share application money with huge and unjustified share premium from corporate entities, merely because said amount was received through banking channel, Assessing Officer was not justified in accepting said transactions as genuine without making proper enquiries. Apparently, he AO has not properly appreciated that decision of the Hon'ble ITAT. The Hon'ble ITAT has never held that share capital and share premium can be assessed as unexplained cash credit merely for high share premium even though the identities and creditworthiness of the share applicant and genuineness of the transactions have been established. What is held by the Hon'ble ITAT is that revision proceedings u/s 263 are valid where the transactions have been accepted as genuine without making proper enquiries.

4.6. Basically the law requires documentary evidences on record in dealing with the issue of authenticity. It is not the case of the AO that necessary documentary evidences are not on record but the only major reliance placed on his action is based on non attendance of the directors of the subscriber companies before him u/s 131 of the Act. It is no longer *res integra* that such non attendance should be considered as a factor which should be used by the AO in coming to an adverse conclusion against the appellant. On an overall analysis of the issue, I find that the AO has not made out his case backed by cogent material on record that the appellant could come under the purview of section 68 of the Act with regard to share capital as reflected in the balance sheet that the same was actually bogus in nature. It is accordingly observed that creditworthiness of the share subscribers to make investment in the share capital of the appellant company cannot be a disputed matter as per material facts on record. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their creditworthiness and source of funds, as well as the genuineness of the transactions being investments in the share

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capital issued by the appellant, which was subscribed to by each of them. Thus, it is proved beyond any doubt or dispute that the share applicants are actually found to have subscribed to the share capital issued by the appellant during the year under consideration as clearly evident not only from their respective books of accounts but also from their audited accounts filed with the income tax authorities in relation to their own income tax assessments and the sources of such funds are also explained by each of the share applicants in their replies addressed to the AO. However, the AO had not brought these indisputable facts on record but acted on his whims and fancies. It is observed that the burden which lay on the appellant, in relation to section 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue. Since the conditions precedent for discharging of burden of proof under the provisions of section 68 of the Act is met with adequate evidence, the addition made by the AO under the pretext of not having discharged the said burden of proof by the assessee deserves to be deleted. In this respect it is imperative to refer to the decision of the jurisdictional High Court in the case of *CIT vs Sagun Commercial (P) Ltd.* [ITA No. 54 of 2001 dated 17.02.2011] which was held as under:

"After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion. We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income-tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed."

4.7. Further, the Hon'ble jurisdictional High Court in the case of *CIT vs. Gayatri Portfolio Fund (P) Ltd* [ITA No. 664 of 2004 dated 26.08.2014], it was observed as follows:

"We find that the learned Tribunal has confirmed the order passed by the CIT who had overturned the order of the Assessing Officer by making the following observation:

"... We find that the identity of the 5 parties investing in the share capital is not in doubt."

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They are body corporates and their complete addressees are on record. This is the very first assessment in the life of the assessee company. The amounts were deposited by these 5 corporates per account payee cheques. These parties were not shareholders of the assessee company at the time when the case was reopened under section 147 or when the summons were issued to them. We find that the assessee has filed before the A.O. copies of share application forms duly signed along with the complete addresses of the investors along with their I.T. file numbers, account payee cheque numbers and the assessee's bank statements disclosing the deposits of these amounts. In these facts we find that the assessee has discharged its initial onus to prove the identity of the investors as well as their creditworthiness. It is not the case of the Revenue that the investor parties did not exist or that the money was not invested by them through banking channels."

Having found such, the Tribunal had relied on the judgement in Hindusthan Tea Trading Co. Ltd. v. CIT (Cal): 263 ITR 289 (Cal) to uphold the order of the CIT.

In view of the findings above noted, no substantial question of law arises and therefore, the appeal and the application are dismissed."

4.8. Again, the Hon'ble Jurisdictional High Court in the case of *CIT vs. Sanchati Projects (P.) Ltd.* [ITAT 140 of 2011 dated 08.06.2011] has observed as under:

"It appears from record that the assessee company during the relevant assessment year under appeal raised its share capital by way of receiving share application money against 1,64,000 equity shares aggregating to Rs.82,00,000/- from 8 different parties. The Assessing Officer, however, treated the share application money of Rs.45,00,000/- received from five different persons as unexplained cash credit in the hands of the assessee.

According to the Assessing Officer, those parties had the same addresses as that of the assessee and they had no fixed assets and utilised their capitals in share application of the assessee company. The Assessing Officer, therefore, was of the view that the money ultimately went to the beneficiary through these companies and there was no advertisement even published by the assessee company inviting share application and no Registrar was engaged for such raising of share capital.

Being dissatisfied the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals), however, set aside the said order of assessment and came to the conclusion that all the share applicant/companies were assessed to the tax and their PAN and acknowledgement of I.T. returns along with their audited balance sheets, bank statements showing transactions etc. were made available to the Assessing Officer. It was pointed out that there was no legal bar of more than one company being registered at the same address and, thus, according to the Commissioner of Income-tax (Appeals), the doubt raised by the Assessing Officer about all those companies at the same address did not hold good.

Being dissatisfied, the Revenue preferred an appeal before the Tribunal below and by the order impugned herein, the said Tribunal has affirmed the order passed by the

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Commissioner of Income-tax (Appeals) After hearing Mr. Nizamuddin, learned advocate appearing on behalf of the appellant

and after going through the aforesaid materials, we agree with the Tribunal below that the Assessing Officer failed to establish that the share applicants did not have the means to make investment and that such investment actually emanated from the coffers of the assessee company. The receipt of share capital money had been duly recorded in the books of the assessee company and the payment of share application money was also duly recorded in the audited account of each of the share applicants.

We, thus, find that both the authorities below on the basis of the aforesaid materials on record were quite justified in deleting the aforesaid addition of Rs. 45,00,000/- done by the Assessing Officer. We are of the view that the order impugned does not suffer from any defect whatsoever and no question of substantial error of law arises justifying our interference.

The appeal is, thus, summarily dismissed."

4.9. There is no evidence adduced on record to show by the AO that the identities of the share applicants are not proved and/or that the subscription made by them to the share capital of the appellant was not genuine and/or the source of investment was not fully explained to the satisfaction of the AO. In almost all the share subscriber companies, assessment was framed u/s 143(3) establishing their identities, genuineness and creditworthiness of the transaction. In view of the foregoing, the AO is directed to delete the impugned amount of ₹85,61,00,000/- made u/s 68 of the Act. These grounds are allowed.



7. The ld. D.R. vehemently submitted before the Bench that the ld. CIT(Appeals) has allowed the appeal of the assessee by ignoring the fact that the share subscribers, who invested in the share capital of the assessee-company have failed to comply the summons issued under section 131 of the Act and, therefore, necessary verification as to identity, creditworthiness of the subscribers and genuineness of the transactions could not be carried out. The ld. D.R. submitted that mere filing of the documents in respect of share subscribers would not *per se* proves the three ingredients as provided

under section 68 of the Act. The ld. D.R. submitted that though the assessee has filed the requisite details, such as Master Data of the subscribers, reply to 133(6) notices issued, certificate of source of funds, copy of bank statements, allotment letters, Board Resolutions, share application forms, audited financial statements and copies of the assessment orders under section 143(3)/147 in the case of subscribers. However, the fact remains that these could not be verified on account of non-appearance of the Directors of the investor companies. The ld. D.R., therefore, prayed that since the three ingredients as provided under section 68 of the Act have not been satisfied, therefore, the order passed by the ld. CIT(Appeals) is incorrect and may be reversed by restoring the order of ld. Assessing Officer.

8. The ld. A.R., on the other hand, relied heavily on the order of ld. CIT(Appeals) by submitting that the assessee has filed all the documents as called for by the ld. Assessing Officer in support of its claim evidencing the receipt of money from the share subscribers along with the books of account. The ld. A.R. also submitted that the documents as required by the ld. Assessing Officer were duly furnished and copies thereof were also filed before the ld. CIT(Appeals) as well as before the AO, which are attached from pages no. 102 to 1164. The ld. A.R. stated that the ld. Assessing Officer has issued notices under section 133(6) of the Act to the share

subscribers and which were duly responded explaining the source of funds and also confirming the investments have not been made in the assessee-company. The ld. A.R. also pointed out that there is no bar in issuing shares at a premium or high premium as this is a management decision to decide as to how the shares were to be allotted and at what price to be issued. The ld. A.R. argued that in most of the cases, the assessments have been framed under section 143(3) of the Act and in some cases under section 143(3)/147 of the Act and copies of the assessment order are placed in the paper book. The ld. A.R. while referring to the appellate order, which refers to the decision of the Hon'ble Supreme Court in the case of CIT-vs.- Orissa Corporation Pvt. Limited reported in (1986) 159 ITR 78 (SC), argued that where the assessee has filed all the evidences comprising names and addresses of the alleged creditors and it was in the knowledge of Revenue that the said creditors were income-tax assesseees and their PANs were available with the Revenue and the Revenue not pursuing the matter apart from issuing summons under section 131 of the Act, then the addition cannot be made on the basis of non-compliance made to the summons under section 131 of the Act thereby upholding the decision of the Hon'ble High Court, which has ,in turn, affirmed the decision of the Tribunal. The ld. A.R. referred to the para 4.3 of the appellate order and submitted that in each case, the ld. 1st Appellate Authority analysed the source of money of

the investor companies and detailed findings were recorded that the investments were within the resources available to the investor companies. The ld. A.R. while referring to para 4.4 of the appellate order submitted that in the case of 36 share subscribers, their cases were either scrutinized under section 143(3) or under section 147 or their returned income have been accepted and thereafter the ld. A.R. referred to the profiles of the of the subscriber companies as discussed by the appellate authorities in the appellate order in the same paragraph. The ld. A.R. therefore, prayed that since the assessee has proved all the parameters as required under the Act, therefore, the order passed by the ld. CIT(Appeals), which is otherwise a very speaking and reasoned one may kindly be upheld by dismissing the appeal of the Revenue.

9. We have heard the rival contentions, perused the relevant material placed before us and the impugned order passed by the ld. CIT(Appeals). We observe that the assessee has raised share application money from 36 subscribers and during the assessment proceedings, the ld. Assessing Officer has issued notices under section 133(6) of the Act to the subscribers, which were duly responded by furnishing the necessary evidences and also confirming the investments having been made in the assessee-company. We also notice that the assessee has also furnished all the information before the ld.

Assessing Officer with necessary evidences comprising PANs, addresses, source of funds, bank statements, allotment letters, Board Resolutions, share application forms, ITRs and audited financial statements, copies of assessments framed by the Department in the cases of subscribers and all these are part of the record before both the authorities below. Besides, the ld. Assessing Officer issued summons under section 131 of the Act to all the subscribers to enforce the personal appearance of the Directors of the investor companies, however, the same were not complied with by the subscribers. The ld. Assessing Officer came to the conclusion that on the basis of above non-compliance of the subscribers to the summons issued under section 131 of the Act that the identity and creditworthiness of the investors and genuineness of the transactions could not be substantiated and therefore, treated the entire share capital as unexplained under section 68 of the Act and added to the income of the assessee. The ld. CIT(Appeals) by appreciating the same facts and evidences as are placed before the ld. Assessing Officer and also before the Tribunal, copies thereof are comprised in the paper book from pages no. 102 to 1164, allowed the appeal of the assessee by holding that the assessee has proved the identity and creditworthiness of the investors and also the genuineness of the transactions. We observe that the ld. CIT(Appeals) has referred to the decision of the Hon'ble Supreme Court in the case of Orissa Corporation

Pvt. Limited (supra), wherein the Hon'ble Apex Court has held that the assessee has given the necessary evidences in the form of PAN, addresses etc. of the alleged creditors to the Id. Assessing Officer and it was in the knowledge of the Revenue that the said creditors were income tax assesseees. The Hon'ble Apex Court has held that there was no effort made to pursue the so-called alleged creditors and the assessee could not do any further. Under these circumstances, the Hon'ble Apex court, has held that the sundry creditors cannot be said to be unexplained and added to the income of the assessee. A perusal of para 4.3 of the appellate order reveals that the Id. CIT(Appeals) has analysed the share capital reserves, net worth of the subscribers and their investments in the assessee-company and also the percentage which the investment made in the assessee-company holds to be total net worth of the subscribers and also appended the observation that in case of 36 investors, their assessments were either framed under section 143(3)/147 or their returns of income have been accepted by the Id. Assessing Officer, Thereafter in para 4.4, the Id. CIT(Appeals) discussed the profiles and the assessment status of each subscriber company. The Id. CIT(Appeals) also referred to the decision of the Hon'ble Jurisdictional High Court in the case of CIT -vs.- Sagun Commercial (P) Limited (supra), wherein the Hon'ble High Court has held that where the assessee has filed before the Id. Assessing Officer the evidences of Permanent

Account Numbers, payment details of shareholding and other bank transactions relating to those payments and the ld. Assessing Officer failed to consider these documentary evidences produced by the assessee, then the addition cannot be made in the hands of assessee by upholding the order of the CIT(Appeals). Similarly the ld. CIT(Appeals) has discussed several decisions in the appellate order and finally recorded a finding that the identity, genuineness and c were duly filed by the assessee and deleted the addition. Having considered the above facts and circumstances, we are inclined to uphold the order of the ld. CIT(Appeals) as the Revenue could not bring any evidence to the contrary before us. Accordingly, ground no. 1 to 7 of the revenue appeal are dismissed by upholding the order of ld. CIT(Appeals) on this issue.

10. The ground no. 8 is general.

11. The issue raised in ground no. 9 is against the deletion of addition of Rs. 4,50,892/- by the ld CIT(A) as made by the ld AO u/s 14A t.w. rule 8D.

12. The facts in brief that the assessee did not have any exempt income during the year which is undisputed. The the AO invoked provisions of section 14A of the Act and calculated the disallowance at Rs. 4,50,892/-.The ld CIT(A) deleted the disallowance on the ground that since there was no exempt income earned during the year , no

disallowance can be made by relying on the decision of Hon'ble Delhi High Court Cheminvest Ltd. CIT 378 ITR 33 (Del) which is the correct position of law as on date. Accordingly we uphold the order of Id CIT(A) on this issue by dismissing ground no. 9 of the revenue appeal.

13. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 8th August, 2023.

Sd/-
(SonjoySarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Kolkata, the day of 8th August, 2023

Copies to : (1) *Income Tax Officer,*
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(3) *Commissioner of Income Tax(Appeals)-7,*
Kolkata;

(4) *Commissioner of Income Tax-;*

(5) *The Departmental Representative*

(6) *Guard File*

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By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.