

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.37/Kol/2021
Assessment Year: 2009-10**

Income-tax Officer, Ward-9(1), Kolkata.	Vs.	Trinetra Vincom Pvt. Ltd., 69, Jamunalal Bajaj Street, Kolkata-700007. (PAN: AACCT9844N)
(Appellant)		(Respondent)

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**C.O. No. 5/Kol/2023
In ITA No.37/Kol/2021
Assessment Year: 2009-10**

Trinetra Vincom Pvt. Ltd.,	Vs.	Income-tax Officer, Ward- 9(1), Kolkata.
(Cross Objector)		(Respondent)

Present for:

Assessee by : Shri Miraj D. Shah, Advocate
Department by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 10.08.2023
Date of Pronouncement : 21.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A)-7, Kolkata vide order no. 708/CIT(A)-7/Ward-9(1)/Kol/14-15 dated 08.09.2020 passed against the assessment order by ITO, Ward-9(1), Kolkata u/s.147/143(3)/263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.03.2014 for AY 2009-10.

2. Appeal of revenue is time barred by 32 days. We have perused the condonation petition and found that the delay is on account of Covid 19 Pandemic. So, there is a reasonable cause for filing the appeal late by 32 days. Hence, we condone the delay and admit the appeal for hearing.

3. Revenue has raised the following grounds of appeal:

“1. That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is Justified to allow the appeal against the assessment order in respect of deleting the addition made by A.O. on introduction of share capital including share premium to the tune of Rs.13,31,00,000/-?”

2. That on the fact and circumstances of the case, as to whether Ld. CIT(A) was justified in deleting the addition of Rs.13,31,00,000/- made by 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 and the circumstances of the case, whether the Ld. CIT(A) Kol is justified in overlooking the principles which has been laid down by the Hon'ble Supreme Court in the case of Pr.CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd (412 ITR 161), which 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.

4.That on the facts and the circumstances of the case, whether the Ld. CIT(A) Kol is justified in ignoring the principle which has been laid down by the Hon'ble Supreme court In the case of Pr.CIT(Central)-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd (412 ITR 161), which also suggests that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, 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 companies to whom shares were allotted on private placement basis. Thus, the decision of the Ld. CIT(A) is erroneous in holding that the raised share capital including share premium was not the assessee's own income.

5. That on the facts and the circumstances of the case, whether the Ld. CIT(A) Kol is justified in ignoring the aspect of Section 68 of the Act and giving relief to the assessee? The principle which has been laid down by the Hon'ble Supreme court in the case of Pr.CIT(Central)-1, Delhi 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 creditworthiness 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 68 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 fact and circumstances of the case, whether the Ld. CIT(A) was Justified In deleting the addition of Rs.13,31,00,000/- made u/s 68 wherein the identity, genuineness and creditworthiness of investor companies remained unsubstantiated, as they failed to appear before the A.O. against summons issued u/s 131 ignoring the decision of Hon'ble Supreme court in the case of Pr.CIT(Central)-1, Delhi Vs NRA Iron & Steel Pvt. Ltd (412 ITR 161)?

7. That on the fact and circumstances of the case, whether the Ld. CIT(A) was correct in granting relief where as the assessee failed to discharge its legal obligation to prove the receipt of share capital and share premium money to the satisfaction of the A.O?

8. That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is justified in allowing the appeal without considering the fact that the sources of share application money including share premium which were not properly explained by the assessee and It lacked any real profit-making business credence?

9. That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is justified in considering the facts that the creditworthiness of the subscribing companies were not established before the A.O. during the course of the assessment proceedings though the onus of providing the identity of the creditor vests solely with the assessee?

10. That on the fact and circumstances of the case, as to whether the Ld. CIT(A) Kol is justified in not considering the facts that the real intention of the assessee company for introducing such huge amount in the form of share capital and share premium in its business only to introduce its unaccounted money in the form of fresh share capital?"

3.1. Grounds of Cross Objection by the assessee are as under:

"1. For that the facts and circumstances of the case the notice u/s 148 of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.

2. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was bad in law and hence the reopening be declared to be bad in law and the reassessment order be quashed.

3. For that the reasons recorded before reopening of assessment u/s 148 of the Income Tax Act 1961 did not meet the test of law laid down by various courts an hence the reopening be declared to be bad in law and the reassessment order be quashed.

4. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was on borrowed satisfaction and not on any independent application of mind by the assessing officer and hence the reopening be declared to be bad in law and the reassessment order be quashed.

5. For that the reopening of assessment u/s 148 of the Income Tax Act 1961 was without any relevant material having link to escapement of income and

hence the reopening be declared to be bad in law and the reassessment order be quashed.

6. For that the sanction u/s 151 of the Income Tax Act 1961 before the reopening of assessment u/s 148 of the IT Act 1961 was mechanical and without application of proper mind and there was no sanction as required u/s 151, and was bad in law and hence the reopening be held to be bad in law.

7. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in upholding that the material based on which the Ld. Assessment Officer passed the assessment order are collected behind the back of the assessee and which were not provided during the course of assessment proceeding, thus material should be excluded/ignored for the purpose of this case.

8. For that in the facts and circumstances of the case the Learned Commissioner of Income Tax Appeals erred in not upholding that the statement of third parties on which the Ld Assessment officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.

9. For that the assessment order passed u/s 147/143(3) of the Income Tax Act,1961 was without jurisdiction and hence the Ld CITA(A) erred in not considering the same. The assessment order was bad in law and should be quashed.

10. For that the facts and circumstances of the case the notice u/s 143(2) of the Income Tax Act 1961 was without jurisdiction and bad in law and hence the entire assessment order is bad in law and the same should be quashed.

11. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.”

3.2. On behalf of the assessee, Ld. Counsel did not press the Cross Objections so filed. Accordingly, the same is disposed off as not pressed.

4. Pursuant to the appeal of the Revenue, brief facts of the case are that assessee filed its return of income on 31.08.2009, reporting loss of Rs.1,407/-. The case was reopened and the assessment was completed u/s. 143(3)/147 of the Act by the AO. In the said order, Ld. AO made addition on account of profit on share dealings amounting to Rs.53,250/-. The CIT, Kolkata-II, Kolkata assumed jurisdiction u/s. 263 of the Act on the justification that the assessment framed was erroneous and prejudicial to the interest of the revenue for not verifying the subscriptions by all the share applicants and accordingly,

the assessment was remitted to the file of the AO for de novo consideration of the issue. In the said order passed according to the directions of the Ld. CIT, Kolkata, Ld. AO made an addition on account of unaccounted cash credit u/s. 68 of the Act in the sum of Rs.13,31,00,000/-.

3.1. Assessee company has issued its share capital including premium to the following ten companies:

Sl. No.	Name	Address	Amount (Rs.) invested in Assessee company
1.	M/s. Aswini commotrade (P) Ltd.	33, Brabourne Road, Kolkata-700001.	60,00,000/-
2.	BAISAKHI Marketing (P) Ltd.	23, Brabourne Road, Kolkata-700001.	2,20,00,000/-
3.	Baisali commotrade (P) Ltd.	133, Canning Street, Kolkata-7001.	1,00,00,000/-
4.	Debdaru Suppliers (P) Ltd.	10, Clive Row, Kolkata-700001.	2,00,00,000/-
5.	Debraj Dealers Pvt. ltd.	10, Clive Row, Kolkata-700001	2,20,00,000/-
6.	Highland Tradelink (P) Ltd.	11, Clive Row, Kolkata-700001	10,00,000/-
7.	Highlighted Commotrade (P) Ltd.	109/A, Canning Street, Kolkata-700001.	1,00,00,000/-
8.	Maharaj Voincom (P) Ltd.	63, Radhabazar, Kolkata-700001.	1,00,00,000/-
9.	Minerva Commodities P. ltd.	31, Brabourne Road, Kolkata-700001	2,00,00,000/-
10.	Olympus Vinimay P. Ltd.	23/24, Radha Bazar, Kolkata-700001.	1,20,00,000/-

3.2. Not convinced by the details and documentary evidence placed on record, Ld. AO by applying the test of human probability made the addition u/s. 68 of the Act. Aggrieved, assessee went in appeal before the Ld. CIT(A), who after elaborately dealing with the facts of the case on all the three dimensions of section 68 of the Act, in respect of identity and creditworthiness of the share subscribing companies and

also the genuineness of the transactions, deleted the addition so made. Aggrieved, Revenue is now in appeal before the Tribunal.

4. Before us, Shri Miraj D. Shah, Advocate represented the assessee and Shri Abhijit Kundu, CIT, DR appeared for the Revenue.

5. Ld. Counsel for the assessee submitted that to establish the identity and creditworthiness of the shareholders and genuineness of the transactions, assessee has submitted all the relevant details and documents in the course of assessment as well as first appellate proceedings, details of which are tabulated as under for ease of reference from the index of paper book placed on record before the Tribunal.

Sl No	Description	Filed before AO	Filed before CIT A	Pages
1	Details of Share Application and Share Applicants	Yes	Yes	01 – 02
2	Application for certified copies dated 21/11/2022	Yes	Yes	03 – 04
3	Reply of Ld. Assessing Officer dated 24/11/2022	Yes	Yes	05
4	Certified copy of notice u/s 148 of the Income Tax Act 1961 dated 05/04/2010	Yes	Yes	06
5	Reply of the Assessee to notice u/s 148 of the Income Tax Act 1961 dated 30/04/2010	Yes	Yes	07
6	Copy of Assessment Order of the Share Applicants filed before CIT(A)	----	Yes	08 – 34
7	Copy of Paper Book filed before CIT(A)	Yes	Yes	35 – 165
8	Letter filed before CIT(A) dated 16/03/2016	----	Yes	166 – 175

5.1. Index of paper book filed before the Ld. CIT(A) is extracted below:

Sl. No.	Nature of Documents	Annexure	Page No.																						
A	General																								
1.	ITR Acknowledgement & Final Accounts of the Assessee Company for the A.Y. 2009-10	A	1 TO 5																						
2.	Bank Statement of the Assessee Company	B	6 TO 8																						
3.	List of Share Applicants	C	9																						
4.	ITR Acknowledgement, Final Accounts, Bank Statement, Allotment Advice and reply to notice issued u/s 133 (6) of the share applicant companies <table border="1" data-bbox="331 853 927 1534"> <thead> <tr> <th></th> <th>Investment details at Page No.</th> </tr> </thead> <tbody> <tr> <td>Aswini Commotrade (P) Ltd</td> <td>13</td> </tr> <tr> <td>Baisakhi Marketing (P) Ltd</td> <td>25</td> </tr> <tr> <td>Baisali Commotrade (P) Ltd</td> <td>38</td> </tr> <tr> <td>Debdaru Suppliers (P) Ltd</td> <td>50</td> </tr> <tr> <td>Debraj Dealers (P) Ltd.</td> <td>62</td> </tr> <tr> <td>Highland Tradelink (P) Ltd</td> <td>74</td> </tr> <tr> <td>Highlight Commotrade (P) Ltd</td> <td>84</td> </tr> <tr> <td>Maharaj Vincom (P) Ltd</td> <td>93</td> </tr> <tr> <td>Minerva Commodities (P) Ltd</td> <td>104</td> </tr> <tr> <td>Olympus Vinimay (P) Ltd</td> <td>116</td> </tr> </tbody> </table>		Investment details at Page No.	Aswini Commotrade (P) Ltd	13	Baisakhi Marketing (P) Ltd	25	Baisali Commotrade (P) Ltd	38	Debdaru Suppliers (P) Ltd	50	Debraj Dealers (P) Ltd.	62	Highland Tradelink (P) Ltd	74	Highlight Commotrade (P) Ltd	84	Maharaj Vincom (P) Ltd	93	Minerva Commodities (P) Ltd	104	Olympus Vinimay (P) Ltd	116	D	10 TO 123
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Olympus Vinimay (P) Ltd	116																								
5.	Copy of letter Submitted to the Assessing officer by the Director of the Company in response to Notice U/s 131 of the Income Tax Act 1961	E	124																						
6.	Copy of Death Certificate	F	125																						

5.2. Ld. Counsel reiterated that the share subscribing companies are body corporate, registered with ROC and are assessed to income-tax. He further stated that these share subscribing companies had

confirmed the transactions, filed relevant papers and documents and also explained the source of funds. He thus, emphasized that assessee had discharged its primary onus casted upon it u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. AO to disprove the material placed before him. Without doing so, the addition made by the Ld. AO is based on conjectures and surmises and, therefore, cannot be sustained.

5.3. Ld. Counsel also emphasized on the fact that in addition to other evidence, assessee has submitted letter from the subscribers in response to notice issued u/s. 133(6) of the Act, confirming the investment made in the share capital of the assessee. He submitted that when a confirmation is submitted, it cannot be ignored. The confirmations made are to be *prima facie* considered as correct unless evidence is brought on record to falsify the claim made therein. According to him, even in the submissions including ITRs, audit reports, share application details etc. as listed above, the Ld. AO has not found fault in any of the details submitted and simply proceeded to make addition in respect of the amount of share capital and premium.

5.4. On the three basic ingredients for any cash credit viz., identity, creditworthiness of the subscribers and the genuineness of the transactions, Ld. Counsel submitted that all of these are fulfilled. In this respect he submitted as under:

(i) On identity : - All the shareholders are regular income tax assesseees and have filed their income tax returns. Ld. Counsel thus emphasized that identity of all the ten share subscribers is well established and cannot be doubted. Further, he submitted that these subscribers are body corporate registered under the Companies Act, 1956.

ii) On creditworthiness: To establish the creditworthiness of the ten subscribers, details relating to source of fund in the hands of these shareholders represented by their respective net worth were furnished along with their respective bank statements and audited financial statements. The details of source of fund furnished by the assessee are reproduced in the table below:

TRINETRA VINCOM PRIVATE LIMITED								
Assessment Year : 2009-2010								
Details of Share Application								
Sl. No.	Name of Share Applicant	Share Capital	Reserve & Surplus	Misc. Expenditures	Accumulate Loss	Net Worth	Amount Invested in Assessee Company	Investment (%) to Net Worth (%)
		1	2	3	4	5 (1+2-3+4)	6	7
1	M/s. Aaravi Commodore (P) Ltd.	114000.00	103792000.00	29200.00	-729.04	104029520.96	600000.00	0.72
2	M/s. Basakhi Marketing (P) Ltd.	140000.00	128700000.00	30700.00	-1740.06	128920000.94	2200000.00	16.31
3	M/s. Basal Commodore (P) Ltd.	1385000.00	127715000.00	33700.00	-1887.30	128531782.70	1000000.00	7.77
4	M/s. Debraj Gyptora (P) Ltd.	1500000.00	138000000.00	35500.00	-1459.05	140104000.95	2000000.00	14.27
5	M/s. Debraj Exoters (P) Ltd.	1485000.00	126640000.00	35600.00	-730.35	128120410.34	2200000.00	16.36
6	M/s. Highland Tradains (P) Ltd.	1500000.00	120000000.00	35600.00	-7480.68	140120000.44	1000000.00	0.71
7	M/s. Highlight Commodore (P) Ltd.	1420000.00	130800000.00	31800.00	-836.08	132180000.92	1000000.00	7.57
8	M/s. Material Vincom (P) Ltd.	1300000.00	124740000.00	32700.00	-4048.74	126120000.96	1000000.00	7.93
9	M/s. Minerva Commodore (P) Ltd.	1290000.00	114840000.00	31000.00	-3338.05	116120000.95	2000000.00	17.25
10	M/s. Olympus Vinmay (P) Ltd.	1301000.00	127800000.00	30700.00	-1718.01	128920000.99	1200000.00	0.93
	TOTAL						13000000.00	

It was thus, submitted that the above table unequivocally testifies and proves that the subscribers had sufficient fund for making investment in the share capital of the assessee.

iii) On genuineness of the transaction: It was submitted that the amounts were invested by the subscribers through proper banking channel which is duly reflected in the respective financial statements of the subscribers. Since the investments reflected in their respective financial statements and the source of such investments by them in the assessee has been accepted by the Department in their respective assessments, already referred above, are thus genuine and transaction cannot be doubted.

6. Per contra, Ld. CIT DR placed reliance on the order of the Ld. AO.

7. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the elaborate observations and findings given by the Ld. CIT(A) while giving relief to the assessee. At the outset, we note that notices u/s. 133(6) of the Act were issued by the Ld. AO to all the share subscribers, who had replied giving all the details and documents required by the Ld. AO along with confirming the transaction of they making investment in the share capital of the assessee. We also take note of the undisputed fact of assessments made by the Department for share subscribers, which establishes their identity, creditworthiness and the genuineness of the transactions.

7.1. From the perusal of the paper book and the documents placed therein, it is vivid that all the share subscribers are (i) income-tax assesseees, (ii) they are filing their income-tax returns, (iii) share application form and allotment letter is available on record, (iv) share application money was made by account payee cheques, (v) details of the bank accounts belonging to share subscribers and their bank statements, (vi) in none of the transactions there are any deposit of cash before issuing cheques to the assessee, (vii) all the share subscribers are having substantial creditworthiness represented by their capital and reserves.

7.2. We also take note of the elaborate and well reasoned findings and decisions arrived at by the Ld. CIT(A) by taking into consideration all the details and documents placed on record. The relevant findings and decisions are extracted as under:

The AO in the impugned assessment proceedings took steps to frame the fresh assessment order in respect of the assessment year under appeal. It is observed that the AO had issued notices u/s 133(6) of the Act, to each of the share subscribers again. Such notices were duly served upon the respective share applicants at their respective addresses on the records of the appellant. Service of such notices u/s 133(6) of the Act to each of the share applicants at their respective known addresses proves their respective identities. It is observed that each of the share applicants are registered under the Companies Act, 1956 and are on the records of Registrar of Companies functioning under Ministry of Corporate Affairs, Government of India. In fact, each of the share applicants has responded to the statutory notices issued to them u/s 133(6) of the Act. In their respective replies, the share applicants had disclosed, inter alia, their Permanent Account Numbers along with the acknowledgment of their return of income and furnished audit report and financial statements which in my opinion proves their identities to the hilt. It is also observed that each of the share applicants maintained bank accounts; and copies of their respective bank accounts from which they made payments to the appellant for subscribing to the shares issued to them, was filed by each of them before the AO. Further, each of the share applicants accepted the fact that they had subscribed to the shares issued by the appellant; and that such transactions were duly reflected in their respective books of accounts, as well as in their audited Balance Sheets. These facts, in my opinion, clearly prove the genuineness of the transactions.

4.4. It is also observed that each of the share applicants explained the source of funds, from which they made payments to the appellant for subscribing to the share capital. It is imperative to consider the replies of the share applicants in seriatim as under:

- a. In the case of Aswini Commotrade P. Ltd. it was stated that:

"The source of fund was the amount of money received as share application money from M/s Highlight Commotrade Pvt Ltd of 10/A, Canning Street, Kolkata-700 001 having PAN No AACCH0877P.

- b. In the case of Baisakhi Marketing P. Ltd. it was stated that:

"We have received the share application money from M/s Highlight Commotrade Pvt Ltd of 109/A, Canning Street, Kolkata-700 001 with PAN No. AACCH0877P which was the source of fund for our investment"

- c. In the case of Baisali Commotrade P. Ltd. it was stated that:

"The source of fund was the amount received as share application money from M/s Baisakhi Marketing (P) Ltd. having PAN No AADCB5096P of 23, Brabourne Road, Kolkata-700 001."

- d. In the case of Debdaru Suppliers P. Ltd. they also filed their confirmation of making share application and regarding source of capital it was stated that:

"The source of fund received by the Co. was from M/s Olympus Vinimay (P) Ltd of 23/24, Radha Bazar, Kolkata-700 001 & Pan No. AABCO0622J"

- e. In the case of Debraj Dealers P. Ltd. they also confirmed the transactions and regarding source it was stated that:

"The source of investment was the fund received by the company towards share application money received."

- f. In the case of Highland Tradelink P. Ltd. they also confirmed the transactions and regarding the source of capital it was stated that it was stated that:

"The Source of fund was amount received by company as share application money. The share application money received by the company was received from M/s. Alishan Complex (P) Ltd of 10 A, Hospital Street, Kolkata (PAN No. AAFCA2673K)"

- g. In the case of Highlight Commotrade (P) Ltd. the transactions were confirmed and regarding source of fund it was stated that:

"The source of investment was the fund received by the company as share application money from M/s Minerva Coomodities (P) Ltd of 31, Brabourne road, Kolkata-1 and the PAN No is AAFCM6498L."

- h. In the case of Maharaja Vincom P. Ltd. the transactions were confirmed and regarding source of fund it was stated that:

"The Source of investment was amount received by the company from M/s Olympus Vinimay (P) Ltd of 23/24, Radha Bazar, Kolkata-700 001 (PAN No.AABCO0622J)"

- i. In the case of Minerva Commodities P. Ltd. the transactions were confirmed and it was stated that:

"The source of amount invested was amount received by us from M/s Highlight Suppliers Pvt. Ltd (PAN No.AACCH0718B) of 15-B Clive Row, Kolkata-700 001."

j. In the case of Olympus Vinimay P. Ltd. it was stated that:

"The source for investment was amount received from M/s Highlight Commotrade (P) Ltd. (PAN No. AACCH0871P) of 109/A, Canning Street, Kolkata-700 001"

These facts borne on record by the share applicants, in my opinion, clearly prove their source of funds, and their capacity for making such payments and accordingly, the criteria of their creditworthiness is proved. The AO has not found any defect and/or deficiency in the source of funds explained by the share applicants through their replies to the statutory notices issued u/s 133(6) of the Act to them. It is also observed that every share applicant in their respective replies to the statutory notices issued u/s 133(6) of the Act, furnished copies of their income tax acknowledgments evidencing filing of income tax returns by each of them, copies of their audited accounts including Balance Sheets wherein such investments made by each of them in the subscription of share capital issued by the appellant are duly reflected as also copies of their bank statements for the relevant period from which such subscription monies were paid by them respectively and copy of the allotment advise received by them from the appellant in respect of shares allotted to them. The return of allotment as well as the annual return for the relevant year filed by the appellant with the Registrar of Companies, Ministry of Corporate Affairs, further proves the fact of allotment of shares to the share applicants. It is further observed that the net worth of the each of the share applicants, as disclosed in their audited Balance Sheets, far exceeded the amount of investments made by them in the shares of the appellant. It is observed that funds held on account of shareholders disclosed in the balance sheets of Aswini Commotrade Pvt. Ltd. is in a sum of ₹10,48,99,276/- as on the 31.03.2009 and only a sum of ₹60,00,000/- was invested as share application money with the appellant, Baisakhi Marketing Pvt. Ltd. is in a sum of ₹13,00,98,259/- as on the 31.03.2009 and only a sum of ₹2,20,00,000/- was invested as share application money with the appellant, Baisali Commotrade Pvt. Ltd. is in a sum of ₹12,85,98,032/- as on the 31.03.2009 and only a sum of ₹1,00,00,000/- was invested as share application money with the appellant, Debbaru Suppliers Pvt. Ltd. is in a sum of ₹14,00,98,530/- as on the 31.03.2009 and only a sum of ₹2,00,00,000/- was invested as share application money with the appellant, Debraj Dealers Pvt. Ltd. is in a sum of ₹13,60,99,860/- as on the 31.03.2009 and only a sum of ₹2,20,00,000/-

was invested as share application money with the appellant, Highland Tradelink Pvt. Ltd. is in a sum of ₹14,00,92,510/- as on the 31.03.2009 and only a sum of ₹10,00,000/- was invested as share application money with the appellant, Highlight Commotrade Pvt. Ltd. is in a sum of ₹13,20,94,664/- as on the 31.03.2009 and only a sum of ₹1,00,00,000/- was invested as share application money with the appellant, Maharaja Vincom Pvt. Ltd. is in a sum of ₹12,60,95,953/- as on the 31.03.2009 and only a sum of ₹1,00,00,000/- was invested as share application money with the appellant, Minerva Commodities Pvt. Ltd. is in a sum of ₹11,60,96,664/- as on the 31.03.2009 and only a sum of ₹2,00,00,000/- was invested as share application money with the appellant, Olympus Vinimay Pvt. Ltd. is in a sum of ₹12,91,98,284/- as on the 31.03.2009 and only a sum of ₹1,20,00,000/- was invested as share application money with the appellant. It is accordingly observed that these facts adequately prove their credit worthiness to make investment in the share capital of the appellant company. The aforesaid facts underlined by evidences clearly prove the identity of the share applicants, their capacity and source of funds of the share applicants, as well as the genuineness of the transactions in relation to the share 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, in the impugned previous year relevant to the assessment year under appeal, 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 her whims and fancies. It is observed that the burden which lay on the appellant, in relation to s. 68 of the Act, has been duly discharged by it and nothing further remains to be proved by it on the issue.

7.1. 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 appellant company along with directors of 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 with 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 when there is no finding with any cogent material evidence 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 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. Hence, I am inclined to accept the arguments tendered by the A/R of the appellant in this respect. In view of the above, I have no hesitation to hold that the impugned addition made by invoking the provisions of s. 68 by the AO is not justified in the circumstances and accordingly, direct him to delete such addition of ₹13,31,00,000/- made on this account. Thus, these grounds of the appeal are allowed.

7.3. Before concluding, to give our finding, we place reliance on the following judicial precedents to buttress our observations and conclusions :

i) The decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *CIT v. Dataware Pvt. Ltd. in ITAT No. 263 of 2011 dated 21.09.2011* wherein Hon'ble jurisdictional High Court held that

"After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence."

ii) Decision of Hon'ble jurisdiction High Court of Calcutta in the case of *CIT Vs. Sagun Commercial P. Ltd. (ITA No. 54 of 2001 dated 17.02.2011)* wherein it 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."

iii) Decision of Hon'ble Madras High Court in the case of *CIT v. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Mad)* wherein it was held as under:

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal."

iv) Decision of Hon'ble Madras High Court in the case of *Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad)* is also referred wherein it was held as under:

"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."

7.4. In the course of assessment proceeding, Ld. AO directed the assessee to produce the director of the assessee and also the directors of the subscriber companies along with relevant documentary evidence and details which was not complied with. Ld. Counsel submitted that mere non-appearance of directors is no basis for invoking provisions of section 68 of the Act for which he placed reliance on the decision of Hon'ble Supreme Court in the case of *CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)* wherein it was held as under:

“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.”

8. Further, in respect of ground nos. 3, 4, 5 and 6, reference to the judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (412 ITR 161) is found to be distinguishable on facts in as much as in the said decision, Ld. AO has made extensive enquiries and some of investors were found to be non-existent. Upon going through the facts involved in that judgment, it is noted that, in the decided case, the AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent, which is certainly not the case before us. In the decided case, certain investor companies also failed to produce their bank statements proving the source for making investments in assessee company. In the facts of the present case, however, not only have the shareholders furnished their bank statements and investment schedules to establish the source of funds but they have also furnished their respective sources of funds in response to notices issued by the AO u/s. 133(6) of the Act.

9. Considering the facts and circumstances narrated and analysed above, all the details and documents placed on record corroborating the claim of the assessee, the judicial precedents referred above and detailed and exhaustive exercise undertaken by the Ld. CIT(A), we unhesitatingly uphold the order of Ld. CIT(A) without any interference. Accordingly, addition made by the Ld. AO towards share capital including share premium of Rs.13,31,00,000/- is deleted. Thus, grounds taken by the revenue in this regard are dismissed.

10. In the result, both the appeal of the revenue and Cross Objection of the assessee are dismissed.

Order pronounced in the open court on 21st August, 2023.

Sd/-
(Rajpal Yadav)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21st August, 2023

JD, Sr. P.S.

Copy to:

- 1.The Appellant:
- 2.The Respondent:.
- 3.CIT(A)-7, Kolkata
- 4.CIT
- 5.DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata