

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA**

**BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&**

DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 727/Kol/2023
Assessment Year: 2012-13**

Abhay Mineral Pvt. Ltd. 13A, Deodar Street Ground Floor Ballygunge Kolkata - 700019 [PAN: AAHCA6532D]	Vs	Income Tax Officer, Ward-12(1), Kolkata
--	-----------	--

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

Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri B.K. Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 04/09/2023

घोषणा की तारीख /Date of Pronouncement: 26/09/2023

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal has been filed by the assessee is directed against the order of the National Faceless Appeal Centre (hereinafter 'the Id. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 23/06/2023, for Assessment Year 2012-13.

2. The sole grievance of the assessee is that the Id. CIT(A) erred in confirming the addition for unexplained cash credit at Rs.2,13,30,000/- u/s 68 of the Act. The facts in brief are that the assessee is a private limited company and engaged in investment business. Income of Rs. 74,460/- was declared in the e-return filed on 21/09/2012. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. The Id. Assessing Officer noticed that

during the year, the assessee has received share capital and share premium totalling to Rs. 2,13,50,000/-. For the purposes of proper verification and examination of the existence and creditworthiness of the share subscribers and the genuineness of the share subscription transactions, the Id. Assessing Officer issued summons u/s 131 of the Act. Though various details were filed by the assessee in support of its contentions that the alleged share application money is duly explained but there was not personal presence of the directors. The Id. Assessing Officer observed that the assessee has not been able to discharge its burden of proof and thus, made addition for unexplained cash credit u/s 68 of the Act at Rs.2,13,50,000/- and assessed income at Rs.2,14,24,460/-.

2.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) and again filed all the details including financial statements, identity proofs, confirmations but again failed to succeed.

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

4. The Id. Counsel for the assessee reiterated the submissions filed before the lower authorities and referring to the paper book containing various documentary evidences, stated that the alleged cash creditors except one individual are non-banking finance companies (NBFCs) duly registered with the Reserve Bank of India and have been assessed to tax u/s 143(3) of the Act for the same year and the source of fund is duly explained which has been made through banking channels and the share subscribers have sufficient capital and reserves and surplus to make investment in the assessee company. Reliance placed on

various decisions including one in the case of *Mahacol Tie Up (P) Ltd., Kolkata vs I.T.O. in I.T.A No.2269/Kol/2019, order dt. 12/10/2022.*

5. On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities and stated that impugned addition may be confirmed as the share subscriber companies are merely providing accommodation entries and do not have any sufficient financial worth to justify the alleged investment in the equity share capital of the assessee company. He also stated that in spite of several notices, directors of the assessee company as well as share subscriber company have not appeared.

6. We have heard rival contentions and carefully gone through the material placed on record. The addition u/s 68 of the Act for unexplained share capital and share premium is in dispute before us. We notice that during the year under consideration, assessee received the alleged sum of Rs.2,13,50,000/- from six share subscribers which included one individual, namely, Abhay Kumar Jain and the remaining are private limited companies, namely, Abhay Commerce Pvt. Ltd., JCC Holding Pvt. Ltd., Madhuvan Dealers Pvt. Ltd., Mahacoal Tie-up Pvt. Ltd. and R.R. Coal Agencies Pvt. Ltd.. We observe that the assessee filed complete financial documents and identity proof to explain the identity and creditworthiness of the share subscribers and genuineness of the transactions and the ld. Assessing Officer without finding any fault or discrepancy in such documents has made the addition merely for the non-appearance of directors/promoters of the assessee company as well as share

subscribers. We observe that the assessee has furnished the following details in the paper book pertaining to the alleged share subscribers before the lower authorities along with financials of the assessee company:-

<u>Sl.No.</u>	<u>Particulars</u>	<u>Page No.</u>	<u>Filed/ Available before</u>
1.	Copy of Audited Financial Statements of Abhay Minerals Pvt Ltd as on 31 st March 2012	1-12	AO &CIT(A)
2.	Details of Share application & Premium received during the year ended 31.03.2012 along with Networth of subscribers.	13	Do
3.	Documents relating to Abhay Kumar Jain (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) • PAN Card • Copy of ITR Acknowledgement (Asst. Yr. 2012-13) • Balance Sheet as on 31.03.2012 • Details of source of fund • Bank Statement • Share Allotment Advice • Reply to notice u/s 131 	14 15 16 17 18 19-22 23 24	Do
4.	Documents relating to Abhay Commerce Pvt Ltd (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) • PAN Card • RBI Registration Certificate • Copy of ITR Acknowledgement (Asstt. Yr. 2012-13) • Copy of Auditor's Report & Audited Financial Statements as on 31st March 2012 • Ledger account of Investment in Unquoted Shares • Details of source of fund • Bank Statement • Allotment Advice • Copy of Assessment Order u/s 143(3) for Asst Year 2012-13 • Reply to notice u/s 131 	25 26 27 28 29-41 42 43 44-45 46 47-50 51	Do

5.	Documents relating to JCC Holding Pvt Ltd (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) 52 • PAN Card 53 • RBI Registration Certificate 54 • Copy of ITR Acknowledgement (Asstt. Yr.. 2012-13) 55 • Copy of Auditor's Report & Audited Financial Statements as on 31st March 2012 56-67 • Details of source of fund 68 • Bank Statement 69 • Allotment Advice 70 • Copy of Assessment Order u/s 143(3)/147 for Asst Year 2012-13 71 • Reply to notice u/s 131 72-73 	Do
6.	Documents relating to Madhuvan Dealers Pvt Ltd (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) 74 • PAN Card 75 • RBI Registration Certificate 76 • Copy of ITR Acknowledgement (Asstt. Yr. 2012-13) 77 • Copy of Auditor's Report & Audited Financial Statements as on 31st March 2012 78-89 • Details of source of fund 90 • Bank Statement 91 • Allotment Advice 92 • Copy of Assessment Order u/s 143(3) for Asst Year 2012-13 93-96 • Reply to notice u/s 131 97 	Do
7.	Documents relating to Mahacol Tie-Up Pvt Ltd (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) 98 • PAN Card 99 • RBI Registration Certificate 100 • Copy of ITR Acknowledgement (Asstt. Yr. 2012-13) 101 • Copy of Auditor's Report & Audited Financial Statements as on 31st March 102-114 	Do

	2012 <ul style="list-style-type: none"> • Details of source of fund 115 • Bank Statement 116 • Allotment Advice 117 • Copy of Assessment Order u/s 143(3) for Asst Year 2012-13 118-121 • Reply to notice u/s 131 122 • Copy of Order of ITAT pronounced on 12.10.2022 123-131 		
8.	Documents relating to R. R. Coal Agencies Pvt Ltd (Subscriber) <ul style="list-style-type: none"> • Reply to notice u/s 133(6) 132 • PAN Card 133 • RBI Registration Certificate 134 • Copy of ITR Acknowledgement (Asstt. Yr. 2012-13) 135 • Copy of Auditor's Report & Audited Financial Statements as on 31st March 2012 136-147 • Details of source of fund 148 • Bank Statement 149 • Allotment Advice 150 • Copy of Assessment Order u/s 143(3) for Asst Year 2012-13 151-152 • Reply to notice u/s 131 153 		Do

7. Further we observe that the share subscriber companies are NBFCs duly registered with the RBI and have been assessed u/s 143(3) of the Act for the very same Assessment Year 2012-13. We also that all the share subscribers have replied to the notice u/s 133(6) of the Act directly to the Assessing Officer along with relevant documents called for in such notices. We also notice that share subscribers have sufficient funds in the form of share capital and reserve and surplus so as to justify the investment in the assessee

company. Both the lower authorities have only focused on the point of non-appearance but no discrepancy has been observed in the documents filed by the assessee. We observe that under similar set of circumstances, this Tribunal in the case of *Mahacol Tie Up (P) Ltd. (supra)*, which co-incidentally is one of the alleged share subscriber company, has dealt with the very same issue and under the similar set of facts and circumstances decided in favour of the assessee as follows:-

“2. The brief facts of the case are that the assessing officer during the assessment proceedings noted from the accounts of the assessee that the assessee during the year has shown receipt of share capital including share premium of Rs. 2.15 crores from seven different private limited companies. To verify the identity and creditworthiness of the shareholders and also about the genuineness of the transaction, the assessing Officer issued summons u/s 131 of the Act to the directors of the share subscriber companies. Since the said summons were not complied with, the AO held that the assessee had failed to discharge the burden of proof to substantiate the identity and creditworthiness of the share subscribers and genuineness of the transaction. He therefore made the impugned addition of share capital and share premium as unexplained income of the assessee u/s 68 of the Income Tax Act. The LdCIT(A) confirmed the additions so made by the AO.

3. We have heard the rival contentions of the ld. Representatives of the parties.

The ld. Counsel for the assessee in support of his case has made the following submissions :

1. Share Capital of 2.15 Crores raised from 7 companies at premium of 2490 per share. Details are annexed in paper book page 22- 22A. Complete details of identity and creditworthiness of the shareholders and genuineness of the transactions were filed before the AO as annexed in paper book page 37-107.
2. All share applicants issued notices u/s 133(6) and in response, compliances made by all of them vide paper book page 23- 29 whereby their financials, bank statement, source of "source of funds", ITR etc. were submitted. However the assessment order is silent and does not narrate the fact on this point. The AO added the same in the assessment made u/s 143(3) only on the ground that the shareholders did not appear personally in response to notice u/s 131 nor assessee could produce the shareholders.

However the shareholders duly complied with the summons by filing their reply- vide paper book page 148-160.

3. Shareholders had substantial "Net worth" in comparison to investment made by way of share subscription In appellant company as depicted in their balance sheet- OyesterCommotrade Pvt Ltd having net worth of more than 1.42 crores Vide paper book page 38, Skyhigh Minerals Pvt Ltd having net worth of more than 2.47 crores vide paper book page 47, Mahalaxmi Promotion Pvt. Ltd having networth of more than 7.98 crores vide paper book page 56, Niknar Commodities Pvt Ltd having networth of more than 5.09 crores Vide paper book page 68, R.R.Coal Agencies Pvt Ltd having networth of more than 12 crores vide paper book page 80, Rosemary Dealcom Pvt Ltd having networth of more than 1.87 crores vide paper book page 91 and Newtown Mercantile Pvt Ltd having networth of more than 12.79 crores vide paper book page 100.

4. Three share applicants assessed u/s 143(3) on substantive basis. Copies of their assessment orders annexed in paper book page 131-147. In case of Mahalaxmi Promotion and Nikhar Commodities Pvt Ltd the share capital being the source of funds invested in assessee company were already taxed u/s 68. Hence once any addition made in hands of share subscribers, there cannot be double addition in hand's of Appellant company. Judgement of Coordinate bench of Kolkata Tribunal in the case of Happy Structure in ITA No. 1977/Kol/2016 enclosed which has relied on another Kolkata ITAT in the case of MaaAmba and CP Rerollers. Recently ITAT Kolkata Bench in the case of Stealex India Pvt Ltd pronounced on 9th September, 2022 copy enclosed has also taken same View.

5. All the shareholder companies are 'Active compliant under MCA records not only at the time of allotment but even till today as per MCA database annexed in paper book page 124-130.

6. Moreover although the assessee has explained the source of source of share capital but the same is not required to be explained for the Asst. Year 2012-13 prior to the amendment which was prospective and applicable from Asst Year 2013-14 as held by Bombay High Court in the case of Gagandeep Infrastructure, copy enclosed.

7. Even otherwise plethora of judgments that non-appearance of directors cannot be ground to make the additions once all documentary evidences w.r.t genuineness, creditworthiness etc filed on record. Pls. refer Calcutta High Court in the case of Crystal Networks, copy enclosed. Kolkata ITAT in the case of Cygnus Developers copy enclosed.

4. The Ld. Counsel reiterating his above submissions has contended that in this case, the assessee had filed all evidences to prove the identity and creditworthiness of the subscribers and genuineness of the transaction including the address, PAN & Form 2 & Form 5 filed with Registrar of Companies of the share subscriber companies, their audited financial statements, acknowledgement of filing their Income Tax Return, copy of

bank statement of the allottee company highlighting the payment of the entire amount of share capital and share premium. That all the transactions were done through banking channel and duly confirmed by the share subscribers. That even the notices u/s 133(6) of the Act were issued by the AO which were duly complied with by the share applicant companies and requisite documents were furnished evidencing their identity, and creditworthiness and that even source of investment was also provided. He has further submitted that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. Further, that all these subscribers were income tax assesseees and further that all the investor companies were duly incorporated with the Registrar of Companies. That there were no paper companies involved in the transactions. The Ld. Counsel has also invited our attention to the assessment orders passed u/s 143(3) of the share subscriber companies. That, however, the AO instead of examining the relevant documents, insisted for the personal presence of the directors of the subscribers which was not in the hands of the assessee. He therefore, has submitted that the identity and creditworthiness of these companies was duly established. He has further submitted that the AO could not point out any defect or discrepancy in the evidences/documents submitted by the assessee to prove the identity and creditworthiness of the subscribers and genuineness of the transaction. He has further submitted that instead of pointing out any defect or discrepancy in the evidences and the details furnished by the assessee, the AO proceeded to take adverse inference only on the ground that the directors of the subscriber companies did not appear personally before the AO. The ld. Counsel for the assessee in this respect has relied upon the decision of the Jurisdictional Calcutta High Court in the case of Crystal networks (P) Ltd. vs CIT (supra). The ld. Counsel has also relied upon the decision of the Co-ordinate Kolkata Bench of the Tribunal in the case of 'M/s Satyam Smertex Pvt. Ltd. vs. DCIT', ITA No.2445/Kol/2019 vide order dated 29.05.2020, wherein the coordinate bench of the tribunal, while further relying upon the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No.179/2008 dated 17.11.2009 has held that non production of the director of the company, which is regularly assessed to income Tax having PAN, on ground that the identity of the subscriber is not proved, cannot be sustained.

5. The ld. D/R, on the other hand, has relied upon the observations made by the AO. He has further relied upon the impugned order of the ld. CIT(A). The Ld. DR has further relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel (P) Ltd. reported in [2019] 103 taxmann.com 48(SC).

6. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as reproduced above, has explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz.,

confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

6.1 Even, as pointed out by the ld. Counsel for the assessee, the share subscribers have been assessed u/s 143(3) on substantive basis. Copies of their assessment orders have been placed on the file. Even in case of the two share subscribers namely Mahalaxmi Promotion and Nikhar Commodities Pvt. Ltd, the share capital being the source of funds invested in assessee company has already been taxed u/s 68. Hence once any addition made in hands of share subscribers, there cannot be double addition in hand's of Appellant company. Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018 wherein, the Coordinate bench under similar circumstances has made the following submissions:

"We find no merit in the Revenue's instant grievance in the light of relevant facts on record. There is no dispute about the assessee's having declared its share subscription premium from M/s Agrani Credit & Finvest Pvt. Ltd., Crown Mansion Pvt. Ltd., Liberal Infrastructure Pvt. Ltd., Darshan Enclave Pvt. Ltd., Snow Fall Impex Pvt. Ltd. involving corresponding sums of ₹27,60,000/-, ₹55,20,000/-, ₹82,80,000/- in case of third and fourth and ₹48,30,000/- in last entity's case; respectively totalling to ₹3,01,00,000/-. Case file suggests that the assessee has placed on record their income tax acknowledgement of the impugned assessment year 2012-13, directors' report alongwith audited financial statements, explanation regarding source of investments, bank statements, share application forms and board's resolution(s) followed by their respective regular assessment orders pertaining to very assessment year u/s. 143(3) of the Act. Their Assessing Officer(s) made u/s 68 unexplained cash credits additions of share premium amounting to ₹67,03,00,000, ₹44,85,00,000/-, ₹24,42,00,000/- & ₹21,70,00,000/- in case of first four entities and accepted similar credits of ₹20,45,00,000/- to be genuine satisfying all parameters of identity, genuineness and creditworthiness. It can therefore be safely assumed that all these additions sums forming subject-matter of the impugned additions to be accepted as genuine in respective investors entities' end as the source of the amount(s) in issue totalling to ₹3,01,00,000/-. Learned Departmental Representative fails to dispute that the same very amount cannot be added twice in payees and recipients' hands u/s 68 of the Act. We therefore see no reason to accept Revenue's

instant former substantive ground. We affirm CIT(A)'s findings under challenge qua the instant former issue."

6.2. *The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of "Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata" I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.*

7. *The Ld. DR before us could not dispute the proposition that since the addition has been made in the hands of the subscriber company, then the same amount cannot be added twice in recipient's hands u/s 68 of the Act.*

8. *So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." (supra) is concerned, we find that the Hon'ble Supreme Court in para 8.2 of the said decision has made the following observations:*

"8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.

The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):

Proof of Identity of the creditors;

Capacity of creditors to advance money; and

Genuineness of transaction

This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source."

Further, in para 9 of the said decision, the hon'ble Supreme Court has observed as under:

"9. The Judgments cited hold that the Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries.

In the present case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the share-holders were either non-existent, or lacked credit-worthiness. "

There after the Hon'ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness 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.

iii. 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 transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

The Hon'ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound conduct to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, the aforesaid decision of the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., in our humble view, is not applicable to the facts and circumstances of the case in hand.

9. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax vs. Manish Build Well (P.) Ltd. reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and

examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply cited certain case laws even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. The order of the ld. CIT(A) is a non-speaking order. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the ld. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

10. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

8. From perusal of the above order of this Tribunal, wherein various judicial precedence have been dealt and considered, we notice that the facts are identical so much so that, in the instant case also, assessee has filed complete details and documentary evidences to explain the nature and source of the alleged sum so as to discharge the primary onus casted upon the assessee to explain such sum as required in the provisions of Section 68 of the Act. We also observe that in the case of the assessee, all the share subscriber companies have been duly assessed to tax and have passed through the scrutiny proceedings u/s 143(3) of the Act for the very same year under consideration. We, therefore, respectfully following the decision of the Tribunal and considering the facts and circumstances, fail to find any justification in this finding of the ld. CIT(A) and the same is set aside.

15

The addition u/s 68 of the Act amounting to Rs.2,13,50,000/- is deleted. Accordingly all the effective grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 26/09/23 at Kolkata.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Kolkata, Dated 26/09/2023

SJC S.P.

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त(अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata