

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

I.T.A. No. 652/Kol/2023
Assessment Year: 2012-13

Spring Home Pvt. Ltd. 1 st Floor, 134/1, M.G. Road Burrabazar Kolkata - 700007 [PAN : AAKCS7477E]	Vs	Income Tax Officer, Ward - 9(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Surana, A/R
Revenue by :	Shri B.K. Singh, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 05/09/2023
घोषणा की तारीख /Date of Pronouncement: 16/10/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the revenue against the order of the National Faceless Appeal Centre, (hereinafter the "Id. CIT(A)") dt. 02/05/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

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

"1. For that the Ld. CIT(A) erred in confirming the order of the AO in adding back the share capital including premium of Rs. 1,02,50,000/- raised during the year from three shareholders on the ground that the identity, genuineness of the transaction and creditworthiness of the shareholders was not proved, when it was on record that two shareholders namely Camay securities P Ld. And Nice Vintrade P Ltd were old shareholders who contributed Rs. 63,80,000/- and 23,70,000/- (in all 87,50,000/-) whose identity, creditor worthiness and genuinely was never disputed in earlier year and the assessment became final and in respect of the third shareholder Naman Commensals P. Ltd. who contributed Rs. 15,00,000/- no notice u/s 133(6) or 131 was issued to the shareholder.

2. For that the Ld. CIT(A) erred in confirming the addition of Rs.1,02,50,000/- u/s 68 only on the ground of non appearance of directors of the assessee company when the same has nothing to do with the explanation in respect of the cash credit u/s 68.

3. *For that on the facts and circumstances of the case that the Ld. CIT(A) erred in confirming the order of the AO in adding back Rs.1,02,50,000/- which was unjustified and uncalled for."*

3. Brief facts of the case are that the assessee is a Private limited company engaged in investment of shares and securities. Loss of Rs. 8,845/- was declared in the return of income filed for Assessment Year 2012-13 on 27/09/2012. Case selected for scrutiny for the reason to examine large share premium received. Notice u/s 143(2) and 142(1) of the Act were issued and validly served. The ld. Assessing Officer observed that the assessee has received share capital to the tune of Rs.1,02,50,000/-. The assessee filed complete details with regard to each of the share subscribers but the personal presence of the directors against the summons issued u/s 131 of the Act was not done and for such non-compliance to notice u/s 131 of the Act, the ld. Assessing Officer came to a conclusion that assessee has failed to establish the three ingredients, namely, identity, creditworthiness of the share applicants and genuineness of the transactions and completed the assessment making addition of Rs. 1,02,50,000/- u/s 68 of the Act. Income assessed at Rs.1,02,41,155/-. Aggrieved, the assessee carried the matter in appeal before the ld. CIT(A) who confirmed the additions so made by the Assessing Officer.

4. Further aggrieved, the assessee is now in appeal before this Tribunal.

5. The ld. Counsel for the assessee referring to the detailed paper book stated that complete documentary evidence have been filed before both the lower authorities for the alleged three share applicants placed at page 122 of the paper book. He further submitted that all the alleged

three share applicants have been regularly filing income tax returns and two of them, namely, Camay Securities Pvt. Ltd. and Naman Commosales Pvt. Ltd., have passed through scrutiny proceedings u/s 143(2) of the Act for the very same Assessment Year. Further referring to the decision of the Co-ordinate Bench of ITAT in the case of *Mahacoal Tie-up (P) Ltd. in ITA No. 2269/Kol/2019; order dt. 12/10/2022*, stated that the same is squarely applicable in the facts of the instant case and since the assessee has discharged the primary onus by proving the identity and creditworthiness of the share applicants as well as the genuineness of the transactions, no addition was called for u/s 68 of the Act.

On the other hand, the ld. D/R vehemently argued supporting the order of the lower authorities and stated that alleged share applicant companies are *jamakharchi* and shell companies and are mainly involved in the providing accommodation entries and are not carrying out any regular business activity.

6. We have heard rival contentions, perused the material available on record and carefully gone through the decisions referred to by the ld. Counsel for the assessee. Addition u/s 68 of the Act for unexplained share capital and share premium of Rs. 1,02,50,000/-, is in dispute before us at the end of the assessee. We observe that during the year under appeal, the assessee company issued 20500 equity shares of face value of Rs.10/- each and received Rs.1,02,50,000/- towards share capital and share premium from three share applicant companies as detailed in page 23 of the paper book. We further notice that the assessee company has filed the following documents before us as well as before the lower authorities in order to explain the nature and source

of the alleged sum and for convenience, the index of the paper book is reproduced below:-

Sl.No.	Particulars	Page No.	Filed/ Available before
1.	Copy of ITR acknowledgement, Auditor's Report and Audited Financial Statements of Spring Home Pvt. Ltd. for Asst Year- 2012-13	1-14	CIT(A)& AO
2.	Details of Director, Form PAS – 3 along with the acknowledgement of filing form along with list of fresh share allottees.	15-23	Do
3.	Documents relating to Camay Securities Pvt. Ltd. (Subscriber) <ul style="list-style-type: none"> • Copy of Assessment Order u/s 143(3) r.w.s. 153A for Asst Year - 2012-13 • Ledger Account from 01.04.2011 to 31.03.2012 • Copy of ITR Acknowledgement (Asst Year - 2012-13) • Audited Financial Statement as on 31.03.2012 • PAN Card • Bank Statement • Confirmation of source of investment in shares of Spring Home Pvt. Ltd. by Camay Securities Pvt. Ltd. • Share Application Form • Share Allotment Advice 	24-26 27 28 29-43 44 45 46-47 48-54 55	Do
4.	Documents relating to Nice Vintrade Pvt. Ltd. (Subscriber) <ul style="list-style-type: none"> • Copy of ITR Acknowledgement (Asst Year - 2012-13) • Audit Financial Statement as on 31.03.2012 • Confirmation of source of investment 	56 57-69 70	Do

	shares of Spring Home Pvt. Ltd. by Nice Vintrade Pvt. Ltd. <ul style="list-style-type: none"> • Bank Statement • PAN Card • Share Application Form • Allotment Advice • Ledger Account from 01.04.2011 to 31.03.2012 	71-78 79 80-86 87 88	
5.	Documents relating to Naman Commosales Pvt. Ltd. (Subscriber) <ul style="list-style-type: none"> • Copy of Assessment Order u/s 143(3) for Asst Year - 2012-13 • Ledger Account from 01.04.2011 to 31.03.2012 • Audit Financial Statement as on 31.03.2012 • Confirmation of source of investment in shares of Spring Home Pvt. Ltd. by Naman Commosales Pvt. Ltd. • PAN Card • Copy of ITR Acknowledgement (Asst Year - 2012-13) • Bank Statement • Share Application Form • Allotment Advice 	89-93 94 96-113 114 115 116 117 118 119	Do
6.	Statement of Bank A/c – Spring Home Pvt. Ltd.	120-122	Do

7. From perusal of the above details, which remain uncontroverted by the revenue authorities except for making general observation that the alleged share applicant companies are *jamakharchi* companies and that they are engaged in providing accommodation entries, could not bring forth any discrepancy in the audited financial statement which are forming part of the income tax returns. Revenue authorities have also failed to controvert the fact that most of the share subscribers have

passed through scrutiny proceedings u/s 143(3) of the Act and have also furnished informations providing details of source of source of funds. In other words, the funds which have been invested in the assessee company by the share applicants, the source of such funds in the hands of the alleged share applicants have also been placed on record and no further investigation or examination of such details has been carried out by the revenue authorities. Under these given facts and circumstances, where the assessee has discharged the primary onus casted upon it u/s 68 of the Act, the onus shifts on the revenue authorities and in absence of any such onus being discharged by the Assessing Officer, the documents filed by the assessee has to be treated on face value which *prima facie* indicates that the alleged share applicants had sufficient funds available in the form of share capital and reserve and surplus to substantiate the alleged investment made in the assessee company. The identity and creditworthiness of the share applicants is proved beyond doubt and genuineness of the transactions is also not in dispute as these companies have made investment in the equity share capital of the company and have confirmed the transactions.

8. We find that, recently the Co-ordinate Bench of the Tribunal, under identical circumstances in the case of *Mahacoal Tie-up (P) Ltd. in ITA No. 2269/Kol/2019; order dt. 12/10/2022*, has held as under:-

"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.*

11. *The appeal of the assessee stands allowed."*

9. From perusal of the above finding and the decision referred and relied therein, we find that the facts of the case are identical as in the

instant case also, all the relevant documents have been filed by the three share applicant companies, namely, Camay Securities Pvt. Ltd., Nice Vintrade Pvt. Ltd. and Naman Commosales Pvt. Ltd., and all the three companies are duly assessed to tax and majority of them have also passed through scrutiny proceedings u/s 143(3) of the Act for the very same Assessment Year. All these three companies are registered with the Ministry of Corporate Affairs and regularly filing their Income tax and ROC returns, the financial statements duly depict capital and reserve and surplus in the hands of the share applicants sufficient enough to cover the investment in the assessee company. We also find that the assessee has duly explained the nature and source of the alleged sum as it was required to only explain the nature and source and not the source of source for the year under appeal and thus provisions of Section 68 of the Act cannot be invoked in this case. In view of the above discussion we delete the impugned additions of Rs.1,02,50,000/- and allow the effective grounds raised by the assessee.

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

Order pronounced in the Court on 16th October, 2023 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 16/10/2023

SP SP

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

1. अपीलार्थी / The Assessee
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
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata