

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

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 1842/Kol/2017
Assessment Year : 2009-10

M/s. Delta Dealers Private Limited PAN: AACCD 9633 P	Vs.	ITO, Ward-8(2), Kolkata
Appellant		Respondent

Date of Hearing	05.09.2023
Date of Pronouncement	26.10.2023
For the Assessee	Shri Akshy Ringasia, CA and Shri Taraknath Jaiswal, Advocate
For the Revenue	Shri Rakesh Kumar Das, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2009-10 is directed against the order dated 07.06.2017 passed by the ld. Commissioner of Income-tax (Appeals) - 16, Kolkata [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

- "1. That on facts and under the circumstances of the case, the Commissioner of Income Tax (Appeal) is unjustified and unlawful in confirming the order of ld. Assessing Officer in making the addition of Rs. 15,51,00,000/- of share capital and share premium. Though the addition made by AO is based on highly dubious and flimsy ground which does not carry any merit in the eye of law.*
- 2. That on facts and under the circumstances of the case, the Commissioner of Income Tax (Appeal) is unjustified and unlawful in confirming the order of the ld. Assessing Officer without verifying our submission.*
- 3. The addition made by AO and confirming by the ld. CIT(A) are not based on the facts and on the true appreciation of evidences.*
- 4. That the addition made by AO is based on a pre-determined and biased mindset and based on pure guess, surprises and conjecture which does not hold good in law.*
- 5. That the entire addition by the AO and confirming by the ld. CIT(A) are based on mere suspicious and without any material evidence on record and hence liable to be deleted.*

6. That the assumption of jurisdiction by the ld. CIT u/s 263 is bad in law in view of fact neither any prejudicial to the revenue was caused nor any loss to revenue accrued.

7. That the addition is based on mere change of opinion which is bad in law.

8. That the ld. Assessing Officer was not justified in making addition on account of share capital as same was verified & certified by him in earlier years in detailed assessment.

9. That the addition made by ld. Assessing Officer and uphold by ld. the Commissioner of Income Tax (Appeal) are liable to be set aside.

10. That the appellant may add, alter, delete, withdraw or modify any of the ground at the time of hearing of the matter with the leave of the Hon'ble ITAT."

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2009-10 by declaring income of Rs. 473. Subsequently, the order u/s 143(3)/147 of the Act was based on 27.05.2010 on a total income of Rs. 1,16,973/- as against the returned income of Rs. 473/-. Immediately after passing the assessment order u/s 147 of the Act read with section 143(3) dated 27.05.2010 was set aside by ld. CIT, Kolkata-2 by exercising his power u/s 263 of the Act vide order dated 05.03.2013. Consequent to that effect, the ld. AO issued notice u/s 142(1) of the Act by directing the assessee to submit inter alia details of share holders along with necessary evidence in support of its claim for share capital and share premium. On this context, the ld. AO issued notice u/s 131 of the Act to the assessee and all the subscribers of the company and out of 22 summons 4 summons were returned back unserved and remaining 16 were served and subscriber companies sent their reply to the AO in compliance to the notices issued u/s 131 of the Act. However, on the submission of the subscriber companies, the ld. AO was not impressed with subscriber companies and resorted to making an addition of entire share application along with share premium totaling to Rs. 15,51,00,000/- on the sole ground that the compliance u/s 131 by the directors of the assessee and share applicant companies

director were not present before the AO. Accordingly, the ld. AO made the addition of share capital and share premium as an unexplained income of the assessee u/s 68 of the Act in the hands of assessee.

3. Aggrieved by the order of AO, assessee carried the matter before the ld. CIT(A) inter alia contended that addition of Rs. 15,51,00,000/- was made based on mere suspicion without any material evidence and without appreciating the document explanation furnished before the AO in response to notice issued u/s 142(1), u/s 133(6) and u/s 131 of the Act. However, ld. CIT(A) without going into the facts of the case sustained the order passed by the AO.

3.1. The ld. AR submitted that the impugned order passed by the CIT(Appeal) and the assessment order dated 17-03-2015 are non speaking, cryptic, unreasoned order and passed without going into the fact and contentions/materials on record submitted in response to Notice u/s 142(1), U/s 133(6) and Summon u/s 131, hence, is vitiated and nullity in the eye of law.

3.2. The ld. AR further contended that in the case of Kranti Associates Put. Ltd, Vs. Masood Ahmed Khand and Others reported in (2010) 9 SCC 496 it is held by the Hon'ble Supreme Court inter alia that a quasi judicial authority must record reasons in support of its conclusions to demonstrate by reasons that the relevant factors have been objectively considered.

3.3. He further stated that the addition of share capital/premium u/s 68 is based on assumption and without any evidence or enquiry/investigations and without dealing and discussing the overwhelming material placed on record by the assessee and subscribed in response to notice u/s 142(1), 133(6) and summon u/s

131 and due to mere non appearance of the directors of the subscriber companies before the ld.AO cannot be a ground for making addition u/s 68 of the Act.

3.4. He further submitted that the ld. CIT, Kolkata in order u/s 263 dated 05-03-2014 had specifically directed the AO to conduct independent enquiry not through the assessee therefore, the question of assessee producing the directors of subscribers company does not arise and in any case, it is well settled law that merely non appearance of directors of assessee or subscribers cannot be a ground to draw an adverse inference. The subscribers in the instant case are all corporate bodies duly registered under the Companies Act, 1956 (2013) and are income tax assesseees, hence, their identity stands proved. Non-appearance of the directors of such corporate entities cannot be a ground to draw adverse inference.

3.5. The ld. AR relied on the following decision in order to substantiate his claim in the case of Cristal Networks Put. Ltd., Vs. CIT reported in (2013] 353 ITR 171 (Cal.), it is held by the Hon'ble Calcutta High Court that when the assessee files all the necessary evidences or records before the Assessing Officer then mere failure of the creditor parties to appear cannot form the basis to invoke Section 61/Section 68 of the Act. The Hon'ble Tribunal considering the judicial precedents held that once the assessee has discharged its onus on identity, genuineness and credit worthiness etc. the lower authorities erred in law and on facts in treating the said as unexplained cash credit and unexplained expenditure under Section 68 and Section 69c of the Act and in the case of DCIT Vs. IRIS Health Services Ltd. reported in 2023-VIL-93-1TAT-Kol., it is held by the Kolkata Bench of the Hon'ble Tribunal that the Assessing Officer has not made any adverse comment on identity, creditworthiness and genuineness of

transactions. Only contention raised by the Assessing Officer was that the directors did not appear for personal examination. It is held that merely because directors did not appear before the Assessing Officer, was not sufficient to hold the entire transactions as bogus. Considering that the share subscriber companies were having sufficient net worth, the addition under Section 68 was deleted.

3.6. Further, in the case of ACIT Vs. M/s Star Delta Transformers ltd., reported in 2019 SCC online ITAT 18282, it is held by the Hon'ble Tribunal that at when all the documents to prove identity, genuineness and creditworthiness of the investors is furnished by the assessee, merely non production of the creditor not sufficient to make additions and also in the case of Garware Synthetics Ltd. Vs. ACIT reported in 2020 (7) TMI 619-ITAT MUMBAI, it is held by the Hon'ble Tribunal following the judgment of the Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., reported in 2010 (14) SCC 761 and in the case of CIT Vs. Goa Sponge and Power Ltd., reported in Tax Appeal No. 16 of 2012 passed by the Hon'ble Bombay High Court has held that once the authorities have got all the details including the name and address and PAN of the share holder, name of the bank from which investors received money as share application then it cannot be termed as bogus. Once the initial burden was discharged by filing necessary evidences then the addition cannot be made section 68 merely for the reasons that the parties have not responded to notices issued by the AO.

3.7. The ld. AR further submitted before the bench by stating that in the instant case the onus to prove the identity, genuineness of transactions and credit-worthiness of the creditors has sufficiently been discharged by the assessee. The burden of proof shifts on the Revenue and also in the case of M/s BST Infra-tech Ltd., Vs. DCIT

reported in 2022-VILL1525-1TAT-Kol, it is held by the Kolkata Bench of the Hon'ble Tribunal that when the assessee furnished the required documents before the Assessing Officer to prove identity, credit worthiness of the share subscribers and genuineness of transactions, the Assessing Officer without pointing out any defect or discrepancy in the documents submitted by the assessee straight away added share application money into the income of the assessee under Section 68 holding same as unexplained cash credit. The assessee has proved identity of share subscribers. The share subscribers are the body corporate available at registered address. In respect of genuineness of transactions, assessee has established that share application money was received through proper banking channels and share holders had sufficient funds for purpose of investments and the investments were reflected in their books of accounts. The Assessing Officer or CIT(Appeal) has not brought any evidence on record to show that it was assessee's own fund that was brought back in form of share application money. The addition made by the Assessing Officer is deleted.

3.8. Similarly, in the case of M/s Heatflex Cables P ltd., Vs. ITO reported in 2018 SCC Online ITAT 494, it is held by the Hon'ble Tribunal that addition under Section 68 cannot be sustained when the investors are corporate entities assessed to tax and the transactions are made through proper banking channels combined with the facts that the documentary evidences filed by the assessee company are not rebutted by the revenue.

3.9. That, in the case of Kali Transport Put. Ltd., Vs. DCIT reported in 2021 (1) TMI 942-ITAT-KOLKATA, it is held by this Hon'ble Tribunal relying on judgments of the High Court and Tribunal in the case of **CIT VS. Data Ware Pvt. Ltd., in ITAT No.263 of 2011 (G.A,**

No.2856 Dated 21-9-2021) and SK Bothra & Sons (HUF) Vs. ITO reported in [2012] 347 ITR 347 (Cal) that if the assessee discharges his onus by filing detailed explanations along with supporting evidences, it is the duty of the Assessing Officer to carry out necessary verifications and the assessee most humbly submits that the subscribers had sufficient Net Worth (Share Capital + Received Surplus) hence, the credit worthiness stands proved.

3.10. That, in the case of **M/s Moongipa Dev. And Inf. Ltd., Vs. DCIT, Mumbai reported in 2021 (5) TMI 156 ITAT-Mum.**, it is held by the Hon'ble Tribunal that as the primary onus cast on assessee under Section 68 was duly fulfilled and the onus was on revenue to controvert the evidences furnished by the assessee. However, nothing has been brought on record by the revenue to substantiate that the assessee's unaccounted money was routed in the books, in the garb of share capital. **The Sixteen investor's entities have sufficient net worth (share capital + reserve and surplus) to make investment.**

3.11. That, in the case of **CIT Vs. Ranchhod Jivabhai Nakhava reported in 2012 (5) TMI 186- Gujarat High Court** it is held by the Hon'ble Gujarat High Court that once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are income tax assessee and whose PAN have been disclosed, the initial burden under Section 68 of the Act is discharged. Similar views have been held in the case of DCIT Vs. Merrygo Id Gems Put. Ltd. reported in 2023 (1) TMI 617-ITAT SURAT.

3.12. That, under Para 28 of the assessment order dated 17-03-2015 u/s 144/263/ 143(3)/147 the AO has held that the credit of Rs. 15,51,00,000/- in the books of the assessee was nothing but own

money of the assessee company in the garb of share capital including share premiums.

4. However, the ld. AR stated that there is absolutely no evidence in support of the said finding but is based on assumption and presumption and in the case of **DCIT Vs. P & P Highrise Put. Ltd., reported in 2022-VIL-1410-ITAT-Kol.**, it is held by this Hon'ble Tribunal that the Assessing Officer added entire amount under Section 68 of the Act by holding that the assessee has brought its own unaccounted money in garb and share capital including premium which is deleted by the CIT (Appeal). The assessee by submission of the materials had established identity of share applicants, genuineness of transactions and their credit worthiness.

The Assessing Officer had not conducted any enquiry for pointing out faults in details submitted by the assessee. The Assessing Officer merely relied upon finding of DDIT (Inv.) but that was not an adjudicatory findings. The Assessing Officer is bound to verify the contentions of the assessee in the light of materials in an analytical manner but that exercise is totally missing, hence, the CIT (Appeal) is rightly deleted the addition under Section 68.

5. Similarly, in the case of **Aanya Developers Put. Ltd., Vs. ITO reported in 2019 (6) TMI 1651-ITAT KOLKATA**, it is held by this Hon'ble Tribunal that no cash was deposited into the bank accounts of the investors prior to issue of cheques to the assessee company and the net worth and the investible funds with the investors was high, hence the credit worthiness stands proved.

6. On the other hand, ld. DR supported the order of ld. CIT(A) and AO.

7. We have heard the rival contentions and gone through the material placed on record. It is noted that notices u/s. 133(6) of the Act were issued by Ld. AO to 22 share subscriber companies who had duly replied directly to the ld. AO, along with relevant documents and details. Copies of the replies duly acknowledged under seal and stamp of the office of the Ld. AO are placed on record. We note that Ld. AO without even going through and discussing these details submitted by the subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscriber companies and the genuineness of the transactions.

7.1. To our mind, ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details received in his office from all the subscriber companies and also pointing out as to what further investigation was needed by him by way of recording of statement of the directors of the assessee and the subscriber companies. We draw our force from the decision of the Hon'ble Bombay High Court in the case of PCIT vs. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Bom) wherein it was 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 its case.

7.2. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Crystal Network Pvt. Ltd. vs. CIT (supra) which held as under:

"We find considerable force from 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."

8. We also take note of the fact that all the share subscriber companies have filed their return of income with the department which have been either processed u/s. 143(1) of the Act for which intimations have been issued or have been assessed u/s. 143(3) or 147 on substantive basis, for which the respective intimation/assessment orders are placed on record in the paper book. We also take note of the fact that all the share subscriber companies have responded to the notice issued u/s. 133(6) of the Act and Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the share subscribing companies. These evidences furnished by them have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has simply added the amount of share capital and share premium on the ground that assessee has not produced the directors/shareholders. Ld. AO has ignored the reply given in response to notice issued u/s. 133(6) of the Act which are on record under duly acknowledged seal and stamp of his good office. From the perusal of the order of Ld. CIT(A), we note that Ld. CIT(A) has perused the evidence in the nature of documents and details and on their examination has sustained the addition made by the Ld. AO. Thus, going by the records placed by the assessee and by all the share subscribing companies in response to

notices issued u/s 133(6), it can be safely held that the assessee has discharged its initial burden and the burden shifted on the ld. AO to enquire further into the matter which he failed to do so.

8.1. Further, we note that ld. CIT(A) has not taken into consideration the creditworthiness of all the subscriber companies by going through the records and the net worth of each of them. It is also noted that all the investing companies have substantial own funds available with them to make investment in the assessee. In this respect, all the investing companies have also explained their source of funds in their reply to notices issued u/s. 133(6) of the Act.

8.2. From the perusal of the paper book and the replies filed by share subscribing companies in response to notice u/s. 133(6) of the Act, it is vivid that all the share applicants 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 paid by account payee cheques, (v) details of the bank accounts belonging to share applicants and their bank statements are on record, (vi) in none of the transactions, there are any deposit of cash before issuing cheques to the assessee, (vii) all the share applicants are having substantial creditworthiness represented by their capital and reserves.

8.3. For expressing our views as aforesaid, we draw our force also from the decision of Hon'ble jurisdictional High Court of Calcutta in the case of PCITvs. Shree Leathers in ITAT/18/2022 (IA No. GA/02/2022) dated 14.07.2022 wherein Hon'ble High Court succinctly dealt with the aspect whether notices u/s. 133(6) of the Act are issued which are duly acknowledged or responded but ignored by

the AO leads to perversity in the assessment order. Relevant extract from the said decision is reproduced as under:

“...Bearing the above legal principles in mind, if we examine the case on hand, it is clear that the assessing officer issued show cause notice only in respect of one of the lender M/s. Fast Glow Distributors. The assessee responded to the show cause notice and submitted the reply dated 22.12.2017. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The assessing officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the assessing officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the assessing officer to enquire further into the matter which he failed to do. In more than one place the assessing officer used the expression "money laundering." We find such usage to be uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the assessing officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Paragraph 5.4 and 5.5 of the assessment order are all personal perception and opinion of the assessing officer which needs to be ITAT 18 OF 2022 ignored. Much reliance was placed on the statement of Shri Ashish Kumar Agarwal, which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the assessing officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making allegations. The assessing officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the assessing officer ignored the basic tenets of law before invoking his power under Section 68 of the Act. Fortunately, for the assessee, CIT(A) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the CIT noted that all these companies responded to the

notices issued under Section 133 (6) of the Act which fact has not been denied by the assessing officer. On going through the records and the net worth of the lender companies, the CIT has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the assessing officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. We find that there is no discussion on the explanation offered ITAT 18 OF 2022 by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the CIT(A) who had in our view rightly appreciated the facts and circumstances of the case. As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the assessing officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22.12.2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A). The Tribunal re-appreciated the factual position and agreed with the CIT(A). The tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under Section 133 (6) of the Act to the lenders where duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.”

9. In respect of reliance placed by the revenue on the decision of Hon'ble Supreme Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 161 (SC), we note that 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 creditworthiness, 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."

9.1. Further, in para 9 of the said decision, 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 creditworthiness."

9.2. Thereafter, Hon'ble Supreme court summed up the principles which emerged by 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 Office 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 namelenders. 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.”

9.3. Hon'ble Supreme Court, thus, held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then, AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, ld. AO in this case has not made any independent enquiry to verify the genuineness of the transactions. Assessee, having furnished all the details and documents before the ld. AO and the ld. AO 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 its initial burden casted upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, it shifted on the ld. AO to examine the evidences furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee by 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.

10. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share

subscribing companies and the genuineness of the transactions. Accordingly, considering these facts and in the light of the judicial precedents referred above, we are inclined to set aside the order and findings given by the Ld. CIT(A) to delete the addition made by the Ld. AO towards share capital and share premium u/s. 68 of the Act. Accordingly, grounds taken by the assessee in this appeal are allowed.

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

Order pronounced in the open court on 26.10.2023

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 26.10.2023

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Delta Dealers Pvt. Ltd., 50, Chowringhee Road, 2nd Floor, Kolkata-700071.
2. Respondent – ITO, Ward-8(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata