

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

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 550/Kol/2023**  
**Assessment Year: 2015-16**

<b>Assistant Commissioner of Income Tax, Central Circle-2(1), Kolkata</b>	Vs	<b>Shalimar Nutrients Private Limited</b> 17 <sup>th</sup> Floor, Suite No. 17A, B & C Everest House 46/C, Chowringhee Road Middleton Street Kolkata - 700071 <b>[PAN: AAPCS1419M]</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri A.K. Tulsyan, FCA
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 12/10/2023  
घोषणा की तारीख /Date of Pronouncement: 21/12/2023

**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 learned Commissioner of Income Tax (Appeals), Kolkata - 20, (hereinafter the "ld. CIT(A)"), passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16.

2. The Registry has pointed out that there is a delay of 1 day in filing the present appeal by the revenue. Petition for condonation of delay is placed on record explaining the reasons. On perusing the same, we are convinced that the revenue was prevented by sufficient cause from filing this appeal in time. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

3. The revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT (A) erred in law by deleting the additions made u/s. 68 of the I.T. Act, 1961 on account of share application money receipt of Rs. 2,50,00,000/- ignoring the facts that A.O. has made the addition based on the facts that all the limbs u/s. 68 of the I.T. Act. are not satisfied in this case.

2. Whether on the facts and circumstances of the case, the CIT (A) erred in law in deleting the addition of Rs. 2,50,00,000/- made u/s 68 of the I.T. Act, 1961 without going into the merits of the case and the facts that creditworthiness of the share applicants could not be proven as there was no rational of the fund received by the share applicants and in turn transferred the fund in the form of share application money to the assessee company who is the ultimate beneficiary.

3. On the facts and in the circumstances of the case, the Ld. CIT (A) erred in law by deleting the additions made u/s 69C of the I.T. Act, 1961 of Rs. 50,000/- ignoring the facts that A.O. has made the based on the evidences material on record.

4. Whether on the facts and circumstances of the case, the CIT (A) erred in law in ignoring the observations of the Hon'ble Apex Court in case of NRA Iron & Steel P Ltd 103 Taxmann.com 48, as the inquiry and analysis made by the AO established that assessee has failed to prove identity, creditworthiness and genuineness of the transaction.

5. That department carves leave to add, alter or modify any or all grounds of appeal either before or during course of Appellate Proceedings."

4. Brief facts of the case are that the assessee- company has filed its return of income on 24.09.2015 declaring total loss of Rs. 4,26,24,857/-. The case of the assessee selected for limited scrutiny through CASS and notices u/s 143(2) and under section 142(1) were issued and duly served upon the assessee. As far as the issue raised in the instant appeals is concerned, the same is confined to addition u/s 68 of the Act

for the alleged unexplained share capital received during the year. On perusal of the record, it reveals that the assessee received share application money of Rs. 2,50,00,000/- from M/s Pratik Merchants Pvt. Ltd., during the year.

5. The Ld. AO issued show cause notice to the assessee dated 26.10.2017 requiring to explain as to why the amount of share application money should not be treated as unexplained cash credit. In response to the said notice, the assessee requested the share applicant to provide necessary documents in support of the identity of the share applicant and genuineness of the transaction. On request, the share applicant i.e., M/s Pratik Merchants Pvt Ltd vide its reply dated 02.11.2017 submitted documents and explanation to prove its identity, genuineness and creditworthiness as under:-

“ ...

Sl. No.	Query	Reply
(i)	Photo Identity Card except PAN Card	Driving License of Mr. Sameer Agarwal, Director attached with reply dated 02.11.2017
(ii)	Amount paid in connection with the loans paid along with date and mode of payment	We have not paid any amount as loan to the company, however we have invested Rs. 2,50,00,000/- during FY 2014-15 in 25,00,000 equity share capital of the

		company, details attached along with the reply dated 02.11.2017
(iii)	Source of fund for making payment stated above, and authenticated copy of Bank statement revealing the relevant transactions	Source of fund for making investment in equity share capital of the company and relevant bank statement attached along with reply dated 02.11.2017
(iv)	The basis of charging of such huge premium	We have not paid any amount towards shares premium, all equity shares have been subscribed at par i.e., Rs. 10/- per share
(v)	A write up on the rationale of investment and benefit derived on such investment	The investment in the Company has been made as it belongs to a rising group, which is mainly into Soya Extraction Plant. The investment has been done seeing the past track record of their group companies and with a hope to get dividends and a good capital appreciation in the future
(vi)	Furnish copy of your Balance Sheet, Profit and Loss Account, acknowledgement of Return of Income & Form	Copy of our Balance Sheet, Profit & loss Account, acknowledgement of Return of Income & Authenticated copy of

	3CD, Authenticated copy of PAN card of the company	PAN Card of the company attached along with reply dated 02.11.2017
(vii)	Copies of correspondence if any, with the investing company	The certified copy of correspondence attached along with reply dated 02.11.2017
(viii)	Copy of rent receipt, electric bill and trade license	It is group company of Shalimar group, whose office at 9 AJC Bose Road, Ideal Group, 5 <sup>th</sup> Floor, Kolkata - 700 017

..."

6. However, the Ld. AR of the assessee stated that the Ld. AO without considering the reply made by the share applicant, again issued another notice dated 09.11.2017 indicating that the notice issued u/s 133(6) to the share applicant returned as unidentified. In reply to the said notice, the assessee replied vide letter dated 16.11.2017, which is reproduced as under:

*"1. During the relevant F.Y. 2014-15, there is increase in share capital of the company to the tune of RS. 2,50,00,000/-. The said amount of Rs. 2,50,00,000/- has been received from M/s Pratik Merchants Pvt Ltd. We have already submitted the detail and documents related to said increase in share capital related to first source vide our letter dated 02.11.2017. Please also find enclosed herewith the documents related to second source for your kind perusal.*

*2. Vide your letter dated 09.11.2017, you have stated that the Notice u/s 133(6) was issued to M/s Pratik Merchants Pvt Ltd at 2A, Ganesh Chandra Avenue, 2<sup>nd</sup> Floor, Room No. 5, Kolkata - 700 013 and the same have been returned by the postal authority with postal address upon which you have issued the notice u/s 133(6) was grossly wrong. The detail of the postal address of the said party is as under:*

*Old Postal Address : 75, Metcalfe Street, Kolkata – 700 013*

*New Postal Address: 9, A J C Bose Road, Ideal Centre, 5<sup>th</sup> Floor, Kolkata – 700 017*

*We are enclosing herewith the copy of Form No. INC-22 i.e., “Notice of situation or change of situation of registered office”. From the said form, it is very much evident that the registered office of the company has been changed w.e.f. 15.03.2017 and the information w.r.t. the said change of address has been intimated to ROC vide Form No. INC-22 on 17.03.2017. Therefore, the notice/letter issued to M/s Pratik Merchants Pvt Ltd after March, 2017 should have been issued to the current postal address. In view of the above, no adverse view may kindly be taken against the assessee company. M/s Pratik Merchants Pvt Ltd is now our group company.*

*3. Vide your letter dated 09.11.2017, you have also stated that the inspector appointed by you for the enquiry of the said company. The inspector said that he couldn't trace out the said company on the given address i.e. at 2A, Ganesh Chandra Avenue, 2<sup>nd</sup> Floor, Room No – 5, Kolkata – 700 013. In this connection, we would like to resubmit that the current postal address of M/s Pratik Merchants Pvt Ltd is 9, AJC Bose Road, Ideal Centre, 5<sup>th</sup> Floor, Kolkata – 700 017 and therefore any enquiry being made other than on the current postal address is irrelevant.*

*4. In connection with the substantiation of the identity of the party and genuineness of the transaction, we would like to submit as under:*

*a) M/s Pratik Merchants Pvt Ltd is an Income Tax Assessee vide PAN AADCP3927B*

*b) M/s Pratik Merchants Pvt Ltd has got its books of accounts audited.*

*c) The said party has filed its annual return to ROC on regular basis.*

*d) The assessment w.r.t. M/s Pratik Merchants Pvt Ltd has been completed vide order u/s 143(3) dated 23.11.2016 w.r.t. Asst. Year 2014-15. Copy of the said order is enclosed.*

*e) The said party is maintaining a regular bank account and the transaction w.r.t. the share application has been duly made by the said bank account. Copy of the relevant page of the bank statement has already been submitted vide letter dated 02.11.2017.*

*Therefore, the identity of the said party to whom the department has itself allotted the PAN and has completed the assessment cannot be doubted. Hence, the identity of the said party is proved. Further, the transaction made through regular and disclosed bank account of the said party are very much genuine.*

7. Further, the Ld. AO had taken note of the investigation carried out by the Income Tax Department against Mr. Amit Kedia and observed that he was engaged in providing accommodation entries in form of share capital/share premium to various beneficiaries in lieu of commission. Ld. AO further observed that the alleged sum received by the assessee through shell company is controlled by Mr. Amit Kedia. Ld. AO also gave reference to statement of Mr. Amit Kedia. In reply to the said allegation, the assessee vide letter dated 16.11.2017, stated as under:

*"5. In the said letter dated 09.11.2017, you have stated that Mr. Amit Kumar Kedia has given statement that M/s Pratik Merchants Pvt Ltd was involved in arranging accommodation entries, etc. In this connection, we would like to submit as under:*

*a) Vide Annexure A of the said letter dated 09.11.2017, it is very much evident that Mr. Amit Kumar Kedia was director of M/s Pratik Merchants Pvt Ltd from 03.07.2006 to 11.01.2011. **Therefore, Mr. Amit Kumar Kedia ceases to be the director of M/s Pratik Merchants Pvt Ltd w.e.f. 11.01.2011 and has no relation with the said company hence forth.** Now, the said party has invested an amount of Rs. 2,50,00,000/- in the assessee company after 11.01.2011. Therefore, there is no relation with the said statement and amount of investment made by the said party after 11.01.2011.*

*b) Hence, the allegation by the Ld. AO that the share capital was raised by way of accommodation entry through the entry operator Mr. Amit Kumar Kedia is grossly wrong. It is quite impossible to say that Mr. Amit Kedia had any control over the company even after cessation of directorship. Therefore, no adverse inference may kindly be drawn against the issue.*

*c) Further, the alleged statement of Mr. Amit Kumar Kedia, even if recorded on the back of the assessee, and if relied upon by the Ld. AO, **the assessee must be provided an opportunity to cross examine Mr. Amit Kumar Kedia.***

*d) It is well settled law that an adverse finding cannot be made against an assessee on the basis of such statements without allowing opportunity to assessee*

to cross examine the person on whose statements reliance is placed against the assessee. The same has also been decided by the **Hon'ble Calcutta High Court in the case of CIT v. Eastern Commercial Enterprises (1994) 201 ITR 105 (Cal)**. On the issue of cross examination, we further place our reliance on the following judicial pronouncements:

(i) **Bangodaya Cotton Mills Ltd v CIT (2011) 330 ITR 104, Hon'ble Calcutta High Court**

*"AO having made the impugned addition simply on the basis of some letters seized from a third party in the absence of any corroborative evidence and without issuing summons to the concerned person or making him available for cross examination, the order passed by the Tribunal upholding the addition is set aside and the matter is remanded back to the AO to consider the matter afresh"*

(ii) **CIT v. Eastern Commercial Enterprise (2011) 210 ITR 103, Hon'ble Calcutta High Court**

*"Revenue making addition on the basis of a witness examined at the back of the assessee, matter remanded for cross examination of the witness with opportunity to assessee to produce further evidence to rebut the aforesaid statement"*

(iii) **Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (Hon'ble Supreme Court Court)**

*".... IT is true that the proceedings under the IT law are not governed by the strict rules of evidence and, therefore, it might be said that even without calling the manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But, before the IT authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him....."*

(iv) **Andaman Timber Industries v. CCE (2015) 281 CTR 241 (Hon'ble Supreme Court)**

(v) **M/s R W Promotions (P) Ltd v. ACIT, Circle-9(3) in ITAT No. 1489 of 2013 (Hon'ble Bombay High Court)**

(vi) **Heirs and LRs of Late Laxmanbhai S. Patel v. CIR (2010) 327 ITR 290 (Hon'ble High Court of Gujarat)**

(vii) **DCIT v. Mahendra Ambalal Patel (2010) 40 DTR (Guj) 243 Hon'ble High Court of Gujarat**

6. *As far as to produce the director of M/s Pratik Merchants Pvt Ltd is concerned, it is submitted that the said company is our group company and Mr. Sameer Agarwal who is the director of the assessee company is also the director of M/s Pratik Merchants Pvt Ltd."*

8. Further, the assessee vide its reply dated 16.11.2017 in addition to proving the identity, genuineness and creditworthiness of the share applicant, the assessee also submitted the second source i.e. source of M/s Pratik Merchants Pvt Ltd, which was never disputed by the Ld. AO. The list of Documents submitted to prove the genuineness of the source of source, are as under:

<b>List of papers enclosed w.r.t. 2<sup>nd</sup> source submitted along with reply dated 16.11.2017</b>	
<b>1</b>	<b>Shivaangan Merchandise Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16
ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction
iv.	Copy of Audited Financial Statement for the FY 2014-15
<b>2</b>	<b>Trove Vanijya Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16
ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction

iv.	Copy of Audited Financial Statement for the FY 2014-15
<b>3</b>	<b>Sutapa Agencies Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16
ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction
iv.	Copy of Audited Financial Statement for the FY 2014-15
<b>4</b>	<b>Natural Suppliers Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16
ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction
iv.	Copy of Audited Financial Statement for the FY 2014-15
<b>5</b>	<b>Starshine Commercial Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16
ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction
iv.	Copy of Audited Financial Statement for the FY 2014-15
<b>6</b>	<b>Yamuna Vintrade Pvt Ltd</b>
i.	Copy of Return filing Acknowledgement i.e. ITR V for the AY 2015-16

ii.	Copy of PAN Card
iii.	Copy of relevant page of bank statement evidencing the said transaction
iv.	Copy of Audited Financial Statement for the FY 2014-15

9. The Ld. AO even after receiving complete details and disclosures from the assessee passed the assessment order u/s 143(3) of the Act observing as follows :-

*“9. The assessee company could not prove the identity, creditworthiness and genuineness of the transactions of the share capital raised during the year under consideration and the credit appeared in its books of accounts. In view of the above discussion, the share application money to the tune of Rs.2,50,00,000/- credited by the assessee in its books is treated as unexplained Cash Credit u/s 68 of the Income Tax Act, 1961.”*

10. Aggrieved, assessee preferred appeal before the Ld. CIT(A). Ld. CIT(A) taking note of various facts noticed that the alleged sum have been received by the assessee from its group concern. No proper opportunity was provided to the assessee to cross examine the persons namely, Mr. Amit Kedia whose statement are used against the assessee. Assessee has filed complete details to prove the identity and creditworthiness of the shareholder and genuineness of the transactions. Ld. CIT(A) also held that the alleged share applicant is duly registered under the Registrar of Companies and is an active company. Ld. AO failed to find the evidence furnished by the assessee as false or fabricated and only believed on the information received during investigation from Mr. Amit Kedia. Ld. CIT(A) thereafter referring to various judgments and decisions came to the conclusion

that Ld. AO was not justified to invoke the provisions of section 68 of the Act, since source of the share application money received was fully explained by the assessee and the assessee has discharged its onus to prove the identity, creditworthiness of the creditors and genuineness of the transaction.

11. Aggrieved, revenue is now in appeals before this Tribunal challenging the finding of the Ld. CIT(A) deleting the addition of Rs. 2,50,00,000/- AY 2015-16.

12. The ld. D/R submitted that the ld. Assessing Officer has examined the facts of the case extensively and financial statements of the share applicants were also scrutinised and came to a plausible conclusion. He vehemently argued supporting the order of the ld. Assessing Officer and stated that merely filing paper documents cannot be treated as a compliance to explain the nature and source of the alleged sum. Surrounding circumstances which includes the meagre income offered by the share subscribers, no regular business activity carried out by the assessee company as well as by the share subscribers and the typical nature of flow of funds in the bank statement indicates that share subscribing companies are engaged in rotation of funds for providing accommodation entries and they are *jamakharchi* or shell/paper companies and, therefore, the ld. Assessing Officer has rightly added the sum in the hands of the assessee.

13. On the other hand, Ld. Counsel for the assessee apart from referring to the detailed submissions filed before the Ld. CIT(A) as well as the finding of the Ld. CIT(A) further submitted that the alleged

addition has been made merely on the basis of the statement of Mr. Amit Kedia and before making such addition assessee was not provided any opportunity to cross examine the person which is a gross violation of principle of natural justice. Further, he submitted that Mr. Amit Kedia was director of M/s Pratik Merchants Pvt Ltd (share applicant) from 03.07.2006 to 11.01.2011. Therefore, Mr. Amit Kedia ceases to be the director of M/s Pratik Merchants Pvt Ltd w.e.f. 11.01.2011 and has no relation with the said company hence forth. Now, the said party has invested an amount of Rs. 2,50,00,000/- in the assessee company much after 11.01.2011 i.e., after 4 years of cessation as director. Therefore, there is no relation with the said statement and amount of investment made by the said party after 11.01.2011. Further, Ld. AO apart from alleging that the assessee could not prove the identity, creditworthiness and genuineness of the transaction has not brought out any evidence to prove the same and also ignored all the relevant documents filed before him. He also submitted that the share applicant company (i.e., M/s Pratik Merchants Pvt. Ltd.) is a body corporate registered with the ROC and the alleged sum was received through proper banking channels. The share applicant company is a active company till date and was merged with M/s Smooth Trading Pvt. Ltd. a group company of the assessee with effect from 1st day of April, 2016 vide Order dated 30.09.2019 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench. The details regarding the applicant with their address as per ROC records and other documents of the share applicant like Balance Sheet, relevant Bank statement, etc.

were submitted to show their identity, credit worthiness and also the genuineness of the transaction. The share applicant is Income tax assessee, having PAN and is regularly filing its income tax returns.

14. It was further submitted that, the assessee company and its investor are group companies as both the companies have common directors. Thus, he prayed that order of Ld. CIT(A) may be confirmed. Reliance placed on various decisions of Jurisdictional High Court and ITAT, Kolkata, mentioned in the case law paperbook.

15. We have heard rival contentions and perused the material placed before us and the various judicial precedents placed before us. Revenue's grievance is against the finding of the Ld. CIT(A) deleting the addition made u/s. 68 of the Act at Rs. 2,50,00,000/- for AY. 2015-16. We observe that during the year the assessee company issued 25,00,000 equity shares of face value of Rs.10/- allotted for a total sum of Rs.2,50,00,000/-. Ld. AO treated the total sum of Rs.2,50,00,000/- as unexplained cash credit u/s. 68 of the Act, received from M/s Pratik Merchants Pvt. Ltd.

16. The main reason for which the Ld. AO treated the alleged sum as unexplained was on account of statements of Mr. Amit Kedia which were recorded by the Income Tax Department in an investigation carried out against him. Wherein he has accepted in his statement that he is engaged in providing accommodation entries in the form of share capital to various companies in lieu of commission. Ld. AO also mentioned that the director of the company could not be examined personally to understand the genuineness of share transactions and for

non-appearance of the directors of the company irrespective of the fact that all the relevant documents were placed before him, he observed that the assessee company has not been able to prove the identity and creditworthiness of the share subscriber companies and genuineness of the transaction.

17. We further observe that the issue is decided in favour of the assessee by Ld. CIT(A) after examining the facts of the case and for sake of reference the finding of the Ld. CIT(A) is extracted below:

*“4.3(a) I have carefully considered the facts of the case and submission of the appellant. In this case, share applicant is a group company under the same director. It appears that A.O. has made additions for two major reasons, they are, nonappearance of director of share applicant company and second is the statement of entry operator, Mr. Amit Kedia. Appellant has submitted that Shri Sameer Agarwal had appeared before the A.O. but his presence was not acknowledged by the A.O. In any case all the documents were submitted before the A.O. but A.O. has not pointed out any discrepancies in those documents. Initially, there was some confusion about the address of the share applicant company but assessee had provided the new address and A.O. has not made any adverse comments in respect of new address of the share applicant company. Besides, appellant has stated a number of judgements where it is held that non-personal appearance of any director/partner would not be a ground for making addition. Regarding the statement of Mr. Amit Kedia, appellant has clarified that his statement is not relevant as he had ceased to be a director in share applicant company. M/s. Pratik Merchants Pvt. Ltd., more than 4 (four) years before, M/s. Pratik Merchants Pvt. Ltd. had given share application money to the assessee company. Besides, Mr. Amit Kedia had no control over M/s. Pratik Merchants Pvt. Ltd. after he ceased to be a director in the said company. Besides, appellant had also pointed out that when statement of Mr. Amit Kedia was intended to be used against assessee, opportunity for cross examination was not provided. This is not justified in view of various Court’s decisions as mentioned by the appellant in its submission in preceding paras.*”

4.3(b) Appellant has also pointed out that there had been multiple scrutiny assessment of the share applicant company and the assessee company. In the case of share applicant company, scrutiny assessment was done in A.Y. 2011-12, A.Y. 2014-15 and A.Y. 2017-18. However, in those assessments order no doubts have been raised on its assets or liabilities. Further share applicant had given share application money to the assessee company in the current as well as two subsequent years. Return for A.Y. 2016-17 (immediate succeeding year) was scrutinized and share application money received from the share applicant has been accepted by the A.O. Share applicant had also given share application money in A.Y. 2017-18 and no doubts have been raised in respect of share application money received. A.O. was aware that in the A.Y. 2015-16, share application money received from the same source was added u/s.68 of the Act. So, in A.Y. 2016-17, A.O. must have again carefully considered the share application transactions. But after considering all facts on record he has not made any addition in respect of share application money received from the same source. This established the creditworthiness of share applicant and any addition in immediate preceding year is also not justified.

4.3(c) Appellant has established the identity, creditworthiness and the genuineness of the transaction, through its explanation and supporting documents. It has cited several judicial decisions in its submission as mentioned above, where it is held that where three conditions has laid down u/s.68 are satisfied, there is no need to prove the source of source. Still, appellant has submitted the documents relating to the identity, creditworthiness of the sources of source and has pointed out their financial strength as reflected by the amount of their share capital and reserves & surplus. The said companies (source of source) appear to have sufficient financial strength to justify the return of loans and purchase of investments of the share applicant company.

4.3(d) In view of the above discussion, I am satisfied that assessee has satisfactorily explained the source of share capital and it has established the identity and creditworthiness of the share applicant as well as the genuineness of the transaction. Besides, the share application money received from the same source has been accepted by the A.O. in the subsequent assessment year which proves that A.O. was fully satisfied with the identity and creditworthiness of the share applicant company

*after verifying the same during the scrutiny proceedings in the subsequent year. Under the circumstances, addition u/s.68 in respect of share application money is not justified. Hence, A.O. is directed to delete the addition of Rs.2,50,00,000/-“*

18. We note that the assessee in order to discharge the burden casted upon it by virtue of Section 68 of the Act, has filed the copies of PAN, Income Tax Returns, audited financial statements, bank statements, source of fund utilised for making the investment, master data of the company as per the Registrar of Companies appearing on the portal of Ministry of Corporate Affairs and also the assessment order u/s. 143(3) of the Act for subsequent AYs of the share applicant company have been filed. Further, merger order of share applicant company with M/s Smooth Trading Pvt. Ltd. dated 30.09.2019 passed by Hon'ble NCLT, Kolkata Bench along with documents of the source of source to show the identity, credit worthiness and also the genuineness of the transaction are also provided. Nowhere during the proceedings carried out before the lower authorities and before us, the revenue has been able to point out any defect in these documents nor has the revenue been able to prove that these are false or fabricated. When the share applicant company is regularly assessed to tax and have also passed through scrutiny proceeding then doubting the source of share capital received from the alleged company is beyond imagination. Whenever, an assessee discharges its onus to explain the source of the alleged sum then the burden shifts upon the revenue authorities to come out with certain evidence to show that the alleged source was arranged/accommodation entry. The revenue authorities

seem to have failed to appreciate the fact that the alleged sum have been received by the assessee's group company only and the directors/shareholders are common. The major thrust of the revenue authorities on which the alleged addition has been made is the statement of Mr. Amit Kedia. We find that the statement given by the person to be accommodation entry provider stands invalid as he ceased to be a director of share applicant company more than four (4) years before such share application took place. Even Ld. AO did not find it important/necessary to provide the assessee with an opportunity of cross examination of Mr. Amit Kedia whose statement have been relied on by the AO which is clearly a violation of principle of natural justice. We find support for this proposition by the judgment of Hon'ble Supreme Court in the case of Andaman Timber Industries Ltd. (2015) 281 ITTR 241 and that of Hon'ble jurisdictional High Court in the case of CIT Vs. Eastern Commercial Enterprises (1984) 210 ITR 103 wherein Hon'ble Court has held that as a matter of fact, the right to cross examine the witness adverse to the assessee is an indispensable right and the opportunity of such cross examination is one of the corners of natural justice. In our considered view even on this ground of not providing the assessee an opportunity of cross examination, the proceeding held by the AO deserves to be quashed.

19. Further, we find that in the alleged statement of Mr. Amit Kedia relied on by the Ld. AO there is no whisper about the name of the assessee company and, nowhere in the statements the name of the

assessee company has been taken which can indicate that assessee has taken an accommodation entry.

20. We also note that one of the reasons for which the AO made the addition was for non-appearance of the directors and however, we find that the notice issued u/s. 133(6) of the Act were returned unserved as the Ld. AO issued the said notice at old postal address upon the share applicant company. However the assessee-company submitted the details explaining the second source i.e., source of M/s Pratik Merchants Pvt. Ltd. Even otherwise all the details of the share applicant company were very much available with the AO including the PAN and, therefore, in view of the judgment of the Hon'ble Supreme Court in the case of *CIT Vs. Orissa Corporation Pvt. Ltd.* 159 ITR 78 wherein it has been laid down that where it was in the knowledge of the revenue that the said creditors were income tax assesseees and their index nos. were in the domain of the revenue and the revenue apart from issuing notice u/s. 131 of the Act did not pursue the matter further and since the assessee has discharged the burden that lies on him then the conclusion by the Tribunal deciding in favour of the assessee cannot be held as unreasonable or perverse order based on no evidence.

21. Similar view was also taken by Hon'ble Delhi High Court in case of *CIT vs. Kamdhenu Steel & Alloys* 361 ITR 220 (Del.) wherein Hon'ble Court held that once the assessee discharged its onus by filing necessary evidence then the onus shifts upon the revenue for dislodging the initial burden discharged by the assessee and to throw

the ball again in the assessee's court demanding the assessee to give some more proof and if the same is not done at the end of revenue then the assessee cannot be subject to the addition for not explaining the share application money.

22. Further, similar view was also taken by Hon'ble Gujarat High Court in the case of *DCIT vs. Rohini Builders* 127 Taxman 523 wherein the Court observed that the assessee had discharged its onus of proving the identity of creditors by giving their complete addresses, permanent accounts number and copies of assessment orders. It was further observed that the assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques. The High Court held that only on the ground that some of the creditors could not be served with notice u/s 131 or they failed to appear before Assessing Officer the loans could not be treated as non-genuine and therefore upheld the order of the Tribunal deleting the addition u/s 68 of the I.T. Act 1961.

23. The share applicant company is one of the group companies of the assessee and the assessee discharged its onus by proving and explaining source and source of source (i.e., 2<sup>nd</sup> Source) by giving all the details and supporting of M/s Pratik Merchants Pvt. Ltd. Further, the share applicant is one of the group companies and Mr. Sameer Agarwal is common director.

24. In the case of *PCIT -vs.- Anmol Stainless (P.) Ltd.* (2022) 138 taxmann.com 535 (Calcutta HC) dated 9th February, 2022, it has been held that where entire sum of share capital along with share premium was

added back as unexplained cash credit to income of assessee-company under section 68, however, Tribunal on making an elaborate factual exercise, sufficiently established that share applicant had substantial creditworthiness and investments had been made by assessee's own sister concern/group companies having mostly common directors and thus, establishing creditworthiness and genuinity of investments, additions under section 68 had rightly been deleted.

The Tribunal in the above case of ACIT -vs.- M/s Anmol Stainless Pvt. Ltd. (ITA No. 1862/Kol/2017 dated 19-07-2019) held that the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants which are sister concerns/group companies of the assessee. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly, all the three conditions as required u/s. 68 of the Act i.e., the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under section 68 of the Act.

In the case of JCIT(OSD) -vs.- M/s Shivam Iron & Steel Company Pvt. Ltd. (ITA No. 238/Kol/2020 dated 22-10-2020) (Kolkata ITAT) the assessee has received share application money alongwith share premium. The CIT(A) deleted the addition made by the AO. Thereafter, the Tribunal held as follows:

*“We hold in view of these overwhelming facts and circumstances supporting the assessee’s case that the CIT(A) has rightly deleted the impugned addition. Hon’ble Gujarat high court’s decision in PCIT vs. Gyscoal Alloys Ltd. Tax Appeal No.1180/2018 decided on 01.10.18 has declined the Revenue’s identical stand seeking to justify similar section 68 addition of cash credits in the nature of share application/premium coming from group entities*

.....

*Be that as it may, we reiterate in line with our preceding observations to conclude that once the assessee had sufficiently proved the impugned sum to have coming from the group concerns (supra), we are of the opinion that the Revenue’s case law PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 103 taxmann.com 48(SC) does not apply in peculiar facts of the case. The CIT(A)’s order under challenge deleting the impugned addition stands upheld therefore.”*

*In the case of BST Infratech Ltd. -vs.- DCIT, Circle-3(1), Kolkata Ltd.*

*(ITA No. 2655/Kol/2019 dated 22-09-2022) (Kolkata ITAT)*

*“We further find force in the contention of the Ld. AR that even the Assessing Officer or the CIT(A) has not brought on record any evidence to show that it was the assessee’s own fund that was brought back in the form of share application money. The Ld. CIT(A), himself, has pointed out that the assessment order of the AO was cryptic and that no exercise was done by the AO to examine the records of the case.*

*Even the Ld. CIT(A), who has, himself, done the exercise of examining the documents has not pointed any doubt or discrepancy with regard to the identity of the investors. The only contention that has been raised by the CIT(A) in the impugned order is that the investor companies have low income. Assets in the form of investments have been created through rotation of money in between the group companies and that the assets mainly consist of cash and cash equivalents. The above contentions raised by the CIT(A), in our view, are not enough to prove that any unaccounted money of the assessee has been introduced in the assessee company, warranting addition under section 68 of the Income-tax Act. Even after making elaborate exercise of examining the documents, the Ld. CIT(A) could not point out any rebuttal to the above evidences furnished by the assessee to prove the identity, creditworthiness of the share subscribers and genuineness of the transaction. The hon’ble*

*Jurisdictional Calcutta High Court, in the case of Pr. CIT v. Anmol Stainless (P.) Ltd. [2022] 138 taxmann.com 535 has held that that where it has been sufficiently established that share applicants had substantial creditworthiness and investments had been made by assessee's own sister concern/group companies having mostly common directors and thus, establishing creditworthiness and genuinity of investments, additions under section 68 had been rightly been deleted."*

In the case of *Satyam Smertex Pvt. Ltd. -vs.- DCIT, Circle-3(1), Kolkata Ltd. (ITA No. 2445/Kol/2019 dated 29-05-2020) (Kolkata ITAT)*, it was held as follows:-

*" 29. In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee and the documents produced by the assessee cannot be brushed aside by the AO to draw adverse view, which action of AO cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, we are of the considered view that addition cannot be sustained merely based on inferences drawn by circumstance. Applying the law laid down in these case laws to the facts of this case, we are inclined to interfere with the order of the Ld. Commissioner of Income Tax (Appeals) and give relief to the assessee.*

*30. To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source, it shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record, including that of the directors and shareholders of share subscribing entities as discussed supra. Accordingly all the three conditions as required u/s. 68 of the Act*

*i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO and confirmed by Ld CIT(A) are based on conjectures and surmises, so their impugned action cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do allow the appeal of assessee and direct deletion of addition of Rs 16 cr under section 68 of the Act.*

*31. ... For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14th May, 2020. In the light of the above discussion, the appeal of assessee is allowed."*

25. Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal), wherein the Hon'ble Court has held as follows:

*"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their*

*creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction. Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three 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 had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was 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 had discharged his initial burden and the burden shifted onto 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". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."*

26. We, therefore, under the given facts and circumstances of the case and respectfully following the judicial precedents referred hereinabove and those relied by Id. CIT(A) are inclined to hold that since the assessee has duly discharged its primary onus by filing all necessary evidence which in our considered view are sufficient enough to prove the identity and creditworthiness of the share subscriber and genuineness of the transaction of receiving share application money at Rs.2,50,00,000/- for AYs. 2015-16, and, thus, the AO was not justified in making the said addition merely on the basis of the statement of the person without giving any opportunity of cross examination to the assessee and secondly, not considering the fact that the alleged entry operator ceased to be director of the share applicant company w.e.f

11.01.2011 and has no relation with the said company hence forth. Further Ld. AO failed to take note of the fact that the alleged share applicant is active company and have been subjected to the scrutiny proceedings u/s 143(3) of the Act and is regularly assessed to income tax, books of accounts is regularly audited and the company having regular business activity, common directors/shareholders. Thus, in our considered view the Ld. AO erred in invoking the provisions of section 68 of the Act and thus, we fail to find any reason to interfere in the finding of the Ld. CIT(A) deleting the alleged addition. Therefore, all the grounds raised by the Revenue are dismissed.

25. In the result, appeal of the revenue is dismissed.

**Order pronounced in the Court on 21<sup>st</sup> December, 2023 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated 21/12/2023

*\*SC S.P.*

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

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  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata