

आयकर अपीलिय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री मनीष बोरड, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
[Before Shri Manish Borad, Accountant Member & Shri Anikesh Banerjee, Judicial Member]

I.T.A. No. 1215/Kol/2018
Assessment Year: 2012-13

VSFT Quilts & Pillows Pvt. Ltd. (Presently known as Mallcom VSFT Gloves Pvt. Ltd.) (PAN: AACCV 2497 F)	Vs.	ITO, Ward-7(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	29.01.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Bishnu Kant Agarwal, FCA
For the Respondent/ राजस्व की ओर से	Shri Kallol Mistry, JCIT, Sr. D.R

ORDER / आदेश

Per Anikesh Banerjee, Judicial Member:

The instant appeal of the assessee was filed against the order of Ld. Commissioner of Income-tax (appeals)-3, Kolkata [in brevity ld. 'CIT(A)'] dated 15.03.2018 passed u/s 250 of the Income Tax Act, 1961 (in brevity the 'Act') for assessment year 2012-13. The impugned order was emanated from

the order of the Id. Income-tax Officer, Ward-7(2), Kolkata (in brevity the 'AO') passed u/s 143(3) of the Act dated 30.03.2015.

2. The assessee has taken the following grounds of appeal:

"1. That no proper opportunity was given to the appellant to represent its case.

2. That based on the facts of the case and in law, the Ld. CIT(A) was wrong in confirming the additions made by Ld. Assessing Officer of Share capital of Rs. 5,07,00,000/- including share premium u/s 68 of the Income Tax Act, 1961."

The assessee has taken additional grounds. But during hearing the additional ground was not pressed.

3. Brief facts of the case is that the assessee is a manufacturer of quilts and pillows at Falta Special Economic Zone, West Bengal and to export them. The major customer of the Company is IKEA. During the impugned assessment year the assessee raised share capital amount to Rs. 5,07,00,000/- by way of issue of equity shares number 202800 by charging Rs. 10/- each and at a premium of Rs. 240/- each. The assessment proceeding was initiated against the assessee and the verification of investors were started. The notice u/s 131 was issued calling for personal appearance of the Directors of assessee company. Further the notice was issued in direction to appear the directors of the invested company but all are remained non-compliance. The assessee complied notice u/s 142(1) of the Act by submitting the financial documents, proof of identity, the transaction through banking channel and creditworthiness related investment.

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Due to lack of verification, the Id. A.O has rejected the assessee's submission and added back the entire amount u/s 68 of the Act.

Aggrieved the assessee filed an appeal before the Ld. CIT(A). All the documents are duly submitted further before the Ld. CIT(A). But the assessment order is upheld. Being dissatisfied on appeal order, the assessee filed appeal before us.

4. The Ld. A.R vehemently argued and filed written submission which are kept in the record. The Ld. A.R first argued about the genuineness and creditworthiness of the invested companies. He stated that all are in nature of company, incorporated under Companies Act, 1956 and have PAN and regular filing of income tax return. The Id. AR placed a list which depicted the percentage of fund was used in assessee company by the shareholders and the identity of the shareholders which are reproduced as under:

A. Name ,Address,CIN and PAN of shareholders

Sl.No	Name of the Company	Address	CIN	PAN
1	Ritesh Construction Pvt Ltd	53A, Mirza Ghalib Street Kolkata- 16	U45400WB2007PTC116301	AADCR6226K
2	Om Vincom Pvt Ltd	53A, Mirza Ghalib Street Kolkata- 16	U51909WB2008PTC123088	AABCO0241K
3	Ritesh Projects Pvt Ltd	53A, Mirza Ghalib Street Kolkata- 16	U4500WB2007PTC116326	AADCR6224M
4	Darshan Vyapaar Pvt Ltd	4, Synagogue Street, Kolkata-01	U52190WB1994PTC062667	AABCD8334Q
5	Ritesh Enclave Pvt Ltd.	53A, Mirza Ghalib Street	U45400WB2007PTC116300	AADCR6228H

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		Kolkata- 16		
6	Ritesh Vinimay Pvt Ltd	53A, Mirza Ghalib Street Kolkata- 16	U51909WB2007PTC1163388	AADCR6258D
7	Ritesh Exim Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U1810WB2007PTC116302	AADCR6229G
8	VPL Oil Marketing Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U51909WB2004PTC098936	AABCV8810F
9	Ritesh Nirman Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U45400WB2007PTC116327	AADCR6227J
10	Shiv Shankar Securities Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U65593WB1995PTC074660	AADCS8062L
11	Jwel Moulders & Holdings Pvt. Ltd.	4, Synagogue Street, Kolkata-01	U15491WB1992PTC056768	AAACJ6404G
12	Salasar Financial Advisory Services Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U74900WB2009PTC135012	AANCS0249R
13	Om Enclave Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U74999WB2011PTC162893	AABCO4774B
14	Surbhika Vyapaar Pvt Ltd.	4, Synagogue Street, Kolkata-01	U51109WB2005PTC102301	AAJCS0680C
15	Ritesh Commercial Holdings Ltd	53A, Mirza Ghalib Street Kolkata- 16	U27106WB1986PLC40985	AABCR1974J
16	Darshan Consultant Pvt Ltd	53A, Mirza Ghalib Street Kolkata- 16	U74140WB211PTC162872	AABCD8334Q
17	Storewell Shipping Pvt Ltd.	11, Government Place (East) Kolkata-69	U35111WB199PTC084198	AAECS8523K
18	Charisma Enclave Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U74999WB2011PTC162892	AAECS8523K
19	North City Creations Pvt Ltd.	4, Synagogue Street, Kolkata-01	U74999WB2012PTC172258	AADCN8759R
20	Real Sunrise Marketing Pvt Ltd.	4, Synagogue Street, Kolkata-01	U74999WB2012PTC172263	AAFRCR6675L
21	Salasar Sarees Pvt. Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U1722WB2009PTC139272	AANCS5332F
22	Speed Business Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U51909WB2000PTC092400	AAECS9293C
23	Veenus Financial Consultants Pvt Ltd.	53A, Mirza Ghalib Street Kolkata- 16	U74140WB2009PTC135145	AADCV0051C

B. Paid up capital and reserve of the shareholders and percentage of total fund invested in this company and source of funds.

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Sr.	Name of Company	Reserve & Surplus Paid-Up Capital (Rs. In Lakhs)	Application Amount (Rs. In Lakhs)	% of Total Fund	Source of fund
1.	Ritesh Construction Pvt Ltd	588.80	12.00	2.03%	Refund of Loan
2.	Om Vincom Pvt Ltd	1,145.62	27.00	2.35%	Refund of Loan
3.	Ritesh Projects Pvt Ltd	1,064.78	69.00	6.48%	Refund of Loan
4.	Darshan Vyapaar (P) Ltd	739.01	20.50	2.77%	Refund of Loan
5.	Ritesh Enclave Pvt Ltd	1,481.99	9.00	0.60%	Refund of Loan
6.	Ritesh Vinimay Pvt Ltd	559.35	26.00	4.64%	Refund of Loan
7.	Ritesh Exim Pvt Ltd	820.75	42.00	5.11%	Refund of Loan
8.	VPL Oil Marketing Pvt Ltd	1134.42	27.00	2.38%	Refund of Loan
9.	Ritesh Nirmans Pvt Ltd	697.94	26.50	3.79%	Refund of Loan
10.	Shiy Shankar Securities Pvt Ltd	1108.88	7.00	0.63%	Refund of loan and interest receipts
11.	Jwel Modulers & Holding Pvt Ltd	1109.49	4.00	0.36%	Refund of Loan
12.	Salasar Financial Advisory Services Pvt Ltd	2050.56	19.00	0.92%	Refund of Loan
13.	Om Enclave Pvt Ltd	953.59	15.00	1.57%	Share capital 8 lakh and refund of loan 7 lakhs
14.	Surbhika Vyapaar Private Limited		45.00		
15.	Ritesh Commercial Holdings Ltd	722.77	6.00	0.83%	Refund of Loan
16.	Darshan Consultant Pvt Ltd	961.04	55.00	5.72%	Share application money
17.	Storewell Shipping Pvt Ltd	100.99	25.00	24.72%	Loan raised from group company
18.	Charisma Enclave Pvt Ltd	931.75	10.00	1.07%	Share application money
19.	North City Creations Pvt Ltd	103.01	15.00	14.56%	Share application money
20.	Real Sunrise Marketing Pvt Ltd	102.01	25.00	24.51%	Share application money
21.	Salasar Sarees Pvt Ltd	651.86	5.00	0.77%	Refund of loan
22.	Speed Business Pvt Ltd	823.37	15.00	1.82%	Refund of loan
23.	Venus Financial Consultants Pvt Ltd	1671.59	2.00	0.12%	Refund of loan

5. The Ld. A.R further argued and placed that during assessment the assessee has produced all the documents and evidence to substantiate the identity, genuineness and creditworthiness of the shareholders. The documents are also submitted in **APB-1, pages 1 to 436** in which following details in respect of each shareholders are submitted:

- i) Share application form
- ii) source of funds
- iii) bank statement
- iv) audited accounts
- v) copy of income tax acknowledgment
- vi) copy of PAN card

The Ld. A.R in argument further relied on the order of **ITAT, Kolkata “A” Bench** in the matter of **ITO vs. Indus Realty Pvt. Ltd.** in **ITA No. 666/Kol/2023 for AY 2012-13 pronouncement date 08.11.2023**. The relevant paragraph extracted as below: -

“7. During the course of hearing, it was pointed out that all these four companies are Group Company of the assessee. They filed positive return income every year though small in number. For instance first group Concern is Citizen Securities Pvt. Ltd., who has net worth of Rs.3.91 crores and this Concern invested only Rs.25 lakhs, i.e. less than 10% of its own net worth. The Directors of this Company appeared before the ld. Assessing Officer and deposed that the Company has made investment with the assessee-company and also paid share premium. Similarly the second company is De-Con Projects Pvt. Limited. It invested Rs.50 lakhs out of its net worth of Rs.6.89 crores. This company has filed a return declaring profit of Rs.3,92,065/-. The next one is Software Conglomerate Pvt. Limited. It has also a net worth of Rs.2.63 crores and made investment of Rs.50 lakhs and the last one is Quickpay Suppliers Pvt. Limited,

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who has net worth of Rs.2.77 crores and made investment of Rs.1.75 crores. According to the assessee, this company had earned a profit of Rs.3.99 crores during the instant year and had enough funds to make such heavy investment. The assessee has filed all these documents. The only area of difference between the assessee and the ld. Assessing Officer is as to why the subscriber will invest in a Company, who is making losses. To this, ld. CIT(Appeals) has also held that it is for the businessman to decide how it wants to use its funds. The subscribers have not borrowed the money for making investment with the assessee-company. The group concern might have decided to start some activity on substantial basis in the assessee-company, therefore, it could be a support from the group concern. The ld. 1st Appellate Authority has also examined whether, this excess premium paid by the subscribers is to be construed as a gift to the assessee within the meaning of section 56(2)(vib) of the Income Tax Act but held that this provision is applicable from A.Y. 2013-14 and not in A.Y. 2012-13.”

6. The Ld. D.R vehemently argued and relied on the order of revenue authorities. The Ld. D.R invited our attention to assessment order which is reproduced as under:

“Response to Final Show cause:

In response to the said notice there was compliance on the part of the assessee company and the assessee furnished that the source of funding of such Share Capital raised / Share premium received /share application received was correct. The contention of the assessee was supported by few documentary evidences which are kept in the records. The documents and details were perused and seen but that does not reduce the assessee's burden to prove and liability to prove a transaction to be true and genuine;

Notice U/s 131 of the I T Act'61

Even though notices U/s 131 of the Income Tax Act'd 1 was issued to the assessee company but there was non compliance on the part of the assessee company. The assessee company failed to totally discharge its onus to prove a transaction to be true even though the statutory notices and further re-fixation notices and further notice U/s 131 of the Income Tax Act'61 was issued to the Directors of the assessee company for personal appearance and recording of statement and obtaining deposition and to substantiate that the alleged transaction was from genuine sources and not a bogus transaction and also to produce the details and documentary evidences of the sources of the source of funding of the shareholders and justification of ^ issue of shares at such a huge premium.

Assessee failed to discharge onus:

Even though opportunity of" being heard was provided to the directors but there was non-compliance to the said 131 notice. The directors of the company failed to produce evidences required to substantiate the transactions along with the source of funding of such Shares/ Premium / applications. The assessee company and the directors of the assessee company failed to discharge the onus to provide a transaction as being genuine and failed to discharge his duties."

7. We heard the rival submissions and considered the document available in the record. The addition was made by pursuing u/s 68 of the Act. The application of Section 68 is standing on 4 legs:

- i. Identity of the party
- ii. Transaction in banking channel
- iii. Filing the income tax return.
- iv. Creditworthiness.

Related to identity, banking transaction and creditworthiness, the assessee already submitted the details document before the revenue authorities and also before the bench from **APB-1-page nos. 1 to 436**. The ld. DR did not make any objection about the first three ingredients related to addition section 68 during the hearing. During the assessment hearing the evidence was filed and no

question about the veracity of the documents. The relevant paragraph of assessment order is extracted as below: -

“The replies received from the assessee company are kept in the records. The details and contentions of the assessee company were perused and considered. The details and documents filed and explanations received were taken in consideration but same are not acceptable.”

The inference is drawn by the Id. AO is lack of reason which cannot be acceptable.

The perusal of the chart (mentioned above) related to the creditworthiness of shareholders we find that the investment varies from .12% to 24.7% of their net worth. The amount was invested from the investment of share holder. The creditworthiness of the shareholders is explained. The assessee was able to cover up all the criterias as per provision of Section 38 of the Act. But the revenue is agitated the issue “preponderance of probability” which is proved beyond the reasonable doubt and cited the order of Hon’ble Apex Court in the case of *Sumati Dayal vs. CIT in 214 ITR 801(SC)*. The question is raised by the Ld. D.R that the issuance of share in premium @ Rs. 240/- for a loss company is against the human probability and relied on the assessment order. Bu this company which was in loss making that time now is doing business as an export company in Falta Special Economic Zone, West Bengal. The issue was rightly discussed and dealt by the Co-ordinate Bench of Kolkata in the case

of Indus Realty Pvt. Ltd. (supra). We relied on the order of the coordinate bench in the case of **Indus Realty Pvt. Ltd**(supra). The order of coordinate bench is squarely covered with this case. The ld. DR was unable to place any contrary judgment during the hearing. The evidence and submission of the assessee related to the transaction are sufficient to fulfill the criteria as per provision of Section 68 of the Act. Mere, non-appearance in persuasion of notice U/s 131 cannot be the main criteria of addition U/s 68 of the Act. Considering above, we set aside the appeal order. The addition U/s 68 of the Act amount to Rs. 5,07,00,000/- is quashed. The appeal of the assessee is succeeded.

8. In the result, the appeal filed by the assessee in **ITA No. 1215/Kol/2018** is allowed.

Order is pronounced in the open court on 23rd February, 2024

Sd/-
(Manish Borad/मनीष बोरड)
Accountant Member/लेखा सदस्य

Sd/-
(Anikesh Banerjee /अनिकेश बनर्जी)
Judicial Member/न्यायिक सदस्य

Dated: 23rd February, 2024

SM, Sr. PS

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Copy of the order forwarded to:

1. Appellant- VSFT Quilts & Pillow Pvt. Ltd. (Presently known as Mallcom VSFT Gloves Pvt. Ltd.), EN-12, Sector-V, Salt Lake City, Kolkata-700091
2. Respondent – ITO, Ward-7(2), Kolkata
3. Ld. CIT(A)- 3, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata