

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 802/Kol/2018**  
**Assessment Year: 2011-12**

Kunjai Synergies Pvt. Ltd.  (PAN: AACCK 9990 L)	Vs.	DCIT, Circle-8(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	28.12.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	29.02.2024
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeal)-3, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 15.03.2018 for the AY 2011-12.

2. Issue raised in ground no. 1 is general in nature and needs no adjudication.

3. Issue raised in ground no. 2 is against the confirmation of addition of Rs. 2,80,00,000/- by the Ld. CIT(A) as made by AO on account of unexplained cash credit u/s 68 of the Act in respect of share capital/share premium.

4. Facts in brief are that the assessee filed return of income on 13.09.2011 showing total income of Rs. 2,06,04,670/-. Thereafter the case of the assessee was selected for scrutiny and notices were duly issued and duly served on the assessee. During the course of assessment proceedings, the AO observed from the balance sheet that the assessee has issued 2,80,000 equity shares of face value of 10/- each at a premium of Rs. 990/-. Accordingly the AO called upon the assessee to furnish details in respect of share capital/share premium and justify the amount of premium received from five subscribers by referring the information received from Directorate of Investigation Wing vide letter dated 28.11.2014 regarding accommodation entries provided to the assessee company. The AO issued summons u/s 131 of the Act on 03.03.2015 to all the parties however none appeared. Accordingly the AO show caused the assessee vide order sheet entry to explain why the transactions should not be treated as accommodation entries which was relied by the assessee vide letter dated 17.03.2015. The assessee submitted in his reply, which is extracted from para 2 at page 4 of assessment order, that when these parties were contacted it was learnt that summons u/s 131 of the Act were received by four parties out of five parties and were duly replied by enclosing the details as requisitioned by the AO furnishing therewith copies of balance sheets, bank statements showing the investments made in the assessee company. The assessee also filed necessary evidences before the AO in respect of share subscribers filing their ITRs, PANs, audited accounts along with bank statements. In para 3 at page 4 of the assessment order it was stated that in respect of 5th party on which the summon could not be served, the assessee filed details comprising master data , ITR, copy of Form no. 18, audited financial statements and copy of bank statement highlighting the investment made in the assessee company. In para 4 of the assessment order it was stated that the book value of share was 212/- per share whereas the premium at which the equity shares were issued was approximately

five times higher. It was also explained that the company was incorporated in the year 2007 and value per share has increased more than 20 times over a period of four years and hence the premium of Rs. 990/- was taken. During the year, the company has returned income of more than Rs. 2.00 crores however the AO disbelieved the explanation of the assessee and without carrying out any investigation on the evidences filed by the assessee treated this amount of unexplained cash credit and added the same to the income of the assessee.

5. The Ld. CIT(A) simply affirmed the order of AO by observing and holding as under:

*“The Hon’ble ITAT has discussed the issue in detail in the case of ITO, Ward-5(3), Kolkata vs. M/s Blessings Commercial Pvt. Ltd. in ITA No. 271/Kol/2014 for AY 2010-11. In this case, Rs. 10/- shares has been issued at a premium of Rs. 990-. On this question, the assessee has not even attempted to justify the amount of share premium. A perusal of the audited statement of accounts of these companies demonstrate that the financials are not in live with the premium charged. Respectfully applying the propositions of law laid down by the co-ordinate bench of the Tribunal to the facts of the case, we find that Section 68 of the Act applies to the facts of this case as a sum of money was credited, in the books of the assessee and the assessee could not prove the genuineness of these credits as well as the creditworthiness of the creditor. Hence in our informed view the addition has rightly been made by the AO. Accordingly, the appeal of the appellant is hereby dismissed as the factual matrix is more or less similar.”*

6. The Ld. A.R vehemently submitted that the assessee company is mainly engaged in the business of trading, storage, distribution petrochemicals, solvents ,energy related products and during the year filed return of income declaring total income of Rs. 2,06,04,670/-. During the year the assessee raised share capital/share premium by issuing equity shares to five subscribers at face value of Rs. 10/- each at a premium of Rs. 990/- per share though the book value of the share was Rs. 212/- per share. However as per the growth of the company the value of the share has increased 20 times over a period of four years. The Ld. A.R submitted that the assessee was incorporated in 2007 and during the period of 4 years ,the worth of shares has gone up 20 times. It is only on this basis , the issue price of the shares has been fixed by the assessee. The Ld. A.R also stated that Section 56(2)(viib) of the Act which provides for addition of income if the shares are issued at a price which is higher than fair

market value of the shares but the same is effective from AY 2013-14 and not the year under consideration which has been settled by various judicial forums. The Ld. A.R also referred to the worth of the share subscribers which was approx. forty to fifty times of the amount invested in the assessee company by way of equity shares. The Id AR , therefore, submitted that the subscribers were having sufficient net worth and the identity, creditworthiness of the investors and genuineness of the transactions cannot be doubted. The Ld. A.R, while referring to PB serial no. 8 to 12 which are in respect of documents filed in respect of share subscribers from page 61 to 460, submitted that in case of M/s Deepak Pens and Plastics Pvt. Ltd. at Sl. No. 8, M/s Nidhi Agro Pvt. Ltd. at Sl. No. 10 and M/s Satyatej Vyapaar Pvt. Ltd. at Sl. No. 11, the assessment have been framed u/s 143(3) of the Act and also submitted that these assessment orders are placed in the PB. The Ld. A.R submitted that the assessee has filed copies of ITRs, audited accounts, certificate of incorporation, memorandum & articles of associations, memorandum & articles of association (amended), annual returns under the Companies Act, 1956, list of share holders, share allotment letters, bank statements, reply to summons issued u/s 131 of the Act, source of source and confirmation certificates etc besides assessment orders (wherever applicable) as stated above in case of all subscribers however the AO has not carried out any investigation. The Id AR submitted that even summon issued to the assessee which was replied by the assessee as stated above. Therefore the addition as confirmed by the Ld. CIT(A) may kindly be deleted.

7. The Ld. D.R on the other hand relied on the order of authorities below and submitted that the AO as well as Ld. CIT(A) has passed a very speaking and reasoned order stating as to how the money received by the assessee from five subscribers do not satisfy the basic three conditions as provided in Section 68 of the Act. The mere fact that subscribers have sufficient funds or net worth would not automatically proved that they have creditworthiness to invest the money and transactions are genuine. The Ld. D.R therefore prayed in view of reasoning by authorities below, the appeal of the assessee may be dismissed.

8. We have heard rival contentions and perused the material on record, we find that during the year the assessee has raised money from five subscribers by issuing equity shares of face value of 10/- each and at a premium of Rs. 990/-. The net worth or the book value as per share as per books of account of the assessee was 212/- per share whereas the assessee was issued shares at a premium of Rs. 990/-. We also note that the assessee company was incorporated in 2007 and over a period of four years the value of shares was increased by 20 times and it is only based on this growth trajectory and potential of the assessee, The equity shares have been priced at Rs. 1,000/- each inclusive of premium of Rs.990/-. Moreover the provisions of Section 56(2)(viib) of the Act are effective from AY 2013-14 and are not applicable to the year under consideration. We also note that all these facts have been placed by the assessee before the AO as well as Ld. CIT(A).

9. We have also perused the chart placed by the assessee which contains the detail of share holders net worth and amount invested to the assessee and is extracted below for the sake of ready reference:

<b>Sl. No.</b>	<b>Name of Shareholder</b>	<b>CIN</b>	<b>Networth</b>	<b>Amount paid (Rs.)</b>
1	Deepak Pens and Plastics Pvt. Ltd.	U70109WB1993OTC060899	65,01,10,633	90,00,000
2	Impression Suppliers Pvt. Ltd.	U51909WB2008PTC130611	18,53,54,639	25,00,000
3	Nidhi Agro Pvt. Ltd.	U92412WB1992PTC054967	73,73,73,766	60,00,000
4	Satyatej Vyapaar Pvt. Ltd.	U51109WB1993PTC061116	74,81,11,997	75,00,000
5	Avon Vanijya Pvt. Ltd.	U51109WB2008PTC25999	11,95,88,722	30,00,000
			<b>Total</b>	<b>2,80,00,000</b>

We note from the above table the subscribers have sufficient net worth to make investments in the shares of the assessee company as the net worth of these companies are 40 to 50 times higher than the investments made in the assessee company. We find that the assessee has filed all the evidences as stated above consisting of copies of ITRs, audited accounts, certificates of incorporation, Memorandum and Articles, Annual Returns filed with ROC, bank statements, replies to summons issued u/s 131 of the Act, source of source certificates, assessment orders u/s 143(3) and intimation u/s 143(1) of the Act in all five investors and the authorities below have failed to pin point any defect of deficiency. Under these facts and circumstances, we are inclined to hold that the addition has wrongly been confirmed by the Ld. CIT(A) and we are not in a position to sustain the same. Consequently the order of Ld. CIT(A) has set aside and AO is directed to delete the addition.

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

Order is pronounced in the open court on 29<sup>th</sup> February, 2024

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

Sd/-  
(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 29<sup>th</sup> February, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kunjal Synergies Pvt. Ltd., 15D, Everest House, 46C, Jawaharlal Nehru Road, Kolkata-700071.
2. Respondent – DCIT, circle-8(1), 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