

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.573/Kol/2020
Assessment Year: 2012-13**

DV Re-Rolling Mills Pvt. Ltd. Diamond Prestige, 41A, A.J.C. Bose Road, 8 th floor, Room No. 801, Kolkata- 700017. (PAN: AADCD6365R)	Vs.	Income Tax Officer, Ward-9(1) Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S. Jhajharia, Advocate
Respondent by : Shri S. Datta, CIT, DR

Date of Hearing : 07.03.2024
Date of Pronouncement : 19.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-3, Kolkata vide Appeal No. 1391/CIT(A)-3/Wd-9(2)/2015-16 dated 16.09.2020 passed against the assessment order by ITO, Ward-9(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.03.2015 for AY 2012-13.

2. The only issue raised by the assessee is in respect of addition of Rs.24,36,00,000/- made on account of unexplained cash credit u/s. 68 of the Act towards share capital raised by the assessee during the year. Assessee has placed on record revised grounds of appeal vide application dated 06.03.2024.

3. Brief facts of the case are that assessee had filed its return of income on 22.12.2012 reporting a total loss of Rs.41,379/-. Case of the assessee was selected for scrutiny assessment through CASS for the reason that “*to examine large share premium received*”. During the year assessee had raised share capital by issuing equity shares of Rs.10/- per share face value and premium of Rs. 90/- per share for 24,36,000 number of shares issued to three share subscribing companies viz.-

- (i) Sparking Star Infradev Pvt. Ltd.
- (ii) Scorpio Marketing Pvt. Ltd.
- (iii) Sacnpoint Infoware Pvt. Ltd.

3.1. Statutory notices were issued by the Ld. AO in this respect. The Ld. AO has noted in para 2 of the impugned order that Ld. AR of the assessee company appeared from time to time and furnished details of submissions and explanations. Notices u/s. 133(6) of the Act was also issued to the shareholder companies in which replies were received as noted by the Ld. AO in the same paragraph. Subsequently, summon u/s. 131 of the Act was issued on the director of the assessee for personal deposition and producing certain details, who failed to appear before the Ld. AO. Ld. AO on the failure of directors to appear before him, concluded that assessee has introduced its undisclosed fund in the garb of subscription by shareholders. According to him, merely establishing the identity of the creditor is not sufficient. By noting that creditworthiness of the shareholders could not be established by the director of the assessee and, therefore, he added the amount of Rs.24,36,00,000/- towards share capital increased during the year as recorded in the books of the assessee by applying provisions of section 68 of the Act. Aggrieved, assessee went in appeal

before the Ld. CIT(A), who confirmed the said addition. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee has placed on record a paper book containing 110 pages to demonstrate the material which was placed before the authorities below who have failed to consider the same. The index of paper book which demonstrates the documents and details which are furnished is extracted below:

Serial No.	Particulars	Page No	Filed before the AO	Filed Before the CIT(A)
1.	Copy of the Written Submission filed before the Learned CIT(A)	1 to 13	Yes	Yes
2.	Copy of the Audited Accounts including the Balance Sheet and the Profit & Loss Account of DV Re-Rolling Pvt. Ltd for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	14 to 27	Yes	Yes
3.	Copy of the Bank Statements of DV Re-Rolling Pvt. Ltd for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	28-35	Yes	Yes
4.	Copy of the Acknowledgement of the Income Tax Return filed by DV Re-Rolling Pvt. Ltd for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	36-36	Yes	Yes
5.	Copy of the Ledger Account DV Re-Rolling Pvt. Ltd in respect of Share Application money received from Scanpoint Infoware (P) Ltd	37-37	Yes	Yes
6.	Copy of the Ledger Account DV Re-Rolling Pvt. Ltd in respect of Share Application money received from Scorpio Marketing (P) Ltd	38-38	Yes	Yes
7.	Copy of the Ledger Account DV Re-Rolling Pvt. Ltd in respect of Share Application money received from Sparkling Star Infradev Pvt Ltd	39-40	Yes	Yes
8.	A Table Showing the names of the parties whom Shares were allotted	41-41	Yes	Yes
9.	The Following details in respect of Scanpoint Infoware Private Limited –		Yes	Yes
	a) Copy of the Acknowledgement of the Income Tax Return Filed for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	42-42	Yes	Yes
	b) Copy of the Audited Accounts including the Balance Sheet and the Profit & Loss Account for the previous Year ended 31 st	43 – 53	Yes	Yes

	March 2012, relevant to the Assessment Year 2012-13.			
	c) Copy of the Assessment order framed under section 153A/143(3) dated 20.12.2016 for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	53A to 53F	No	No
10.	The following Details in respect of Sparkling Star Infradev Private Limited-			
	a) A statement Showing the Application of Fund as well as the Sources of the Fund	54 to 55	Yes	Yes
	b) Ledger Accounts in respect of Payments in respect of Share Application money from Bank Accounts	56-56	Yes	Yes
	c) Copies of Bank Accounts	57-64	Yes	Yes
	d) Copy of the acknowledgement of Filing of Income Tax Return and also the Computation of Income	65-66	Yes	Yes
	e) Copy of the Audited Accounts Including the Balance Sheet and the Profit & Loss Account for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	67-80	Yes	Yes
	f) Copy of the Assessment order framed under section 153A/143(3) dated 20.12.2016 for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	80A-80F	No	No
11.	The following details in respect of Scorpio Marketing Pvt. Ltd –			
	a) A statement shoeing the Application of Fund as well as the Sources of Fund	81-82	Yes	Yes
	b) Copy of the Ledger Account in respect of Payments made to the Appellant in respect of Share Application money	82-82	Yes	Yes
	c) Copy of the acknowledgement of Income Tax Return filed for the previous Year	83-83	Yes	Yes

	ended 31 st March 2012, relevant to the Assessment Year 2012-13.			
	d) Copy of the Audited Accounts including the Balance Sheet and the Profit & Loss Account for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	84-97	Yes	Yes
	e) Copies of the Bank Statement for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	98-102	Yes	Yes
	f) Copy of the Assessment Order framed under section 153A/143(3) dated 23.12.2016 framed for the previous Year ended 31 st March 2012, relevant to the Assessment Year 2012-13.	103-108	Yes	Yes
12.	A copy of the letter dated 1.8.208 from the AO asking the Appellant to furnish the documents filed before the CIT(A), to enable him to file the Remand Report requisitioned by the Learned CIT(A)-3, Kolkata	109-109	Yes	Yes
13.	A copy of a letter dated 23.8.2019, under cover of which all the details filed before the CIT(A) were also filed with the AO to enable him to file the Remand Report requisitioned by the Learned CIT(A)-3, Kolkata	110-110	Yes	Yes

5. Further, Ld. Counsel referred to the details of share allotment made during the year under consideration, giving details in respect of name of the shareholders which are tabulated as under:

Sl. No	Name of Shareholder	No. of Shares	Amount (In Rs.) (Issued at 10+90)	Returned Income	Source of Fund
1	Sparking Star Infradev Pvt Ltd	1435000	143500000.00	12410.00	Sale of Investment
2	Scorpio Marketing Pvt Ltd	951000	95100000.00	-5764.00	Sale of Investment
3	Scanpoint Infoware Pvt Ltd	50000	5000000.00	1201.00	Sale of Investment
	Total	2436000	243600000.00		

6. Ld. Counsel also referred to details furnished in respect of net worth of each of the share subscribers to demonstrate their

creditworthiness for making investment in the share capital of the assessee. The said details are tabulated as under:

DV Re-Rolling Mills Pvt. Ltd.
AY 2012-13

					Paper Book
Sl. No.		Share investment	Net worth	Balance Sheet	Asst. order
1.	Scanpoint Infoware (P) Ltd.	50,00,000/-	35,86,90,795/-	48	53A
2.	Sparking Star Infradev (P) Ltd.	14,35,00,000/-	18,92,12,382/-	75	80A
3.	Scorpio Marketing (P) Ltd.	9,51,00,000/-	16,65,79,574/-	90	103

7. It was also submitted that Ld. AO had issued notices u/s. 133(6) of the Act to all the share subscribers who had duly responded by submitting the desired details and documents which the Ld. AO himself has taken note of in the impugned order. According to the Ld. Counsel, though the directors of the share subscribing companies did not attend to the summon issued u/s. 131 of the Act, however, all the details and documents were placed on record which have not been controverted by the authorities below in any manner whatsoever. According to the Ld. Counsel, the AO has made the addition with a predetermined mind set without taking into consideration exhaustive details and documents which were placed on record both.

8. In the course of first appellate proceeding, Ld. CIT(A) had called for a remand report from the Ld. AO. In the said assessment proceeding, Ld. AO had issued a notice dated 02.08.2018 calling for the details and explanations. Against the said notice, assessee had furnished the required documentary evidence in the form of a paper book which was also submitted before the Ld. CIT(A). The said submission is dated 23.08.2019 duly acknowledged by a sealed stamped on the said letter placed at paper book at page no. 110.

9. He placed reliance on the decision of Hon'ble jurisdictional High Court of Calcutta in the case of PCIT Vs. Naina Distributors Pvt. Ltd. in ITAT/113/2023 vide IA No. GA/1/2023 dated 28.06.2023 wherein similar issue has been dealt by the Hon'ble Court. He took us through the said judgment from where the following points emerged:

(a) The Hon'ble Court noted that Ld. Tribunal has independently examined as to the genuinity of the transaction in the matter of raising share capital and that even during the assessment proceedings, the assessee had furnished all the details in respect of the share capital and share premium including the details of the investors who had made their submissions before the AO.

(b) The Hon'ble Court also observed that the Tribunal has noted about the assessee had produced all the documents, disclosed the names and addresses and PAN of the investors including several other documentary evidence.

(c) Hon'ble Court also observed that AO had issued notices u/s. 133(6) of the Act for carrying out independent verification of the transaction and thus investors duly responded to the said notices and filed the requisite details.

(d) Also, the assessment years framed u/s. 143(3) of the investors were placed on record.

(e) Tribunal also noted that the only reason for making the addition was that the directors of the assessee company did not respond to the summons issued by the AO u/s. 131. Thus, the non-appearance of the director formed the basis of making the addition.

9.1. From the above stated observations and notes, the Hon'ble High Court came to the conclusion that there was no question of law much less substantial question of law which arose for consideration in the said appeal and thus, the appeal filed was dismissed. A reference was also made by the Hon'ble Court to its decision in the case of Crystal Networks Pvt. Ltd. Vs. CIT 253 ITR 171 (Cal) on which the Tribunal had placed its reliance.

10. Per contra, Ld. Sr. DR placed reliance on the orders of the authorities below and submitted that assessee's own income has been infused in the guise of share capital through the investor companies. According to him, assessee could not establish the identity and creditworthiness of the share subscribers and prove the genuineness of the transaction by not producing the director of the assessee before the AO.

11. We have heard the rival contentions and gone through the material available on record. We note that Ld. AO without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. 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 furnished in his office and also as to get 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 v. Paradise Inland Shipping Pvt. Ltd.* [2017] 84 taxmann.com 58 (Pan) 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 their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *Crystal Network Pvt. Ltd. v. CIT (supra)* which held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT (Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

12. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee of the share subscribing companies. These evidences furnished 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 its director. Thus, going by the records placed by the assessee of all the share subscribing companies, 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. It is also noted from their audited financial statement and chart extracted above that all the investing companies have sufficient own funds available with them to make investment in the assessee.

13. A perusal of the impugned first appellate order shows that the Ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply cited certain case laws even without pointing out as to how these case laws were applicable to the facts and circumstances of this case. By simply reproducing the contents of the case laws without discussing about their application on the facts of the case, in our view, would not make the order of the Ld. CIT(A) justifiable speaking order and hence, the same is not sustainable as per law.

14. From the facts and circumstances of the case as already discussed above, we find that the case of the assessee is squarely covered by the decision of Hon'ble jurisdictional High Court in the case of Naina Distributor Pvt. Ltd. (Supra). We have already summarised the observations and noting as well as the finding arrived at by the Hon'ble High Court in this case which applies on the factual matrix of the present case. Considering the facts and circumstances of the case and respectfully following the decision of the Hon'ble jurisdictional High Court of Calcutta (supra), we find that the assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies

and the genuineness of the transaction towards issue of share capital of Rs.24,36,00,000/- during the year. Accordingly, we delete the addition so made by the AO. Grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open court on 19th March, 2024.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 19th March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A)-3, Kolkata
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata