

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसमसी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH: KOLKATA**  
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No.724/Kol/2023**  
**Assessment Year: 2010-11**

Class Commercial Pvt. Ltd.  (PAN: AAICS 6032 N)	Vs.	ACIT, CC-3(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	27.02.2024
Date of Pronouncement / आदेश उद्घोषणा की तिथि	10.04.2024
For the Appellant / निर्धारिती की ओर से	Shri Joydeep Chakroborty, Advocate
For the Respondent / राजस्व की ओर से	Shri Prabir Gupta Choudhury, Addl. CIT

**ORDER/ आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- 21, Kolkata [hereinafter referred to as 'Ld. PCIT'] dated 09.06.2023 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) for the assessment year 2010-11.

2. The only issue pressed at the time of hearing is against the confirmation of addition of Rs. 5,00,000/- by the Ld. CIT(A) as made by the AO u/s 68 of the Act.

3. Facts in brief are that the case of the assessee was reopened by the AO after the having information that the assessee has received Rs. 5,00,000/- from Vinayak Textiles, proprietary concern of Mr. Binod Singh. The AO issued summons u/s 131 of the Act to M/S Vinayak Textile but the same was returned unserved with the remark 'not found'. On perusal of the bank statement of Scope Vyapar Pvt. Ltd. now changed to the present assessee as Class Commercial Pvt. Ltd, it had Rs. 5,00,000/- from Vinayak Textiles during the AY 2010-11. Accordingly, notice u/s 148 of the Act was issued on 31.03.2017 and duly served upon the assessee. The assessee filed return of income on 36.07.2017 declaring loss of Rs. 30,980/-. The reasons recorded u/s 148(2) of the Act were also supplied to the assessee after receiving assessee's request to this effect. The statutory notice has been issued and served upon the assessee but there is no compliance and finally Rs. 5,00,000/- was added to the income of the assessee in the assessment framed u/s 143(3) read with Section 147 of the Act dated 26.07.2017.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by simply affirming the order of AO.

5. After hearing the rival contentions and perusing the material on record, we find that the name of assessee has been changed from Scope Vyapar Pvt. Ltd. to Class Commercial Pvt. Ltd. and certificate for incorporation for changing the name dated 09.07.2011 was placed before the Bench. We note that the assessee purchased 1250 equity shares of White Moon Vyapar Pvt. Ltd. for a consideration of Rs. 5,00,000/- from M/s Cindrella Dealers Pvt. Ltd. on 30.06.2009 a copy of which is filed at page 3 Annexure-A. We note that these equity shares were sold by the assessee to Vinayak Textiles on 01.09.2009 and the consideration for received in lieu of that. Thus we find merit in the contentions of the assessee for this reason that these shares did not appear in the balance sheet of the assessee. We have also examined the bank statement furnished before us for the period from 01.04.2009 to 31.03.2010 of M/s Cyndrella Dealers pvt. Ltd. wherein the payment made by the assessee of Rs. 5,00,000/- was

duly reflected on 30.06.2009. We also note that White Moon Vyapar Pvt. Ltd. was not being a penny stock company as is clear from the list of penny stocks which is placed at page 55 of annexure E of PB. Thus it is clear that the assessee has received Rs. 5,00,000/- from Vinayak Textiles. Therefore this is the business / commercial transaction and therefore addition u/s 68 cannot be made to the income of the assessee and as a result the appellate order cannot be sustained. Accordingly we are inclined to set aside the order of AO and direct the AO to delete the addition.

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

Order is pronounced in the open court on 10<sup>th</sup> April, 2024

Sd/-

(Sanjay Garg /संजय गर्ग)  
Judicial Member /न्यायिक सदस्य

Sd/-

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

Dated: 10<sup>th</sup> April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Class Commercial Pvt. Ltd., (formerly known as Scope Vyapar Pvt. Ltd.) 23/1, Principal Khudiram Bose Road, Kolkata-700006
2. Respondent – ACIT, CC-3(1), Kolkata
3. Ld. CIT(A)-21, Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata