

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1276/KOL/2023
Assessment Year: 2012-13**

Minto Park Estates Pvt. Ltd. Block-A, 4 th Floor, Mangalam 409, 24, Hemant Basu Sarani, Kolkata- 700001. (PAN: AAHCM8499F)	Vs.	Income Tax Officer, Ward-12(3) Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Miraj D. Shah, Advocate
Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 25.01.2024
Date of Pronouncement : 10.04.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order No. ITBA/NFAC/S/250/2023-24/1057264904(1) dated 20.10.2023 passed against the assessment order by ITO, Ward-12(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 27.03.2015 for AY 2012-13.

2. The assessee has raised as many as seven grounds of appeal wherein the moot point is in respect of addition of Rs.1,10,00,000/- on account of bogus share capital along with premium holding it as

unexplained cash credit u/s. 68 of the Act. Grounds are not reproduced for the sake of brevity.

3. Brief facts of the case are that assessee filed its return of income on 25.09.2012 reporting total income at Rs.770/-. Assessee is engaged in real estate business. During the year under consideration, assessee raised share capital of Rs.1,34,00,000/- including share premium on account of total shares issued 1,64,000. Assessee issued 1,40,000 shares to three individual share subscribers at a face value of Rs.10/- each. Nine other share subscribers were allotted shares with a face value of Rs.10/- and a premium of Rs. 490/- per share aggregating to Rs.1,20,00,000/-. The details of allotment of shares are tabulated as under:

List of Allotees (Addition)

Sl. No.	Name of the Allotee	Address of the Allotee	PAN	No of Shares Alloted	Total (Face Value = Rs. 10/-Premium Rs. 490/- per share)	133(6) Notice Complied
1	ANAMIKA DEALMARK (P) LTD.	28, BARODA CHARAN BHATCHARJEE LANE, HOWRAH-711101	AAJCA6415F	3000	15,00,000	YES
2	BHOLENATH COMMOALE (P) LTD	4, BALLAV DAS STREET, 4TH FLOOR, R.NO. 415, KOLKATA	AAECB6143Q	3000	15,00,000	YES
3	AASHA COMMOTRADE (P) LTD.	9/12, LAL BAZAR STREET, KOLKATA-700001	AAJCA6414E	3000	15,00,000	YES
4	EYESOR TRADECOM PVT. LTD.	21/1, MAHENDRA NATH LANE, BHOLA APARTMENT, FLAT 402, 4TH FLOOR, HOWRAH-711101	AACCE0020D	2000	10,00,000	YES
5	EYESOR TRADECOM PVT. LTD.	21/1, MAHENDRA NATH LANE, BHOLA APARTMENT, FLAT 402, 4TH FLOOR, HOWRAH-711101	AACCE0020D	2000	10,00,000	YES
6	ROSE COMMOALE PVT. LTD.	67A, BALRAM DEY STREET, KOLKATA-711101	AAECR2224G	2000	10,00,000	YES
7	RADHASHYAM DEAL TRADE PVT. LTD.	221/1, STRAND ROAD, 2ND FLOOR, R.NO. 02, KOLKATA-700001	AAFRC6225E	3000	15,00,000	YES
8	CASTLE FINCON (P) LTD.	KAVERI HOUSE, 132/1, M.G.ROAD, 4TH FLOOR, KOLKATA-700007	AABCC1208L	4000	20,00,000	YES
TOTAL				22000	1,10,00,000	

List of Allotees (No Addition)

Sl. No.	Name of the Allotee	Address of the Allotee	PAN	No of Shares Alloted	Total	133(6) Notice Complied
9	SHASHI MEHTA	2/10, SARAT BOSE ROAD, KOLKATA-700020	AFGPM9032B	70000	7,00,000	YES
10	AMIT MEHTA	2/10, SARAT BOSE ROAD, KOLKATA-700020	AHCPM8306L	35000	3,50,000	YES
11	KUNAL MEHTA	2/10, SARAT BOSE ROAD, KOLKATA-700020	AHBPM2547E	35000	3,50,000	YES
12	ARREN TIE UP PVT. LTD. (Face Value = Rs. 10/-Premium Rs. 490/- per share)	128 UDAYGARH COLONY, BHATTNAGAR, HOWRAH-711203	AAFCA4324B	2000	10,00,000	YES
TOTAL				142000	24,00,000	

3.1. Ld. AO called for explanation in respect of issue of share capital along with premium to the above share subscribers. Summon u/s. 131 of the Act was issued on the director of the assessee for personal appearance. One director Shri Kunal Mehta appeared before the Ld. AO whose statement was recorded and is placed on record. Assessee furnished necessary documentary evidence and explanations before the Ld. AO. Ld. AO also wanted directors of share subscribing companies to appear before him. In absence of their personal appearance, Ld. AO held that genuineness and creditworthiness of the share subscribing companies could not be established. He thus, concluded the assessment by making an addition of Rs.1,10,00,000/- in respect of (8) eight share subscriber companies out of (9) nine share subscriber companies by holding it as unexplained cash credit u/s. 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 195 pages to demonstrate the material which was placed before the authorities below who have failed to consider the same. The index of the paper book which demonstrates the documents and details which were furnished is extracted below:

SN	Description	Authority before whom filed		Page No.
		AO	CIT(A)	
1	Share Allotment Chart	Yes	Yes	01
2	Share Application and Share Applicants details	Yes	Yes	02
3	ITR Acknowledgement of the assessee	Yes	Yes	03
4	Computation of the assessee	Yes	Yes	04
5	Audited Accounts of the assessee	Yes	Yes	05 – 22
6	Return of Allotment (Form 2) of shares for A.Y. 2012-13 dated 28/03/2012 & 31/03/2012	Yes	Yes	23 – 34
7	Notice u/s 133(6) replied filed by :- a) Shashi Mehta dated 24/07/2014 b) Amit Mehta dated 24/07/2014 c) Kunal Mehta dated 24/07/2014 d) Anamika Dealmark Pvt Ltd dated 28/11/2014 e) Bholenath Commosale Pvt Ltd dated 01/12/2014 f) Aabha Commotrade Pvt Ltd dated 26/11/2014 g) Arren Tie-up Pvt Ltd dated 01/12/2014 h) Eyesore Tradecom Pvt Ltd dated 01/12/2014 i) Rose Commosale Pvt Ltd dated 28/11/2014 j) Radhasnyam Dealtrade Pvt Ltd dated 26/11/2014 k) Castle Fincon Pvt Ltd dated 02/12/2014	Yes	Yes	35 36 37 38 39 40 41 42 43 44 45
Documents of Share Applicants				
8	Documents of Mrs. Shashi Mehta a) ITR Acknowledgment b) Share Allotment Letter c) Bank Statement	Yes	Yes	46 47 48
9	Documents of Mr. Amit Mehta a) ITR Acknowledgment b) Share Allotment Letter c) Bank Statement	Yes	Yes	49 50 51

10	Documents of Mr. Kunal Mehta a) ITR Acknowledgment b) Share Allotment Letter c) Bank Statement	Yes	Yes	52 53 54
11	Documents of M/s. Anamika Dealmark Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	55 56 57 – 67 68 69 70
12	Documents of M/s. Bholenath Commosale Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	71 72 73 – 83 84 85 86
13	Documents of M/s. Abha Commotrade Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	87 88 89 – 99 100 101 102
14	Documents of M/s. Arren Tie Up Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	103 104 105 -116 117 118 119
15	Documents of M/s. Eyesore Tradecom Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	120 121 122 -133 134-135 136 137
16	Documents of M/s. Rose Commosale Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	138 139 140 -151 152 153 154

17	Documents of M/s. Radhashyam Dealtrade Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	155 156 157-172 173 174 175
18	Documents of M/s. Castle Fincon Pvt. Ltd. a) ITR Acknowledgment b) Certificate of Incorporation c) Audited Accounts d) Share Application Form e) Share Allotment Letter f) Bank Statement	Yes	Yes	176 177 178-192 193 194 195

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, their addresses, their PAN details etc. which are already extracted above.

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:

Sl No	Name of Shareholder	CIN	Networth	Amount Paid (Rs.)
1	ANAMIKA DEALMARK PVT LTD.	U74999WB2011PTC161885	21,00,76,662	15,00,000
2	BHOLENATH COMMOSALE PVT LTD.	U74999WB2011PTC161918	45,18,62,780	15,00,000
3	AABHA COMMOTRADE PVT LTD.	U52190WB2011PTC162383	19,79,88,329	15,00,000
4	EYESOR TRADECOM PVT. LTD.	U51909WB2008PTC127064	9,17,53,787	10,00,000
5	EYESOR TRADECOM PVT. LTD.	U51909WB2008PTC127064	9,17,53,787	10,00,000
6	ROSE COMMOSALE PVT. LTD.	U51909WB2008PTC130601	9,05,62,467	10,00,000
7	RADHASHYAM DEAL TRADE PVT. LTD.	U51909WB2012PTC171632	7,69,69,752	15,00,000
8	CASTLE FINCON PVT LTD.	U65993WB1993PTC060446	48,83,01,829	20,00,000
			Total	1,10,00,000

7. 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, by the assessee as well as by the share subscribing companies.

8. 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.

8.1. 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.

9. 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 as well as share subscribers produced before the AO.

10. 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."

11. 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 the directors/shareholders. 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.

11.1. 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.

11.2. 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.1,10,00,000/- during the year. Accordingly, we delete the addition so made by the AO. Grounds taken by the assessee in this respect are allowed.

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

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

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 10th April, 2024

JD, Sr. P.S.

Copy to:

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

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata