

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 326/Kol/2024**  
**Assessment Year : 2012-13**

Magnum Credit & Consultants Pvt. Ltd.	vs	ITO, Ward-7(1), Kolkata
PAN: AABCM 8949 E		
Appellant		Respondent

Date of Hearing	01.05.2024
Date of Pronouncement	21.05.2024
For the Assessee	Shri Sushil Kumar Pransukhka, Adv.
For the Revenue	Shri Abhijit Adhikary, Addl. CIT

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of Id. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi dated 05.01.2024 for A.Y. 2012-13.

2. The issue raised in ground no. 1 is against the confirmation of addition of Rs. 1,25,00,000/- by Id. CIT(A) which was added by the AO on account of unexplained cash credit u/s 68 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts in brief are that the assessee filed the return of income on 15.03.2013 declaring total income of Rs. 1,64,956/-. Thereafter, the case of the assessee was selected for scrutiny under CASS and statutory notices were issued and duly served on the assessee. The AO during the course of assessment proceedings observed that the assessee has issued equity shares at a very high premium and accordingly the information/details

were called for. However, the assessee was not compliant before the AO. Thereafter, notice u/s 131 of the Act was also issued to the assessee. The AO thereafter treated the entire share capital/premium as unexplained and added the same to income of the assessee vide order dated 26.03.2015 passed u/s 144 of the Act. In the appellate proceedings, the ld. CIT(A) also dismissed the appeal when the assessee failed to appear on the various dates as have been given at page no. 4 para 4 of the appellate order by affirming the order of AO.

4. We have heard the rival contentions and perused the material on record. The assessee has produced an affidavit before the bench dated 30.04.2024 of Shri R.K. Todi, director of the assessee-company and it was explained in the said affidavit that the proceedings before the ld. CIT(A) could not be attended due to the death of Principal Officer of the group company, Mr. S. M. Varma who was the Company Secretary and was responsible for managing all tax related litigations of the assessee. It was pleaded before us that the death of S.M. Varma was the sole reasons for not attending the appellate proceedings and thus the non-appearance before the ld. CIT(A) was not willful nor for any extraneous reason. The AR of the assessee also produced before us the copies of the audited balance sheets as on 31.03.2011 and 31.03.2012 respectively which was also available before the revenue authorities below. The ld. AR stated that the AO as well as ld. CIT have overlooked the facts on record that assessee has not received/raised any share capital/share premium during the impugned financial year relevant to A.Y. 2012-13. The ld. AR

referred to the audited balance sheet as on 31.03.2012 a copy of which at page no. 10 to 22. The ld. AR, by referring to the first page of balance sheet at page no. 13 of the PB, submitted that the assessee has not raised any share capital/share premium during the year as the amount of share capital/premium were same as on 31.03.2011 as well as 31.03.2012. The ld. AR also referred to the schedule of "Shares Capital" and "Reserves and Surplus" copy of which is available at page no. 16 & 17 to corroborate his contentions. The ld. AR referred to the balance sheet as on 31.03.2011 which has previous year as well as on 31.03.2010 also proving his plea that there has been no issuance of share capital/premium. The ld. AR submitted that share capital/share premium have thus in fact been raised during the F.Y. 2010-11. The ld. AR therefore, prayed that the provisions of section 68 of the Act have no application as it these are applicable only in those cases where any sum of money is credited in the books of account during the year and not the money which was received in the earlier financial year. The ld. AR relied on the decision of Calcutta High Court M/S Abhijeet Enterprise Ltd Vs PCIT ITAT/187/2023IA No: GA/1/2023, GA/2/2023 17<sup>th</sup> November, 2023 wherein it has been held that section 68 of the Act is not applicable to money received in the preceding financial year and is applicable only to the money received and found to be credited in the books of account during the year. The ld. AR further prayed that the appeal of the assessee may be allowed as this is a open and shut case and nothing is going to be served by restoring the issue to the file of

lower authorities. The Id DR fairly agreed to the contention of the assessee that the share capital/share premium was not received during the year however prayed that the issue may be restored to either of authorities below.

5. We have perused the material available on record and find that no share capital/share premium has been received by the assessee during the instant financial year also as there was no such credit in the books of accounts. Though the assessee did not appear before either of the authorities below but in view of this being clear cut and open and shut case, we are deciding on the basis facts before us. The facts are squarely covered in favour of the assessee by the decision of the Hon'ble Calcutta High Court in the case of M/S Abhijeet Enterprise Ltd Vs PCIT wherein it has been held as under:

*“After we have elaborately heard the learned Advocate for the appellant we find learned Tribunal was right in allowing the assessee’s appeal to the extent indicated by taking note of the various decisions of the High Court on the very same subject. In this regard, we refer to the decision of the High Court At Madras in V.R. Global Energy (P)Ltd. vs. ITO, Corporate Ward 3(4), Chennai 407 ITR 145 (Madras). It was held that when the assessee allotted share to a company in settlement of their existing liability of assessee to the said company, since no cash was involved in the transaction of said allotment of shares. conversion of this liability in which share capital and share premium could not be treated as unexplained cash credits under Section 68 of the Act. The Revenue filed an appeal against the said judgement and the same was dismissed by the Hon’ble Supreme Court in ITO vs. V.R. Global Energy (P) Ltd. [2020] 113taxmann.com 31(SC). The decision of the Hon’ble Division Bench of the High Court of Delhi in case of CIT vs. Ritu Anurag Agarwal, 2009(7)TMI 1247, Delhi High Court, the same also stands in aid to the case of the respondent/assessee.*

*The decision of the Hon’ble Division Bench of this Court in Jatia Investment Co.Vs. CIT (1994) 206 ITR 78 (Cal) will also support the case of the respondent/assessee.In the said decision, the Court found that cash did not pass at any stage though entries were made in cash book showing payment and receipts; but since the entries made a complete round, no passing of cash was necessary for the purpose of making entries. Further, it was held that if there was no real cash entry on credit side of the cash book*

*by merely an emotional or fictitious cash entry, as admitted by the Income Tax Officer, there is no real credit to cash, to its cash book the question of inclusion of the amount of the entry as unexplained cash credit cannot arise. In the light of the above decision, the view taken by the learned Tribunal was perfectly in order and sustainable.*

*Thus, we find there is no ground to interfere with the order passed by the learned Tribunal.*

*Accordingly, the appeal is dismissed and the substantial questions of law are answered in favour of the revenue.*

*The portion of the order and direction of the learned Tribunal remanding the matter for a limited purpose is affirmed.*

*Consequently, the applications stand closed.”*

It is noteworthy to state that keeping in view the apparent facts before us we not restoring the case to CIT(A) or AO as no verification is required to be done at the level of either CIT(A) or AO. Therefore in view of the facts as narrated above and the ratio laid down in the above decision, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 21.05.2024.

Sd/-

Sd/-

(Sonjoy Sarma)  
JudicialMember

(Rajesh Kumar)  
AccountantMember

Dated: 21.05.2024  
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Magnum Credit & Consultants Pvt. Ltd., 12, Darga Road, Park Circus, Kolkata-700017.
2. Respondent – ITO, Ward-7(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata