

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य
एवं श्री

गिरीश अग्रवाल, लेखा सदस्य
के समक्ष

Before
Shri Sanjay Garg, Judicial Member
and
Shri Girish Agrawal, Accountant Member

I.T.A. No.718/Kol/2019
Assessment Year: 2012-13

Ambe Tex Fab (India) Pvt. Ltd.....Appellant
Banerjee Para, Mukherjee Gate,
24 Parganas South,
Kolkata-700141.
[PAN: AAGCA4162L]

vs.

ITO, Ward-10(2), Kolkata.....Respondent

Appearances by:

Shri Miraj D Shah, AR, appeared on behalf of the appellant.
Shri P. P. Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 12, 2024

Date of pronouncing the order : July 15, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 10.10.2018 of the Commissioner of Income Tax-15, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee through its grounds of appeal has agitated the addition of Rs.89,65,000/- made by the Assessing Officer treating share capital and share premium received by the assessee as unexplained income of the assessee u/s 68 of the Act.

3. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the only observation made by the Assessing Officer in the impugned order is that the assessee during the year had received share capital/share premium of Rs.89,65,500/- That the Assessing Officer treated the said amount as unexplained income of the assessee by way of a non-speaking order and in a mechanical manner. That the assessee had duly furnished all the relevant details in respect of assessee company such as ITRs, PANs, copies of audited financial statement, copy of Form 5 along with receipt filed with ROC, details of source of funds relating to the identity and creditworthiness of the creditors and genuineness of the transaction. However, the Ld. Assessing Officer, without examining the said documents and without pointing out any defect, discrepancy or infirmity in the evidences furnished by the assessee made the impugned additions with a predetermined mind set.

3.1. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the assessee had made detailed submissions before the CIT(A), which have also been reproduced in the impugned order. Even, during the appellate proceedings, the assessee again furnished the relevant documents to prove the identity, creditworthiness of the share-subscribers and genuineness of transaction. However, the ld. CIT(A), without considering any of the submissions and evidences furnished by the

assessee, confirmed the additions so made by the Assessing Officer in a mechanical manner. That neither the CIT(A) nor the Assessing Officer has bothered to even examine any of the documents either furnished by the assessee or that have been received from the share-subscriber companies.

4. The ld. counsel has submitted that the assessee during the year under consideration received share application money along with premium from the following 9 share-subscribers:

1. M/s Dhanrashi Financial Consultants Pvt. Ltd.
2. M/s Accent Commosales Pvt. Ltd.
3. M/s Panghat Dealtrade Pvt. Ltd. And
4. M/s Chetan Commotrade Pvt. Ltd.
5. M/s Ajay Vanijya Pvt. Ltd.
6. M/s Puja Dealtrade Pvt. Ltd.
7. M/s Namrata Tie Up Pvt. Ltd.
8. M/s Mridang Commosales Pvt. Ltd.
9. M/s Aprajita Tie Up Pvt. Ltd.

4.1. The Ld. Counsel has further submitted that the assessee had furnished the following details in respect of each of the 9 share-subscriber companies before both the lower authorities:

- a) ITR acknowledgement
- b) Audited Accounts
- c) Share application form
- d) Share allotment letter
- e) Certificate of Incorporation
- f) Memorandum and Article of Association

g) Reply filed u/s 133(6) of the Act

h) Source of source

4.2. The Ld. Counsel has further submitted that the identity of the share subscriber was duly proved, transactions were carried out through banking channel, the source of funds of the share subscriber was duly furnished. He has further submitted that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. Further, that all these subscribers were income tax assessees. That the share-subscriber companies were having adequate reserves and surplus to invest in the assessee company. Further that all the investor companies were duly incorporated with the Registrar of Companies and were active compliant companies. That there were no paper companies involved in the transaction. All the share-subscribers had duly responded to the notice issued by the Assessing Officer u/s 133(6) of the Act and furnished the required details independently also. That the Assessing Officer did not point out any defect or discrepancy in the same.

4.3. The ld. DR has, however, strongly relied upon the orders of the lower authorities. He has also filed written submissions also.

5. We have considered the rival submissions and gone through the record. We find force in the contentions raised by the Ld. Counsel for the assessee. We also note that the assessment order is short and cryptic order. There is even no mention of the name of the share subscribers in the assessment order, what to say of any details and evidences furnished by the assessee. Though, the Assessing Officer has observed in the assessment order that the addresses of the registered offices of some companies were same with common directors and further that all these facts proved the connivance of the

assessee with the investor company. However, this observation of the Assessing Officer, in our view, goes in favour of the assessee rather than against it. It is generally observed that a company is always interested in its group companies and always prefer to make investment in its group companies as there is a security of the investment being common directors. The group companies not only are known to each other but also are fully aware of the financial strength and future projections and progress chances of such company. The name of the directors of the investor companies were also furnished before the Assessing Officer from which the Assessing Officer had made the observation that the investor companies and the assessee company have common directors. This fact on the file also proves that the assessee duly established the identity of the share subscribers. The Assessing officer has neither discussed about, nor pointed out any defect, discrepancy or infirmity in the order of the assessing officer.

5.1. Even during the appellate proceedings, the assessee furnished all the relevant documents to prove the identity and creditworthiness of the share-subscribers and genuineness of the transaction, however, the Id. CIT(A) also did not refer to any of the documents furnished by the assessee and did not point out any defect or discrepancy in the same. The Id. CIT(A) upheld the order of the Assessing Officer in a mechanical manner. A perusal of the order of the CIT(A) would reveal that it seems that the Id. CIT(A) has copy-pasted a standard order without referring to the facts of the case. Even some of the observations of the CIT(A) were contrary to the observations made by the assessing officer. Though, the Assessing Officer has observed in the assessment order that the addresses of the registered offices of some companies were same with common directors and further that

all these facts proved the connivance of the assessee with subscriber companies and further that all the investor companies had duly replied to the notices issued u/s 133(6) of the Act, however, the Id. CIT(A) in the impugned order mentions, "Since the assessee is a private limited company which is by law, prohibited from offering its securities for subscription by general public, it is not open to the assessee to contend that it has no clue about the identity of the subscribers to its share capital". The aforesaid observation of the CIT(A) is not coming out from the records of the case. The Assessing Officer alleges that all the share-subscriber companies have common directors and that they are hand in glove with each other, whereas the Id. CIT(A) alleges that the assessee has stated that he has clue about the identity of the subscriber. This finding of the CIT(A) is factually wrong. The Id. CIT(A) has further mentioned in the impugned order that when summons were issued to the directors of the assessee company u/s 131 of the Act, neither all the directors of the assessee company nor all the investor company appeared, however, this observation of the CIT(A) is again factually wrong. There is no mention in the assessment order that any summons u/s 131 of the Act were ever issued to the assessee company either to the director of the assessee company or to the director of the investor companies. The Id. CIT(A) has not discussed any of the documents furnished by the assessee to prove their identity and even the financials of the share subscriber companies. There is no rebuttal to the contention that the share subscribers were having sufficient net worth to invest in the assessee company.

5.2. Though, before us, the Id. DR has filed written submissions, wherein, the Id. DR has taken upon himself the task to analyse the accounts of share subscribers, which exercise has not been done

either by the Assessing Officer or by the CIT(A). The crux of the submission of the ld. DR is that the net profit of the share subscriber companies was low. He has further pointed out that a considerable amount of income from other sources has been neutralised by the amount of total expenses. There was less cash in hand. That the investor companies had received premium on sale of shares and had paid premium in purchase of shares to the assessee. That the assessee as well as investor companies were involved in purchase and sale of shares of the lesser-known companies and that all the investor companies were generally group companies managed and controlled by the common directors. Neither the assessee nor the investor companies were blue chip companies and that the investment was not secured. That there was also rotational movement of funds and that there was no/meagre declaration of dividend. That there was negligible fixed assets. That there was no justification of high premium. The ld. DR has also relied upon various case laws.

5.3. It is to be noted firstly that none of the lower authorities have taken any pain in pointing out any discrepancy in the documents furnished by the assessee. Further the points brought or submitted by the ld. DR are, in any way, not enough for justification of the additions made by the Assessing Officer u/s 68 of the Act. We have already discussed above that investment by the group companies proves justification of investment and that this fact does not go against the assessee. So far as the justification of premium is concerned, the answer also lies in the submissions of the ld. counsel for the assessee, that since the investor companies are group companies of the assessee, it is up to them whether to pay the premium along with share application or not. The justification given by the ld. AR in this respect is that the premium is paid to avoid hefty fees/charges which

are applicable on the face value/share price and not on the premium. Even otherwise, since the investment is not made in any unknown company and all the companies are group companies, therefore, the question of justification of premium loses the importance as the investment is made in the fully known companies having common directors. The low income of the companies is not a criteria to determine their creditworthiness/net worth. There is no rebuttal to the fact that the subscriber companies were having substantial net worth to invest in the group companies. There is no evidence brought on record that the investor companies have received funds in cash from third parties and which have been further transferred to unknown beneficiaries. Neither there is any such allegation made nor the same has been substantiated in assessment order or the appellate order of the CIT(A).

Even the reliance placed by the ld. DR on the decision of Hon'ble Jurisdictional High Court in the case of '*PCIT vs. Swati Bajaj & Ors*' reported in [2022] 139 *taxmann.com* 352 (Calcutta), in our view, is misplaced as there is no reference in the case in hand as to any report of Investigation Wing. In this case, there is no record or observation of any authority that the investor companies are shell companies. In fact, nothing has been discussed specifically about any of the individual investor companies either in the assessment order or in the order of the CIT(A) in this respect. The ld. D/R has merely given a general statement that these companies are paper/shell companies but no concrete evidence is filed on record which could prove the substance in such submissions. The issue in hand can be decided only on the basis of documentary evidence available on record, which clearly states that the assessee has duly furnished the unrebutted evidence to

prove the identity and creditworthiness of the share subscribers and genuineness of the transactions.

So far as the reliance of the Ld. DR on the decision of the Hon'ble Supreme Court in the case of "*PCIT v/s NRA Iron & Steel (P) Ltd.*" (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "*the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.*"

Thereafter the Hon'ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and

ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

5.4. The Hon'ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra)*, impugned additions are not warranted in this case.

5.5. Our view is further supported by the following judicial pronouncements:-

a) The Hon'ble Apex Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd. (supra)*, under identical circumstances, has held as follows:-

*"In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. **The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.**"*

{emphasis ours}

b) The ITAT Kolkata Bench in *ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016*, held as follows:

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by ITO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "

c) Further the co-ordinate bench in the case of *ITO vs. Forceful Estates Pvt. Ltd.* in ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023, and for necessary reference, the facts and findings of the Tribunal read as follows:-

“5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

“5. Conclusion:

Ground No.1 & 2

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.

It is observed form the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for Lne AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that

the respective Assessing Officers have all verified the accounts and therefore any amount that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not.

When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act.

In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed.

Ground no. 3 is general in nature, which does not require adjudication.

6. In the result, the appeal of the assessee is treated as allowed.”

6. A perusal of the above concluding part of the order of the CIT(A) reveals that the ld. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were

assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled law, once the addition has been made in the hands of the share subscribers, the investments by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of "Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata" I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not

under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has 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. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has 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."

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed."

d) Our view is further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal) has held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation

about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

6. Respectfully following the above decisions, which, in our view, are squarely applicable on the facts of the instant case, we find that the assessee has successfully discharged the burden of proof primarily casted upon it to explain the identity and creditworthiness of all the 9 share applicants and genuineness of the share transactions and correctness of such details has not been disputed by the Revenue Authorities except making general observations. In view of the above discussion, we do not find justification on the part of the lower authorities in making the impugned addition and the same is accordingly ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 15th July, 2024.

Sd/-

[गिरीश अग्रवाल /**Girish Agrawal**]
लेखा सदस्य/**Accountant Member**

Sd/-

[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य/**Judicial Member**

Dated: 15.07.2024.

RS

Copy of the order forwarded to:

1. Ambe Tex Fab (India) Pvt. Ltd
2. ITO, Ward-10(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches