

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

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 35/KOL/2023

Assessment Year: 2012-13

M/s. Nexcare Agency Pvt. Ltd.....Appellant
[PAN: AACCN 5944 P]

Vs.

ITO, Ward-7(1), Kolkata.....Respondent

Appearances:

Assessee represented by: None.

Department represented by: Subhendu Datta, CIT D/R.

Date of concluding the hearing : June 3rd, 2024

Date of pronouncing the order : July 26th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the appellant filed return of income on 08.09.2012 declaring total loss of Rs. 10,893/-. In the first round, order u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') was passed on 24.02.2014 at a total income of Rs. 1,26,350/-. It is seen that this assessment order was set aside u/s 263 of the Act by the Pr. Commissioner of Income Tax-3, Kolkata [hereinafter referred to as 'Pr. CIT'] vide his order dated 09.03.2016 directing for inquiries in respect of share capital received by the assessee. It was observed by the Pr. CIT that the assessee had issued 10,000 equity shares

of Rs. 10/- each at a premium of Rs. 490/- per share. Thus, the total amount received by way of share capital was Rs. 50 Crore (impugned amount). It is seen that since the initial assessment order was set aside u/s 263 of the Act for conducting inquiries for establishing the genuineness, creditworthiness etc. of the share applicants, hence the ld. AO had initiated the said proceedings to enquire on those facts. During the second stage assessment proceedings, summons u/s 131 of the Act were issued for 11 shareholders for enforcing their attendance. It is recorded in the assessment order that 4 such share subscribers could not be located on the given addresses and 6 share subscribers on whom the summons could be served requested for time to furnish details. The remaining share subscribers neither appeared nor sent any communication to the Assessing Officer (hereinafter referred to as ld. 'AO'). Admittedly the said proceedings were being conducted in December, 2016 when the proceedings were going to be barred by limitation on the 31st day of the said month. The Ld. AO proceeded to add Rs. 50 crores u/s 68 of the Act after holding that the identity and creditworthiness of the share subscribers and genuineness of the transactions were not established in this case.

1.1. The Commissioner of Income Tax (Appeals) [hereinafter referred to as ld. 'CIT(A)'] disbelieved the averments of the assessee in so far as it was averred before him that in the first round of assessment proceedings, the then ld. AO had been satisfied by whatever documentation was presented before him for proving the transactions concerning the share capital amount. Thereafter, ld. CIT(A) proceeded to rely on a number of authorities to show that the onus cast on the assessee to prove the said transaction was not discharged and hence, he proceeded to confirm the addition made by the ld. AO.

1.2. Aggrieved with this action of ld. CIT(A) the appellant has filed the present appeal with the following grounds:

“1. For that the Ld. CIT(A) erred in confirming the order of the AO in adding back the share capital including premium of Rs. 50,00,00,000/- raised during the year as unexplained cash credit u/s. 68 when all the details and

evidences were filed to prove the identity and creditworthiness of the party and genuineness of the transactions, the AO verified the same by issue of notice u/s 133(6), the onus that lay on the assessee was discharged and the AO simply made the addition on surmises & suspicions without bringing any cogent material on record.

2. For that the Ld. CIT(A) erred in doubting the value of share premium amount determined by the assessee company for issue of shares when neither the provisions of section 56(2)(vüb) came into force from the assessment year under consideration nor the source of source as required under the amended provisions of section 68.

3. For that on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the order of the AO in adding back Rs. 50,00,00,000/- which was unjustified and not in accordance with law.”

2. It is seen from the records that this case has been pending since long and on several previous hearing dates the appellant has filed applications for adjournments. It is seen that on 19.03.2024 a paper book running into 272 pages was filed mainly containing documents pertaining to the 11 share subscribers. On the last date of hearing i.e. 03.06.2024, it was decided to get the documents filed through the paper book certified by the ld. AO. Interestingly, as a result of this exercise, through letter dated 13.06.2024, ld. AO has responded through the ld. D/R that in all the 11 cases some documents which have been recorded as having been filed before ld. CIT(A) and the AO were actually never filed. The report of the ld. AO deserves to be extracted as under:

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GOVERNMENT OF INDIA, INCOME TAX DEPARTMENT
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE - 2(3), KOLKATA
AAYAKAR BHAWAN (POORVA), 4TH FLOOR, ROOM NO. 403
110, SHANTI PALLY, E.M. BYE-PASS, KOLKATA - 700 107
Phone No. 03324410238, e-mail: kolkata.dcit.central3@incometax.gov.in

File No : DCIT/CC-2(3)/Kol/AACCN5944P/2024-25/174 Date: 13/06/2024.

To
The Commissioner of Income Tax (DR), ITAT-3
225-C, A.J.C. Bose Road,
Kolkata-700020.

(Attn: Hon'ble 'A' Bench ITAT, Kolkata)

Respected Sir,

Sub: Appeal before the ITAT 'A' Bench, Kolkata in the case of Nexcare Agency Pvt. Ltd., ITA No. 35/Kol/2023 for A.Y.-2012-13- direction of the Hon'ble Bench. Matter regarding.

Ref: F.No. CIT(DR)/ITAT-3/Kol/AACCN5944P/2024-25/397 dated 03.06.2024.

Kindly refer to the above.

As per direction of the Hon'ble ITAT Bench, in the case of Nexcare Agency Pvt. Ltd. for the A.Y. 2012-13, a checklist has been prepared and forwarded along with the paper book as received from ITO, Ward-7(1), Kolkata for your kind perusal and necessary action.

Thanking you.

Encl. (i) Checklist
(ii) Paper Book

Memo No : DCIT/CC-2(3)/Kol/AACCN5944P/2024-25/
Copy forwarded for kind information to:-
(i) JCIT, Range-2(Central), Kolkata.

Yours faithfully,
(Sandip Kumar De)
DCIT, CC-2(3), Kolkata.

Date: 13/06/2024.

(Sandip Kumar De)
DCIT, CC-2(3), Kolkata.

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CONTENTS NOT VERIFIED

Nexcare Agency Pvt. Ltd.
A.Y.-2012-13 Checklist

Sl. No.	Particular	As per Paper Book	As available in assessment record
01	Balance Sheet as at 31/03/2012 of M/s Nexcare Agency Pvt. Ltd.	Filed	Filed
02	List of Shareholders who subscribe shares in A.Y.- 2012-13	Filed	Filed
03	Documents of Fortune Trade & Vyapaar Pvt. Ltd. (Shareholder)		
	i. Copy of Reply to Notice u/s 133(6) along with enclosures consisting :		
	•Share Application Form	Filed	Not filed (Share Application Form)
	•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
	•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
	•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
	•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
	•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii. Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 23/12/2016.	Filed	Not found in Assessment folder
04	i Documents of Maars Advisory Services Pvt. Ltd. (Shareholder)		
	Copy of Reply to Notice u/s 133(6) along with enclosures consisting :		
	•Share Application Form	Filed	Not filed (Share Application Form)
	•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
	•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
	•ITR Acknowledgment for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
	•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
	•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii. Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 23/12/2016.	Filed	Filed (Speed Post receipts dated 23/12/2016.)

05	i	Documents of Dewpoint Estates Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application^ Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment^ Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Filed (Speed Post receipts dated 22/12/2016.)
06	i	Documents of Eversafe Highrise Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgment for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Filed (Speed Post receipts dated 22/12/2016.)
07	i	Documents of Fastflow Infra Projects Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application)

				Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Filed (Speed Post receipts dated 22/12/2016.)
08	i	Documents of Force Agency Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgment for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Not found in Assessment folder
09	i	Documents of Fourfold Marketing Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)

		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 23/12/2016 with Evidence of return from Income Tax Office (Envelop)	Filed	Not found in Assessment folder
10	i	Documents of Northstar Dealcomm Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
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		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Filed (Speed Post receipts dated 22/12/2016.)
11	i	Documents of Quantam Suppliers Pvt Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		• Copy of Declaration	Filed	Filed (Copy of Declaration)
		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
		•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)

	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Filed (Speed Post receipts dated 22/12/2016.)
12	i	Documents of Smooth Impex Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
		•ITR Acknowledgement for Asst Yr 2012-13	Filed	Filed (ITR Acknowledgement)
		•Audited Financial Statements for FY 2011-12	Filed	Filed (Audit Statements)
	•Bank Statement highlighting the payment made for purchase of shares	Filed	Filed (Bank Statement)	
	ii	Copy of Notice u/s 131 and its reply filed with the Ld. A.O. with Speed Post receipts dated 22/12/2016.	Filed	Not found in Assessment folder
13	i	Documents of Topmost Builders Pvt. Ltd. (Shareholder)		
		Copy of Reply to Notice u/s 133(6) along with enclosures consisting:		
		•Share Application Form	Filed	Not filed (Share Application Form)
		•Share Allotment Advice	Filed	Not filed (Share Allotment Advice)
		•Copy of General Ledger	Filed	Filed (Copy of General Ledger)
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2.1. Considering the discrepancy between the certificate recorded by the assessee in the paper book and the facts actually available on the record of the Id. AO at this stage we would like to reserve our opinion regarding the conduct of the assessee in terms of approaching this Bench with clean hands.

Needless to say, this case would be dealt with on merit, considering the totality of facts and circumstances as available with us.

3. We have carefully considered the documents placed before us and since nobody has been attending on behalf of the assessee for past several hearings the averments of the appellant have been gleaned from the submissions before the ld. CIT(A) and whatever material has been filed through the paper book (*supra*).

3.1. Before the ld. CIT(A), it is seen that the assessee filed submissions regarding the satisfaction of the ld. AO in first round proceedings, where an exercise had been undertaken to gather information concerning the share capital subscribers through issuance of notices u/s 133(6) of the Act. It was submitted that necessary bank statements, balance sheet copies, assessment particulars, and other details were provided which eventually satisfied the then ld. AO (in first round assessment proceedings) regarding the genuineness of the transactions. it was also averred that in the second-round proceedings, very little time was given to the assessee to comply with the summons u/s 131 of the Act issued to the 11 share capital subscribers. Ultimately, it was asserted that the onus was discharged by the assessee for proving the impugned transactions and therefore, adverse inferences drawn were unjustified.

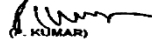
4. The Ld. D/R relied on the order of ld. CIT(A) and the ld. AO and stated that abnormally high share premium in closely held companies, with no clear-cut profitability, would need to be justified and the assessee would need to prove the identity and creditworthiness of the entities advancing such sums of monies.

5. On a careful consideration of the totality of facts and circumstances, as also the averments of the assessee and ld. D/R it is clear that once proceedings u/s 263 of the Act were initiated then the assessee was put on notice regarding his duty to prove the transactions which involved very substantial amounts as share premium. It is not understood how a closely

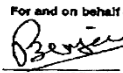
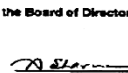
held company which has minimal commercial activity as is evidenced by the profit and loss account filed with the paper book could attract abnormally high share premiums. To illustrate this point the Profit and Loss account deserves to be extracted as under:


NEXCARE AGENCY PVT. LTD.			
PROFIT & LOSS STATEMENT FOR THE YEAR ENDED 31.03.2012			
PARTICULARS	NOTE NO.	Figures for the current reporting period	Figures for the previous reporting period
		31.03.2012	31.03.2011
I Revenue from Operations		-	-
II Other Income	C1	126,350	96,020
III Total Revenue (I + II)		126,350	96,020
IV Expenses			
Other Expenses	C2	137,243	105,926
Total expenses (IV)		137,243	105,926
V Profit before exceptional and extraordinary items and tax (III-IV)		(10,893)	(9,906)
VI Exceptional Items		-	-
VII Profit before extraordinary items and tax (V-VI)		(10,893)	(9,906)
VIII Extraordinary Items		-	-
IX Profit before tax (VII-VIII)		(10,893)	(9,906)
X Tax Expense:			
(1) Current Tax		Nil	Nil
(2) Deferred Tax		-	-
XI Profit (Loss) for the period from continuing operations (VII-VIII)		(10,893)	(9,906)
XII Profit/(Loss) from discontinuing operation		-	-
XIII Gain / (Loss) on disposal of assets / settlement of liabilities attributable to the discontinuing operations		-	-
XIV Tax Expense of discontinuing operation		-	-
XV Profit/(Loss) from discontinuing operation (after tax) (XII-XIII-XIV)		-	-
XVI Profit (Loss) For the period (XI + XV)		(10,893)	(9,906)
Earning per equity share			
(1) Basic & Diluted EPS		(0.01)	(0.09)

Summary of Significant Accounting Policies
See accompanying notes forming part of the financial statements D1
As Per Our Report of Even Date Annexed
For, **PARASURAM KUMAR & CO.**
Chartered Accountants


P. KUMAR
Proprietor
(M. No.: 068183)
Place: Kolkata
Dated : 26th June, 2012.



For and on behalf of the Board of Directors

P. BANERJEE

A. SHARMA

For Nexcare Agency Private Limited

Lokanath Ganguly
Director

5.1. The profit and loss account filed by the assessee paints a grim picture about the qualitative aspect of commercial activity which does not seem to justify a premium of Rs. 490/- on a share with face value of Rs. 10/-. Thus total revenues of Rs 1,26,350 for the year ending on 31.3.2012 and Rs. 96,020 for the year ending on 31.3.2011 are visible, which cannot be said to indicate a healthy bottom-line or even a robust business model. Considering this fact, it would be all the more prudent to examine the genuineness etc. of the 11 concerns which chose to repose considerable faith in the commercial future of the assessee to trust them with huge sums of money. It was on a somewhat similar situation when the Hon'ble Jurisdictional High Court upheld the

doubtful nature of share premium monies being given to companies having doubtful commercial credentials in the case of *PCIT vs. BST Infratech Ltd.* reported in [2024] 161 taxmann.com 668 (Calcutta). Hon'ble Calcutta High Court had occasion to observe that in the said case investors had no reason to invest huge amounts in business of that assessee and the entire transaction was done to circumvent the provisions of the Act. It has been held that the action of the assessing officer in treating such share application money u/s 68 of the Act as undisclosed cash credit was justified. The relevant portion from this order deserves to be extracted as under:

“36. In Swati Bajaj, the court held that based on the foundational facts the department has adopted the concept of "working backward" leading to the assessee. The department would be well justified in considering the surrounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over and then arrive at a decision.

37. Thus the CIT(A) was right in adopting a logical process of reasoning considering the totality of the facts and circumstances surrounding the allegations made against the assessee taking note of the minimum and proximate facts and circumstances surrounding the events on which charges are founded so as to reach a reasonable conclusion and rightly applied the test that a reasonable/prudent man would apply to arrive at a conclusion. On facts we are convinced to hold that the assessee has not established the capacity of the investors to advance moneys for purchase of above shares at a high premium. The credit worthiness of those investors companies is questionable and the explanation offered by the assessee, at any stretch of imagination cannot be construed to be a satisfactory explanation of the nature of the source. The assessee has miserably failed to establish genuineness of the transaction by cogent and credible evidence and that the investments made in its share capital were genuine. As noted above merely proving the identity of the investors does not discharge the onus on the assessee if the capacity or the credit worthiness has not been established.

38. In the light of the above discussion, we hold that the assessee has failed to discharge legal obligation to prove the genuineness of the transaction and the credit worthiness of the investor which has shown to be so by a "round tripping" of funds. For all the above reasons, the revenue succeeds.

39. In the result the appeal is allowed, the order passed by the learned Tribunal is set aside and the order passed by the CIT(A) dated 28.11.2019 is restored and the substantial questions of law are answered in favour of the revenue.”

5.2. We also draw considerable strength from the case of *PCIT vs. NRA Iron & Steel (P.) Ltd.* reported in [2019] 412 ITR 161 (SC) in which share application money was approved for action u/s 68 of the Act even where the share applicants had filed confirmations and attempted to show that the transactions have taken place through normal banking channels, etc. In this case, the Hon'ble Apex Court has dealt with the issue from a legal perspective and some of the passages deserve to be extracted for reference:

“■ This Court in the land mark case of Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC) and, Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down 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 creditworthiness, then the Assessing Officer 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. [Para 8.2]

■ With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. Merely, proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established. [Para 8.3]

■ The Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries. In the instant case, the Assessing Officer made an independent and detailed enquiry, including survey of the so-called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the shareholders were either non-existent, or lacked creditworthiness. [Para 9]

■ 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 creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the creditworthiness 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 inquiries 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. [Para 11]

■ In the instant case, the Assessing Officer had conducted detailed enquiry which revealed that:

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee. The genuineness of the transaction was found to be completely doubtful.

ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90 lakhs to Rs. 95 lakhs in the assessment year 2009-10, for purchase of shares at such a high premium.

iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the assessee company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10 per share.

iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.

v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under section 68. [Para 12]

■ The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which, would justify addition of the said amount to the income of the assessee. [Para 14]

■ On the facts of the present case, clearly the assessee company - respondent failed to discharge the onus required under section 68, the

Assessing Officer was justified in adding back the amounts to the assessee's income. [Para 15]"

5.3. It is seen that in another case on somewhat similar facts, the Hon'ble Calcutta High Court in the case of *BalGopal Merchants (P.) Ltd. vs. PCIT* reported in [2024] 162taxmann.com465 (Calcutta) has held that action u/s 68 of the Act was justified.

6. A close reading of the case laws cited (*supra*) reveals that mere filing of confirmations and the income tax details etc. are not enough to justify payment of monies as share premium when the financial aspects of the recipient company would not merit such investments under any kind of prudent consideration. In the present case while 4 out of 11 share applicants were not traceable on given addresses and one more did not respond to the summons, it is evident that even those share applicants who did file certain documents, were not sufficient in the eyes of law to discharge the burden cast on the assessee regarding proving the genuineness of the transaction. The profit and loss account statement extracted (*supra*) would normally paint a grim picture to any prudent investor, however, in this case it seems to have encouraged 11 entities to transfer huge sums of money by way of share premium.

6.1. Considering the case laws cited (*supra*) the financial health of the assessee and the inadequate discharge of onus, we hold this case to be a fit case for application of Section 68 of the Act and thereby confirm the impugned addition.

7. Before parting with this issue, as mentioned earlier, we can only regret the attempt by the assessee to present a picture of compliance through the voluminous paper book which unfortunately contains some documents which were not before the authorities below. Suffice it to say that since the assessee has not succeeded in this appeal, we do not deem it fit to comment any further on the conduct of the assessee regarding drawing a certificate in the paper book which is not entirely correct.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 26th July, 2024.

Sd/-

[Rajpal Yadav]
Vice President

Sd/-

[Sanjay Awasthi]
Accountant Member

Dated: 26.07.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Nexcare Agency Pvt. Ltd., 18/1, Olabibitola Lane, LP-228/4, Howrah, West Bengal, 711104.**
- 2. ITO, Ward-7(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata