

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, HON'BLE PRESIDENT  
AND  
SHRI B.R. BASKARAN, HON'BLE ACCOUNTANT MEMBER**

| <b>ITA No.</b> | <b>A.Y.</b> | <b>Appellant</b>  | <b>Respondent</b>   |
|----------------|-------------|---|---|
| 3348/Mum/2023  | 2012-13     | Dy. Commissioner<br>of Income Tax,<br>Circle-7(1)(1),<br>Mumbai | Needful Dealcomm<br>Pvt. Ltd.,<br>A-201,<br>Ramji Mansion,<br>Jagannath<br>Shakarsheth Marg,<br>Dhobitalo,<br>Kalbadevi,<br>Mumbai<br>PAN: AADCN5282H |
| 2940/Mum/2023  | 2012-13     |   |   |

Assessee by : Shri J.P. Bairagra &  
Ms. Rupa Nanda,

Revenue by : Shri S. Srinivasu, CIT-DR

Date of Hearing : 06/05/2024

Date of Pronouncement : 05/08/2024

**ORDER**

**PER B.R. BASKARAN, A.M :**

Both these appeals have been filed by the Revenue and they are directed against the separate orders passed by the learned Commissioner of Income Tax (Appeals)-NFAC, Delhi (in short 'Ld.CIT(A)') and both relate to AY. 2012-13. The appeal numbered as ITA No. 3348/Mum/2023 relates to the original assessment order passed by the AO u/s. 143(3) of the Income Tax Act, 1961 ('the Act') and the other appeal, viz., ITA No. 2940/Mum/2023 relates to the re-assessment passed by the AO u/s. 147 of the Act. The addition made by the AO in both the assessments is one and the same, i.e., The AO had made

addition cash credit received in the form of share application money u/s 68 of the Act in the original assessment order and very same addition is reiterated in the order passed in thereassessment also. Hence, both these appeals are being disposed of by this common order.

2. The facts relating to the case are stated in brief. The assessee filed its original return of income on 29-03-2013 for the year under consideration declaring a total income of Rs. 1,05,750/-. The same was selected for scrutiny. The AO noticed from the record that the assessee has issued share capital at a premium and accordingly, collected share capital of Rs. 16,10,000/- and share premium of Rs.37,92,40,000/-. Since the assessee did not furnish any document relating to share application money during the course of original assessment proceedings, the AO assessed the above said amount aggregating to Rs. 38.08 crores as un-explained income u/s. 68 of the Act. The assessee challenged the same by filing appeal before the Ld.CIT(A). Since the assessee did not appear before Ld CIT(A), he dismissed the appeal of the assessee by an ex-parte order dated 09-02-2017 passed by him. However, the Tribunal, vide its order dated 25-02-2020 passed in ITA No.1671/KOL/2017 restored the matter back to the file of Ld CIT(A).

3. In the mean time, the AO received information from the Investigation Wing, Kolkattathat the assessee has received above mentioned share application money by way of accommodation entries from some of the companies managed by a person named Shri Subhash Chandra Bhartia. The above said Shri Subhash Chandra Bhartia was subjected to search and survey operation and in the statement recorded from him, he had admitted that he is involved in the activities of providing accommodation entries in the guise of share application money. On the basis of the above said information, the AO re-opened the assessment of the current year by issuing notice dated 30-03-2019

u/s. 148 of the Act. Before the AO, the assessee furnished details and documents relating to share applicants in order to prove the money received by way of share application in terms of sec.68 of the Act. The details of share application money received by the assessee from six companies has been tabulated as under by the Ld.CIT(A):

| S. No | Name and address of share holder  | PAN        | No. of shares applied for | Face Value | Share Premium | Total Share Application Money |
|-------|---|------------|---------------------------|------------|---------------|-------------------------------|
| 1     | Eastern Synthetics Pvt. Ltd.,<br>Room No. 307, G C Avenue, 29, Kolkata-700013.                              | AAACE7591E | 3300                      | 33000      | 1,64,67,000   | 1,65,00,000                   |
| 2.    | External Exim Pvt. Ltd.,<br>Room No. 307, G C Avenue, 29, Kolkata-700013.                                   | AABCE9575E | 13480                     | 134800     | 6,72,65,200   | 6,74,00,000                   |
| 3.    | Kavery Trading & Holding Pvt. Ltd.,<br>3, Khetra Das Lane, Kolkata-700013.                                  | AABCK1467B | 15940                     | 159400     | 7,95,40,600   | 7,97,00,000                   |
| 4.    | Suvodaya Distributors Pvt. Ltd.,<br>Room No. 12, 2 <sup>nd</sup> Floor, 3, Khetra Das Lane, Kolkata-700013. | AAJCS6470Q | 15560                     | 155600     | 7,76,44,400   | 7,78,00,000                   |
| 5.    | Silverline Enclaves Pvt. Ltd.,<br>Room No. 307, 3 <sup>rd</sup> Floor, 29, G C Avenue, Kolkata-700013.      | AAECS3796E | 12040                     | 120400     | 6,00,79,600   | 6,02,00,000                   |
| 6.    | Vikrant Construction Pvt. Ltd.,   | AAACV9124D | 15680                     | 156800     | 7,82,43,200   | 7,84,00,000                   |
|       | Total   |            | 76000                     | 760000     | 37,92,40,000  | 38,00,00,000                  |

The assessee had issued 75,000 shares @ Rs.10/- each to Shri Mrudule Puneter. It had issued another 76,000 shares at a price of Rs.5,000/- each, which consisted of face value of Rs.10/- and premium of

Rs.4,990/-. Hence, the aggregate amount collected by the assessee was Rs.38,07,50,000/-. However, the AO has made addition of Rs.38,08,50,000/-.

4. In the reassessment proceedings, the AO placed reliance on the report given by the Investigation Wing and held that the share application money received by the assessee is only an accommodation entry. The AO, however, noticed that the above said amount of Rs. 38.08 crores has already been added to the total income in the original assessment passed u/s. 143(3) of the Act. Hence, there was no necessity for him to add it again in the reassessment proceedings. Accordingly, he reiterated the total income determined in the original assessment order and accordingly completed the re-assessment. The assessee filed appeal before the Ld.CIT(A) challenging the re-assessment order passed u/s. 147 of the Act questioning the validity of re-opening of assessment and also the addition reiterated therein.

5. Both these appeals came to be disposed of by the Ld.CIT(A) through the impugned orders. The Ld CIT(A) quashed the reassessment proceedings and hence the revenue is challenging the said order of the Ld CIT(A). In respect of appeal filed against the original assessment order passed u/s 143(3) of the Act, the Ld CIT(A) observed that the assessee has furnished all the documents relating to share application money received by the assessee as required u/s 68 of the Act and accordingly held that the assessee has discharged the onus placed upon it u/s 68 of the Act. Accordingly, he deleted the addition of Rs.38.08 crores made the AO u/s 68 of the Act. The Ld CIT(A) also held that the share application money received by the assessee is Capital receipt and accordingly held that the same is not liable to tax.

6. We shall first take up the appeal relating to original assessment proceedings. The solitary issue urged by the revenue is related to the deletion of addition of Rs.38.08 crores made by the AO u/s 68 of the Act.

7. We noticed earlier that the assessee did not furnish any details relating to share application money before the AO in the original assessment proceedings. However, all the relevant details were furnished in the reassessment proceedings. The Ld CIT(A) considered the documents furnished during the course of reassessment proceedings for deciding the very same addition made in the original assessment order. Hence it is contended by the revenue that the Ld CIT(A) was not justified in considering those documents and further, the first appellate authority has violated the provisions of Rule 46A in not confronting those documents with the assessing officer.

8. We noticed earlier that the nature and quantum of addition made in the original assessment order and reassessment order is one and the same, i.e., the share application money received by the assessee during the year under consideration. It is true that the assessee did not furnish relevant details before the AO in the original assessment proceedings in order to discharge the burden placed upon it u/s 68 of the Act. However, the fact would remain that the assessee has furnished all the relevant details relating to share application money before the AO in the reassessment proceedings. Since all the relevant details were furnished to the AO, although in the subsequent reassessment proceedings, the Ld CIT(A) took the view that those documents could be considered in the original assessment proceedings. Accordingly, he has proceeded to examine the correctness or otherwise of the addition made u/s 68 of the Act. In our view, it is not a case where the Ld CIT(A) has admitted altogether new evidences, which

would require calling for a remand report from the AO. On the contrary, calling of a remand report on the very same documents would result in multiplicity of proceedings and may be an empty formality, since the AO was already aware about the documents filed by the assessee before him in the reassessment proceedings. Accordingly, in the facts and circumstances of the case, we are of the view that it cannot be considered that there was violation of Rule 46A of IT Rules, as contended by the revenue.

9. We shall now examine as to whether the assessee has discharged the onus placed upon it u/s 68 of the Act in respect of share application money received by it. In this regard, we notice that the Ld CIT(A) has examined this issue in a detailed manner. The relevant observations made by Ld CIT(A) in the context of sec.68 of the Act are extracted below:-

“It can be seen that the assessee has received total share application money of Rs. 16,10,000/- and share premium of Rs. 37,92,40,000/- totaling to Rs. 38,08,50,000/- during AY 2012-13. Out of these 75,000 equity shares of Rs. 10 each were issued at par to Mrudula Puneter and 76,000 equity shares of face value of Rs. 10 were issued to aforementioned six companies at share premium of Rs. 4,990 per share.

**(c)** During the course of assessment proceedings, the assessee was asked to

justify the receipt of share capital during the year. In response the assessee uploaded following documents in support of his claim: -

1. Copy of Confirmation of account by the party
2. Copy of Share Application Form of the party for application of shares in the company
3. Copy of Board Resolution of the party for investment in shares
4. Copy of Acknowledgement of return filed by the company for AY 2012-13
5. Copy of Audited Balance Sheet for AY 2012-13
6. Copy of bank statement of the party from where cheque is issued

7. Chart of Share Application money received in respect of six companies – Name, Address, PAN, share money, share premium, No. of shares applied for and Total Share application money.
8. Form No. 2 i.e., Return of allotment filed with the ROC in respect of six shareholders to whom 76,000 shares issued.
9. To prove the credit worthiness of the six companies, it was submitted that owned fund of the share applicant companies i.e. shares capital and reserves of the share applicant company as on 31.03.2012 was more than share application money paid.

(d) The assessee provided these documents to the Assessing Officer (AO) during the assessment proceedings. The Assessing Officer has acknowledged this by mentioning in the assessment order that :

***“In support of its claim of issuance of share the assessee submitted confirmation of account of six companies to whom shares were issued along with the copy of Board Resolution of the party of the investment in shares, R.O.I. of all six parties and bank statement of the parties reflecting the transaction.”***

The Assessing Officer was however not satisfied with the genuineness, credit worthiness and identity of the parties to whom shares were issued after considering the submission of the assessee. The AO referred to the investigation done by Investigation Wing, Kolkata and statement of Shri Subhas Chandra Bhartia accepting that he was involved in providing accommodation entries. The AO also mentioned that data seized showed that M/s. Needful Datacomm Pvt. Ltd. was one of the beneficiaries. The AO thus concluded that the six companies mentioned above are shell companies and therefore made addition of Rs. 38,08,50,000/- u/s 68 of the IT Act.

(e) I find that the Assessing Officer relied on the report of the Investigation Wing, Kolkata but did not conduct any enquiry or investigation by himself. The AO did not provide copy of seized/impounded material to the assessee which proved that the assessee was beneficiary company of the accommodation entries provided by Shri Subhas Chandra Bhartia. The AO also did not provide copy of statement of Shri Subhas Chandra Bhartia wherein he had admitted that he was involved in providing accommodation entries. Opportunity of cross-examination of Shri Subhas Chandra Bhartia was not provided to the assessee by the AO. The AO made the addition of Rs. 38,08,50,000/- just by mentioning that the explanation offered by the assessee is not satisfactory. Thus, the AO did not follow the principles of natural justice while finalizing the assessment.

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(f) I find that in the instant case, the assessee discharged the onus laid on its shoulders as per the requirement of section 68 of the Act and submitted all relevant documentary evidences pertaining to the investor company including the bank statement, confirmation, application form for allotment of equity shares, Board Resolution, Audited Balance Sheet and Form No.2 showing the allotment of shares. The AO did not find any defect or any discrepancy in the documentary evidences. He neither conducted any enquiry nor followed the principle of natural justice. After discharge of onus by the assessee, the onus shifts on the AO to disprove the claim of the assessee by establishing that the evidence filled by the assessee was false and by bringing new adverse material on record and failure to do so at the end of AO has vitiated the additions made under section 68.

Reliance is placed on the order of **Jurisdictional Hon'ble ITAT "E" Bench, Mumbai in the case of M/s. Seth Carbon and Alloys Private Limited Vs DCIT Mumbai ITA No. 2865/Mum/2019-20 order dated 17.05.2021** wherein it was held by the Hon'ble ITAT that no addition can be made by the AO u/s 68 without any verification. The relevant part is reproduced as under:

***"4.5. We find that assessee by furnishing all the aforesaid documents had duly explained the nature and source of credit in the form of share capital and share premium received from the aforesaid two shareholders. From the balance sheet of the shareholders, it could be seen that they are having sufficient creditworthiness to make investment in the assessee company. Similarly, all the shareholders are duly assessed to tax and had filed their income tax returns and ROC returns. This proves the identity of the shareholders. All the transactions are routed through account payee cheques in the regular banking channels. The justification for premium was also duly made by the assessee by giving explanation in writing. This clearly proves the genuineness of the transactions. We find that the Id. AO after receiving all the information in the form of various documentary evidence remained silent. We find that the Id. AO did not resort to make any verification in any manner whatsoever either by issuing notice u/s.133(6) of the Act or issuing summons u/s.131 of the Act to the concerned shareholders in order to examine the veracity of such documents. We find that the Id. AO without resorting to any sort of verification in the manner known to law, had simply proceeded to make addition in the hands of the assessee by treating the receipt of share capital and share premium as***

***accommodation entries merely by relying on the statement recorded from Shri Shirish Chandrakant Shah and his key employees. In any case we also find that the statement of Shri Shirish Chandrakant Shah and his key employees were never furnished to the assessee for its rebuttal. Hence, the said statements cannot be relied upon as sole basis for framing addition in the hands of the assessee. We hold that the addition made u/s.68 of the Act in the case of the assessee is merely based on surmise and conjecture and absolutely without any basis and absolutely without any verification in the manner known to law. Accordingly, we have no hesitation in deleting the addition made u/s.68 of the Act in the case of the assessee.”***

Reliance is also placed on decision of **Jurisdictional Hon. Mumbai ITAT** in the case of **Netscape Software Ltd. v. DCIT – ITA/3852/M/2009 dt 19-10-2011**), wherein it is held as under:

***Income tax-Section 68-Whether AO can solely rely on the enquiries of investigation wing to treat the share application money as in genuine and make additions-Whether AO is bound to bring positive evidence on record to establish that the money received in the shape of share application money was actually assessee’s own money particularly when the assessee has complied with all the ingredients of section 68 of the Act.***

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Reliance is also placed on decision of **Hon’ble Calcutta High Court** in the case of **Principal Commissioner of Income tax v. Overtop Marketing (P.) Ltd**, 148 [taxmann.com](http://taxmann.com) 94, January 3, 2023 wherein it has been held as under:

***“Where assessee-company had discharged onus to prove identity, creditworthiness and genuineness of its loan transactions with various companies by providing income-tax acknowledgements, audited accounts, etc. and some lender companies had also replied to notice issued on them under section 133(6), since Assessing Officer failed to discharge his onus to prove them wrong, impugned additions made under 68 treating loan amount as unexplained cash credit was to be deleted.”***

Further, Reliance is placed on decision of Jurisdictional **Hon. Bombay High Court dated 22-01-2020** in the case of **Mr. Gaurav Triyugi Singh vs. ITO, ITA No. 1750 of 2017** wherein similar findings are given that assessee is not required to prove the source of source wherein assessee has filed all the details to the establish the identity, creditworthiness and genuineness and hence discharged the onus.

**(g)** In view of the above discussion I hold that the assessee has given all the necessary evidence including the confirmation letters, bank statement, financial statements, income tax return and board resolution of the six companies. On the basis of the above documents appellant had discharged the burden and thereafter AO had not made any further enquiry on that except relying on statement of Subhas Chandra Bhartia recorded u/s 132(4) copy of which was neither given to appellant nor cross examination was allowed. Hence, the same cannot be basis of the treating the share capital & premium received by the appellant as unexplained cash credit u/s 68 of the IT Act, 1961. The addition of Rs. 38,08,50,000/- being share capital along-with the premium is therefore deleted.”

10. We noticed that the Ld CIT(A) has given clear cut finding that the assessee has discharged the onus placed upon its shoulders u/s 68 of the Act by proving three main ingredients, viz., the identity of the creditor, the credit worthiness of the creditor and genuineness of the transactions. We notice that the assessing officer did not disprove any of the documents furnished by the assessee. No other material was placed before us by the revenue to contradict the findings given by Ld CIT(A). Under these set of facts, as held by the High Courts and co-ordinate benches, the AO could not have made addition of share application money u/s 68 of the Act. Accordingly, we confirm the order passed by Ld CIT(A) in deleting the addition made u/s 68 of the Act.

11. We shall now take up the appeal relating to reopened assessment. We noticed that the Ld CIT(A) has held that the reopening of assessment is not valid. We also noticed that the nature and quantum of addition made in the original assessment order and reassessment order is one and the same. While disposing the appeal relating to the original assessment order, we have upheld the order of Ld CIT(A) in

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deleting the addition made u/s 68 of the Act. The decision rendered by us on merits would equally apply to the reassessment order also. Since the addition made in the reassessment order would also not survive, the grounds urged on validity of reopening of assessment are rendered academic and hence, the same are kept open.

12. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 5<sup>th</sup> August, 2024

Sd/-  
(JUSTICE (Retd.) C.V. BHADANG)  
PRESIDENT

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai,  
Date : 5<sup>th</sup> August, 2024

*TNMM*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai