

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 27/KOL/2024
Assessment Year: 2012-2013**

***Heaven Vyapaar Pvt. Limited,.....Appellant
7, Red Cross Place, 4th Floor,
Kolkata-700001
[PAN:AACCH7234G]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-5(4), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

No one, appeared on behalf of the assessee

*Shri B.K. Singh, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : June 19, 2024

Date of pronouncing the order : August 20, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 10th November, 2023 passed for Assessment Year 2012-13.

2. The assessee has taken three grounds of appeal, out of which Ground No. 3 is a general ground, which does not call for recording of any finding.

3. In Ground No. 1, the assessee has pleaded that the ld. CIT(Appeals) has erred in confirming the addition of Rs.1,75,50,000/-, which was added by the ld. Assessing Officer with the aid of section 68 being unexplained cash credit found in the accounts of the assessee.

4. In Ground No.2, the assessee has pleaded that the ld. CT(Appeals) has erred in confirming the addition of Rs.16,120/-, which was added under section 14A read with Rule 8D of the Income Tax Act.

5. First, we take Ground No. 1. Before adverting to the brief facts, we deem it appropriate to observe that in response to the notice of hearing, no one has come present on behalf of the assessee. The Registry has listed this appeal on the board on 12.03.2024. In response to the notice, no one had appeared. The Bench has issued fresh notice through RPAD as well as information on the e-mail of the assessee mentioned in Form No. 36. The hearing was adjourned to 24.04.2024. On that date, Bench did not function and hearing was adjourned to 15.05.2024. On 15.05.2024, again no one appeared and hearing was adjourned to 19.06.2024. The notice was again issued through RPAD. On 19.06.2024, none appeared but we find that a paper book without

any certificate exhibiting the fact that these papers were filed before the lower authorities, has been filed. This paper book is running into 147 pages. It has been filed under the signature of the Director without writing his name. With the assistance of Id. D.R., we have gone through all these papers as well as written submission made in this paper book.

6. Brief facts are that the assessee has filed its return of income on 23.12.2012 declaring total income of Rs.1,451/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued on 08.08.2013. The Id. Assessing Officer thereafter issued notice under section 142(1). Shri Deepak Kumar, Chartered Accountant appeared on behalf of the assessee. On scrutiny of the accounts, it revealed that the assessee had issued 8,775 equity shares @ Rs.10/- each and received a premium of Rs.1,990/- per scrip. Thus, it has received a total amount of Rs.1,75,50,000/-. The Id. Assessing Officer has directed the assessee to submit relevant details and also produce the Directors of all the shareholder companies as well as of the assessee-company. The Id. Assessing Officer again directed the assessee to produce the Directors as well as documents in support of that. According to the Id. Assessing Officer, no one has appeared. Thereafter he discussed the jurisprudence governing the issue of share application money including premium. He made reference to the decision of the Hon'ble Jurisdictional High Court in the case of CIT -vs.- Precision Finance Pvt. Ltd. reported in 208 ITR 463. He made discussion of various other decisions of the

Hon'ble High Courts as well as of the Hon'ble Supreme Court and accordingly he made the addition of Rs.1,75,50,000/-.

7. Appeal to the Id. CIT(Appeals) did not bring any relief to the assessee.

8. Before us, the assessee has filed written submissions, which read as under:-

WRITTEN SUBMISSIONS:

This appeal has been filed against Order U/s.143(3) of I.T.Act 1961 dated 23.03.2015 passed by I.T.O.Ward – 5(4), Kolkata, determining total income at Rs. 1,75,67,571 . The brief facts under which the said order was passed remain as follows:

The company obtained certificate of incorporation the financial year 2011-12 relevant to the Assessment Year 2012-13 to carry its activities as per articles and memorandum of Association. Return of Income was filed on 23.12.2012 declaring total income at Rs. 1450 /- on the basis of Books of accounts which we are audited. The return was selected for scrutiny by issue of Notice U/s 143(2) and 142(1). Subsequently, notice U/S 131 were issued to the directors & shareholders calling for details/documents as per questionnaire. In response, A/R appeared to explain the return and furnish details / documents as asked for, Subsequently, notice U/S 131 were issued to the director and shareholders and the books of accounts required by A.O. was produced before Ld. A.O.. In spite of producing all books of accounts ALd. A.O. further issued a letter of show cause notice dt. 09.03.2015 for compliance and accordingly as per Ld. A.O's requirement all relevant documents/statement were submitted but were not considered by the Ld.A.O. and passed the order. In the background of above, grounds of appeal referred in Form no. 35 are dealt with as under :

Ground No. 1:

This ground has been referred against A.O.'s action to treat share capital with premium aggregating to Rs. 1,75,50,000/- received on allotment as unexplained Cash Credit U/s.68 of I.T.Act. The addition is improper and unjust for reasons explained below:

1. It is evident from observation at Para 2 and 3 of order U/s 143(3) that A.O.issued notice u/s. 142(1) along with a questionnaire in compliance to which, A.R. appeared to furnish various details as desired and produced books of accounts which were duly examined.

2. The various details furnished on record included list of share allottees with address, PAN, etc. from whom Rs. 1,75,50,000/- was received as share capital with premium. Details thereof remains as under:

<u>Name and address</u>	<u>PAN</u>	<u>No. Of Shares</u>	<u>Total receipt including Premium</u>
1. APARANITA VANIJYA PVT LTD. Chunari Para colony Post Nawabgari Kolkata – 743144.	AAJCA0546R	1750	Rs. 35,00,000
2. CHAMPION COMMOTRADE PVT. LTD. 8,Amartalla Street, Kolkata – 700 001	AAECC4321K	1700	Rs. 34,00,000
3. DESTINY COMMOTRADE PVT. LTD. 69/3, Nimtolla Ghat Street Kolkata – 700006.	AADCD9476D	1250	Rs. 25,00,000
4. ELEGANT DEALMARK PVT. LTD 7,Red Cross Place, Kolkata – 700 001	AACCE7972Q	750	Rs. 15,00,000
5. MERIT DEALCOM PVT. LTD Kaveri House 132/1 ,M.G.,Road ,4 th Floor Kolkata – 700 007	AAHCM3378D	175	Rs. 3,50,000
6. NAVNITA DEALCOMM PVT. LTD. 8,Amartalla Street, Kolkata – 700 001	AAACN8369A	1050	Rs. 21,00,000
7. PLEASURE DEALCOM PVT. LTD. 84,B.T.Road, Kolkata – 700 002	AAGCP1614C	45	Rs. 9,00,000
8. ZEUS VINIMAY PVT. LTD. 8,Amartalla Street, Kolkata – 700 001	AAACZ1043P	1650	Rs. 33,00,000
TOTAL		8775	1,75,50,000

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3. Two Promoter Directors contributed remaining share capital while formation of the company. After getting incorporation Certificate from R.O.C., the Promoter Directors decided to raise additional fund for commencing its activities of business. Consequently, the Directors proceeded to raise necessary funds by issue of 8775 shares of face value Rs. 10/- at a premium of Rs. 1,990/- each per share. Therefore on personal approach of the Director, the company raised additional fund of Rs. 1,75,50,000/- from eight allottees who subscribed in the share capital with premium as explained earlier.
4. To establish identity, creditworthiness and genuineness of share application from above parties, the appellant furnished the areas documents as specified against each which are shown below:

<u>Sl. No.</u>	<u>Name</u>	<u>List of documents furnished</u>
1.	APARANITA VANIJYA PVT LTD.	I.T.Acknowledgement, Audited Balance Sheet, Share Application (Form No. 2), Bank Statement.
2.	CHAMPION COMMOTRADE PVT. LTD.	- DO -
3.	DESTINY COMMOTRADE PVT. LTD.	- DO -
4.	ELEGANT DEALMARK PVT. LTD.	- DO -
5.	MERIT DEALCOM PVT. LTD.	- DO -
6.	NAVITA DEALCOMM PVT. LTD.	-- DO -
7.	PLEASURE DEALCOM PVT. LTD	-- DO -
8.	ZEUS VINIMAY PVT. LTD.	- DO -

5. The appellant has furnished complete evidences in discharge of its own. All the shareholders are body corporate and duly incorporated under the Companies Act, 1956. It cannot be said that they have no identity of their onus. The share applicant companies are also independently assessed to Income Tax.
6. Regarding the genuineness of the share transaction undertaken with the said applicants such subscriptions were received by account payee cheques through banking channel which is traceable from the origin to the destination of such payments. Further, the implement share application moneys were recorded in the balance sheets and duly reflected in their returns filed with the respective Assessing officer of share applicants. Therefore the genuinity of the transactions cannot be called into question.
7. That eight share applicants were worthy of credit will be evident from their capital position. The investment made with the appellant company out of such capital is negligible as detailed below :

<u>Share Holder's Name</u>	<u>Capital and Reserve</u>	<u>Investment with Assessee</u>	<u>%</u>
1. APARANITA VANIJYA PVT.LTD.	37,07,67,680	35,00,000	19.94%
2. CHAMPION COMMOTRADE PVT. LTD.	2,95,95,711	34,00,000	19.37%
3. DESTINY COMMOTRADE PVT. LTD.	27,02,00,360	25,00,000	14.25%
4. ELEGANT DEALMARK PVT. LTD.	1,57,32,788	15,00,000	8.55%
5. MERIT DEALCOM PVT. LTD.	33,25,22,941	3,50,000	1.99%
6. NAVNITA DEALCOMM PVT. LTD	20,29,37,780	21,00,000	11.97%
7. PLEASURE DEALCOM PVT. LTD	17,53,00,346	9,00,000	5.13%
8. ZEUS VINIMAY PVT. LTD.	25,68,48,606	<u>33,00,000</u>	18.80%
		<u>1,75,50,000</u>	

8. Ld. A.O. has disbelieved such genuine transactions with a pre determined mindset. There was no case of the A.D. that there was any dearth of proof in support of share application money received by the Appellant from the share applicants. The copies of the Return Income along with audit report and financial statements, bank statements, and allotment advice etc. were filed with him.

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There were no cash transaction in their respective Bank accounts filed with the Ld.A.O. The entire gamut of transactions was undertaken in their respective Bank accounts filed with the Ld. A.O The entire gamut of transactions was undertaken by way of Account Payee Cheque only. In respect of the share applicants there were more than enough funds to subscribe to the share of the appellant as furnished earlier.

9. Thus it may be submitted that the share applicants had sufficient balances to advance the share application moneys to the appellant during the financial years relevant to the Assessment Year under dispute.
10. No doubt as per the requirements of the provisions of Section 68, the initial burden lies on the assessee to explain the nature and source of share application money received by it. It is also clear that the Assessee has to satisfactorily establish the identity of the share holders, the genuineness of the transactions and the creditworthiness of the share holders to discharge its primary burden. The initial burden which lay on the appellant was duly discharged by providing all the three criteria as explained earlier. Therefore the onus to disprove the same shifted to the Ld. SA.O. who previously failed to discharge the same. Further the nature and source of cash credit or the explanations submitted by the appellant is not considered satisfactory can not be a matter of surmise of conjecture and/or arbitrary and capricious assumption of Ld.A.O. The opinion of the Ld. A.O. must be justified by the test of reason and not reached anyhow with a pre-conceived mindset. Since evidences relating to identity, creditworthiness and genuineness were brought on records the adverse conclusion drawn by A.O. is simply out of court.
11. The increased share capital received from six corporate entities has been considered as unexplained cash credit. U/s 68 based on findings available at para-4 of the order as reproduced below :

“In order to verify the genuineness of the transactions and to verify the identity and credit worthiness of the share holders. Notice U/s.131 was issued to Directors of all share holders company. They were asked to appear personally and to produce/furnish details/ documents in support of justification for the investment made by them in the Assessee companybut none of them appeared before the undersigned.”

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12. I may draw your kind attention to the decision in the case of C.I.T.-vs-Sagun Commercial Pvt.Ltd.(I.T.A. No.54 of 2001 dated 17.2.2011) wherein it was held that failure to produce the share applicants before the A.O. could not justify the stand of the A.O.to disbelieve the explanations offered by the Assessee which is duly supported by PAN. Payment details of share holding, Bank transactions relating to those payments which were before him and he failed to consider those documentary evidences in arriving at his conclusion. The same logic may be applicable were the Directors do not comply in terms of summons U/s.131
13. Reliance is also placed to the decision in C.I.T. -VS-Gayatri portfolio Fund Pvt.Ltd.(I.T.A.No.664 of 2004 dt. 26.08.2014) where it was held that the Assessee had discharged its initial onus to prove the identity and creditworthiness of the investors as well as genuineness of transactions since it had filed copies of share applications duly signed along with complete address of investors with their I.T.file nos. Account Payee cheque no. and the Associates' Bank Statements disclosing the deposits of these amount before the A.O. and it is not the case of the revenue that investors parties did not exit or that money was not invested by them through Banking channels. Therefore the impugned addition was made with an Arbitrary mindset. Further, the Ld. A.O. has not specifically recorded his finding that evidences filed by the Appellant in support of share application money. i.e, copy of return, Audit report and financial statement, Bank Statement were vague or depict and untrue state of affairs. As long as details asked for are provided, physical presence can not detract from the validity or sufficiency thereof. In spite of that Ld. A.O. has presumed that the share application money given by the share supplicants are unaccounted cash credit in the hands of the appellant.
14. It is further submitted that the appellant had duly adduced evidence on records to justify the point of financial capabilities of his share applicants. In fact, no adverse of action was taken in the assessment processing of the share applicants company in respect of investment made by them in the share of the appellant in their respective return of income. In this connection your attention is drawn to decision of Jurisdictional High Court in the case of C.I.T.verses Data ware P.Ltd. (I.T.A No. 263 of 2011 dt. 21.09.2011) wherein it was held that where it is not established that return submitted by the creditors has been rejected by its Assessing officer.The Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and genuineness of transactions has been established.
15. The Hon'ble Supreme Court in the case of C.I.T.-VS Lovely ExportsPvt.Ltd., 216 CTR, 195 held that where share application money is received by the Assessee Company from share holders whose names are given to the A.O., the department is free to proceed to re-open their individual assessment in accordance with law but they cannot be treated as the undisclosed income of the Assessee Company.

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16. The law does not allow any discretion to the Assessing Authority to act otherwise in consonance with proven facts. It is not the case of the Ld. Assessing Officer that the evidence adduced on record in respect of the share applicants were in genuine and thus he acted in defiance of law and facts and in such event, the impugned addition made on that basis being unsustainable cannot survive due to lack of justification and is liable to be deleted.
17. The cash credit in the present appeal refers to share application money received from the shareholders but not from outsiders. The rigors of section 68 of the Act to establish identity, creditworthiness and genuineness cannot be applied to shareholders funds. Reliance is placed to the decision of Rajasthan High Court in Shree Barkha Synthetic Limited – VS – ACIT 155, Taxman 289
18. Similar views expressed by Rajasthan High Court as stated above was earlier confirmed by Delhi High Court in C.I.T.- VS-Stellar Investment Ltd. 192, ITR 287 (Delhi)
19. The views expressed in Stellar Investment Ltd., supra with some modifications was approved by larger Bench of Delhi High Court in the case of Sophia Finance Ltd., 205 ITR 98 and confirmed by Hon'ble Supreme Court.
20. Reliance is also placed to the decision in C.I.T.-VS Lovely Export Pvt.Ltd., 216 I.T.R.195, (AC). This has been discussed earlier.
21. The various documents including I.T.Return acknowledgement accounts with Balance Sheet, Bank Statement, etc. furnished on record have not been found to be false on enquiry. There is no adverse remark so far as various documentary evidences furnished on records are concerned. No independent enquiry was conducted by A.O. from the Assessing Officer of share applicant. The A.O. has not pointed as to how on the basis of evidences filed by the share applicant it can be concluded that ingredients of section 68 are not fulfilled. There is no finding that either the Assessee or the share applicant is Paper Company and not a genuine Investor. Hence the adverse comments are not maintainable.

22. It is submitted that there is not ground to draw adverse inference for non-appearance of Directors of allottee company since all possible evidences of the existence, creditworthiness and genuinity was furnished on record. There is nothing more for the Directors to state in this respect. Moreover the provisions of section 68, do not suggest any essential relation of the Director of share holder company.

23. Your honor may find that the A.O. has not brought anything on record to establish that it was Assesse's own money which has been routed in the form of share capital. Thus addition u/s 68, made on suspicion should be deleted. Reliance is placed to the decision of Hon'ble Delhi High Court in I.T.O.-vs-Neelkanth Findbuild Ltd.(2015)61, Taxman.com 12

24. Admittedly the shares were issued at a premium of Rs.1990/- per share. But this cannot be valid ground for considering share capital as unexplained. In this respect your attention is invited to huge expressed by I.T A.T.Mumbai Bench in the case of Green Infra Ltd. – Vs – I.T.O Ward (1), 159 TTJ728 wherein it was held :-

“It is prerogative of the Board of Directors of a Company to decide the premium amount and it is wisdom of the Share holders whether they would subscribe to such a heavy Premium. The revenue cannot question the charging of huge premium Without a bar from any legislative law of land”

25. The Ld.A.O. has relied upon certain judicial decisions which empower A.o.to draw adverse inference, where the Assessee fails to discharge the owners cast U/S.68 of I.T.Act.We have explained in details that there was no failure on Assessee part to discharge obligations U/S 68 by referring to various judicial decisions. Hence, decision referred by the I.T.O.stands in fractious.

Ground No.2:

This A.O. error in disallowing the P/L of expenditure to the tune of Rs. 16,120/- notionally although all relevant papers and documents were produced by the assessee to prove the expenditure to be allowable as per provisions of sec 14A, of IT.Act read with rule 8D,I.T.Rules.

9. On the other hand, ld. D.R. pointed out specific defects. He submitted that these papers were not filed comprehensively before the ld. Assessing Officer. The assessee has not filed any application for permission to additional evidence. A perusal of the financial statements of alleged share applicants would reveal that all these companies are really not involved in doing any business. Thus the ld. Assessing Officer has rightly made the addition.

10. We have duly considered the written submission of the assessee as well as the submission of the ld. D.R., before we embark upon an inquiry on the facts of the present appeal, in order to find out whether the share capital and share premium money received by the assessee during the year is required to be treated as its unexplained credit and deserves to be added under section 68 of the Income Tax Act, 1961. We deem it appropriate to bear in mind certain basic principles/tests propounded in various authoritative pronouncements of the Hon'ble High Courts and Hon'ble Supreme Court. We take cognizance of some of them. It is pertinent to observe that in so far as companies incorporated under Indian Companies Act are concerned, whether Private Limited or Public Limited Companies, they raise their share capital through shares, though manner of raising share capital in Private Limited Company on one hand and Public Limited Company on other hand, would be different. The share capital and share premium are basically irreversible receipts or credits in the hands of the companies. Share capital is considered to be cost of shares on equivalent amount issued and premium is considered as extra amount charged by the company for issue of that capital. In the case of Private Limited Company, normally shares are subscribed by family members or persons known/close to the promoters. Public Limited Company, on the other hand, generally raised by public issue inviting general public at large for subscription of these shares. Yet, it is also possible that in the case of Public Limited Company, the share capital is issued in close-circuit. When companies incorporated under the Companies Act raise their capital through shares, various persons would apply for

shares and then give share application money. This amount received from such share holder would naturally be credited in the books of accounts of the assessee. Once the alleged share capital is credited to the accounts of the assessee, then role of section 68 would come. It is pertinent to take note of this section. It reads as under:

"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 officer, satisfactory the sum so credited may be charged to income tax as the income of the assessee of that previous year."

11. A perusal of the section would indicate that basically this section contemplates three conditions required to be fulfilled by an assessee. In other words, the assessee is required to give explanation which will exhibit nature of transaction and also explain the source of such credit. The explanation should be to the satisfaction of the AO. In order to give such type of explanation which could satisfy the AO, the assessee should fulfill three ingredients viz. (a) identity of the share applicants, (b) genuineness of the transaction, and (c) credit-worthiness of share applicants. As far as construction of section 68 and to understand its meaning is concerned, there is no much difficulty. Difficulty arises when we apply the conditions formulated in this section on the given facts and circumstances. In other words, it has been propounded in various decisions that section 68 contemplates that there should be a credit of amounts in the books of an assessee maintained by the assessee, (b) such amount has to be a sum received during the previous year, (c) the assessee offers no explanation about the nature and source of such credit found in the books, or (d) the

explanation offered by the assessee is not, in the opinion of the Assessing Officer, satisfactory. The Hon'ble Delhi High Court in the case of CIT v. Novadaya Castles (P.) Ltd. 367 ITR 306 has considered a large number of decisions including the decision of Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad [1971] 82 ITR 540 (SC). According to the Hon'ble Delhi High Court, basically there are two sets of judgments. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholder and bank account from which payment was made. The fact that payment was received through bank channels, filed necessary affidavit of the shareholders or confirmations of the directors of the shareholder company. But thereafter no further inquiry was made by the AO. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The Assessing Officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances.

12. Let us take into consideration observations made by the Hon'ble Delhi High Court in the case of Softline Creations P. Ltd. (supra) while taking note of judgment of Hon'ble Delhi High court in the case of CIT Vs. Fair Finvest Ltd., 357 ITR 146 (Delhi). Hon'ble Delhi High Court made following observations:

".....This court has considered the concurrent order of the Commissioner of Income-tax (Appeals) as well as the Income-tax Appellate Tribunal. Both these authorities primarily went by the fact that the assessee had provided sufficient

indication by way of permanent account numbers, to highlight the identity of the share applicants, as well as produced the affidavits of the directors. Furthermore, the bank details of the share applicants too had been provided. In the circumstances, it was held that the assessee had established the identity of the share applicants, the genuineness of transactions and their creditworthiness; The Assessing Officer chose to proceed no further but merely added the amounts because of the absence of the directors to physically present themselves before him.

13. The Income-tax Appellate Tribunal has relied upon a decision of this court in CIT v. fair Finvest Ltd. [2013] 357 ITR 146 (Delhi), where in somewhat similar circumstances, it was stated as follows (page 152):

"This court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income-tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the Registrar of Companies in relation to the share application, affidavits of the directors, Form 2 filed with the Registrar of Companies by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahesh Garg. To elevate the inference which can be drawn on the basis of reading of such material into judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of section 68.

Having regard to the entirety of facts and circumstances, the court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra)"

14. We also deem it appropriate to take note of some of observations of the Hon'ble Delhi High Court from the decision of Fair Finvest Ltd. (supra). The Hon'ble Court has noticed proposition laid down by the Hon'ble Delhi High Court in the case of CIT Vs. Victor Electrodes Ltd., 329 ITR 271 (Delhi) regarding non-production of share applicants before the AO. The following observations are worth to note:

"...In this connection the observation of the jurisdictional High Court in case of Dwarkadhish Investment (Supra) are quite relevant where the court has observed that it is the revenue which has all the power and wherewithal to trace any person. Further in the case of CIT vs. Victor Electrodes Ltd. 329 ITR 271 it has been held that there is no legal obligation on the assessee to produce some Director or other representative of the Director or other representative of the applicant companies before the A.O. Therefore, failure on part of the assessee to produce the Directors of the share applicant companies could not by itself have justified the additions made by the AO particularly when the seven share applicant companies through their present Directors have now again filed fresh affidavits confirming the application and allotment of shares with respect to the total amount of Rs.45 Lacs. It is observed that no attempt was made by the AO to summon the Directors of the share applicant companies. Moreover, it is settled law that the assessee need not prove the "source of source". Accordingly, it was incumbent upon the department to have enforced attendance of Shri Mahesh Garg or the erstwhile Directors of the share applicant companies and confronted them with the evidences & affidavits relied upon by the appellant and thereupon given opportunity to the assessee to cross examine these applicants."

15. In the light of above, we have examined the written submission filed by the assessee. Basically, the stand of the assessee is that it has received the money through banking channel. It has filed copies of the returns of these companies. It has filed their Certificate of Incorporation to prove the identity. It has filed their balance-sheets and other documents. Hon'ble Delhi High Court has observed that if payments are received through account payee cheque do not mean the transaction is sacrosanct. The Bank statement of Syndicate Bank, Kolkata of the assessee has been placed at page no. 23 of the paper book, where it reflects that Aparajita Vanijya Pvt. Limited has made payment of Rs.35,00,000/-. This payment was received by the assessee on 16.12.2011, but out of that, same amount was withdrawn on 16.12.2011 itself by way of a cheque and these were transferred to Champion Commotrade Pvt. Limited and Copuma Vinimoy and Rs.50,000/- was withdrawn under a cheque of self. Similar is the position of other amounts. This company has received Rs.25,00,000/-, Rs.9,00,000/- and Rs.3,50,000/- on 17.12.2011. it has transferred Rs.33,00,000/- to Nishtha Vincom on 17.12.2011 itself. Thus on the date, it has received the alleged share application money. It has transferred the equal amount for alleged further investment to other some companies. The copy of the return of income of Aparajita Vanijya Pvt. Limited for A.Y. 2012-13 is available on page no. 53 of the paper book. The declared income is zero. It means that it has not carried out any real business, rather the whole working in the alleged balance-sheet is to receive the money from one hand and forwarded to other hand. The second applicant is Champion Commotrade Pvt. Limited from

whom the assessee has received Rs.34,00,000/-. Copy of the return of this assessee is available on page no. 70 of the paper book and this assessee has shown a meagre income of Rs.18,596/-. Copy of return of the 6th applicant Navnita Dealcomm Pvt. Limited from whom the assessee has received Rs.21,00,000/-, which is available on page no. 122 of the paper book and the total declared income is Rs.62,986/-. Again in the names of these companies, the assessee has shown huge capital reserve but we find that none of the companies actually doing any business except providing these type of entries here and there. To our mind, these are paper companies to make investment and on receipt of money forwarded to some other one. The transactions are not genuine. In our opinion that these assesseees are not creditworthy because the total income of all these assesseees is less than 1,00,000 rupees. The last investor is Zeus Vinimay Private Limited, who has given Rs.33,00,000/- to the assessee. Copy of return of this company is available at page no. 140 of the paper book and the total declared income is zero. Now the assessee alleged that capital reserve of Rs.25,68,48,606/- is with this company but how it is possible that such a huge amount of money kept by the assessee could result into zero income. A further perusal of the accounts would reveal that hardly any company has spent money for its business activities. In their accounts only reflects shareholders fund, share capital reserve & surplus which is a jugglery of figure instead of any real issue.

16. We have made a detailed examination of all the accounts of the share applicants as well as of the assessee. It is highly

improbable that somebody would pay a premium of Rs.1990/- for an assessee like the present one for making investment, who actually not doing any business and does not have any future plan. The assessee did not prosecute its defence before the ld. Assessing Officer as well as ld. CIT(Appeals) seriously. Before us also, for the sake of compliance, it has filed these papers without any substance. Therefore, we do not find any error in the orders of the revenue authorities on the first fold of issue and this ground of appeal is dismissed.

17. As far as the second ground of appeal is concerned, we find that ld. Assessing Officer has observed that the assessee has shown Rs.2,00,50,000/- as current investment in equity. It has not shown any exempt income out of such investment but on account of administrative expenditure, ld. Assessing Officer has made a meagre disallowance of Rs.16,120/- under section 14A with Rule 8D. Since complete details are not being placed before us exhibiting whether any exempt income is being claimed by the assessee or not and whether it has debited any expenditure or not on this account. Therefore, it is quite difficult to adjudicate this issue. Hon'ble Delhi High Court in the case of DCIT, Central-2 - vs.- M/s. Era Infrastructure Limited in ITA No. 202 of 2022 and C.M. Application No. 3144/2022 has held that if there is no exempt income, then no disallowance is to be made. The ld. Assessing Officer has not pointed out any exempt income claimed by the assessee. He has only observed that earning of exempt income cannot be ruled out, but for that disallowance under section 14A

is not to be made in A.Y. 2012-13. Therefore, this ground of appeal is allowed and disallowance made under section 14A is deleted.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20/08/2024.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 20th day of August, 2024

*Copies to :(1) Heaven Vyapaar Pvt. Limited,
7, Red Cross Place, 4th Floor,
Kolkata-700001*

*(2) Income Tax Officer,
Ward-5(4), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;*

(4) CIT - , Kolkata;

(5) The Departmental Representative;

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.