

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसमसी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 902/Kol/2024**  
**Assessment Year: 2014-15**

MagesticVyapaar Pvt. Ltd.  (PAN: AAECM 6260 D)	Vs.	ITO, Ward-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	25.07.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.08.2024
For the Appellant/ निर्धारिती की ओर से	Shri Ritesh Goel, A.R
For the Respondent/ राजस्व की ओर से	Shri N. L. Dash, Addl. CITDR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) dated 28.02.2024 for the AY 2014-15.

2. The common issue raised by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) confirming the addition of Rs. 1,39,99,920/- as made by the AO on account of unexplained share capital/share premium u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 18.09.2014 declaring total income at Nil. The case of the assessee was selected for scrutiny and statutory notices duly were issued and served upon the assessee. In response to the said notices Mr. Prosanta Ghosh appeared from time to time during the assessment proceedings and furnished the details as called for by the AO. During the course of assessment proceedings, the AO observed that the directors of the share assessee company and allottee companies were common. The statement of common director Mr. Raj Kumar Damani was recorded u/s 131 of the Act which was also extracted by the AO from page 1 to 4 in para 2 in the assessment order. Shri Raj Kumar Damani, in his statement in reply to question no. 3, submitted that he was the director of assessee company, the equity shares of which were allotted to two group companies namely M/s Genesis Tie-up Pvt. Ltd. and M/s Kippy Engineering Pvt. Ltd. In reply to question no. 4, he stated that the equity shares were allotted to these group companies at face value of Rs 10/- each at a premium of Rs. 80/- per share and subscription amounts were received through banking channel. In reply to question no. 8, the said director stated that due to requirement of funds in the assessee company, share allotments were made to these group companies. It was also stated that the proceeds raised from issue of shares were utilized for purchase of flat which has also been noted by the AO at page no. 4 para 1 in the assessment order. The AO further noted that during FY 2013-14 there were purchases and sales of fabric by the assessee to the tune of Rs. 20,59,960/- and Rs. 21,94,080/- respectively. Pertinent to state that the AO in order to do verification of the share capital/ share premium also issued notices u/s 133(6) of the Act to both the subscribing companies and subscribing companies have duly furnished the details/evidences called for by the AO. From the details furnished by the assessee as well as by the subscribing companies, the AO observed that there were loan transactions and non-current investments only and thus he doubted the subscription of shares by these companies. The AO, thereafter, after discussing the provision of Section 68, added the amount of subscription received by way of share capital/share premium of Rs. 1,39,99,920/- to the income of the assessee

u/s 68 of the Act in the assessment framed u/s 143(3) of the Act dated 23.12.2016.  
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4. In the appellate proceedings, the Ld. CIT(A) affirmed the order passed by AO by relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC) which provides that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probability besides relying on the decision of Hon'ble Supreme court in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) and PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 and finally dismissed the appeal of the assessee.

5. The Ld. A.R vehemently submitted before us in this case the notices were issued to the group companies ,who subscribed the equity shares ,having common directors as has been noted by the AO in the assessment order on the very first page. The Ld. A.R submitted that the assessee has filed all the evidences/details and explanation as called for by the AO in the notice issued u/s 142(1) of the Act which were not controverted or disputed by the AO. The Ld. A.R stated that the assessee has furnished qua the share subscribers all the details i.e. names, addresses, PANs, Audited accounts, bank statements, confirmation letters etc. The Ld. A.R stated that the AO has only doubted that the subscribing companies were not having any business and thus doubted investments by overlooking the fact that these were group companies of the assessee with common directors and shareholders and that the statement of the common director of Shri Raj Kumar Damani was also recorded by the AO during the assessment proceedings and was extracted in the assessment order. The ld AR argued that in the statement recorded of Shri Raj Kumar Dhamani, all the queries were answered confirming the issue of share capital/ share premium of face value of Rs. 10/- at a premium of Rs. 80/-. The Ld. A.R also stated that the AO has also noted in the assessment order that the assessee company was carrying on the business of dealing fabric and the fact of having done sales and purchases of fabrics during the year were duly mentioned by the AO in the assessment year itself. The Ld.

A.R also referred to the notices issued u/s 133(6) of the Act by the AO to both the subscribers in order to verify the investments which were furnished with all details/ information and the AO has not disputed / doubted these evidences. The Ld. A.R stated that merely on the basis of general observations that the assessee has routed its own funds to these companies is a presumption and is incorrect and against the facts on record as it is not the case of the AO that these were shell or bogus companies. The ld AR submitted that these are group companies and were having adequate sources. The ld AR therefore contended that the transactions were genuine and beyond any doubt. While distinguishing the decisions relied upon by the ld. CIT(A), the Ld. A.R submitted that these are applicable where the assessee has not furnished evidences before the tax authorities or where the truth has to gathered from the circumstantial evidences. The ld AR stated the theory of human probability is not applicable to the instant case and therefore reliance on the decisions of Hon'ble Supreme Court in the case of CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC), Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) and PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 is wrong as here all the evidences in the instant case were before the authorities below. Therefore human preponderance cannot be the basis of making the addition. The Ld. A.R referred to a series of decisions wherein the assesseees have filed all the evidences and also offered explanation qua the money received and even the notices issued u/s 133(6) of the Act were duly responded by the investors. The Hon'ble courts have held that in that scenario, the addition cannot be made merely on the fact that the summons u/s 131 of the Act were not complied. The AR contended that the assessee's case stood on a better footing as in the present case, the statement of the common director Shri Raj kumar Dhamani was recorded and he confirmed the transactions during the course of recording the statement itself by the AO which was reproduced by the AO in the assessment order. The decisions referred to by the counsel of the assessee are as under:

- i) CIT vs. Orissa Corporation Ltd. in [1986] 159 ITR 78 (SC)
- ii) Crystal Networks (P)Ltd vs CIT reported in 353 ITR 171 (SC)

iii) ITO Vs M/s Cygnus Developers India Pvt. Ltd. (ITA No. 282/Kol/2012)

iv) CIT Vs Orchid Industries (P) Ltd 397 ITR 136 (Bom)

6. The Ld. D.R on the other hand submitted that though the money was received from the group companies of the assessee and also that the fact has been mentioned by the AO in the assessment order and also not controverted by the First Appellate authority but the fact remains that mere filing of evidences and recording statement of the director would not per se prove that all the ingredients of section 68 of the Act namely identity, creditworthiness and genuineness were satisfied. The Ld. D.R heavily relied on the decision of Hon'ble Calcutta High Court in the case of Balgopal Merchants Pvt. Ltd. vs. PCIT in ITAT/232/2023 (IA No. GA/ 2023) order dated 13.05.2024 wherein the Hon'ble Court has held that mere filing of documents by the assessee and receipt of money through banking channel do not per se prove the three ingredients as envisaged in Section 68 of the Act. The Ld. D.R therefore prayed that in view of the said decision of Hon'ble Calcutta High Court the appeal of the assessee may kindly be dismissed.

7. In the rebuttal the Ld. A.R stated that the facts of the case as decided by the Hon'ble Jurisdictional High Court in the case of Balgopal Merchants Pvt. Ltd. (supra) were clearly distinguishable. The Ld. A.R drew our attention that in para 3 in that decision of the Honble Calcutta High Court wherein it was noted by the AO summons were issued to the directors of the assessee company and there was no compliance to the summons and therefore identity, genuineness and creditworthiness of the share applicants were not established. The Ld. A.R also drew attention to the Bench in para 4 of the impugned decision of the High court wherein it was stated that the assessee company was recently incorporated without any proven track record to justify the high share premium whereas in instant case before us ,the assessee is an old company and has been continuously doing business over the years. The ld. A.R drew our attention to Para 11 of the impugned decision wherein it was stated that the equity shares were allotted on 30.03.2012 without any premium at the face value of

Rs. 10/- whereas on very next day on 31.03.2012 shares were allotted at a share premium of Rs. 4,990/- per share while in the case of assessee allotment was made to two group companies of equity shares at a face value of Rs. 10/- each at premium of Rs. 80/-. The Ld. A.R therefore prayed that the facts of the case as decided by the Hon'ble Calcutta High Court (supra) are clearly distinguishable and therefore the said ratio laid down by the Hon'ble Court in the above decision is not applicable in the case of assessee.

8. We have heard the rival contentions and perused the material available on record including the decisions cited before us by the rival parties and also the order of authorities below. The undisputed facts are that the assessee during the year has issued equity shares to two group companies namely M/s Genesis Tie-up Pvt. Ltd. and M/s Keepy Engineering Pvt. Ltd. Pertinent to note that these group companies have common directors. The AO during the course of assessment proceedings, noticed that equity shares were allotted to these group companies at face value of Rs. 10/- each at a premium of Rs. 80/-. The AO noted that these companies were not having any business and were having only loan transactions and non-current investments. Pertinent to state that the assessee has filed all the evidences / explanation as called for by the AO during the course of assessment proceedings comprising details as to names, addresses, PANs, audited accounts, bank statements, confirmation letters etc. to prove this transactions. Besides the AO in order to verify these transactions has also issued notice u/s 133(6) of the Act to both the subscribers which were also duly complied with and the share subscribing companies have furnished all the details as called for by the AO. Besides the summon u/s 131 were issued to the director of the assessee company who happens to be director on the subscribing companies and his statement was recorded by the AO. The said director Shri Raj Kumar Damani has admitted to have issued equity shares from the assessee company to two group companies namely M/s Genesis Tie-up Pvt. Ltd. and M/s Kippy Engineering Pvt. Ltd. and it was also stated that the subscribing companies having substantial resources available to invest in the assessee company. It was also stated that the subscription

proceeds were utilized for the purchase of flat. The statement of the said director is extracted by the AO from page 1 to 4. We note that despite all these evidences being furnished as stated above, the AO has only doubted the business of the assessee as well as the investing companies without disputing the evidences filed by the assessee or pointing out any defect/deficiency therein. The Ld. CIT(A) simply affirmed the order by relying on the preponderance of human probability thereby ignoring the facts on record. We note that in the present case the assessee or its group companies are not shell companies engaged in providing accommodation entries and therefore we find that theory of the AO that the assessee's own money routed through these investing companies appears to be incorrect. In our opinion, the assessee has filed all the evidences qua the investing companies and these share subscribers have also complied with the notices issued u/s 133(6) of the Act as well as summon issued u/s 131 of the Act. Therefore in our considered opinion the provisions of section 68 of the Act were wrongly invoked by the AO and Ld. CIT(A) affirmed the assessment order on the same reasoning which is not sustainable. We have also perused decision cited before us of the Hon'ble Jurisdictional High Court in the case of Balgopal Merchants Pvt. Ltd. (supra) and find that the facts of the case are clearly distinguishable because in that case that the equity shares were allotted on two dates i.e. on 30.03.2012 and 31.03.2012. On 30.3.2012 at a face value of Rs. 10/- at nil premium and the next day 31.3.2012 at face value of Rs. 10/- each at a premium of Rs. 4,990/- per shares whereas in the present case before us the assessee has allotted equity shares to two group companies at a face value of Rs. 10/- each at a premium of Rs. 80/-. Besides the Hon'ble Jurisdictional High court has noted that the directors of the assessee company were not complied with the summons issued u/s 131 whereas in the case before us, the summons were duly complied with by the director Shri Raj Kumar Dhamani of the assessee company who appear before the AO and the statement was also recorded and extracted by the AO in the assessment order itself. Considering these facts and circumstances of the case on record, we are of the view that the ratio laid down by the Hon'ble High Court in the above decision is not applicable to the instant case at hand. In our considered opinion, the assessee has proved identity and

creditworthiness and genuineness of the transactions by furnishing these evidences and the Ld. CIT(A) has not controverted these documents by giving substantive findings. Therefore, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 22<sup>nd</sup> August , 2024

Sd/-

Sd/-

( Pradip Kumar Choubey /प्रदीप कुमार चौबे)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 22<sup>nd</sup> August , 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Magestic Vyapaar Pvt. Ltd., 22/1, Alipore Road, Alipore, Kolkata-700027
2. Respondent – ITO, Ward-11(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata