

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Shri Manish Borad, Accountant Member  
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 807/Kol/2024  
Assessment Year: 2012-13**

**Mundhra Construction Pvt. Ltd.  
CF-300, Sector 1, Salt Lake City,  
Kolkata - 700064  
[PAN: AAGCM5610H]**

.....**Appellant**

**vs.**

**Income Tax Officer  
Ward 10(2), Kolkata- 700069**

..... **Respondent**

**Appearances by:**

Assessee represented by : Shri Sunil Surana, AR

Department represented by : Shri Abhijit Kundu, CIT-DR

Date of concluding the hearing : July 10, 2024

Date of pronouncing the order : August 13, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 27.03.2024 arising out of Assessment Order dated 23.03.2015, passed under Section 143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

"1. For that the Ld CIT(A) erred in holding that a TRO can be an AO and therefore, the assessment order passed by TRO-4 was valid.

- 2 *For that the Ld CIT(A) erred in holding that the assessee cannot challenge the jurisdiction u/s 124(3)(a) when the section was not applicable since the TRO was never vested with the jurisdiction.*
- 3 *For that the Ld CIT(A) erred in confirming the addition of share capital and premium issued to 9 share applicants on the ground that the assessee denied to produce their documents when the assessee never denied and the documents were already on record and must have been submitted to CIT(A) by AO along with the remand report.*
- 4 *For that the Ld CII(A) erred in confirming the addition of share capital and premium issued to remaining 21 share applicants on the ground that their creditworthiness is not proved when they had sufficient amount of reserves & surplus.*
5. *For that the Ld CIT(A) erred in confirming the addition of share capital and premium issued to remaining 21 share applicants on the ground that the genuineness of the transaction due to high share premium is not proved when charging high share premium cannot be a ground to make the addition.*
6. *For that the Ld CIT(A) erred in confirming the addition of share capital and premium on the ground that the directors of the share applicants were not produced when it is not required as per law and various judicial decisions.*
7. *For that on the facts and in the circumstances of the case the addition was not valid and is liable to be deleted."*

2. Brief facts of the case are that the assessee filed its return of income for the AY 2012-13 by disclosing total income of Rs. 2,05,157/-. The case of the assessee was processed under section 143(1) of the Act. Later on the case of the assessee was selected for scrutiny under CASS followed by statutory notices issued under section 143(2) and 142(1) of the Act. In response to the notices, Ld. AR of the assessee appeared time to time before the AO. During the assessment proceedings, the Ld. AO issued notices under section 133(6) of the Act to the assessee and reply against the said notices were received. Similarly, the Ld. AO issued summon under section 131 of the Act to the Director of the assessee-company to appear before him requisiting to file his submission by producing and justify the following points:

- (a) Proof of your photo identity/PAN card.
- (b) List of companies where you were directors/shareholders from the A.Y. 2008-09 till date with dates of appointments thereto with your DIN.
- (c) Proof of acknowledgment of filing your personal IT Return, copies of accounts Proof of your address
- (d) Copy of bank statement of your company reflecting the all transaction during the period 01.04.2011 to 31.03.2012 with complete narration & source of fund.
- (e) Produce the directors of investors' company along with their proof of photo identity and copy of bank statement of their company reflecting the all transaction during the period 01.04.2011 to 31.03.2012 with complete narration & source of fund.
- (f) A write-up on justification of large share premium

3. However, the assessee-company had filed written submission along with proof of identity of the Director of investee company but no reasons provided for non-compliance of Director of such investee company before him. The Ld. AR after considering the various aspects of the case, he find that share application money received along with premium amounting to Rs. 2,82,10,798/- which were remained unexplained and added to the income of the assessee under section 68 of the Act.

4. Aggrieved by the above order, the assessee went in appeal before CIT(A) where appeal of the assessee was dismissed. Before the Ld. CIT(A) assessee took additional ground on the issue of jurisdictional point that the assessment having been completed by TRO and has no jurisdiction to frame the assessment. However, this plea taken by the assessee was rejected by Ld. CIT(A) observing that case of the assessee was covered under clause (a) of sub section (3) of Section 124 of the Act as the assessee did not challenge the jurisdiction of AO within the expiry of one month from the issuance of notice

under section 142(1) of the Act on 31.10.2024 and claim of the assessee was rejected.

5. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising multiple grounds on the jurisdictional issue as well as on the merits of the case. The Ld. Counsel for the assessee placed on record a paper-book containing 463 pages in support of corroborating the transaction of share capita including share premium raised during the year. The Ld. Counsel for the assessee has made detail and elaborate submissions on the jurisdictional issue. He placed before the bench on the merit of the case to demonstrate that onus discharge by the assessee in terms of section 68 of the Act. He categorically pointed out that the Ld. AO himself noted in the assessment proceedings that the assessee has furnished sheaves of paper documents in response to the summon issued. The Ld. Counsel pointed out that notice u/s 133(6) of the Act were issued and reply against the notice received by him which evidently demonstrate that all the relevant documentary evidence were placed before the Ld. AO although adverse view was taken. He also stated that summons were issue u/s 131 of the Act on the Director of the assessee which even though were not applied in terms of personal attendance but assessee had responded by making all the necessary details and documents which had been acknowledged by Ld. AO. The Ld. AR stated that the AO had failed to exercise the provision prescribed u/s 131 of the Act for summoning the Director of the investee company and instructed the Director of the assessee-company to produce the director of the investee company before him for their deposition is against the spirit of law of the land. Therefore, alleged addition made by the AO is not correct and liable to be set aside by this Tribunal.

6. The Ld. Counsel also submitted that mere non-appearance of director is no bass of invoking the provision of Section 68 of the Act for which he placed

reliance on the decision of Hon'ble Supreme Court in the case of CIT V. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC) wherein it was held as under:

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

*The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed."*

7. The Ld. Counsel for the assessee submitted that in order to establish the identity and creditworthiness of the shareholders and genuineness of the transactions, assessee has submitted all the relevant details and documents in the course of assessment as well as appellate proceeding, details of which are tabulated and is extracted below from the index of the paper book for ease of reference:

Sl No.	Particulars	Page No.	Filed before
1	List of share application to whom shares issued during the year	1	C.I.T(A) & A.O.
2	Documents of M/s Lucky Prime Financial Consultants Pvt. Ltd.	2-17	Do
	Audited financial statements for FY 2011-12 Present ROC Master Data (Active)		
3	Documents of M/s Subhalaxmi Vincom Pvt. Ltd.	18-33	Do
	Audited financial statements for FY 2011-12 Present ROC Master Data (Active)		
4	Documents of M/s Subhshree Tradelink Pvt. Ltd.	34-47	Do
	Audited financial statements for FY 2011-12 Present ROC Master Data (Active)		

5	Documents of M/s Navdurga Dealer Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	48-60	Do
6	Documents of M/s Shivganga Tradelink Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	61-76	Do
7	Documents of M/s Mansamata Vvapaar Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	77-91	Do
8	Documents of M/s Padmakar Marketing Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	92-103	Do
9	Documents of M/s Panghat Dealtrade Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	104-115	Do
10	Documents of M/s Sakambhari Financial Consultancy Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	116-130	Do
11	Documents of M/s Labhdhan Vanijya Pvt. Ltd Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	131-145	Do
12	Documents of M/s Hemlata Holdings Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	146-157	Do
13	Documents of M/s Mangalkamna Suppliers Pvt. Ltd. Audited financial statements for FY 2011-12 Present ROC Master Data (Active)	158-171	Do Do

14	Documents of M/s Lovely Tradelink Pvt. Ltd. Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	172-182	Do
15	Documents of M/s Manju Real Estate Consultants Pvt. Ltd.  Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	183-193	Do
16	Documents of M/s Pitambari Tie Up Pvt. Ltd.  Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	194-194	Do
17	Documents of M/s Indralok Investment Consultants Pvt. Ltd. Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	195-206	Do
18	Documents of M/s Puja Dealtrade Pvt. Ltd. Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	207-217	Do
19	Documents of M/s Iris Commosale Pvt. Ltd. Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	218-232	Do
20	Documents of M/s Namrata Tie Up Pvt. Ltd. Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	233-243	Do
21	Documents of M/s Matashree Barter Pvt Audited financial statements for FY 2011-12  Present ROC Master Data (Active)	244-254	Do
22	Documents of M/s Mridang Commosales Pvt. Ltd.	255-265	Do
23	Documents of Mr Aditya Mundhra  Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:	266-280	Do

Voter ID (Identity Card)

PAN Card

Share Allotment Advice

Bank Statement highlighting the payment made for purchase of shares

ITR Acknowledgement for Asst yr 2012-13

Computation of Income

Financial Statements for FY 2011-12

24 Documents of Mrs Sonali Mundhra 281-292 Do

Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:

Voter ID (Identity Card)

PAN Card

Share Allotment Advice

Bank Statement highlighting the payment made for purchase of shares

ITR Acknowledgement for Asst yr 2012-13

Computation of Income

Financial Statements for FY 2011-12

25 Documents of M/s Accent Commosales Pvt Ltd 293-327 Do

Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:

Share Allotment Advice

Voter ID (Identity Card)

PAN Card

Share Allotment Advice

Bank Statement highlighting the payment made for purchase of shares

ITR Acknowledgement for Asst yr 2012-13

Computation of Income

Audited Financial Statements for FY 2011-12  
Present ROC Master Data (Active)

26	Documents of M/s Ajay Dealers Pvt Ltd Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:	328-346	Do
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Share Allotment Advice

PAN Card

Share Application Form

Bank Statement highlighting the payment made for  
purchase of shares

ITR Acknowledgement for Asst yr 2012-13

Audited Financial Statements for FY 2011-12  
Present ROC Master Data (Active)

27	Documents of M/s Ajay Dealers Pvt Ltd Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:		Do
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Details of Source of Fund  
Share Allotment Advice

Share Application Form  
PAN Card

Bank Statement highlighting the payment made for  
purchase of shares

ITR Acknowledgement for Asst yr 2012-13  
Computation of Income

Audited Financial Statements for FY 2011-12  
Present ROC Master Data (Active)

28	Documents of M/s Aprajita Tie up Pvt Ltd Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:	368-388	Do
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Details of Source of Fund  
Share Allotment Advice  
PAN Card

	Share Application Form		
	Bank Statement highlighting the payment made for purchase of shares		
	ITR Acknowledgement for Asst yr 2012-13 Computation of Income		
	Audited Financial Statements for FY 2011-12 Present ROC Master Data (Active)		
29	Documents of M/s Aprajita Tie up Pvt Ltd Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:  Share Application Form Share Allotment Advice Voter ID Card of Director Details of Source of Fund  Bank Statement highlighting the payment made for purchase of shares List of Equity Shareholders  ITR Acknowledgement for Asst yr 2012-13 Computation of Income  Audited Financial Statements for FY 2011-12 Present ROC Master Data (Active)	389-418	Do
30	Documents of M/s Dhanvarsha Investment Management Pvt Ltd  Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:  Details of Source of Fund PAN Card  Share Application Form  Share Allotment Advice  Bank Statement highlighting the payment made for purchase of shares  ITR Acknowledgement Computation of Income Audited Financial Statements	419-440	Do

Present ROC Master Data (Active)

31	Documents of M/s Dhanvirdhi Investment Management Pvt Ltd	441-463	Do
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Notice u/s 133(6) and its reply filed before AO along with enclosures consisting:

Details of Source of Fund  
Share Application Form

Share Allotment Advice

PAN Card

Bank Statement highlighting the payment made for purchase of shares

ITR Acknowledgement  
Computation of Income

8. Ld. Counsel reiterated that the share subscribers are body corporate, registered with ROC and are assessed to income tax. He further stated that these subscribers had confirmed the transactions, filed relevant papers and documents and also explained the source of funds in their hands for making investment in the assessee company. He thus, emphasized that assessee had discharged its primary onus casted upon its u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. AO to disprove the material placed before him, without doing so, the addition made by the Ld. AO is based on conjectures and surmises and, therefore, cannot be sustained. He pointed that Ld. AO for reasons known to him alone, did not choses to issue notices/summons u/s. 133(6)/131 to the share subscribers.

9. Ld. Counsel submitted that instead of pointing out any defect or discrepancy in the evidence and the details furnished by the assessee, Ld. AO proceeded to take adverse inference only on the ground that the directors of the assessee did not appear personally before him. In this respect he placed reliance on the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Crystal Networks Put. Ltd. v. CIT in ITA 158 of 2002 dated 29.07.2010.

10. The Ld. Counsel also emphasized on the fact that in the submissions including ITRs, audit reports, share application details etc, as listed above, the Ld. AO has not found fault in any of the details submitted and simply proceeded to make addition in respect of the amount of share capital and premium. The documents furnished are to be prima facie considered as correct unless evidence is brought on record to falsify the claim made therein.

11. On the three basic ingredients for any cash credit viz., identity, creditworthiness of the subscribers and the genuineness of the transactions, Ld. Counsel submitted that all of these are fulfilled. In this respect he submitted as under:

(1) On identity: All the shareholders are regular income tax assesseees and have filed their income tax returns. Ld. Counsel thus emphasized that identity of all the share subscribers is well established and cannot be doubted. Further, he submitted that company subscribers are body corporate registered under the Companies Act, 1956.

ii) On creditworthiness: To establish the creditworthiness of the subscribers, details relating to source of fund in the hands of these shareholders represented by their respective net worth were furnished along with their respective bank statements and audited financial statements. The details furnished by the assessee in this respect are reproduced in the table below:

S.No.	Name of the shareholders	Equity Shares	Share Capital	Share Premium	Share Application Money	Net Worth
1	Lucky Prime Financial Consultants Pvt. Ltd.	500	5,000	245,000	250,000	18,133,22
2	Subhalaxmi Vincom Pvt. Ltd.	1,000	10,000	490,000	500,000	151,720,57
3	Subhshree Tradelink Pvt. Ltd.	1,000	10,000	490,000	500,000	95,195,09
4	Navdurga Dealer Pvt. Ltd.	1,000	10,000	490,000	500,000	23,727,52
5	Shivganga Tradelink Pvt. Ltd.	1,000	10,000	490,000	500,000	23,495,66

6	Mansamata Vyapaar Pvt. Ltd.	1,000	10,000	490,000	500,000	79,186,33
7	Padmakar Marketing Pvt. Ltd.	1,000	10,000	490,000	500,000	25,379,69
8	Panghat Dealtrade Pvt. Ltd.	3,250	32,500	1,967,500	2,000,000	161,368,79
9	Sakambhari Financial Consultancy Pvt. Ltd.	2,000	20,000	980,000	1,000,000	90,663,70
10	Labhdhan Vanijya Pvt. Ltd.	2,000	20,000	980,000	1,000,000	79,310,18
11	Hemlata Holdings Pvt. Ltd.	1,000	10,000	490,000	500,000	9,330,15
12	Mangalkamna Suppliers Pvt. Ltd.	2,000	20,000	980,000	1,000,000	152,619,21
13	Lovely Tradelink Pvt. Ltd.	1,250	12,500	987,500	1,000,000	27,352,78
14	Manju Real Estate Consultants Pvt. Ltd.	1,250	12,500	987,500	1,000,000	50,846,02
15	Pitambari Tie Up Pvt. Ltd.	1,250	12,500	987,500	1,000,000	158,420,852
16	Indralok Investment Consultants Pvt. Ltd.	1,875	1,875	1,481,20	1,500,000	67,044,054
17	Puja Dealtrade Pvt. Ltd.	1,250	1,250	987,500	1,000,000	60,051,181
18	Iris Commosale Pvt. Ltd.	1,000	1,000	790,000	800,000	93,441,362
19	Namrata Tie Up Pvt. Ltd.	1,875	18,750	1,481,250	1,500,000	68,793,619
20	Matashree Barter Pvt. Ltd.	1,875	18,750	1,481,250	1,500,000	61,043,097
21	Mridang Commosales Pvt. Ltd.	1,875	18,750	1,481,250	1,500,000	2,757,933
22	Aditya Mundhra	30,000	300,000	-	300,000	11,502,355
23	Sonali Mundhra	10,000	100,000	-	100,000	295,393,405
24	Accent Commosales Pvt Ltd	3,875	38,750	2,461,250	2,500,000	51,101,709
25	Ajay Dealers Pvt Ltd	1,250	12,500	987,500	1,000,000	68,805,279
26	Ajay Vanijya Pvt Ltd	1,250	12,500	987,500	1,000,000	43,452,081
27	Aprajita Tie up Pvt Ltd	1,875	18,750	1,481,250	1,500,000	369,640
28	Avinesh Exim Pvt Ltd	1,250	1,250	987,500	1,000,000	134,262,549
29	Dhanvarsha Investment Management Pvt Ltd	2,000	20,000	980,000	1,000,000	23,266,314
30	Dhanvirdhi Investment Management Pvt Ltd	500	5,000	245,000	250,000	
		<u>82,250</u>	<u>822,500</u>	<u>27,377,500</u>	<u>28,200,000</u>	

12. It was thus, submitted that the above table containing details on "source of source" unequivocally testifies and proves that the subscribers had sufficient fund for making investment in the share capital of the assessee.

13. On genuineness of the transaction: It was submitted that the amounts were invested by the subscribers through proper banking channel which is duly reflected in the respective financial statements of the subscribers. Since

the investments reflected in their respective financial statements have been duly reported in their respective returns with the Department are thus genuine and transaction cannot be doubted.

14. Per contra, Id. Sr. DR placed reliance on the order of the authorities below and submitted that assessee's own income has been infused in the guise of share capital through the allottee companies by layering the transactions to make appear a non-genuine transaction as a genuine one

15. We have heard the rival contentions and gone through the material placed on record. We note that Ld. AO without even going through and discussing the details submitted by the subscriber companies, insisted for personal appearance of the directors of the assessee to prove the identity, creditworthiness of the subscribers and the genuineness of the transactions. To our mind, Ld. AO could have taken an adverse view only if he could point out the discrepancies or insufficiency in the evidence and details furnished in his office and also as to what further investigation was needed by him by way of recording of statement of the directors of the assessee. We draw our force from the decision of the Hon'ble Bombay High court in the case of PCIT v. Paradise Inland Shipping Pvt. Ltd. [2017] 84 taxmann.com 58 (Pan) wherein it was held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. We also draw our force from the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of Crystal Network Pvt. Ltd. v. CIT (supra) which held as under:

*"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore, it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses*

*pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT (Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."*

16. Ld. AO has not bothered to discuss or point out any defect or deficiency in the documents furnished by the assessee of the share subscribing companies. These evidences furnished have been neither controverted by the Ld. AO during the assessment proceedings nor anything substantive brought on record to justify the addition made by him. Ld. AO has simply added the amount of share capital and share premium on the ground that assessee has not produced its directors. Thus, going by the records placed by the assessee of all the share subscribing companies, it can be safely held that the assessee has discharged its initial burden and the burden shifted on the Ld. AO to enquire further into the matter which he failed to do so. It is also noted from their audited financial statement and chart extracted above that all the investing companies have sufficient own funds available with them to make investment in the assessee.

17. From the perusal of the paper book and the documents placed therein, it is vivid that all the share applicants are (i) income tax assesseees, (ii) they are filing their income tax returns, (iii) share application form and allotment letter is available on record, (iv) share application money was made by account payee cheques, (v) details of the bank accounts belonging to share applicants and their bank statements, (vi) in none of the transactions there are any deposit of cash before issuing cheques to the assessee, (vii) all the share applicants are having substantial creditworthiness represented by their capital and reserves, (viii) details relating to 'source of source' also placed on record by the subscribers.

18. Before concluding, to give our finding, we place reliance on the following judicial precedents to buttress our observations and conclusions :

i) The decision of Hon'ble Jurisdictional High Court of Calcutta in the case of CIT v. Dataware Pvt. Ltd. in ITAT No. 263 of 2011 dated 21.09.2011 wherein Hon'ble jurisdictional High Court held that

*"After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence."*

ii) Decision of Hon'ble jurisdiction High Court of Calcutta in the case of CIT Vs. Sagun Commercial P. Ltd. (ITA No. 54 of 2001 dated 17.02.2011) wherein it was held as under:

*"After hearing the learned advocate for the appellant and after going through the materials on record, we are at one with the Tribunal below as well as the Commissioner of Income-tax (Appeals) that the approach of the Assessing Officer cannot be supported. Merely because those applicants were not placed before the Assessing Officer, such fact could not justify disbelief of the explanation offered by the assessee when details of Permanent Account Nos. payment details of shareholding and other bank transactions relating to those payments were placed before the Assessing Officer. It appears that the Tribunal below has recorded specifically that the Assessing Officer totally failed to consider those documentary evidence produced by the assessee in arriving at such conclusion.*

*We, therefore, find no reason to interfere with the decision passed by the Commissioner of Income-tax (Appeals) and the Tribunal below and answer the questions formulated by the Division Bench in the affirmative and against the Revenue. The appeal is, thus, dismissed."*

iii) Decision of Hon'ble Bombay High Court in the case of CIT v. Creative World Telefilms P. Ltd. (2011) 333 ITR 100 (Bom) wherein it was held as under:

*"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by*

*the Tribunal could not be faulted. No substantial question of law was involved in the appeal."*

iv) Decision of Hon'ble Madras High Court in the case of Pranav foundations Ltd. (2015) 229 Taxman 58 (Mad) is also referred wherein it was held as under:

*"In view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four companies and all the companies accepted their investment. Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of section 68. When the nature and source of the amount so invested is known, it cannot be said to undisclosed income. Therefore, the addition of such subscriptions as unexplained credit under section 68 is unwarranted."*

19. We note that authorities below have relied upon the decision in the case of M/s Bisakha Sales Pvt. Ltd. v CIT [2014] 52 taxmann.com 305 (Kolkata- Trib.). In this case, it was held that where assessee company received share application money with huge and unjustified share premium from corporate entities, merely because said amount was received through banking channel, Assessing Officer was not justified in accepting said transactions as genuine without making proper enquiries. Apparently, the AO has not properly appreciated that decision of the Hon'ble ITAT. The Hon'ble ITAT has never held that share capital and share premium can be assessed as unexplained cash credit merely for high share premium even though the identities and creditworthiness of the share applicant and genuineness of the transactions have been established. What is held by the Hon'ble ITAT is that revision proceedings u/s 263 are valid where the transactions have been accepted as genuine without making proper enquiries.

20. Further, in the judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (412 ITR 161), Ld. AO has made extensive enquiries and some of investors were found to be non-existent. Upon going through the facts involved in that judgment, it is noted that, in the decided case, the AO had made extensive enquiries and from that he had found that some of the

investor companies were non-existent, which is certainly not the case before the undersigned. In the said decided case, certain investor companies also failed to produce their bank statements for proving the source for making investments in assessee company. In the facts of the present case however, not only have the shareholders furnished their bank statements and investment schedules to establish the source of funds but they have also furnished their respective sources of funds.

21. Considering the facts and circumstances of the case and the material placed on record, we find that assessee has discharged its onus to prove the identity and creditworthiness of the share subscribing companies and the genuineness of the transactions towards sum of Rs.2,76,50,000/- received during the impugned year. Accordingly, considering these facts and in the light of the judicial precedence referred above, we set aside the order of the Id. CIT(A) and delete the addition made towards share capital and share premium u/s. 68 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

22. Since on the merits of the case, we have deleted the addition made by the Ld. AO in terms of our observations and findings recorded above, the legal issue raised by the assessee in this appeal on the jurisdiction of TRO to make the impugned assessment is rendered as a mere academic exercise. Accordingly, we desist ourselves from indulging into such an exercise. Ld. Counsel for the assessee has made a detailed written submission on the legal issue which is placed on record. Ld. CIT, DR in the course of hearing had also submitted that he be given an opportunity to make a submission on the legal issue in case it is being adjudicated upon which in the present case is not warranted. Accordingly, grounds taken by the assessee in this respect are not adjudicated upon.

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

***Kolkata, the 13<sup>th</sup> August, 2024.***

***Sd/-***  
**[Manish Borad]**  
**Accountant Member**

***Sd/-***  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 13.08.2024.  
*AK, PS*

*Copy of the order forwarded to:*

- 1 Mundhra Construction Pvt. Ltd.
2. Income Tax Officer, Ward 10(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

