

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No. 199/KOL/2024
Assessment Year: 2012-13

Shankar Traders & Distributors Pvt. Ltd. A-Block, 1 st Floor, Mercantile Building, 9, Lal Bazar Street, Kolkata-700001, West Bengal	Vs	Income Tax Officer, Ward-5(1), Aaykar Bhawan, P-7, Chowringhee Square, Kolkata-700, West Bengal [PAN: AADCS8907L]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by:	Shri Manish Tiwari, AR
Revenue by:	Shri Susanta Saha, DR

सुनवाई की तारीख/Date of Hearing : 14.08.2024
घोषणा की तारीख /Date of Pronouncement : 03.10.2024

आदेश/O R D E R

PER DR. MANISH BORAD, AM:

This appeal at the instance of the assessee is directed against the order of National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 27th December, 2023, which is arising out of the assessment order under Section 143(3) read with section 144 of the Income-tax Act, 1961 (the Act) dated 30th March, 2015.

2. Facts in brief are that the assessee is a private limited company and is a registered non-banking finance company (NBFC) having RBI registration certificate dated 10th April, 2021, and is engaged in the business of carrying on NBFC activities of providing loans and advances and dealing in shares and securities. For A.Y. 2013-14, e-return filed on 25th September, 2012. Case selected for scrutiny through CASS followed by validly serving notices u/s 143(2) and 142(1) of the Act. The ld. AO called for various information about the registration certificate of RBI, bank

statement, audited financial statement, etc. to which reply was furnished. Ld. DR observed that assessee has issued equity shares and has received share capital of ₹4,60,000/- and security premium of ₹2,25,40,000/-. The ld. AO thereafter examined the financials of the assessee company for past many years and taking note of the low revenue and meagre profits came to a conclusion that considering the financial statements, assessee cannot raise share capital with such huge share premium. Thereafter, the ld. AO examined the transactions in light of section 68 of the Act and was of the view that assessee could not explain the nature and source of alleged sum to his satisfaction and he concluded the assessment by making addition u/s 68 of the Act at ₹2,30,00,000/- and also made minor addition u/s 14A of the Act at ₹1010 and assessed the income at ₹2,29,68,322/-.

3. Aggrieved assessee preferred the appeal before the ld. CIT (A) challenging the addition made u/s 68 of the Act and again filed various documents and evidences to prove the identity and creditworthiness of the share applicants and genuineness of the transactions and also submitted that replies to notice u/s 133(6) of the Act has been filed and that transactions have not carried out through banking channel. However, the ld. CIT (A) confirmed the addition based on the principle of preponderance of the probabilities observing that contention of the assessee company regarding share capital and premium cannot be accepted. The finding of the ld. CIT (A) is appearing at para 8 of the impugned order and reads as under:-

“8.0 After carefully considering the action as recorded by the Ld. A.O. as also considering the detailed submissions made by the Ld. A.R for the appellant company. I observe that the basic issue for adjudication remains as to whether the appellant has been able to establish the identity, capacity to lend and the genuineness of the transactions which have been doubted by the Ld. A.O in the impugned order. I observe that the impinged issue is regarding the addition made by the Ld. AO on account of unexplained cash credit received by the assessee

during the subject assessment year of Rs.2,30,00,000/-. The basic issue is the genuineness of the transactions of receipt of share capital and huge share premium. The Ld. A.O has discussed the financial and credentials of the corporate-persons who have subscribed, and based on the jurisdictional facts, I entirely agree with the Ld. A.O that the credentials which emerge do not lend an iota of credence to the applicants. I find that there is no core business activity in them, and that the incomes disclosed are too nominal even to be mentioned. The extent of operations as disclosed does not breed any confidence to believe that they have any creditworthiness to subscribe to the purported share of the appellant-company. It is therefore pertinent to observe that the applicant-companies which have subscribed to the shares of appellant-company on substantial premium do not have either the capacity or the financial standing to do so. I observe that during the course of assessment proceedings the identity, capacity and the genuineness of the transaction has not been established by the appellant, and the onus of law has not been duly discharged by it. Also, in my carefully considered view, the principle of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, the information becomes unproven or patently false or unsatisfactory or unverifiable, the onus shifts back to the assessee. Therefore, there is no gainsaying that the applicants were required to obey the summon, and present himself before the Ld. AO for examination and verification of the documents. The details available reflect certain paperwork and documentation, and that however such documentation does not lead credence to the genuineness, creditworthiness and identity of the persons. It is therefore observed that the companies that have subscribed to the shares of Assessee Company on substantial premium do not have the capacity or the financial standing to do so. During the course of assessment proceedings, the identity, capacity and the genuineness of the transaction has not been established by the appellant. Therefore, on preponderance of probabilities the contention of the assessee company regarding share capital and premium cannot be accepted."

4. After going through the above finding, the Id. CIT (A) has referred to plethora of decisions and has dismissed the assessee's appeal. Now, the assessee is in appeal before this Tribunal.

5. The Id. Counsel for the assessee vehemently argued referring to the written submission filed before the Id. CIT (A) and also referring to the decisions and the judgments mentioned in the written submissions filed before the Id. CIT (A). The Id. Counsel for the assessee also took us through the detailed paper book which contains 273 pages with the relevant documents of each share applicant company so as to prove that all are duly assessed to tax, registered with the Ministry of Corporate Affairs, all have replied to the notice u/s 133(6) of the Act and most of the

share applicant company have been assessed u/s 143(3) of the Act for the very same assessment year.

6. On the other hand, the Id. DR supported the orders of the lower authorities and stated that alleged share applicant companies are Jamakharchi / paper / shell company and the assessee with the help of entry providers has managed to arrange the accommodation entry in the form of bogus share capital and therefore, the Id. CIT (A) has rightly confirmed the addition u/s 68 of the Act.

7. We have heard the rival contentions and perused the records placed before us. Addition u/s 68 of the Act at ₹2,23,00,000/- has been challenged by the assessee. The said addition made by the Id. AO has subsequently, being affirmed by Id. CIT (A). The assessee company has issued 46,000/- equity shares of the face value of ₹10/- each and charge share premium of ₹490 per share. Details of the shareholders who have been issued 46,000 equity shares are as under:-

SL	Name & PAN	Address	No. of shares	Share capital	Share premium	Total Capital
1.	Uniworth Marketing Pvt. Ltd. PAN: AABCU2603B	40, Weston Street, 3 rd Floor, Kolkata- 700 013	5,000	50,000	24,50,000	25,00,000
2.	Lochan Distributors Pvt. Ltd. PAN: AACCL1024E	106, Buxarah Road, Howrah-700110	8,000	80,000	39,20,000	40,00,000
3.	Amaresh Trading Pvt. Ltd. PAN AAJCA8084E	106, Buxarah Road, Howrah-700110	4,000	40,000	19,60,000	20,00,000
4.	Blackberry Marketing Pvt. Ltd. PAN: AAECB7709C	D-2, Ananya Apartment, DC 58 Narayantolla Baguihati Kolkata-700059	4,000	40,000	19,60,000	20,00,000
5.	Dynasty Tradelink Pvt. Ltd. Pan: AACCD7561J	137/12, Narikeldanga Main Rod, Kolkata 700011	3,000	30,000	14,70,000	15,00,000
6.	Regius Tie-Up Pvt. Ltd. PAN AAFCR6431G	40, Weston Street, 3 rd Floor, Kolkata-700 013	5,000	50,000	24,50,000	25,00,000



7.	Shivkripa Creations Pvt. Ltd. PAN AAQCs8409Q	4, Raja Woodmount Street, Kolkata-700 001	2,000	20,000	9,80,000	10,00,000
8.	Subham Commotrade Pvt. Ltd. Pan AAOCS3790C	10, Kirron Shankar Roy Road, Kolkata-7000001	3,000	30,000	14,70,000	15,00,000
9.	Maco Distributors Pvt. Ltd. PAN AAHCMR128P	10, Kirron Shankar Roy Road, Kolkata-7000001	2,000	20,000	9,80,000	10,00,000
10.	Devkripa Agency Pvt. Ltd. PAN: AAECD0988P	3, Amartolla Street, 1 st Floor, Kolkata-700 001	3,000	30,000	14,70,000	15,00,000
11.	Navtech Agency Pvt. Ltd. PAN AADCN8661N	3, Amartolla Street, 1 st Floor, Kolkata-700 001	3,000	30,000	14,70,000	15,00,000
12.	Duplex Vinimay Pvt. Ltd. PAN AADCD0933H	4, Synagogue Street, 4th Floor, R.No. 401, Kolkata-700 001	1800	18,000	8,82,000	9,00,000
13.	Prayash Dealcom Pvt. Ltd. PAN: AAGCP3894C	40, Weston Street, 3 rd Floor, Kolkata-700 013	2200	22,000	10,78,000	11,00,000
Total			46,000	4,60,000	2,25,40,000	2,26,00,000

8. We note that the assessee is a NBFC, holds registration certificate issued by Reserve Bank of India bearing no.B0504173 dated 10th April, 2001. The companies which are registered with NBFC are required to make compliance to various rules and regulations of the RBI on timely basis. The assessee is into this business since past 11 years. Now, the issue in dispute is about the applicability of Section 68 of the Act on the share capital and share application money totalling to ₹2,30,00,000/- received from 13 share applicants named above. Section 68 of the Act has a direct bearing on the issue and therefore, is reproduced below:-

"Section 68 in The Income Tax Act, 1961

68. Cash credits.

- 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 [Assessing Officer] [Substituted by Act 4 of 1988, Section 2, for " Income-tax Officer" (w.e.f. 1.4.1988).], satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

[Provided that] where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:[Provided further] that nothing contained in the first proviso 81[or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

9. Going through the above provision, we note that if any sum is found credited in the books of account, the assessee is required to explain the nature and source of such sum to the satisfaction of the Id. AO. We note that the Hon'ble Supreme Court in the landmark judgment of *Kale Khan Mohammad Hanif Vs. Commissioner Of Income-Tax* dated 8th February, 1963 reported in [1963] 50 ITR 1(SC) and *Roshan-Di-Hatti vs CIT* (1977) 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.

10. Thereafter the Hon'ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

“11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

11. The Hon'ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra), impugned additions are not warranted in this case.

12. Now, in the light of the principle laid down by the Hon'ble Apex Court with regard to examination of credits in the bank account, we find that the assessee is required to discharge its primary onus by first placing the evidence to prove the identity & creditworthiness of cash creditors/ share applicant and genuineness of the transactions. Before us, the Id. Counsel for the assessee has submitted detailed paper book containing various documents filed for each of the share applicant and the same is abstracted below:-

SL	Particulars	From		To
3.	<u>Details of share Applicants</u>			
(i)	Uniworth Marketing Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)	--	27	--
	Copy of IT Acknowledgement	--	28	--
	Audited Financial Statement	29		38
	Copy of Share application	--	39	--
	Copy of allotment advice	--	40	--
	Copy of relevant bank statement	--	41	--
(ii)	Lochan Distributors Marketing Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)	--	42	--
	Copy of IT Acknowledgement	--	43	--
	Audited Financial Statement	44	--	52
	Copy of Share application	53	--	54
	Copy of allotment advice	55	--	56
	Copy of relevant bank statement	57	--	58
	Copy of assessment order u/s 144 for A.Y. 12-13	58A	--	58K
(iii)	Amaresh Trading Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)	--	59	--
	Copy of IT Acknowledgement	--	60	--
	Audited Financial Statement	61	--	69
	Copy of Share application	--	70	--
	Copy of allotment advice	--	71	--
	Copy of relevant bank statement	--	72	--
(iv)	Blackcherry Marketing Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)	--	73	--
	Copy of IT Acknowledgement	--	74	--
	Audited Financial Statement	75	--	84
	Copy of Share application	--	85	--
	Copy of allotment advice	--	86	--
	Copy of relevant bank statement	--	87	--
	Copy of assessment order u/s 144 for A.Y. 12-13	87A	--	87L
(v)	Dynasty Tradelink Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)	--	88	--
	Copy of IT Acknowledgement	--	89	--
	Audited Financial Statement	90	--	102
	Copy of Share application	--	103	--



	Copy of allotment advice	--	104	--
	Copy of relevant bank statement	--	105	--
(vi)	Regius Tie Up Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		106	--
	Copy of IT Acknowledgement		107	--
	Audited Financial Statement	108		119
	Copy of Share application		120	
	Copy of allotment advice		121	
	Copy of relevant bank statement		122	
(vii)	Shivkripa Creation Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		123	--
	Copy of IT Acknowledgement		124	--
	Audited Financial Statement	125		136
	Copy of Share application		137	
	Copy of allotment advice		138	
	Copy of relevant bank statement		139	
	Copy of assessment order u/s 144 for A.Y. 12-13	139A	--	139C
(viii)	Subham Commotrade Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		140	
	Copy of IT Acknowledgement		141	
	Audited Financial Statement	142		153
	Copy of Share application		154	
	Copy of allotment advice		155	
	Copy of relevant bank statement		156	
	Copy of assessment order u/s 144 for A.Y. 12-13	156A	--	156B
(ix)	Maco Distributors Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		157	
	Copy of IT Acknowledgement		158	
	Audited Financial Statement	159	--	170
	Copy of Share application		171	
	Copy of allotment advice		172	
	Copy of relevant bank statement		173	
	Copy of assessment order u/s 144 for A.Y. 12-13	173A	--	173D
(x)	Devkripa Agency Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		174	
	Copy of IT Acknowledgement		175	
	Audited Financial Statement	176		187
	Copy of Share application		188	
	Copy of allotment advice		189	
	Copy of relevant bank statement		190	
	Copy of assessment order u/s 144 for A.Y. 12-13	190A		190E
(xi)	Navtech Agency Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		191	
	Copy of IT Acknowledgement		192	
	Audited Financial Statement	193		205
	Copy of Share application		206	
	Copy of allotment advice		207	
	Copy of relevant bank statement		208	
	Copy of assessment order u/s 144 for A.Y. 12-13	208A		208D
(xii)	Duplex Vinimay Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		209	
	Copy of IT Acknowledgement		210	
	Audited Financial Statement	211		222



	Copy of Share application		223	
	Copy of allotment advice		224	
	Copy of relevant bank statement		225	
	Copy of assessment order u/s 144 for A.Y. 12-13	225A	--	225C
(xiii)	Prayas Dealcom Pvt. Ltd.			
	Copy of reply to notice u/s 133(6)		226	
	Copy of IT Acknowledgement		227	
	Audited Financial Statement	228		241
	Copy of Share application		242	
	Copy of allotment advice		243	
	Copy of relevant bank statement		244	246

13. From perusal of the above details, we notice that all the alleged share applicants are private limited companies which are registered with the Ministry of Corporate Affairs (MCA) and their credentials are available on MCA portal. All the 13 share applicants are regularly assessed to tax. Books of accounts are duly audited and audited financial statements are attached to the income tax return and are also filed along with the annual return. One cannot deny the possibility that assessee which became a NBFC and being into this trade since 11 years, have been able to approach various private limited companies of which few have consented to apply of equity shares of the assessee company. Proper process has been followed and after filing of the share application and making due payment, allotment has been issued. Copies of the bank statement of each of these companies are available on record and there is no immediate cash deposit prior to issuing of cheque for making alleged investment. Revenue authorities also failed to rebut this fact that against the notice issued by the Id. AO u/s 133(6) of the Act all the share alleged share applicants have replied and had furnished the details along with cover. It is also observed that most of the alleged share applicants have also passed through the scrutiny proceedings for the very same assessment year i.e. A.Y. 2012-13 u/s 143(3) of the Act. All these documents speaks loud enough that identity and creditworthiness of alleged share applicants is established beyond doubt. Genuineness of the

transactions is also proved because these companies have sufficient net worth to make the investment and they have applied in a NBFC company for better returns. Once, the assessee has discharged his primary onus, the burden of proof shifts on to Revenue authority and observations of Id. AO that they are not satisfied with these details will not serve the purpose. At some part of the assessment order the Id. AO has even observed that the assessee had filed submissions and some voluminous paper work which was of no use other than to increase the volume of the assessment report of the assessee company.

14. We fail to find any justification in such observation of the Id. Assessing Officer. Rather than mentioning the documents as voluminous paper work, he/ she should have move ahead to examine the correctness of those documents and should have discussed the same in the assessment order. General observation that the Id. AO is not satisfied with the documents filed by the assessee cannot meet the requirement of law. We on perusal audited the balance sheet of the alleged share applicant companies notice that they have sufficient net worth in the form of share capital and accumulated reserve and surplus to explain the source of investment made in the assessee company.

15. Even the provisions which entitles the revenue authorities to examine the case where a company not being a company in which public are substantially interested receive from any person in any consideration for issue of shares that exceeds the face value of such share, the aggregate consideration received for such shares as exceeds the fair market value of the share to be treated as income of other sources u/s 56(2)(VIIB) of the Act has been inserted by the Finance Act, 2012, with effect from 1st April, 2013 and is therefore not applicable for the year under consideration.

16. We are thus of the considered view that the assessee has successfully explained the nature and source of the alleged share application money by way of proving the identity and creditworthiness of share applicants and genuineness of the transactions and our view is further supported by the following decisions:-

“a) The Hon’ble Apex Court in the case of CIT vs. Orissa Corporation Pvt. Ltd. (supra), under identical circumstances, has held as follows:-

“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.”

emphasis ours}

b) The ITAT Kolkata Bench in ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016, held as follows:

9. We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue.

c) Further the co-ordinate bench in the case of ITO vs. Forceful Estates Pvt. Ltd. in ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023, and for necessary reference, the facts and findings of the Tribunal read as follows:-

“5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

“5. Conclusion: Ground No.1 & 2

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.

It is observed from the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for Lne AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that the respective Assessing Officers have all verified the accounts and therefore any amount that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of

the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not. When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act. In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed. Ground no. 3 is general in nature, which does not require adjudication. 6. In the result, the appeal of the assessee is treated as allowed.” 6. A perusal of the above concluding part of the order of the CIT(A) reveals that the ld. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled law, once the addition has been made in the hands of the share subscribers, the investments by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of “Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata” I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022. 7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has 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. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has 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."

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed.

14(b). Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal) has held as follows:

“Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that 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 Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are “the assessee offers no explanation”. This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee’s transaction. Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression “money laundering”. Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68.”

17. Respectfully following the above decisions, which in our view are squarely applicable on the facts of the instant case, we find that the assessee has successfully discharged the burden of proof primarily casted upon it to explain the identity and creditworthiness of all the alleged thirteens share applicants / shareholder and genuineness of the share



transactions and correctness of such details has not been disputed by the Revenue Authorities except making general observations. Therefore, we are inclined to hold that no addition u/s 68 of the Act, is called for. Accordingly, the finding of the Id. CIT(A) is set aside impugned addition of ₹2.30 crore is deleted and all the effective grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the Court on 3rd October, 2024 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Kolkata, Dated 03.10.2024

***SS, Sr.Ps**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

**Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata**