

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

BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No. 473/KOL/2019
Assessment Year: 2012-13

ONE Point Commercial Pvt. Ltd. 40/4, Strand road, 2 nd floor, Kolkata-700001. (PAN: ACVPJ4013F)	Vs	ITO, Wad 6(3), Kolkata
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri S. K. Tulsiyan, Advocate & Ms. Puja Somani, CA & Shri Narendra Kedia, AR
Revenue by :	Shri Pradip Biswas, Addl. CIT

सुनवाई की तारीख/**Date of Hearing** : 26.08.2024
घोषणा की तारीख/**Date of Pronouncement** : 16 .10.2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The captioned appeal filed by the assessee for A.Y. 2012-13 is directed against the order passed by the Ld. Commissioner of Income Tax Appeals – 09, Kolkata (hereinafter referred to as the ‘ld. CIT(A)’) dated 21.01.2019 which is arising out of the assessment order passed u/s 143 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) by ITO, Ward-6(3), Kolkata dated 24.03.2015.

2. The instant appeal came up for hearing in the past on 12.01.2023 and the same was disposed of by this Tribunal vide order dated 23.02.2023. In this appeal, sole issue before this Tribunal was addition on account of unexplained cash credit u/s.

68 of the Act on account of share capital and share premium totaling to Rs.4,78,50,000/- and this Tribunal decided in favour of the assessee deleting the addition made u/s. 68 of the Act.

3. The revenue challenged the order of this Tribunal before the Hon'ble jurisdictional High Court and Hon'ble Court vide order dated 10.04.2024 set aside the order of this Tribunal and remanded the matter to this Tribunal to take a fresh decision on merits and in accordance with law and pass a reasoned order. The finding of the Hon'ble court reads as under:

“We have heard Mr. Tilak Mitra, learned standing Counsel appearing with Mr. Prithu Dudhuria, learned Advocate for the appellants revenue and Ms. Sutapa Roy Chowdhury, learned Counsel appearing for the respondent.

The Assessing Officer while completing the assessment under [Section 143\(3\)](#) of the Act by order dated 24th March, 2015 held that the assessee has failed to prove any one of the three ingredients which are required to be proved under [Section 68](#) of the Act. Several decisions were referred to and the Assessing Officer concludes that there was no documents produced by the assessee to substantiate their claim. This order was affirmed by the Commissioner of Income Tax (Appeals)-9 [CIT(A)] by order dated 21st January, 2019 holding that merely furnishing documents in a routine way does not explain the source of creditworthiness of the party. Further, it has been held that the basis on which premium has been charged for the shares has not been explained; no efforts have been made with the help of financial statements to justify the quantum of share premium charged. The CIT(A) placed reliance on the decision of Kolkata Bench of the Tribunal in the case of M/s. Blessings Commercial Pvt. Ltd. in ITA 271/Kol/2014, dated 28th June, 2017 and other judgments and ultimately the appeal was dismissed. On an appeal preferred by the assessee before the Tribunal, the concurrent findings recorded by the Assessing Officer and the CIT(A) have been set aside and the appeal has been allowed. The impugned order passed by the Tribunal runs to 14 pages and in paragraph 11 of the impugned order, the learned Tribunal has recorded that from the bare perusal of the paper book and the documents placed, it is revealed that all the share applicants are income tax assesseees, they are filing their income tax returns, share application form and allotment letter is available on record which were filed in response to the notice under [section 133\(6\)](#), share application money was made by account payee cheques, details of

the bank accounts belonging to the share applicants and their bank statements have been furnished and all the share applicants are having substantial creditworthiness represented by their capital and reserves. Though such is the findings recorded by the Tribunal, it is not supported by facts. The Assessing Officer has held that the assessee was a Private Limited company which cannot issue shares in the same manner in which Public Limited company does and in so far as creditworthiness of the share subscribers is concerned, there must be positive evidence to show the nature and source of resources of the share subscribers and if the assessee was serious enough to establish his case, it ought to have complied with the notices/letters issued by the Assessing Officer and ought to have produced the directors of the subscribing companies before the Assessing Officer so that they could explain the sources from which the share subscription was made. It is stated that there is no complaints either from the end of the assessee company or from the end of the alleged subscriber company. This finding recorded by the Assessing Officer as affirmed by the CIT(A), if required to be set aside by the learned Tribunal, reasons have to be assigned. Therefore, we find that the conclusion arrived at by the learned Tribunal in paragraph 11 is insufficient to support its ultimate conclusion in allowing the assessee's appeal. Therefore, we are of the view that the matter has to be remanded back to the Tribunal for fresh consideration.

Accordingly, the appeal is allowed. The order passed by the learned Tribunal is set aside and the matter is remanded to the Tribunal to take a fresh decision on merits and in accordance with law and pass a reasoned order. Consequently, substantial questions of law are left open.

The stay application GA 2 of 2024 stands disposed of.

Considering the fact that the assessment is of the year 2012-13 and the assessment order was passed on 24.3.2013 pursuant to a direction issued under [section 263](#) of the Act, we request the learned Tribunal to give some precedence to the matter so that the appeal can be disposed of at the earliest.

When this appeal was heard earlier, since the learned Counsel for the respondent assessee took a stand that all documents were placed before the Assessing Officer, direction was issued to the learned Standing Counsel for the Department to call for the assessment file and opportunity was granted to the learned Counsel for the assessee to peruse the file and the learned Counsel upon perusal would submit that all documents which have been given by the assessee find place in the assessment file except for one document. The learned Tribunal shall grant liberty to the assessee to file a paper book containing all documents which they have stated to have submitted before the

learned Tribunal and if any further documents are to be submitted, leave of the Tribunal may be obtained and thereafter submitted.”

4. In direction of the Hon'ble jurisdictional High court, we proceed to adjudicate the issue of unexplained share capital and share premium u/s. 68 of the Act amounting to Rs.4,78,50,000/-.

5. Brief facts of the case are that the assessee which is a Private Limited Company declared income of rs.55,200/- in the return furnished on 24.09.2012 pertaining to AY 2012-13. After the case being selected for scrutiny through CASS followed by validly serving notice u/s. 143(2) and 142(1) of the Act, Ld. AO proceeded to examine the financial transactions entered into by the assessee company. Ld. AO observed that the assessee had issued 2,48,750 equity shares of face value of Rs. 10/- and share premium of Rs. 190/- per share was received on issue of 2,38,750 equity shares. In other words, 10000 equity shares were issued at face value of Rs. 10/- and 2,38,750 equity shares issued at Rs.200/- per share (Rs.10/- face value and Rs.190/- share premium). To examine/verify the identity and creditworthiness of the shareholders notice u/s. 131 of the Act was issued to produce the Managing Directors of all the shareholder companies but none appeared though the assessee furnished requisite details for discharging its primary onus cast upon u/s. 68 of the Act. During the course of assessment proceedings and the notice issued u/s. 133(6) of the Act were replied but Ld. AO taking support of the decision of this Tribunal in the case of *Bishakha Sales Pvt. Ltd., ITA No. 1493/Kol/2014* and other similar decisions observed that in the bank account similar amount was debited in the account of the assessee almost on the same day when share application money was credited. P&L Account also shows that no major business activity is carried out and the work of the assessee company its

activity and reputation in the market does not justify such a huge premium. Accordingly, Ld. AO concluded the assessment making the addition u/s. 68 of the Act at Rs.4,78,50,000/-.

6. Aggrieved, assessee preferred appeal before the Ld. CIT(A) but failed to succeed as the view taken by the Ld. AO was confirmed by Ld. CIT(A) making reference to various decisions mainly in the case of *Blessings Commercial Pvt. Ltd. ITA No. 271/Kol/2014 dated 28.06.2017 and that of PCIT Vs. NDR Promoters Pvt. Ltd., ITA No. 49/ 2018 dated 17.01.2019*. Aggrieved, assessee is now in appeal before this Tribunal.

7. Ld. Counsel for the assessee made twofold arguments, firstly submitted that sufficient documents and evidence have been put-forth in reply to each of the alleged share applicant to prove their identity, creditworthiness and genuineness of the transaction and submitted that all the share applicants are income tax assesseees and have replied to notice u/s. 133(6) of the Act. Director of the assessee company has appeared before the AO from time to time in response to the notice u/s. 133 (6) of the Act. Shri B. K. Jhunjhunwala has appeared on behalf of the five share applicants namely, One Stop Commosale Pvt. Ltd., Baisakhi Commercial Pvt. Ltd., UP Agro Farm & Export Pvt. Ltd., Swastik Polyplast Pvt. Ltd. and Mukta Commosales Pvt. Ltd. He also submitted that there was an allegation of the department that there was no compliance either from the end of the assessee company or from the alleged share subscribers but the fact as evident from paper book pages 21 to 102 shows that replies have been given to notice u/s. 133(6) along with all details. He also submitted that share premium of Rs. 190/- is justified considering the valuation certificate issued by a Chartered Accountant on 16.12.2022 calculating the fair market

value at Rs.193.63 as on the date of issue of alleged share capital. He thus, summarized that whatever best is needed to prove the identity and creditworthiness of the share applicants and genuineness of the transaction has duly been placed by the assessee before the revenue authorities and before this Tribunal.

8. Second fold of contention is that the share applicants have also been assessed to tax and passed through scrutiny proceeding u/s. 143(3) of the Act for AY 2012-13 and in the assessment orders additions have been made in their hands and details of the same are placed at pages 4 and 5 of the written submission. He thus, contended that when share applicants have already been subjected to the additions, the source is explained and the assessee cannot be subjected to alleged addition as the same would tantamount to double additions. Reliance placed on the judgment of Hon'ble Apex Court in the case of *Mahaveer Kumar Jain Vs. CIT dated 19.04.2018, AIR on line 2018 SC 1461 Civil Appeal No. 4166 of 2006 dated 19.04.2018.*

9. On the other hand, Ld. DR placed on record a written submission dated 12.06.2024 and referring to the same he firstly commented upon the financials of the assessee company mainly revenue operation Vs. Profit plus Tax, poor figure of cash in hand, poor business, unsecured investment towards sinking fund, lack of distinct visible business, none/meager declaration of dividend etc. Further, he referred to the reflection of the bank statement for all the transactions almost matching debit and credit entries but they were having no effect on the business related yield. He also submitted that the share premium was also not justified considering the financials of the company. Lastly, making reference to various judgments, he stated that assessee failed to

establish identity and creditworthiness of the share applicants and genuineness of the transaction.

10. We have heard rival contentions and perused the material placed before us. We find that assessee is aggrieved with the finding of the Ld. CIT(A) confirming the addition made u/s. 68 of the Act for the unexplained share capital and share premium received from five share applicants. We notice that assessee issued 10000 equity shares at Rs. 10/- and 2,38,750 equity shares at Rs.200/- per share comprising of share premium of Rs. 190/- and face value of Rs.10/- each. This fact has been examined from the audited financial statement but the details of 10000 equity share issued at Rs. 10/- are not emanating from the records but the details of share applicants subscribing 2,38,750 equity shares is as under:

Sl. No.	Name of Subscribers of Share capital	No. of share allotted	Total amount
1.	Swastik Polyplast Pvt. Ltd.	76,500	1,53,00,000.00
2.	UP Account law Services Pvt. Ltd.	75,000	1,50,00,000.00
3.	UP Agro Fard & Export Pvt. Ltd.	78,000	1,56,00,000.00
4.	Mukta Commosale Pvt. Ltd.	2,500	5,00,000.00
5.	Baisakhi Commercial Pvt. Ltd.	250	50,000.00
6.	One Stop Commosale Pvt. Ltd.	6,500	13,00,000.00

11. We further notice that in the course of the assessment proceedings Mr. Birendar Kumar Jhunjunwala appeared on behalf of the share applicants mentioned at Sl. No. 1, 4, 5 and 6 and gave information about share applicant companies. The Ld. AO has invoked sec. 68 of the Act which relates to unexplained cash credit and the same reads as under:

“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], 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 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.”

12. From perusal of the above sec. 68, we notice that if any credit entry is found in the books of account and the assessee is asked to explain the same, it is the primary onus of the assessee to explain the nature and source of the alleged sum to the satisfaction of the AO. Once the assessee discharges its initial onus then Ld. AO in case not satisfied then has to record the dissatisfaction to that effect.

13. Though there is no standard operating procedure stated under the Act adhering to which one can prove the nature and source of such sum but in the past Hon'ble Apex Court in the case of the land mark judgment of Kale Khan Mohammad Hanif Vs. CIT (1963) 50 ITR 1 (SC) and Roshan-Di-Hatti Vs. CIT (1977) 107 ITR 938 laid 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. 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."*

10. 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.

11. Now to test the documents filed by the assessee in the light of the above principles laid down by the Hon'ble Apex Court, we notice that the assessee had furnished following details of each of the share applicant company which have also been filed by the

respective share applicants in reply to the notice u/s. 133(6) of the Act.

A. Swastik Polyplast Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Income Tax Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 3, Pages 21 to 33

B. UP Account law services Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Income Tax Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 4, Pages 34 to 46

C. Up Agro Farm & Export Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 5, Pages 47 to 59

D. Mukta Commosale Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation : In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Acknowledgement of Return filed
- (iii) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (iv) PAN number

The above documents are filed in Paper Book in Sl. No. 6, Pages 60 to 72

E. Baisakhi Commercial Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.

- (ii) Bank Statement
- (iii) Acknowledgement of Return filed
- (iv) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (v) PAN number

The above documents are filed in Paper Book in Sl. No. 7, Pages 73 to 86

F. One Stop Commosale Pvt. Ltd

In response to notice u/s 133(6) of the Act the company had confirmed the transaction and provided the following documents.

- (i) Confirmation: In response to notice u/s 133(6) of the Act this company has confirmed the transaction with the appellant company.
- (ii) Bank Statement
- (iii) Acknowledgement of Return file
- (iv) Audited Balance Sheet, Profit and Loss Account and annexure to the financial statement
- (v) PAN number

The above documents are filed in Paper Book in Sl. No. 8, Pages 87 to 102

12. Now on going through all these details which mainly include audited financial statements, ITR, PAN and confirmation, we note that the share applicants are Pvt. Limited Company duly registered with the Ministry of Corporate Affairs. It is not a mere registration with MCA but the private limited company are also required to file annual return and upload the audited Balance sheet and P&L Account in the format given on the MCA portal. There is a continuous check and verification of such details by the office of Registrar of Companies. So the identity of the share applicant companies remains undisputed.

13(a). Now, coming to the creditworthiness of the share applicant companies, we have perused the financial statement of all these companies. We take note of Swastik Polyplast Pvt. Ltd. and the Balance Sheet shown that as on 31.03.2022 the share capital along with reserve and surplus amounts to Rs. 2.90 Cr and there are current liabilities of Rs.6.89 Cr. Now, the alleged sum received by the assessee from Swastik Polyplast Pvt. Ltd. is only Rs1.53 Cr.

and considering the credit available with the share applicant, it is discernible that there was sufficient fund available in the share applicant to make the investment. Next in line with the share applicant namely, UP Account Law Services Pvt. Ltd. which is having share capital, reserve surplus and unsecured loans of approx Rs.10.9 Cr. which is much more than the investment of Rs.1.50 Cr received by the assessee company.

13(b). M/s. UP Agro Firm & Export Pvt. Ltd. which has invested Rs.1.56 Cr. in the equity share of the assessee company was available with the funds to the tune of Rs.10.45 Cr. in its Balance Sheet. Mukta Commosale Pvt. Ltd. has invested only Rs. 5 lakh in the equity of assessee but is having its own interest free funds of approx Rs.5.70 Cr. Baisakhi Commercial Pvt. Ltd. has only invested Rs. 50 lakh but is having substantial reserves of share capital approx Rs.5.10 Cr. Last in the row is of One Stop Commosale Pvt. Ltd. which apart from having any regular business activity also has share capital and reserve and surplus as on 31.03.2012 at Rs. 6.70 Cr. but it has made a small investment of Rs. 13 lakhs in the assessee.

13(c). All the above details clearly show that sufficient funds were available with the alleged share applicants to make the investments in equity of assessee company. We would like to make reference to the observation of *Hon'ble Bombay High Court in the case of Ami Industries (India) Pvt. Ltd. (ITA 1231 of 2017)* wherein the Hon'ble Court has observed that it was not necessary that share application money should be invested out of taxable income only. We, therefore, considering the facts of the case find that the share applicants should have source of funds to explain the investment. The assessee is only bound to explain the source of the

fund received and in the present case the assessee has depicted the source of source also. Therefore, creditworthiness of the share applicants is also fulfilled.

14(a). Last limb of sec. 68 is the genuineness of transaction. A Public Limited Company can very well grow by going for public issue for its business projects and raise capital but the Private Limited Company have to make the arrangement of funds by the personal contacts of the directors, promoters and existing shareholders. The manner in which a person secures unsecured loan bearing interest similar is the situation for procuring fund through issue of equity share capital. Investment in the equity share capital apart from being based on the current financial strength of the investee company is also based on the perspective of the future business which can either give rise to profits and even losses.

14(b). So far as the case in hand is concerned, assessee company after having contacted various other private limited companies was able to convince the alleged share applicants to make investment in its equity share capital. Though the assessee company in the year under consideration is not having a huge turnover but the book value of each of its equity share on the date of issue is Rs.193.63. A certificate dated 16.12.2022 to this effect has been given by the Chartered Accountant Firm placed at page 185 of the paper book giving information about the fixed assets, current assets and then after reducing the net current liabilities from the total of the asset side, book value has been calculated by dividing the remaining sum with a number of equity shares. The book value so arrived is Rs.5,75,07,068/- and on dividing the same by number of equity shares i.e. 2,97,000 the book value per share

is Rs.193.63 and the same is more than the share premium of Rs.190/- per share charged by the assessee. We, therefore, considering the facts of the case are satisfied that the assessee has successfully proved the genuineness of the transaction.

15. At this stage, we would like to place reliance to the judgment of Hon'ble jurisdictional High court in the case of *PCIT Vs. Sreeleathers* (2022) 448 ITR 332 wherein it has been held as under:

“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."

16. Respectfully following the judicial precedence and on examining the facts of the instant case, we find force in the first fold of the contention made by the Id. Counsel for the assessee and are satisfied that the assessee has been able to explain the identity and creditworthiness of share applicant and genuineness of transaction and, therefore, there was no justification of invoking sec. 68 of the Act on the given transaction of receiving alleged share capital and share premium.

17. Though we are satisfied with the first fold argument and have deleted the impugned addition but for academic purpose, we would also like to deal with the second fold of the contention of the Id. Counsel for the assessee, wherein it has been claimed that the alleged share applicants have themselves been scrutinized u/s. 143(3) of the Act for AY 2012-13 and subjected to the addition and the details of the same is mentioned below:

1. No.	Name of subscribers of share capital	Share application money received (Rs.)	Reply of the share applicant enclosed in paper book-1	Amount added in the assessment order	Order placed at page no. of paper book-2
1.	Swastik Polyplast Pvt. Ltd.	1,53,00,000	21-33	2,80,00,000	161-167
2.	UP Agro Far & Export Pvt. Ltd.	1,56,00,000	47-59	1,80,00,000	157-160

3.	Mukta Commosale Pvt. Ltd.	5,00,000	60-72	5,76,10,000	168-176
4.	Baisakhi Commercial Pvt. Ltd.	50,000	73-86	5,19,00,000	153-156
5.	One Stop Commosale Pvt. Ltd.	13,00,000	87-102	40,00,000	149-152

18. From going through the above details, we notice that alleged share applicants have been subjected to additions of approx. Rs.15.95 Cr. whereas the alleged sum in dispute before us is approx. 4.78 Cr. only. In the assessment orders of the alleged share applicants the source of source of share application money which has been received by the assessee has already been taxed in the hands of the share applicants and taxing the same again in the hands of the assessee would tantamount to double additions. Our attention was drawn to the judgment of the Hon'ble Apex court in the case of *Mahaveer Kumar Jain (supra)* wherein the Hon'ble Court has held as under:

"It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. Furthermore, a taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. So, it is clear enough that the income in the present case is taxable only under one law. By virtue of clause (k) to Article 371 F of the Constitution which starts with a non-obstante clause, it would be clear that only the Sikkim Regulations on Income-tax would be applicable in the present case. Therefore, the income cannot be brought to tax any further by applying the rates of the IT Act."

19. Considering the ratio laid down by the Hon'ble Apex Court and on finding that the alleged share applicants have been subjected to substantial addition, we find merit in the second fold of argument of the Ld. Counsel for the assessee and, therefore, on this ground also the impugned addition u/s. 68 of the Act is uncalled for. We accordingly, set aside the finding of the Ld. CIT(A)



and delete the addition u/s. 68 of the Act made by the AO.
Effective grounds of appeal of the assessee raised are allowed.

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

Order pronounced in the Court on 16th October, 2024 at Kolkata.

Sd/-

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

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

Kolkata, Dated 16th OCTOBER, 2024

**jd, Sr.Ps*

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, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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