

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

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

I.T.A. No. 656/KOL/2024
Assessment Year: 2012-13

Income Tax officer, Ward-7(1), Kolkata.	Vs	Vikash Fastners Private Limited 41A, AJC Bose road, Kolkata- 700017. (PAN: AABCV4998A)
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Miraj D. Shah, AR
Revenue by :	Shri Sailen Samadder, Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing	:	09.10.2024
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, pertaining to assessment year 2012-13 is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), NFAC, Delhi (hereinafter referred to as the 'ld. CIT(E)') dated 31.03.2023.

2. The sole grievance of the revenue is against the deletion of addition made u/s. 68 of the Act at Rs.2,60,08,000/-.
3. At the outset, Ld. Counsel for the assessee referring to the order of Ld. AO dated 01.02.2024 giving effect to the order passed by Ld. CIT(A) u/s. 250 of the Act stated that the only observation of Ld. CIT(A) is that the assessee failed to prove the identity of alleged cash creditor for which directions were given to AO to verify and

who carried out the proceedings by issuing notice u/s. 133(6) as well as summons u/s. 131 of the Act and was satisfied with the identity of the share applicant company and deleted the impugned addition. He further submitted that the appeal of the revenue deserves to be dismissed as infructuous because prior to filing the appeal before this Tribunal Ld. AO has already given relief to the assessee in view of the direction given by the Ld. CIT(A).

4. On the other hand, Ld. DR referring to the impugned order submitted that the assessee in order not to fall u/s. 68 of the Act has to explain the identity and creditworthiness of the share applicants and genuineness of the transaction. However, Ld. CIT(A) has only referred to one limb i.e. identity and, therefore, since the genuineness of the transactions and creditworthiness of the share applicant is not proved the impugned addition deserves to be confirmed.

5. We have heard rival contentions and carefully perused the material placed before us. We observe that the assessee is a private limited company which was subjected to scrutiny proceedings u/s. 143(3) of the Act for AY 2012-13. The assessment proceedings were concluded making various additions including addition u/s. 68 of the Act at Rs.2,60,08,000/- for the alleged unexplained share application money. Since the instant appeal only relates to the addition u/s. 68 of the Act, we will deal it only. The assessee challenged the addition made by Ld. AO before the Ld. CIT(A) and furnished all the details with evidence including ITR, audited balance sheet, bank statement, share application and allotment letter and confirmation letter from all the share applicants who have been allotted the equity shares during the



year for a total sum of Rs.2,60,08,000/-. All these details were placed before the Ld. CIT(A) and who after examining the same only made an observation about few share applicants who had common address but the notice remained unserved. The Ld. CIT(A) has held that the addition is upheld if the assessee is unable to prove the identity of the share applicant. We observe that Ld. AO in direction to the finding of the Ld. CIT(A) carried out the proceedings by issuing notice u/s. 133(6) and 131 of the Act to the alleged share applicants and the directors and after being satisfied with all these details gave relief to the assessee by reducing the addition of Rs.2,60,08,000/- in the following manner:

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DIN: ITBA/GEA/N/250/2023-24/1060436880(4)

OFFICE OF THE INCOME TAX OFFICER, WARD- 7(1), KOLKATA
AAAYAKAR BHAWAN, P-69, CHOWRINGHEE SQUARE, 5th FLOOR, KOLKATA-700069

1.	Name and address of the assessee	:	Vikash Fastners Pvt Ltd R.No.310,Diamond Prestige, 41A, A.J.C. Bose Road, Kolkata-700 017
2.	P.A. No.	:	AABCV4998A
3.	Status	:	Company
4.	Assessment Year	:	2012-13
5.	Date of Order	:	01/02/2024

ORDER GIVING EFFECT TO THE ORDER PASSED U/S. 250/143(3) OF THE I.T. ACT, 1961

In the instant case, order u/s 143(3) of the I.T.Act,1961 was passed on 27.03.2015 and the total income was determined of Rs. 2,25,60,582/-. Addition of Rs. 2,60,08,000/- was made u/s 68 of the I.T.Act,1961 as introduction of fresh share capital including share premium and disallowance of Rs. 3,17,192/- was made u/s 14A of the I.T.Act read with Rule 8D. Being aggrieved, assessee preferred appeal before the Ld. CIT(A). Order u/s 250 of the I.T.Act,1961 was passed by Ld. CIT(A), NFAC, New Delhi on 31/03/2023 vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1051815449(1). Ld. CIT(A) directed the A.O. to issue summons u/s 131 to all the directors of the investor companies for examining them. Ld. CIT(A) also directed to call for information u/s 133(6) regarding their PAN, status before ROC, copy of the latest return of income and bank statements evidencing financial capability.

As directed by Ld. CIT(A), NFAC, Notice u/s 133(6) were issued to the six(6) subscribing entities i.e. (i) M/s Mohanka Exports Pvt Ltd, (ii) M/s Escorts Trading Pvt Ltd, (iii) M/s Tolasariya Viniyog Pvt Ltd, (iv) M/s Nagina Exports & Finvest Pvt Ltd, (v) M/s MR Casting Pvt Ltd and (vi) M/s Lupin Commoddeal Pvt Ltd through online on 08/11/2023 to furnish copy of PAN Card, ITR for the A.Y. 2013-13 and A.Y. 2023-24, bank statement for the F.Y. 2011-12 and F.Y. 2022-23 and copy of Master data etc. In compliance to Notice u/s 133(6) of the Act all the above subscribing companies furnished copy of PAN Card, copy of acknowledgement of ITR for the A.Y. 2012-13 & A.Y. 2023-24, copy of bank statements for the period 01/04/2011 to 31/03/2012 and 01/04/2022 to 31/03/2022 and copy of company master data, Form 20B and Audited Financial Statements for the year ended on 31/03/2023.

As directed by Ld. CIT(A), NFAC, New Delhi Summon u/s 131 of the I.T.Act were also issued to the Directors of the six(6) subscribing companies through online as mentioned in Table below through online on 28/12/2023 to appear personally before the A.O. on 09/01/2024 to give evidence in connection with give effect proceedings to the CIT(A)'s order in the case of M/s Vikash Fastners Pvt Ltd, PAN-AABCV4998A

Sl.No.	Company name	Director name	Directors' PAN
1	MOHANKA EXPORTS PVT LTD	ABHISHEK RUNGTA ASHISH RUNGTA	AGMPR5677G AGMPR5676H



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DEBASISH NASKAR
Office Superintendent
O/o Range-7, Kolkata



2	LUPIN COMMODEAL PVT. LTD.	ALOK RUNGTA ASHISH RUNGTA	
3	MR. CASTING PRIVATE LIMITED	MAYA RUNGTA ABHISHEK RUNGTA	ABZPR6414R
4	NAGINA EXPORTS & FINVEST PVT LTD	ALOK RUNGTA ASHISH RUNGTA	AGMPR5678K
5	TOLASARIYA VINIYOG PVT. LTD	ALOK RUNGTA ASHISH RUNGTA	
6	ESCORTS TRADELINK PVT LTD	ALOK RUNGTA ASHISH RUNGTA	

ASHISH RUNGTA	AGMPR5676H
MAYA RUNGTA	ABZPR6414R
ALOK RUNGTA	AGMPR5678K
ABHISHEK RUNGTA	AGMPR5677G

In compliance to summon u/s 131 of the Act, Maya Rungta, Director of M/s MR Casting Private Limited furnished a petition on 09/01/2024 through e-proceedings module stating that the business activities has been carried on by her son and requested for exemption from personal hearing. Sri Ashish Rungta, Director of M/s Tolasariya Viniyog Pvt Ltd, M/s Escorts Tradelink Pvt Ltd, M/s Nagina Exports & Finvest Pvt Ltd, M/s Mohanka Exports Pvt Ltd and M/s Lupin Commodeal Pvt. Ltd furnished a petition on 09/01/2024 through e-proceedings module stating that the business activities has been carried on by his brother and requested for exemption from personal hearing. Mr. Alok Rungta, Director of M/s Tolasariya Viniyog Pvt Ltd, M/s Escorts Tradelink Pvt Ltd, M/s Nagina Exports & Finvest Pvt Ltd and M/s Lupin Commodeal Pvt. Ltd furnished a petition on 09/01/2024 for adjournment of hearing for 7-10 days due to medical emergency of his family members. Mr. Abhishek Rungta, Director of M/s MR Casting Private Limited and M/s Mohanka Exports Pvt Ltd furnished a petition on 09/01/2024 for adjournment of hearing for 7-10 days due to medical emergency of his family members. Considering the above mentioned directors' request, another summon u/s 131 of the Act were issued on 10/01/2024 to personally appear before the A.O. on 22/01/2024 at 12.30 P.M. along with books of accounts and other documents as specified in earlier summon u/s 131 of the Act dated 28/12/2023. Subsequently, the date of appearance was changed to 23/01/2024.

In compliance to summon u/s 131, Sri Alok Rungta, Director of M/s Escorts Trading Pvt Ltd, M/s Lupin Commodeal Pvt Ltd, M/s Nagina Exports & Finvest Pvt Ltd, and M/s Tolasariya Viniyog Pvt Ltd appeared on 23/01/2024, whose statements was recorded and placed in the folder. He submitted copy of PAN Card, copy of Master data from MCA Website, certificate of incorporation, NBFC Certificate, Copy of financial statements for the F.Y. 2011-12 & F.Y. 2022-23, Copy of ITR for the A.Y. 2012-13 and A.Y. 2023-24 to substantiate the identity of the share subscriber company viz. M/s Escorts Trading Pvt



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DEBASISH NASKAR
Office Superintendent
O/o Range-7, Kolkata

Ltd, M/s Lupin Commoddeal Pvt Ltd, M/s Nagina Exports & Finvest Pvt Ltd, and M/s Tolasariya Viniyog Pvt Ltd

Sri Abhishek Rungta, Director of M/s MR Casting Pvt Ltd and M/s Mohanka Exports Pvt Ltd also appeared on 23/01/2024, whose statements was recorded and placed in the folder. He also submitted copy of PAN Card, copy of Master data from MCA Website, certificate of incorporation, NBFC Certificate, Copy of financial statements for the F.Y. 2011-12 & F.Y. 2022-23, Copy of ITR for the A.Y. 2012-13 and A.Y. 2023-24 to substantiate the identity of the share subscriber company viz. M/s MR Casting Pvt Ltd and M/s Mohanka Exports Pvt Ltd

On verification of aforementioned documents etc. submitted and deposition made before the A.O., it is found that the identity of the investor companies i.e. (i) M/s Mohanka Exports Pvt Ltd, (ii) M/s Escorts Trading Pvt Ltd, (iii) M/s Tolasariya Viniyog Pvt Ltd, (iv) M/s Nagina Exports & Finvest Pvt Ltd, (v) M/s MR Casting Pvt Ltd and (vi) M/s Lupin Commoddeal Pvt Ltd has been duly proved. Since the identity of the investors has been proved, as per direction of Ld. CIT(A),NFAC, New Delhi's order No.ITBA/NFAC/S/250/2022-23/1051815449(1) dated 31.03.2023 addition of Rs. 2,60,08,000/- is being deleted.

In pursuance of Ld. C.I.T.(A),NFAC, New Delhi's Order No. ITBA/NFAC/S/250/2023-24/1051815449(1) dated 31.03.2023, the total income and tax thereon is revised as under :

Assessed Income as per order u/s. 143(3) dated 27/03/2015	Rs. 2,25,60,582/-
Less : Relief allowed as per CIT(A),NFAC, New Delhi's Order dated 31/03/2023 after verification of identity of investors.	<u>Rs. 2,60,08,000/-</u>
Revised total loss	<u>Rs. 34,47,418/-</u>

Tax thereon	: Rs. Nil
Less : TDS	: Rs. 61,448/-
Advance Tax	: Rs. 25,000/-
Regular payment tax	: <u>Rs. 17,51,930/-</u>
Refundable	: Rs.18,38,378/-
Add : Intt. u/s 244A already allowed	: Rs. 7,749/-
Intt. u/s 244A is now allowed	: <u>Rs. 7,57,166/-</u>
refundable	: Rs. 26,03,293/-
Less : Refund has already been issued	: <u>Rs. 93,840/-</u>
Now refundable	: <u>Rs. 25,09,453/-</u>

Issue copy of order & refund to the assessee



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DEBASISH NASKAR
Office Superintendent
O/o Range-7, Kolkata

Sanjay Kumar
(SANJAY KUMAR)
Income Tax Officer, Ward-7(1) Kolkata
संजय कुमार
SANJAY KUMAR
आयकर अधिकारी, वार्ड-7(1), कोलकाता
Income Tax Officer, Ward-7(1), Kolkata
ए.ओ. कोड- WBG-W-107(1)
A.O. CODE- WBG-W-107(1)

6. From going through the above order giving effect by the AO and also considering the details submitted by the assessee before Ld. CIT(A), we find that the assessee has successfully discharged its primary onus by explaining the nature and source of the alleged share application money by proving the identity and creditworthiness of the share applicant and genuineness of the transaction to the satisfaction of the AO and, therefore, Ld. AO has rightly given the relief. Therefore, the instant appeal of the revenue deserves to be dismissed as infructuous because when the Ld. AO has himself deleted the impugned addition, the instant appeal has no legs to stand.

7. In the result, the appeal of the revenue is dismissed.

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

Sd/-(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-(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