

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

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

**Before Dr. Manish Borad, Accountant Member and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.1151/Kol/2024**  
Assessment Year: 2012-13

**Megapix Vanijya Pvt. Ltd.....Appellant**

C/o Subash Agarwal & Associates,  
Advocates, Siddha Gibson,  
1, Gibson Lane, Suite 213, 2<sup>nd</sup> Floor,  
Kolkata – 700069.  
[PAN: AAHCM6624J]

**vs.**

**ITO, Ward-9(1), Kolkata.....Respondent**

**Appearances by:**

Shri Siddharth Agarwal, Advocate, appeared on behalf of the appellant.  
Shri Pradip Biswas, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 27, 2024

Date of pronouncing the order : November 18, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

The present appeal is filed by the assessee against the order dated 13.05.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for assessment year 2012-13.

2. The brief facts of the case are that the assessee filed its return of income on 26.09.2012 by declaring a total loss of Rs.4,540/-. The case of the assessee was selected for scrutiny due to large share premium received by the assessee during the relevant financial year. Consequently, the Assessing Officer issued notices u/s 142(1) and 142(2) of the Act requesting for furnishing requisite information. In response to the notices, the ld. AR of the assessee appeared before the Assessing Officer and provided primary details including an explanation that the assessee company was engaged in the business of share trading. Upon

verification of the records, the Assessing Officer noted that the assessee company had received share capital amounting to Rs.2,62,00,000/-. However, the Assessing Officer questioned the genuineness of the transaction and issued summons u/s 131 of the Act to the director of the assessee company and to the share-subscribers. Although, the share-subscribers submitted various details in response to the summons, however, director of the assessee company did not appear before the Assessing Officer for personal deposition on a specified date. Consequently, the Assessing Officer deemed the responses as insufficient and, therefore, an addition of Rs.2,62,00,000/- was made to the income of the assessee u/s 68 of the Act.

3. Dissatisfied with the above order, the assessee went in appeal before the ld. CIT(A) by making various submissions, however, the submissions made by the assessee before the ld. CIT(A) were turned down and the appeal of the assessee was dismissed without considering the submissions made by the assessee before the him.

4. Aggrieved by the above order, the assessee is now in appeal before us. The contention of the ld. AR is that the impugned order passed by the ld. CIT(A) was not correct and the addition made by the Assessing Officer was also not correct and liable to be set aside. In this regard, the ld. AR submitted detailed documentary evidences to establish identity, creditworthiness of the shareholders as well as genuineness of the share premium received by the assessee during the assessment year in question. In this regard, the ld. AR contended that each equity share with face value of Rs.10/- was issued at premium of Rs.990/- and this premium was capital in nature and not subject to Income Tax relying on the judicial precedents including the decision of *Coordinate Hyderabad Bench of the Tribunal in ITA No. 1160/Hyd/2012 in the case of ITO vs. M/s. Trident Shelters Pvt. Ltd.* and the decision of *Coordinate Mumbai*

*Bench of the Tribunal in the case of Green Infra Ltd. vs. ITO reported in 145 ITR 240(Mum).* The ld. AR argued that the shareholders were subjected to tax scrutiny u/s 143(3) and 147 of the Act in the previous assessment year and the Assessing Officer could not dispute identity and creditworthiness of these shareholders. Non-appearance of the directors of the company could not be the sole ground to justify for treating the share application money as undisclosed income in the hands of the assessee. Reliance in this respect has been placed on the following decisions:

*1. Decision of Hon'ble Jurisdictional Calcutta High Court in the case of CIT vs. M/s Sagum Commercial Pvt. Ltd. in ITA No.54 of 2001, wherein, the High Court held that merely because shareholders not produced, no adverse inference can be drawn when PAN no., other details submitted.*

*2. ITAT, Mumbai Bench's order in the case of M/s Alcon Biosciences (P) Ltd. in ITA No.1946/Mum/2016 dated 28.02.2018, wherein, the Tribunal has held that on high premium @990/-, the Assessing Officer cannot question issue of shares at a premium and also cannot bring to tax such high share premium within the provisions of section 68 of the Act.*

4.1 The ld. AR has furnished the relevant documents to substantiate the identity, creditworthiness and genuineness of the share-subscribers for receiving the entire amount during the year:

*“1. ITR Acknowledgement and Final Accounts of the assessee for the AY: 2012-13*

*2. Bank statement of the assessee along with the reconciliation*

*3. Form 2*

*4. List of share allottees*

5. ITR Acknowledgement, Final Accounts, Share Application Form, Bank Statement and Reply to summon u/s 131 of the following shareholders -

- a) Tuberose Pronmoters (P) Ltd.
  - b) Gentle Commosales (P) Ltd.
  - c) Harlalka Commercial (P) Ltd.
  - d) Moonview Markfab (P) Ltd.
  - e) Samarpan Merchants (P) Ltd.
  - f) Oversure Niwas (P) Ltd.
  - g) Satyalaxmi Plaza (P) Ltd.
  - h) Avlokan Tie-up (P) Ltd.
6. Assessment order of the following shareholders -
- a) Harlalka Commercial (P) Ltd.
  - b) Samarpan Merchants (P) Ltd.

6.. Final Accounts, Share Application Form in connection with the following share applicants to whom the share application money refunded in the subsequent year -

- a) Kerbs Vyapaar (P) Ltd.
- b) Amit Stock & Commodities (P) Ltd.

7. Bank Statement of the assessee reflecting the money refunded

8. Table showing the investment vis-à-vis net worth of the share applicants

9. Reconciliation of addition of Rs. 2,62,00,000/- made by the A.O.”

4.2 The ld. AR further submitted that moreover, in the case of share-subscriber company namely Harlalka Commercial (P) Ltd. and Samarpan Merchants (P) Ltd., assessment orders were framed u/s 143(3) of the Act for assessment year 2012-13. He further stated that the Assessing Officer without examining any of the aforesaid documents, did not point out any defect, discrepancy or infirmity in the evidences furnished by the assessee and made the impugned addition in a mechanical manner. Even the Assessing Officer has not properly considered the documents furnished by the assessee before him which shows non-application of mind on the part of the Assessing Officer. The ld. counsel has also submitted that even before the CIT(A), the assessee had made various

details which had not considered by the ld. CIT(A) and simply confirmed the addition in a mechanical manner.

5. On the other hand, the ld. DR argued that non-compliance of directors under summons suggest a lack of transparency raising doubt about genuineness of the transaction. Since, the identity, creditworthiness and genuineness of the transactions were not satisfactorily demonstrated, the Assessing Officer was justified in adding the share capital received and treating the unexplained cash credit u/s 68 of the Act. The ld. DR argued that the case laws cited by the ld. AR were factually distinct rendering them inapplicable to the present case.

6. We, after hearing the rival submissions of the parties and perusing the materials available on record, find that the contention raised by lower authorities is that the director of the subscriber companies did not appear in response to the summons issued u/s 131 of the Act. On this aspect, the ld. counsel has submitted that the directors of the share subscriber companies though have shown inability to appear personally on the date fixed, however, they had duly responded to the summons issued and sent the requisite details and evidences to the Assessing Officer. The Assessing Officer 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. In the present case, the assessee duly explained about the identity, creditworthiness and financials etc. of each of the share subscriber company. The Assessing Officer, 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 Assessing Officer, 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 Assessing Officer. 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."*

7. So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." (supra) has taken note of the observations made by the Supreme Court in the "the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down 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 credit-worthiness, 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 credit-worthiness 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.”*

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., impugned additions are not warranted in this case.

8. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the Assessing Officer and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law. In this case, the assessee has provided detailed evidences to establish identity and creditworthiness and genuineness of the transaction in the shape of bank statements, acknowledgement of Income Tax Returns and transaction evidencing for each of the shareholders at the time of

framing of assessment order and also before the ld. CIT(A). The non-appearance of the director of the assessee company before the Assessing Officer may raise concern, that alone does not invalidate otherwise credible documentary evidences. The Hon'ble Supreme Court in the case of CIT vs. Kamdhenu Steel & Alloys Ltd. in SLP(CC) No.15640 of 2012, dated 17-09-2012 held that mere non-appearance of director cannot be held to be justified in treating the share premium and share capital as unexplained income if sufficient documentary evidences are provided. In the present case of the assessee, the shareholders were scrutinised u/s 143(3)/147 of the Act, further detailed evidences were submitted to establish genuineness of the transactions. In this regard, we rely on the decision of the *Hon'ble Apex Court in the case of CIT vs Lovely Exports (P) Ltd. reported in (2008) 216 CTR 195 (SC)*, wherein, it was held that once company proves the existence and authenticity of shareholders, it had discharged its burden u/s 68 of the Act. We find merit in the contention of the ld. AR. That the premium is matter of business prerogative as held in the Coordinate Mumbai Bench of the Tribunal in the case of M/s Greek Infra Ltd. vs. ITO in I.T.A. No.7762/Mum/2012 and in the case of Trident Shelters Pvt. Ltd. (supra). That revenue cannot question the quantum of share premium in the absence of evidence of collusion or mala fide intent. Considering the facts and submissions and judicial precedents, we hold that the addition made by the Assessing Officer of Rs.2,62,00,000/- as unexplained cash credit u/s 68 of the Act is unsustainable since the assessee has sufficiently established the identity, creditworthiness and genuineness of the transaction relating to the share capital received during the relevant financial year. We, therefore, direct the Assessing Officer to delete the addition of Rs.2,62,00,000/- u/s 68 of the Act in the hands of the assessee.

9. In terms of the above discussion, the appeal of the assessee is allowed.

**Kolkata, the 18<sup>th</sup> November, 2024.**

Sd/-

**[Manish Borad]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sonjoy Sarma]**

न्यायिक सदस्य/Judicial Member

Dated: 18.11.2024.

RS

*Copy of the order forwarded to:*

1. Megapix Vanijya Pvt. Ltd
2. ITO, Ward-9(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches