

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'A', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.997/Kol/2023
Assessment Year: 2012-13

Karni Infraprojects Pvt. Ltd. **Appellant**
229, A. J. C. Bose Road, Room No. 9C,
9th Floor, Kolkata-700020.
(PAN: AADCK7733N)

vs.

Income Tax Officer, Ward-12(3), Kolkata **Respondent**

Appearances by:

Shri Miraj D. Shah, AR appeared on behalf of the Appellant
Shri Subhro Das, Addl. CIT Sr. DR appeared on behalf of the Respondent

Date of concluding the hearing: November 26, 2024
Date of pronouncing the order: November 26, 2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order dated 08.08.2023 of the Ld. Commissioner of Income Tax, (Appeal), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AY 2012-13.

2. The assessee, in this appeal, is aggrieved by the action of the lower authorities in making/confirming the addition of Rs.2,50,00,000/- u/s. 68 of the Act treating the share capital and share premium received by the assessee as unexplained and not genuine and thereby adding the same as income of the assessee from undisclosed sources.

3. At the outset, the Ld. Counsel for the assessee has invited our attention to the impugned order to submit that the Assessing Officer (in short 'AO') has made the impugned addition by way of a short and cryptic order in mechanical manner without examining any of the documents/evidences furnished by the assessee and even without discussion on any of the factual aspects of the matter. The sole reason for confirming the addition mentioned by the AO was that summons u/s. 131 of the Act were issued to Shri Girdharlal Goenka, director of the assessee company for his personal appearance and to produce the investors which had not been complied with by him. The AO solely on this ground held that the assessee had failed to discharge the onus cast upon him to prove the genuineness of the transaction. The Ld. Counsel, in this respect, further inviting our attention to the paper book has submitted that the assessee had duly furnished all the relevant details in respect of assessee company such as ITRs, PANs, copies of audited financial statement, copy of Form 5 along with receipt filed with ROC, details of source of funds relating to the identity and creditworthiness of the creditors and genuineness of the transaction. However, the Ld. Assessing Officer, without examining the said documents and without pointing out any defect, discrepancy or infirmity in the evidences furnished by the assessee made the impugned additions with a predetermined mind set.

3.1. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the assessee had made detailed submissions before the CIT(A), which have also been reproduced in the impugned order. Even, during the appellate proceedings, the assessee again furnished the relevant documents to prove the identity, creditworthiness of the share-subscribers and genuineness of transaction. However, the ld. CIT(A), without considering any of the submissions and evidences furnished by the assessee, confirmed the

additions so made by the Assessing Officer in a mechanical manner. That neither the CIT(A) nor the Assessing Officer has bothered to even examine any of the documents either furnished by the assessee or that have been received from the share subscriber companies.

3.2. The Ld. Counsel has further demonstrated that out of the aforesaid alleged total amount received of Rs.2,50,00,000/-, a sum of Rs.50,00,000/- was received on 27.01.2010 i.e. during the financial year 2010-11 and that the same was duly reflected in audited Balance Sheet as on 31.03.2011. Since the amount of Rs.50,00,000/- was received earlier year and not during the assessment year under consideration, therefore, there was no justification on the part of the AO in treating the said amount as part of the share application/share premium received by the assessee during the year under consideration.

3.3. The Ld. Counsel has further invited our attention to pages 1 and 2 of the paper book to submit that the assessee during the year had received share application/share premium from following three share subscribers, which have sufficient net worth to subscribe the share capital of the assessee company.

Sl.	Share subscribers	PAN	Cheque No.	Date	Amount	Net worth
1	Sri Salasar Suppliers (P)Ltd.	AADCS8457R	000470	06.07.2011	20,00,000	25,62,38,686
2	Rosy Dealcomm (P) Ltd.	AADCK7733N	519213	06.07.2011	50-,00,000	45,86,59,986
3	Kasera Agencies (P) Ltd.	AAACK0770A	929233 929222	06.07.2013 13.07.2013	30,00,000 <u>1,00,00,000</u> 2,00,00,000	16,14,51,295

3.4. The Ld. Counsel has further invited our attention to page 10 of the paper book to show that out of the aforesaid three subscribers, two share subscribers i.e. Rosy Dealcom Pvt. Ltd. And Sri Salasar Suppliers Pvt. Ltd.

were promoters of the assessee company who were having substantial shareholding in the assessee company and were deeply interested in the business affairs and progress of the assessee company. He, in this respect, has demonstrated that Rosy Dealcom Pvt. Ltd. was having 45.94% shareholding and Sri Salasar Suppliers Pvt. Ltd. was having 43.67% shareholding as on 31.03.2012, whereas the said companies were having shareholding of 47.73% as on 31.03.2011. The Ld. Counsel has further submitted that the assessee had received share application and share premium from M/s. Rosy Dealcom Pvt. Ltd. and Sri Salasar Suppliers Pvt. Ltd. in the earlier years also, but no such addition has ever been made by the Income Tax Authorities in this respect. Further, the Ld. Counsel for the assessee has demonstrated before us that the assessee not only during the assessment but also during the appellate proceeding had submitted following documents in respect of the assessee company :

Sl. No.	Description
1.	MCA masterdata of the assessee
2.	Audited Accounts with Audit Report
3.	Income Tax Return with Acknowledgement
4.	Share Allotment
5.	Bank Statement showing payments against the bills
6.	Form2 (Allotment of shares)

3.5. He has further referred to the various pages of the paper book to show that the assessee had produced following documents relating to identity and creditworthiness of the subscribers and showing the genuineness of the transaction:

Sl. No.	Subscribers	Description of Documents
1.	Sri Salasar Suppliers (P) Ltd.	MCA Master Data
		Income Tax Return
		Audited Accounts
		Share Allotment Letter
		Bank Statement
		Confirmation of Accounts
		Percentage of Share Holding

		Source Certificate
2.	Rosy Dealcomm (P) Ltd.	MCA Master Data
		Income Tax Return
		Audited Accounts
		Share Allotment Letter
		Bank Statement
		Confirmation of Accounts
		Percentage of Share Holding
		Source Certificate
3	Kasera Agencies (P) Ltd.	MCA Master Data
		Income Tax Return
		Audited Accounts
		Share Allotment Letter
		Bank Statement
		Confirmation of Accounts
		Percentage of Share Holding
		Source Certificate

3.6. The Ld. Counsel has further submitted that it was duly explained before the lower authorities that the assessee company was an investment company, which requires huge investment supported by cheap finance. Accordingly, the assessee company had decided to raise funds by issuing fresh equity shares. The Ld. Counsel, in this respect has further invited our attention to page 8 of the paper book, which is a copy of the Balance Sheet to submit that the funds raised by the assessee were invested for short term loans and advances. He, in this respect, has invited our attention to relevant column in the Balance sheet to show that the assessee had made short term loans and advances of Rs.4,50,05,595/- as on 31.03.2012, whereas, the short term loans and advances as on 31.03.2012 was Rs.2,50,00,000/-. Ld. Counsel, therefore, has submitted that the funds received by the assessee were further invested by the assessee company in group companies, who were carrying a housing project at Lucknow. That all the money received was advanced as short term loans and advances to get good returns. The Ld. Counsel, therefore, has submitted that the assessee had duly discharged the initial burden cast upon it to prove identity and creditworthiness of the share

subscribers and genuineness of the transaction. He has relied upon the various case laws to contend that the lower authorities were not justified in making the impugned additions without pointing out any defect or discrepancy in the detailed evidence and explanations furnished by the assessee and solely on the ground that the assessee had not produced the directors of the investment companies for their statement before the AO.

4. The Ld. DR, on the other hand, has submitted that, in fact, the source and net worth of the subscriber companies was also out of share capital and share premium. That all the documents furnished by the assessee before the lower authorities were just paper arrangements whereas, the assessee company was not having sufficient goodwill and income, so as to invite the investors to make investment in assessee company.

5. We have considered the rival contentions and gone through the material available on records. Before proceeding further, it will be appropriate to reproduce the impugned assessment order:

Assessment Order

1. In the instant case I.T. return was submitted on 14.08.2012, showing income of Rs2,570/- which was processed u/s 143(1). The case was selected for scrutiny as per CASS of the Central Action Plan. Notice u/s 143(2) was issued on 07.08.2013 by ITO, Ward-56(4), Kolkata and served on the assessee. Thereafter, the case was received on transfer from ITO, Ward-56(4), Kolkata on 19.08.2014 and notice u/s.142(1) was issued on 25.08.2014 along with requisition and also served on the assessee. In response to these notices, Sri K. V. Jaiswal, A/R of the company filed submission on 09.09.2014.

2. During the year, the assessee company is engaged in the business of trading and investment in shares & securities.

3. Summon u/s 131 was issued to Sri Girdharlal Goenka on 09.02.2015, the signatory directory for personal appearance and to produce the investors on 20.02.2015 which has not been complied to and therefore the high amount of share premium collected remained unexplained and therefore, the assessee failed to discharge its onus.

4. In this context, the observation of the Hon'ble ITAT, Kolkata, in the case of Bishakha Sales Pvt Ltd, on non compliance against summons u/s 131, may be reproduced as under:

"This also clearly shows the evasatory tactics that are being adopted to wriggle its way out of the corner it has put itself into by its own acts and commissions. A peculiarity in such cases that is noticed is that sheaves of paper documents are readily produced but when a summon is issued the responsible persons conveniently disappear. Only the assessee knows the intricacies of its accounts. It is for the assessee to prove its claim of share capital/ application money introduction and its affairs in respect of its accounts. Merely dumping papers and documents on the table of the assessing authority does not in any way mean compliance. The burden of proof cannot be shifted on the revenue by cart loads of documents. The documents submitted must be explained. We do understand the predicament of the assessee in so far as if any responsible person appears then he would have to answer many unpleasant questions which could lead to the reopening of assessments in multiple assessment years and multiple assessees. But then what has been created and knotted up by the assessee must be answered and unraveled only by the assessee and none else would know the facts better than the assessee itself."

5. The above discussion clearly leads to the inference that the assessee company was incorporated (date of incorporation 26.10.2009) having no visible business activity and raised share capital and / or premium in order to route its undisclosed money to the desired end of the beneficiary taking recourse of the corporate veil. The assessee company must have rotated its undisclosed money layering through different body corporates in different structured web to obfuscate inquiry. Therefore, it appears that the assessee did not appear because he did not want to be cross examined which could have expose the design within. As such the capital raised during the year is bogus and the share premium amount credited on its allotment of **Rs. 2,50,00,000 /-** is treated as cash credit and is being added back to the total income of the assessee u/s 68 of the I.T. Act, 1961.

6. Subject to the above discussion, total income of the assessee is computed as under :

Business Income

Total income as per return	Rs.	2,569/-
Add back : As discussed above on account of – Unexplained cash credit u/s.68		<u>Rs.2,50,00,000/-</u>
	Total Income	Rs.2,50,02,569/-
	Rounded off	Rs.2,50,02,570/-

7. Penalty proceeding u/s.271(1)(c) has already been initiated separately.

8.. Assessed u/s.143(3) as above. A copy of the order, D.N. and Printout of ITD Calculation Sheet are being issued to the assessee.

6. A perusal of the aforesaid assessment order would reveal that the impugned order passed by the AO is a short and cryptic order without any discussion on merits in respect of any of the documents and details furnished by the assessee to prove the identity and creditworthiness of the creditors and genuineness of the transaction. The AO has simply made the impugned addition on the ground that the assessee had not produced the directors of the share subscriber companies for deposition before him. It has been held by various courts of law including the jurisdictional Calcutta High Court, time and again, that mere non-production of directors of the assessee company or of the share subscriber companies cannot be a ground to hold the share capital as non-genuine. However, the assessee had duly furnished the requisite documents to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction and the Income Tax Authorities have not pointed out any defect/short-coming or infirmity in the detailed evidence furnished by the assessee. In the case in hand, the Ld. Counsel for the assessee has duly demonstrated that out of the three investor companies, two investor companies were majority shareholders of the assessee

company and they had interest into the affairs and progress of the assessee company and, therefore, their motive for investment in the assessee company could not be doubted. Further, he has demonstrated that the subscribing companies were having adequate reserves and surpluses to invest in the assessee company. Further, that all these subscribers were Income tax assesseees. That the share-subscriber companies were having adequate reserves and surplus to invest in the assessee company. Further that all the investor companies were duly incorporated with the Registrar of Companies and were active compliant companies. That there were no paper companies involved in the transaction. That all the transactions were done through banking channel. That there was no immediate cash deposit in the bank account of the share subscriber companies before investment in the assessee company. Therefore, the assessee, in our view, had discharged the initial burden cast upon it. On the other hand, as noted above, the assessment order is a short and cryptic order. Even there is no mention of the name of the share subscribers in the assessment order, what to say of any discussion on the details and evidence furnished by the assessee in respect of these share subscribers. Even during the appellate proceedings, the assessee furnished all the relevant documents to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, however, the Ld. CIT(A) also did not refer to any of the documents furnished by the assessee and did not point out any defect or discrepancy in the same. The Ld. CIT(A) upheld the order of the Assessing Officer in a mechanical manner.

7. The Ld. CIT(A) has given a short observation that the income of the assessee company was not commensurate with the share

subscription. However, the Ld. Counsel for the assessee, has duly demonstrated that the assessee company was an investment company and that investors were majority shareholders of the assessee company and had deep interest in the affairs of the assessee company. The Ld. CIT(A), in this respect, has not made any observation in the impugned order. In our view, there are so many factors and parameters by which an investor decides to invest his money in other companies. It has been held time and again that Income Tax Authorities can not sit in the arm chair of the businessman to decide as to which step of the assessee/business entity relating to his business or investment was justified or not. Every business entity takes its decision according to its strategy, which need not to be put in public domain. Further, even otherwise, since the investment is not made in any unknown company and all the companies are group companies, therefore, the question of justification of premium, loses its importance as the investment is made in the fully known companies. The low income of the companies is not a criteria to determine their creditworthiness/net worth. There is no rebuttal to the fact that the subscriber companies were having substantial net worth to invest in the assessee company. There is no evidence brought on record that the investor companies have received funds in cash from third parties, which have been further transferred to assessee. Neither there is any such allegation made nor the same has been substantiated in assessment order or the appellate order of the CIT(A). In this case, there is no record or observation of any authority that the investor companies are shell companies. In fact, nothing has been discussed specifically about any of the investor companies either in the assessment order or in

the order of the CIT(A) in this respect. The Id. D/R has merely given a general statement that these companies are paper/shell companies but no concrete evidence is filed on record which could prove the substance in such submissions. The documentary evidence available on record, clearly states that the assessee has duly furnished the unrebutted evidence to prove the identity and creditworthiness of the share subscribers and genuineness of the transactions.

8. 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) is concerned, we note that the Hon'ble Supreme Court in the said case 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) 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 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.*"

9. 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.”

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. 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.

11. So far as the contention that the assessee company had not produced the directors of the investment companies for deposition is concerned, the issue is squarely covered by the following case laws:

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 ITO, 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 form 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.”

d) Our view is 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."

12. Our views further fortified by the decision of the Hon'ble jurisdictional Calcutta High Court in the case of Pr. CIT Vs. M/s. Naina Distributors Pvt. Ltd., ITAT 113/2023, IA No. GA/1/2023 dated 28.06.2023, wherein the Hon'ble Calcutta High Court has held as under:

"After carefully considering the findings recorded by the Commissioner of Income Tax, (Appeals) 7 Kolkata (CITA) in his order dated 21.09.2020 and the findings recorded by the learned Tribunal we find that the entire matter is fully factual. The learned Tribunal has independently examined as to the genuinity of the transaction in the matter of raising share capital and the Tribunal noted that even during the assessment proceedings, the assessee has furnished all details in respect of the share capital and share premium raised by the assessee besides the details of the investors by their submission dated 9.6.2014 in reply to the notice issued by the Assessing Officer under Section 142 of the Act dated 5.5.2014. The Tribunal also noted that the assessee had produced all documents, disclosed the names and addresses and PAN Numbers of the investors, copies of the share allotment

advice, copies of the share application form, bank statement, statement giving details of share application, money receipt during the year, copy of Form No.2 evidencing return of allotment and copy of Form No.5 for increase in various capital. Further the assessing officer has issued notice to the investors under Section 133(6) on 11.06.2014 for carrying out independent verification of the transaction and those investors duly responded to those notice and filed the requisite details such as the number of shares subscribed, ledger account, bank statement, explanation for source of funds, income tax returns and audited financial statements and also assessment order framed under Section 143(3) of the Act in all the cases. The Tribunal further noted that in spite of such being the factual position, the only reason for making the addition in the hands of the assessee the director of the assessee company did not respond to the summons issued by the assessing officer under Section 131 of the Act. The correctness of this was also considered by the learned Tribunal and it was held that non-appearance of the director cannot be made a ground for addition in the hands of the assessee under Section 68 of the Act when other evidence relating to the raising of share capital qua the share subscriber were available on record as furnished by the assessee and also cross verified by the assessing officer pursuant to the enquiry conducted in response to the notices issued under Section 133(6) of the Act. The learned Tribunal also referred to the decision of this Court in the case of Crystal Networks Pvt. Ltd. Vs. CIT. reported in 353 ITR 171 (CAL).

Thus we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed”.

13. So far as the reliance of the Ld. DR in the case of ACIT Vs. BST Infratech Ltd. [2024] 161 taxmann.com 668 (Cal.) is concerned, we find that the said decision is not applicable in the case in hand as in the said case, the lower authorities had duly discussed the facts of the case, wherein, it was demonstrated that the cash amounts were deposited in the bank account of the share subscribers before the same were transmitted to the assessee. We, however, in this case, has observed above, the AO, even does not bother of mentioning the name of the share subscriber, what to say of any discussion about the evidence furnished by the assessee. Similarly, in the case of another decision relied upon by the Ld. DR in the case of ‘Bal Gopal Merchants (P) Ltd. Vs. Pr. CIT’ [2024] 162 taxmann.com 465 (Cal), in that case the Tribunal after going through the records has held that the assessee had failed to discharge the initial

burden to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, which factual finding given by the Tribunal has been confirmed by the Hon'ble High Court. However, the facts of both the case laws relied upon by the Ld. DR are quite distinguishable in view of the observation made above. In view of the discussion made above and in view of the proposition laid down through various case laws of the high/highest courts of the country, we do not find any justification on the part of the lower authorities in making the impugned addition and the same is accordingly, ordered to be deleted.

14. In the result, appeal of the assessee is stands allowed.

Order is pronounced in the open court on 26.11.2024.

Sd/-

[Rajesh Kumar]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 26.11.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – Karni Infraprojects Pvt. Ltd.**
2. **Respondent – ITO, Ward-12(3), Kolkata**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar,
ITAT, Kolkata