

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष  
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

**I.T.A. No. 578/Kol/2024**  
**Assessment Year: 2012-13**

M/s Titivate Vyapaar Pvt. Ltd.  (PAN: AACCT 6882 G)	Vs.	ITO, Ward-9(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	26.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	27.11.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. Jhajharia, A.R
For the Respondent/ राजस्व की ओर से	Shri P. P. Barman, Addl. CIT, Sr. DR

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) dated 22.02.2024 for the AY 2012-13.

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) confirming the addition of Rs. 3,37,00,000/- as made by the AO in respect of unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 18.03.2013 declaring total income of Rs. 6,330/-. The case of the assessee was selected for scrutiny under CASS in order to examine large share premium received by the assessee and accordingly notices u/s 143(2) and 142(1) of the Act were duly served upon the assessee along with questionnaire. The AO called upon the assessee to furnish the necessary details / evidence as regards the share capital/share premium raised of Rs. 3,37,00,000/- and also issued notices u/s 133(6) of the Act for independent verification of these transactions by the share subscribers which were duly responded by these parties. Besides, the AO issued summons u/s 131 to the directors of the assessee company for personal deposition and perusing certain information / documents as mentioned in Para 2 at page 2 of the assessment order. Thereafter the assessee furnished all the documents before the AO and the AO upon perusal of the said documents recorded a finding that the assessee could not discharge its onus in the matter of explaining the source of capital as the summons issued u/s 131 of the Act were not complied. Thereafter, the AO treated the same as unexplained cash credit u/s 68 and added the same to the income of the assessee besides adding an interest of Rs. 6,330/-.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after taking into account the contentions as made by the assessee. While dismissing the appeal, the Ld. CIT(A) observed that the assessee has failed to establish identity, creditworthiness of the subscribers and genuineness of the transactions as the share premium was received at a phenomenal high rate of 99900% on the face value of 10 each meaning thereby that the share was issued at Rs. 10,000/- each including premium.

5. Ld. Counsel for the assessee vehemently submitted before the bench that the order passed by the Ld. CIT(A) is wrong and against the facts on record and various decisions given by different judicial forum. The Ld. AR, while referring to the evidences filed by the assessee as well as by the subscribers, submitted that the assessee as well as the subscribers have filed all the evidences proving the identity and creditworthiness of the subscribers as well as genuineness of the transactions. The Ld. AR referred to the replies filed in response to notice u/s. 133(6) of the Act and in

response to summons u/s. 131 of the Act and submitted that the AO has not pointed out any defect or deficiency in these evidences, which abundantly proved the three conditions of section 68 of the Act. The Ld. AR stated that where the assessee has filed all the evidences qua the subscribers consisting of names and addresses, PANs, audited accounts, bank statements etc. and AO has not carried out any further verification, then the addition cannot be made merely on the ground that there was no compliance to summon issued u/s. 131 of the Act. The Ld. AR stated that even the information sought by the AO in the summons issued u/s. 131 of the Act were duly complied. In defense of his argument he relied on the following decisions:

- (i) CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC);
- (ii) CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom);
- (iii) Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol);
- (iv) ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012) and
- (v) Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020).

6. The Ld. D.R strongly controverted and opposed the arguments as put forth by the Ld. A.R by submitting that the share application money was received by the assessee from various subscribers who were not having any creditworthiness. The Ld. D.R submitted that replying to the notices u/s 133(6) and u/s 131 of the Act did not mean that the ingredients as envisaged in section 68 of the Act were duly satisfied. Besides the ld DR stated that the enquiries and investigation could not be carried out by the AO when the subscribers did not appear personally in compliance to summons issued u/s 131 of the Act. Therefore the Ld. D.R ,therefore, submitted that the addition was rightly made by the AO and also confirmed by the Ld. CIT(A) after taking into account the reply of the assessee and the various circumstantial evidences.

7. After hearing the rival contentions and perusing the material on record, we find that the assessee has furnished before the AO as well as the Ld. CIT(A) all the evidences qua raising the share capital/ share premium during the year comprising the proofs of voter IDs, Driving licenses, PAN cards, list of directors with share holders with DIN,

copies of ITRs, copies of bank statements with full narration as to credit and debit entries, source of funds in the hands of investors etc. We find that though the assessee company did not comply with summon u/s 131 by producing the director / principal officer/ individual of the share subscribing companies however, we note that they have filed all the details before the AO. The AO even issued the notice u/s 133(6) of the Act to all the share subscribers which were duly responded by the share investors. The assessee also furnished the details as called in the summons issued u/s 131 of the Act. We note that the AO has not done any verification on the evidences furnished by the assessee as well as by the share subscribers independently and has not pointed any defect of any kind whatsoever. We note that the AO has only harped on the fact that the directors did not turn up on the date and time giving for personal deposition. Besides the AO has harped on the fact that these shares were allotted at very high premium by ignoring the facts that there was no bar on issue of shares of high premium in the AY 2012-13 and the same was applicable from AY 2013-14 because Clause (viib) to Clause 2 section 56 inserted by Finance Act, 2012 w.e.f 01.04.2013. Similarly the provisions in Finance Act, 2012 that the assessee company issuing share premium have to prove source of source has been inserted w.e.f 1.4.2013 is not applicable in the case of assessee for AY 2013-14 onwards. The case of the assessee finds support from the decision of the Hon'ble Bombay High Court in the case of CIT vs. Gangadeep Infrastructure Pvt. Ltd. in 80 taxmann.com 272 (Bom). Therefore, the appellate order passed by the Ld. CIT(A) upholding the assessment order which lacked any enquiry on the evidences filed by the assessee and also failure on the part of the AO to bring any substantive evidences on record, we are unable to sustain the appellate order. In our opinion, the addition cannot be made merely on the ground that the summon issued u/s 131 to the directors of the assessee company were not complied with whereas on the other hand the assessee has filed all the evidences called for by the AO qua the subscribers. We also noted that even the notice issued u/s 133(6) of the Act were fully complied with and same by position with regard to summon issued u/s 131 of the Act as all the details called for by the AO were duly furnished nonetheless no personal appearance was made for deposition. The case of the assessee finds support from the following: Under the

circumstances, we are not in a position to sustain the order of Ld. CIT(A). We find support from the decision of Hon'ble Supreme Court in the case of Orissa Corporation Ltd. (supra)

*“That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, 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 creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, 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 arose. The High Court was right in refusing to state a case.”*

7.1 The case of the assessee is also squarely covered by the decisions of Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT (supra ) wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned un-served or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

*“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 Ld. CIT(A) 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 product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:*

*“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if*

*the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”*

7.2. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:

*“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.*

*9. We have considered the rival submissions. We are of the view that order of Ld. 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 share holder. In this regard it is seen that for AY 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 AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 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 ITAT, 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 Ld. CIT(A) and dismiss the appeal of the revenue.”*

7.3. Similar ratio has been laid down by the Hon’ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd (supra) by holding that provisions of section 68 of the Act can not be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN ,financial and bank statements showing share application money .

8. In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has

not commented on these evidences filed by the assessee. Besides the investors have also furnished complete details/evidences before the AO which proved the identity, creditworthiness of investors and genuineness of the transactions. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above, we are inclined to set aside the order of Ld. CIT(A) by directing the AO to delete the addition.

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

Order is pronounced in the open court on 27<sup>th</sup> November, 2024

Sd/-

Sd/-

(Sanjay Garg /संजय गर्ग)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 27<sup>th</sup> November, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Titivate Vyapaar Pvt. Ltd., C/o, M/s Salarpuria Jajodia & Co.,  
7, C.R. Avenue, 3<sup>rd</sup> Floor, Kolkata-700072
2. Respondent – ITO, Ward-9(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata