

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

**I.T.A. No. 1457/Kol/2023**  
**Assessment Year: 2017-18**

ITO, Ward-4(3), Kolkata	Vs.	Acuity Merchants Pvt. Ltd.  (PAN: AAICA 4474 D)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	21.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	02.12.2024
For the Appellant/ निर्धारिती की ओर से	Ruchika Sharma, Sr. D.R
For the Respondent/ राजस्व की ओर से	Shri S. K. Tulsian, Advocate Sonam Bajoria, A.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 25.10.2023 for the AY 2017-18.

2. The only issue raised by the revenue is against the deletion of addition of Rs. 4,47,75,200/- by the Ld. CIT(A) as made by the AO on account of cash credit u/s 68 being unexplained cash credit.

3. Facts in brief are that the assessee filed return of income for the instant year on 30.03.2018 declaring Nil income after claiming loss of Rs. 3,97,357/-. The case of the assessee was selected for scrutiny under CASS for examination of expenses incurred for earning exempt income, investments/advances/ loans and share premium. The statutory notices were accordingly duly issued and served upon the assessee. The assessee complied with the said notices by filing the details / evidences as called for by the AO and also submitted the calculation of fair market value of the assessee as on 31.03.2017 as per Rule 11UA. The AO from the details filed by the assessee noted that the asse issued 1,15,400 equity shares at the rate of 388 per share with face value of 10 each and premium of 378 and thus received Rs. 4,47,75,200/-. The said amount was received from two companies namely Akansha Commodities Pvt. Ltd. and Invorex Vincom Pvt. Ltd.. The AO also issued notice u/s 133(6) to the share subscribers to independently verify the identity and creditworthiness of the subscribers and genuineness of the transaction which were duly replied by the said parties submitting the details as called for by the AO. Further the AO also issued summon u/s 131 of the Act on 30.10.2019 to the director of the both the subscribers companies and they were asked to appear on 18.11.2019. However, none appeared on the appointed date. Thereafter the AO issued show cause notice as to why the amount credited in the books of account should not be treated as unexplained cash credit. The assessee replied the said show cause notice the AO finally treated the share capital/ share premium received of Rs. 4,47,75,200/- as unexplained cash credit and added the same to the income of the assessee. Besides making other addition of Rs. 8,61,73,500/- in the assessment framed u/s 143(3) of the Act dated 24.12.2019.

3. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

*“3.3. I have considered the rival arguments. Admittedly, it is settled law that the three ingredients to be checked in case of cash credit are (i) genuineness of identity (ii) genuineness of transaction (iii) creditworthiness. As far as genuineness of identity of the two companies are concerned, it is fact that companies are artificial persons and not natural persons. They are creations of Companies Act. It seen from the assessment order and assessee’s submission that assessee as well as the two companies had submitted all documents asked for by the AO like*

*PAN card, ITR, bank account statement, books of account etc. The two companies are existing assessees of Income tax department. AO has not said anything about their nonexistence in Income Tax department's records or Registrar of Company's records. AO said that Inspector and postman of postal department could not find at the given address. Address may change, particularly when assessment takes place a few years after previous year. Directors of assessee company were directors of creditor/ depositor companies too. So, there was no doubt about genuineness of identity of directors. Further, there was compliance and filing of all documents suggesting that the depositor companies existed. In fact, AO requisitioned some documents like books of account and financial statements for FY 2015-16 and list of shareholders, as mentioned in Para 5 of assessment order, which were not quite germane. Case laws cited by assessee also point towards the position of law on this issue. On the basis of the above, I am of the opinion that AO's conclusion that genuineness of identity of the two creditor companies was not proved is not correct.*

*3.4 As far as genuineness of transaction is concerned, it is admitted by AO also that the amount travelled from the bank accounts of the two creditor companies to the bank account of assessee. So, the transactions cannot be said to be non-existent or false. Next issue is, whether these are sham, whether matching account went from assessee's account to the accounts of the two companies before or after the impugned transactions. That did not because AO has written in Para 9 (page 4) of his order that the matching amounts went from Vashine Conclave Pvt Ltd and Finnlines Promoting Pvt Ltd. AO has not proved that any amount was paid by assessee company even to Vashine Conclave Pvt Ltd and Finnlines Promoting Pvt Ltd as quid pro quo. In other words, AO has not brought out anything on record to show that assessee's own money went to the creditors' accounts before or after the payment by those two companies. So, I think, AO has not brought out any material evidence to say that transactions were not genuine. In view of the above, issue of genuineness of transaction is decided in favor of the appellant.*

*3.5 Regarding creditworthiness of the two creditor companies, it is seen from bank account statements that on 7.1.2017 the appellant did not have sufficient fund to pay for purchase of shares. But on the same day, amount was credited to their accounts and immediately thereafter, the amount went by transfer to the assessee's account. In other words, the two creditor companies, Kabari and Akansha got money from another company and thereafter paid to assessee. This was also in lieu of shares which means it was investment by Finnlines and Vashine. So, it is proved and agreed that after receipt of fund from Finnlines and Vashine, the two creditor companies became creditworthy or had sufficient fund to invest in assessee company. AO stressed on the issue that the two creditor companies did not have "own fund" and had only borrowed fund. I am of the opinion that the law requires AO to see whether creditor was creditworthy or capable to give the amount and does not further want to see whether creditor was capable to give from OWN fund. It is settled law that direct tax laws are to be interpreted strictly as it is without inserting or removing any word or without inserting intendment of legislature particularly when power of judicial interpretation lies with the Supreme Court and High Courts only. On the basis of the above discussion, I hold that assessee has proved its creditworthiness.*

*3.6 The judgment of Sophia Finance Ltd, cited by AO, merely says, AO has power to make enquiry into identity, true character of transaction, source of fund of the depositor etc. In the present case, AO has done the same and his doing so or power to do so is not the issue challenged in this appeal. The case law of Sumati Dayal said that human probabilities is important even if direct evidences suggest something. In the present case, AO has not brought out anything which is humanly not probable. So, the ratios of this judgment is also not applicable.*

*3.7 Thus, all three ingredients have been proved. Therefore, I delete the addition of Rs. 4,47,75,200/-."*

The Ld. CIT(A) also deleted the addition made by the AO on account of advances received of Rs. 14,48,57,451/- which is not under challenge before us.

4. After hearing the rival contentions and perusing the material on record, we find that the assessee has filed all the evidences in respect of share capital/share premium. We note that even the notices issued u/s 133(6) by the AO for independent verification of this transactions were duly replied by the share subscribers who furnished all the details/ evidences as requisitioned by the AO. However, the summon issued u/s 131 of the Act were not complied with. We note that the assessee has raised shares from two group companies having a common director at market value determined u/s 11UA of the Act. We also observed that the Ld. CIT(A) has noted that the assessee as well as the share subscribers had submitted all the details comprising PAN card, ITRs, bank statements, books of account etc. and the subscribing companies were existing in the income tax record. The Ld. CIT(A) also noted that the AO has not done anything to carry out the facts of the other verification on the evidences filed by the assessee. The mere fact that the inspector / post man could not trace the address cannot a sole factor for treating the money raised in the form of share capital/ share premium as unexplained cash credit. In para 3.4, the Ld. CIT(A) noted that the genuineness of the transaction cannot be doubted as the money flowed from the bank account of the two subscribing companies to the bank account of the assessee and it is not the case of the AO that any cash introduction has taken place before the date of investment. In Para 3.5 the Ld. CIT(A) discussed about the creditworthiness of the investors and thus recording a finding a fact that investors have the creditworthiness to invest in the assessee company and it is not necessary that the investor should be made out his own funds as there is no bar on raising money and then investing the money in the assessee company. The Ld. CIT(A) also had the case law in the case of Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC) which deals with the human probability is not applicable as the AO has failed to bring on record anything which is humanly not probable even otherwise the Ao has failed to bring any substantive material which proves that ingredients as enumerated in

Section 68 are not satisfied. Moreover, the mere addition on the basis of non-compliance of summon is not sustainable in the eyes of law as has been held in the following decisions namely (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).

4.1 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 uphold the order of Ld. CIT(A) by dismissing the appeal of the revenue.

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

Order is pronounced in the open court on 2<sup>nd</sup> December, 2024

Sd/-

Sd/-

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)  
Judicial Member/न्यायिक सदस्य

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

Dated: 2<sup>nd</sup> December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-4(3), Kolkata
2. Respondent – Acuity Merchants Pvt. Ltd., Amrita Abasan Bimalendu Ghosh Sarani, Sonarpur, Kolkata-700150.
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- 2, Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata