

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 768/Kol/2024**  
**Assessment Year: 2012-13**

Rapid Commotrade Pvt. Ltd.  (PAN: AACCR 6599 L)	Vs.	ITO, Ward-7(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	20.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	09.12.2024
For the Appellant/ निर्धारिती की ओर से	Shri Manish Tiwari, FCA
For the Respondent/ राजस्व की ओर से	Shri Pradip Kumar Biswas, Addl. CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is the appeal preferred by the assessee against the order of Id. Commissioner of Income Tax(Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 26.03.2024 for the AY 2012-13.

2. The only issue raised in ground no. 1 to 4 is against the confirmation of addition of Rs. 1,85,30,000/- by the Ld. CIT(A) as made by the AO in respect of share capital/share premium u/s 68 of the Act.

3. Facts in brief are that the assessee filed return of income on 03.09.2012 declaring total income at Rs. 4,20,011/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee which was replied by the assessee by submitting various documents/details as called for by the AO. The AO in order to independent verify these transactions also issued summon u/s 131 to the assessee on 20.02.2015. The AO even admitted the Id. Counsel of the assessee filed all the details which were placed in the assessment folder. Thereafter the AO issued a final show cause notice on 25.02.2015 which was complied with by the assessee. Thereafter the AO noted that there was no compliance to the summon issued u/s 131 of the Act and therefore, the assessee has failed to discharge the onus to prove the transaction. Finally the AO made the addition of Rs. 1,85,30,000/- to the income of the assessee by treating the same as unexplained cash credit besides making an addition of Rs. 69,410/- u/s 14A read with Rule 8D in the assessment framed u/s 143(3) of the act dated 27.03.2015.

4. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by noting that there was non-filing of required details called for by the AO beside non-production of the investors by the assessee and non-attendance to the creditors to the summon conclusively proved that the share capital appeared in the books of account were not genuine and thus sustained the addition.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee raised money by issuing equity shares to four parties namely Gallant Dealers Pvt. Ltd., Saharsh Holdings Pvt. Ltd., Stuti Securities Pvt. Ltd., and Sunview Tradelinks Pvt. Ltd. We note that the Id. Counsel, in response to various questionnaire, file detailed submissions before the AO along with evidences/ details in respect of money raised in the form of share capital/ share premium. However, the AO's contentions was that though the assessee has filed all the details as called for, yet the summon issued u/s 131 to the assessee remained uncomplied with. The AO has noted that the issue of equity shares at such high premium was not justified. We also note

that the assessee has issued shares based on the valuation report a copy of which is attached at 164 to 172 of the PB which justified the issue of equity shares at such a premium. We note that the said valuation was filed before the AO vide written submission dated 07.02.2015 and vide para no. 11 the assessee stated that the equity shares of face value of Rs. 10/- each with share premium of Rs. 990/- per equity shares was based upon the CA certificate along with copy of valuation of the property of the company. Even we note that there was no application of mind by the AO at the time of assessment and similarly in the appellate proceedings also the Ld. CIT(A) confirmed the addition despite the assessee specifically pointing out that out of Rs. 2,49,92,000/- shown as equity share as on 31.03.2012 by the assessee, a sum of Rs. 1,70,00,000/- adjusted towards allotment of shares was actually received in the earlier assessment year and therefore cannot be considered as addition under section 68 of the Act. The assessee filed a details before the Ld. CIT(A) on 30.06.2016 wherein the issue has been elaborately discussed in page 1 and 2 of the written submission. We note that even qua money raised from four subscribers, all the documentary evidences including assessments framed u/s 143(3)/143(1) were placed before the authorities below. In the case of Gallant Dealers Pvt. Ltd the share capital/share premium received were Rs. 14.00 Lacs and all the documents such as bank statement, audited balance sheet and confirmation are available in the paper book from page no. 58 to 77. We also note that the assessee in response to notice u/s 131 submitted before the AO vide letter dated 28.02.2015 requesting that a week time may be given for making compliance to the summon u/s 131 of the Act . Similarly in response to Saharsh Holdings Pvt. Ltd. we note that the money raised was Rs. 35 Lacs and all the details were submitted by the subscriber in response to notices issued u/s 133(6). From M/s Stuti Securities Pvt. Ltd the money invested was Rs. 50.00 lacs and all these details were also available in the paper book with evidences. Similarly in respect of final subscribers M/s Sunview Tradelinks Pvt. Ltd. details were filed before the AO as well as before the Ld. CIT(A). We note that in the case of first subscriber the assessment was framed u/s 143(3) / 147 of the Act vide order dated 24.05.2019 whereas in respect of second , third and fourth subscribers the assessments were made

u/s 143(1) of the Act and are available in the paper book. We note that all the subscribers have filed their replies before the AO confirming the investments along with source of fund with copies of ledger accounts, bank statements, ITRs and audited statement of accounts etc. However both the authorities below have failed to carry out any investigation and enquiry on the documents furnished by the assessee as well as by the subscribers and merely harped on the fact that compliance to the summons were not made. In our opinion, the AO as well as Id CIT(A) acted in total disregard to the facts on records as even the money raised during the earlier assessment year was added u/s 68 and confirmed which was to the tune of Rs. 1,72,00,000/-. Moreover, the addition cannot be made merely on the basis of the fact that there was no compliance to summons issued u/s 131 to the assessee as well as subscribers when all the corroborating evidences are furnished before the authorities. We find support from the following decisions in our conclusion namely CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC), CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom), Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol), ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012) and Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020). Considering these facts and circumstances, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. The ground of appeal is allowed.

6. So far as the second addition of Rs. 6,9410/- u/s 14A read with Rule 8D(2)(iii) which is raised in ground no. 5, we note that during the year the assessee has earned dividend income only Rs. 1540/-. Therefore, disallowance in the instant case cannot be exceeded the exempt income. In view of the decision of the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs. CIT (ITA No. 117/2015) dated 25.02.2015. Considering the facts and circumstances of the case and the ratio laid down, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition. The ground is allowed.

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

Order is pronounced in the open court on 9<sup>th</sup> December, 2024

Sd/-  
(Sonjoy Sarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

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

Dated: 9<sup>th</sup> December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Rapid Commotrade Pvt. Ltd., 6B, 6<sup>th</sup> Floor, 3C, Dr. U. N. Brahmachari Street, Kolkata-700017
2. Respondent – ITO, Ward-7(1), Kolkata
3. Ld. CIT(A)- Kolkata
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata