

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

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA No.1540/KOL/2024
(Assessment Year:2013-14)**

DCIT
5th Floor, 110, Shantipally,
Aaykar Bhavan Poorva, Kolkata-
700107, West Bengal

(Appellant)

**Vinod Nirman Private
Limited**
Vill Kalachara, Chanditala
P.O. Kolkata, Kolkata-
712702, West Bengal

(Respondent)

Vs.

PAN No. AACCV5313J

CO No. 44/KOL/2024

(Arising in ITA No. 1540/KOL/2024 for A.Y. 2013-14)

**Vinod Nirman Private
Limited**
Vill Kalachara, Chanditala
P.O. Kolkata, Kolkata-
712702, West Bengal

(Applicant)

DCIT
5th Floor, 110, Shantipally,
Aaykar Bhavan Poorva, Kolkata-
700107, West Bengal

(Respondent)

Vs.

Assessee by : Shri Sunil Surana, AR
Revenue by : Shri Jitendra Kantilal Surti, DR

Date of hearing: 03.12.2024
Date of pronouncement : 20.12.2024

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Department and CO by the assessee against the order of the Commissioner of Income-tax (Appeals), kolkata-21,(hereinafter referred to as the "Ld. CIT(A)") dated 29.02.2024 for the AY 2013-14.



02. The only issue raised by the Revenue is against the deletion of addition of ₹1,48,00,000/- by the Id. CIT (A) as made by the Id. AO u/s 68 of the Act, in respect of share capital raised during the year whereas the assessee has filed cross objection challenging the validity of reopening proceedings itself on the ground that there was no tangible material before the AO and the reopening is based on the post search enquiries.
03. First of all, we will adjudicate the departments appeal.
04. The facts in brief are that the assessee filed its return of income as nil on 06.09.2013, declaring total loss of ₹14,487/-/-. The return was processed u/s 143(1) of the Act on 07.03.2014, accepting the return of income. The case of the assessee was reopened u/s 147 of the Act, after the AO received information that assessee is a beneficiary of bogus share capital of ₹1,48,00,000/- and accordingly, notice u/s 148 of the Act on 22.09.2017. The assessee complied with said notice by filing return of income on 15.09.3028. Thereafter, the statutory notices u/s 143(2) & 142(1) of the Act were issued , along with questionnaire and were duly served upon the assessee. They were replied from time to time furnishing the details called for by the Id. Assessing Officer. The assessee noted that the assessee has issued equity shares capital to four parties on face value of ₹10 each thereby raising a sum of ₹1,48,00,000/-. The Id. AO has given the details of these companies in the assessment order itself. According to the Id. AO, during search and pre-search operation, some information was collected that the assessee who is related to Saraogi Group has availed some bogus accommodation entries in the form of share capital. The assessee filed before the Id. AO in respect of three



subscribers, copies of ITRs, board resolutions ,applications for allotment of equity shares, bank statements, audited financial statements, form 1 and master data of the subscribers and also filed the details of allotment which were made during the year. The copies of audited financial statement, bank statement, annual return, etc. relating to the assessee were also furnished. The Id. AO also issued notice u/s 131 of the Act, requiring personal attendance of the subscriber companies which were not served and returned. Thereafter, the Id. AO issued show cause notice u/s 26.11.2018, giving the final opportunity to the directors of the subscriber companies , the same also remained non-complied with. Finally, the Id. AO concluded that the money raised by the assessee was not explained as the assessee failed to establish the identity, creditworthiness of the subscribers and genuineness of the transactions and added the same to the income of the assessee u/s 68 of the Act and framed the assessment u/s 143 read with section 147 of the Act dated 18.12.2018.

05. The Id. CIT (A) allowed the appeal of the assessee by observing and holding as under:-

"Discussion & Findings

I have carefully examined the impugned assessment order, the submissions of the appellant, remand report, rejoinder to remand report, the citations relevant to this appeal as well the other materials on record. Thereafter, this appeal, ground-wise, is being disposed as under:

This ground agitates against the action of the AO in making addition of a sum of Rs. 1,48,00,000/- on account of share application money received on the ground that the share applicants were not found at the given address.

During the year under consideration the assessee company had raised share capital & premium amounting to Rs.1,48,00,000/-. The assessee company received share capital of Rs.13,00,000/- from M/s Dynamic Sarees Pvt. Ltd., Rs.50,00,000/- from Berhampore Finance & Leasing Pvt. Ltd., Rs.73,00,000/- from M/s Pilot Barter Pvt. Ltd and Rs.12,00,000/- from M/s Swift Barter Pvt. Ltd

respectively. As recorded by the AO, the assessee company had allotted 14,80,000 shares at a face value of Rs.10/- per share. The details are as follows:

Name of Company	No. of shares	Face Value	Share Premium	Share Capital Raised in Rs.
Dynamic Sarees P Ltd.	1,30,000	Rs.10/-	Nil	13,00,000/-
Berhampur Finance & Leasing Ltd.	5,00,000	Rs.10/-	Nil	50,00,000/-
Pilot Barter Ltd.	7,30,000	Rs.10/-	Nil	73,00,000/-
Swift Barter Pvt. Ltd	1,20,000	Rs.10/-	Nil	12,00,000/-
Total				1,48,00,000/-

It is evident that the shares were issued at par and no premium was charged.

The appellant in his submission has stated that the share application money was received through proper banking channels, and that the share holder companies had sufficient fund in their books of account for the purpose of investment & the investments are reflected in their books of account. The appellant has submitted the Bank account statements of the shareholders to confirm that the transactions were made through banking channels.

In the course of assessment proceedings details of share capital raised i.e., name & address of the share applicants, no of shares allotted and amount along with Form No- 2 filed with ROC, ITR acknowledgement, relevant bank statements showing receipt of such share capital, copies of audited accounts of the share applicants, share application forms etc were submitted before the AO by the appellant.

On perusal of the assessment order, it is observed that the AO made the additions on the following grounds.

i. The share subscribers were not found in the given address ii. The assessee did not produce the director of the subscriber company.

iii. Share applicant companies disclosed meager income

The documents submitted by the appellant have been perused. The appellant has stated that the share applicant companies regularly filed their income tax returns. As per documents placed on record, it is observed that all the share applicant companies regularly file their income tax returns which are duly processed u/s 143(1).

From the audited books of account of the three share subscriber companies, viz. the following facts emerge:

Name of Company	Capital and Reserves	Investment with assessee
Dynamic Sarees P Ltd.	1,32,38,356/-	13,00,000/-



Berhampur Finance & Leasing Ltd.	32,91,75,291/-	50,00,000/-
Pilot Barter Ltd.	3,68,88,760/-	73,00,000/-
Swift Barter Ltd.	8,82,24,382/-	12,00,000/-

Evidently all the share applicant companies had sufficient funds with them for the purpose of making such investments. In support of Genuineness of Transaction, the appellant submitted Bank statements showing the transactions through banking channel. I find that the AO has not been able to dispute these facts placed by the appellant, both during the course of assessment proceedings as well as appellate proceedings.

The agitation of the appellant is further vindicated by the following statement in his submissions during the course of appeal proceedings that :

“ It may be stated here that the same company m/s Berhampur finance & leasing pvt. ltd. contributed share capital in another group company of the assessee namely kohinoor sarees p ltd which case also was reopened and the Ld AO accepted the capital in respect of the said company but added only in respect of the receipt from M/s Earth Tradelink pvt. Ltd. which too was deleted by the Id CIT(A), a copy of order of Ld CIT(A) is enclosed herewith.”

The said assessment order pertaining to M/s Kohinoor Sarees Pvt Ltd for A.Y: 2009-10 u/s 143(3) r.w.s 147 has been perused and it was observed that the AO had reopened the proceedings u/s 147 based upon the information received from ADIT(Inv) Unit-3(4) towards receipt of share capital to the tune of Rs.2,10,00,000/-. Out of the said amount, an amount of Rs.50 Lakhs was raised from M/s Berhampur Finance & Leasing Ltd. The AO in his assessment order, has accepted the entire share capital received from M/s Berhampur Finance & Leasing Ltd. and has not made any addition towards the same.

Owing to all these reasons, a Remand Report was called for from the present Assessing Officer for her comments. However, it is observed from the Remand Report submitted by the AO, no discussion was made by the AO with regards to any further enquiries conducted in this regard especially in view of the contentions raised by the appellant. The contentions raised by the appellant has therefore not been controverted by the AO. In the said remand report, the AO has only reiterated that during the course of assessment proceedings Directors of these three share subscriber companies did not appear in response to the notices u/s 131.

On the above point appellant submitted the rejoinder to the remand report. From the rejoinder, following points were noted with regard to the said ground:

(a) During Assessment proceedings the appellant submitted following details to prove the genuineness of the transaction, identity & creditworthiness of the shareholders:

(i) share applications (ii) allotment letters (iii) MOA and AOA of the shareholders (iv) Financial statement of the relevant Assessment years, (v) copy of bank statements (vi)



Form No. -2 being the return of allotment filed before ROC (vii) Master Data of the Shareholder taken from ROC showing all the companies as active (viii) details of registered office of the companies as per www.mca.gov.in. (ix) Schedule of the balance sheet of the shareholder from FY 2012-13 to 2017-18 showing that they were holding the shares of assessee company from ROC which also proved that they were regularly making compliance under company law. (x) PAN No. of allottee company.

The AO states that the parties were not found at the given address. However, in the assessment order itself, the AO has discussed that as per the Inspectors Report submitted before ADIT(Inv) Unit-3(4), that the Inspector was able to serve notice u/s 131 on the three companies at the registered office of the companies on 15.02.2016. During the course of assessment proceedings or appeal proceedings, however no Inspector enquiry has been made by the AO to ascertain the whereabouts of the said companies.

In the case of Kohinoor Sarees Pvt Ltd for the assessment year 2009-10, shares were issued to one of these common shareholders namely M/s Berhampur Finance & Leasing Ltd. The AO assessing them accepted the contribution from Berhampur Finance & Leasing Ltd. The Ld AO himself found the said party as genuine and accepted the share capital received from M/s Berhampur Finance & Leasing Ltd. Therefore, when in another group company, the said shareholder was found and complied and the AO has accepted the same, then how can the creditworthiness of the said shareholders or genuinity of transaction be disputed in another group company.

During Appeal Proceedings also the Appellant submitted all the relevant document inter alia including the following:

In support of Identity, appellant submitted Master data downloaded from ROC mentioning the three share subscriber companies as "Active" along with ITR`s filed by the share subscriber companies for the A.Y. 2012-13.

In support of Creditworthiness, appellant submitted Books of accounts of three share subscriber companies showing fund position held with them, which has already been discussed earlier in this order.

In support of Genuineness of Transaction, appellant submitted Bank statements to establish that the transactions through banking channel.

In view of these discussions, I find that since the share subscriber companies are active on ROC records and have been filing their ITR`s regularly, the identity of these companies cannot be placed under doubt. Similarly no comments has been made by the AO regarding the sufficient funds available with the share applicant companies before investment and since the bank statements were placed before the AO, the respective fund inflow of these companies, has also not been doubted by the AO. The AO has also not been able to bring forth any fund flow statement or any evidence to substantiate his allegation that it was the unaccounted money of the appellant which was brought back in the form of share capital. I find that in the assessment order, there is singular absence of any enquiry conducted by the AO regarding the creditworthiness of the share applicant companies as well as genuineness of the transactions. Similarly, since the share applicant companies regularly filed their Income Tax Returns which were duly processed u/s 143(1), their identity cannot be placed under doubt, especially owing to the fact that the Departmental Inspector was able to locate their office and serve the summons upon them, besides the fact that one of



the share applicants investing in a group concern of the appellant has been accepted. Therefore, I find that the appellant has been able to discharge his onus towards establishing the identity, creditworthiness of the share applicants as well as the genuineness of the transactions.

The AO on the other hand, made no further enquiries in respect of the documents submitted by the appellant. So, in absence of any cogent evidence from the AO, no doubt can be raised on creditworthiness of these companies. The transactions were also made through banking channels and therefore it is hard to doubt the genuineness of these transactions.

The appellant has submitted a plethora of judgements in support of his contention. I find that various courts including the Hon. Jurisdictional High Court has held that where the assessee offers an explanation to the AO by placing evidence regarding the identity of the investor along with relevant documentary evidences such as relevant bank statements, share certificates etc, 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, which in the instant case has not been made.

It is observed that the AO in her Remand Report has placed reliance upon the judgement of the Hon. Delhi High Court in CIT vs Oasis Hospitalities Pvt. Ltd. The said judgement has been perused and it is observed that the Hon. Delhi Court in the said judgement is of the similar opinion that where the assessee offers an explanation to the AO by placing evidence regarding the identity of the investor along with relevant documentary evidences such as relevant bank statements, share certificates etc, 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. The relevant part is being reproduced :

“As far as creditworthiness or financial strength of the credit/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. This judgment further holds that once these documents are produced, the assessee would have satisfactorily discharge the onus cast upon him. Thereafter, it is for the AO to scrutinize the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion.”

*The Hon'ble Jurisdictional High Court in the case of **CIT VS. Dataware Private Ltd.** [ITAT No. 263 of 2011 dated 21.09.2011] while examining the issue of addition of share application money received by the assessee therein u/s 68 of the Act, held that after getting the PAN number and getting the information that the creditor is assessee under the Act, the Assessing Officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the*



Assessing Officer of the Creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. The Hon'ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

In a very recent judgement, the Hon'ble Calcutta High Court in the case of **PCIT Vs. Naina Distributors Pvt. Ltd. in ITAT/113/2023, IA No. GA/1/2023 dated 28.06.2023** has decided the issue in favour of the assessee by holding that mere non-production of director cannot be the ground for making any addition in the hands of assessee u/s 68 of the Act. The operative part is reproduced 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."

Owing to the above discussion, I cannot agree with the contention of the AO that the identity, creditworthiness and genuineness of the transaction were not proved. The addition of Rs. 1,48,00,000/-, therefore, cannot be sustained and stands deleted. This ground is allowed."

06. After hearing the rival contentions and perusing the materials available on record, we find that the case was reopened u/s 147 of the Act on the basis of information recovered during search and post search operation that the assessee has been beneficiary of bogus share capital from three subscribers amounting to ₹ 1,48,00,000/-, the details of which are given in extraction of the appellate order above. We note that the Id. CIT (A) has given very comprehensive findings while deleting the addition. The Id. CIT (A) noted that these transactions were routed through banking channel and all the evidences were placed before the Id. AO qua these subscribers. The Id. CIT (A) in page no. 37 have been discussed the total net worth of the subscribes and money advanced to the assessee company. The Id. CIT (A) even noted that from one of the subscriber's M/s Berhampore Finance & Leasing Pvt. Ltd. was raised Rs. 50 lacs was accepted in the assessment framed. The Id. CIT (A) even called for remand report but the Id. AO did not give any finding in the remand report and merely oppose the deletion of addition. Finally, the Id. CIT (A) has noted that the assessee has filed all the evidences whereas the AO has not pointed out any defect or deficiency in these documents which are on record. The Id. CIT (A) after following the decision of Hon'ble Jurisdictional High Court in case of CIT Vs. Data ware private Ltd. [ITA no. 263 of 2011 dated 21.09.2011] and Hon'ble Calcutta High Court in case of PCIT Vs. Naina Distributors Pvt. Ld. in ITAT/112/2023, IA No. Ga/h1/2023 dated 28.06.2023, allowed the appeal of the assessee. In



the case of Data ware Private Limited (supra), wherein the Hon'ble High Court has held that where the assessee has given PAN No. and other information along with names of creditors, the Id. AO should enquire the creditworthiness, genuineness of the transactions and whether such transaction has been accepted by the Assessing Officer of the Creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. Similarly, in the case of PCIT Vs. Naina Distributors Pvt. Ltd. in ITAT/113/2023, IA No. GA/1/2023 dated 28.06.2023 has decided the issue in favour of the assessee by holding that mere non-production of director cannot be the ground for making any addition in the hands of assessee u/s 68 of the Act. Similar ratio has been laid down by the Hon'ble Apex Court in CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC), Hon'ble Bombay High Court in CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom).

07. In view of the facts and the ratio laid down in the various decisions as discussed above, we find no infirmity in the order of the Id. CIT (A) and consequently uphold the same. The appeal of the Revenue is dismissed.
08. Coming to CO of the assessee, the assessee has raised legal issue. We find that the Id. AO in the reasons recorded referred to the material found during the course of search and based on the search enquiries that the assessee is a beneficiary of bogus share capital. We note that that the Id. AO has not made any enquiry independently and just made the conclusion as to reopening the assessment based on the search enquiries. Therefore, this is the case of borrowed satisfaction



by the Id. Assessing Officer. The case of the find support from the decision of Hon'ble Dehi High Court in case of PCIT Vs. Meenakshi Overseas (P.) Ltd. [2017] 395 ITR 677 (Delhi). Accordingly, the re-assessment proceedings as well as assessment order is hereby quashed.

09. In the result, the appeal of the Revenue is dismissed and cross objection by the assessee is allowed.

Order pronounced in the open court on 20. 12.2024.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 20.12.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata