

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

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

**ITA No.1302/KOL/2024
(Assessment Year: 2012-13)**

**M/s Swarnalaxmi Dealcom Pvt.
Ltd.**

5/1/Clive Row, 2nd Floor, Room
No.54, Kolkata-700001,
West Bengal

(Appellant)

ITO Ward-7(3), Kolkata

Aayakar Bhawan, P-7,
Chowringhee Square,
Kolkata-700069
West Bengal

(Respondent)

Vs.

PAN No. AALCS9071K

Assessee by : Shri Ankit Jalan, AR

Revenue by : Shri Amuldeep Kaur, DR

Date of hearing: 18.12.2024

Date of pronouncement : 15.01.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 28.05.2024 for the AY 2012-13.

02. The only issue raised by the assessee in the grounds of appeal is against the confirmation of addition of ₹2,06,20,000/- by Id. CIT (A) as made by the Id. AO on account of share capital/ share premium being unexplained u/s 68 of the Act.
03. The Id. AR at the outset, submitted that on page no.2 at para 1 of the assessment order the Id. AO noted that the assessee appeared before the Id. ITO, Ward-12(3), Kolkata and filed the details as asked for by the Id. Assessing Officer, however, did not complied with the summons issued u/s 131 of the Act and made addition of



₹2,06,20,000/- on account of share capital/ share premium by treating the same as unexplained cash credit. Similarly, the Id. CIT (A) in the appellate order in para 6.2.1 dealt with the submissions of the assessee that the shares were issued in lieu of investments made in other companies and therefore, Section 68 of the Act has no application where there is no involvement of any cash or money is not credited into the books of accounts of the assessee. Thereafter, the Id. CIT (A) noted that however this contention was not raised before the Id. AO and accordingly, documents submitted by the assessee were forwarded to the Id. AO vide letter dated 25.01.2024 for remand, however, no response was received despite repeated reminders i.e. dated 13.02.2024, 29.02.2024 and 26.02.2024 and finally, the case was decided on the basis of available information. The Id. CIT (A) thereafter confirmed the addition primarily on the basis that the assessee could not produce the director of the subscribing committee before the Id. Assessing Officer. The Id. AR therefore prayed that in the interest, justice and fair play the matter may kindly be restored to the file of the Id. AO for *denovo* necessary verification as to the fact that whether the assessee has issued these shares in lieu of allotment of shares in other companies or not. If the plea of the assessee is correct then no addition is called for u/s 68 of the Act as it has no application.

04. The Id. DR on the other hands relied on the orders of the Id. lower authorities and submitted that assessee has failed to file any substantive evidences to prove its contention before the authorities below and therefore, the appeal of the assessee may kindly be dismissed.
05. Having heard the rival contentions and perusing the materials available on record, we find that the Id. CIT (A) in para no.6.2.1 has



clearly noted the contention of the assessee before the appellate authority that the shares were issued on barter basis i.e. in lieu of allotment of shares in other companies. However, the Id. CIT (A) has not dealt with these contentions despite having sent the documents filed by the assessee to the Id. AO for remand which was not sent by the Id. AO despite repeated reminders. Under these facts and circumstances, we are of the view that ends of justice would be made if the appeal is restored to the file of the Id. AO with a direction to decide the same *denovo* after taking into account these evidences and also after allowing reasonable opportunity of being heard to the assessee.

06. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15.01.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.01.2025

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