

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

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

**ITA No.2168/KOL/2024
(Assessment Year:2012-13)**

Kalyanakari Wholeseller Pvt. Ltd.
Room No. 505, 5th Floor, 277,
B.B. Ganguly Street,
Kolkata-700012
West Bengal
(Appellant)

Vs.

ITO, Wad-11(1)
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata, West Bengal
(Respondent)

PAN No. AAECK6914E

**ITA No.2296/KOL/2024
(Assessment Year:2012-13)**

ITO, Wad-11(1)
Aaykar Bhavan, P-7,
Chowringhee Square,
Kolkata, West Bengal
(Appellant)

Vs.

Kalyanakari Wholeseller Pvt. Ltd.
Room No. 505, 5th Floor, 277,
B.B. Ganguly Street,
Kolkata-700012
West Bengal
(Respondent)

Assessee by : Shri Sunil Surana, AR
Revenue by : Shri P.N. Barnwal, CIT DR

Date of hearing: 23.01.2025
Date of pronouncement : 24.02.2025

ORDER

Per Rajesh Kumar, AM:

These are the Cross appeals preferred by the assessee and Revenue against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 03.10.2024 for the AY 2012-13.



02. The only issue raised in ground nos. 2 to 5, in ITA No. 2168/KOL/2024 in assessee's appeal, is against the order of Id. CIT (A) confirming the part addition of ₹6,20,87,580/- by the Id. CIT (A) as against addition made by the Id. AO of ₹12,41,75,000/- on account of share capital / share premium.
03. The facts in brief are that the assessee filed the return of income on 28.08.2012, declaring total income at ₹ nil. The case of the assessee was selected for scrutiny and accordingly, statutory notices were duly issued and served upon the assessee. Accordingly, the assessment u/s 143(3) was framed vide order dated 25.03.2015, assessing the total income at ₹12,41,75,160/-, after making the addition on account of share capital / share premium issued during the instant financial year amounting to ₹12,41,75,160/- as unexplained cash credit u/s 68 of the Act. In the first round of litigation, the matter travelled upto the Tribunal and tribunal restored the matter to the file of the Id. AO for denovo adjudication after examining the facts and evidences filed by the assessee and after affording a reasonable opportunity of hearing to the assessee. Pertinent to state that the Tribunal vide order dated 20.12.2020 in Para 4 observed that the books of accounts, bank statements, copy of returns were furnished by the assessee but not considered by the Id. AO during the assessment proceedings and therefore to meet the end of justice, the issue was remanded to the file of the Id. AO for fresh adjudication. In the set aside proceeding, the assessee filed copies of PAN Cards, the audited financial statements, bank statements of the subscribers and the Id. AO even noted that the subscribers have been assessed u/s 143(3) of the Act. Thereafter, Id. AO simply added the amount of share capital / share premium again on the ground that any prudent person would not invest in such company which has no significant assets or no track



record of business and finally framed the assessment u/s 143(3) read with section 144 of the Act dated 28.03.2022.

04. In the appellate proceedings, the Id. CIT (A) simply,, after taking into account the submission made by the assessee, observed in Para 4.1 that to end the process of litigation a fair view is taken and profit is taken at 50% of the total credits of ₹12,41,75,160/-, which comes to ₹6,20,87,520/- and thereby partly allowed the appeal by deleting the addition to the extent of 50%.
05. The Id. Authorized Representative vehemently submitted before us that the assessee has filed all the evidences before the Id. AO such as names, addresses, PANs, audited financial statements, bank statements, etc. evidencing that the shareholders have invested money in the assessee company and all the money has been received through banking channels. The Id. Authorized Representative further submitted that the Id. AO, in order to independently verify the transactions, issued notices u/s 133(6) of the Act to the subscribers of shares and all the subscribers duly furnished their replies along with the evidences as were called for by the Id. AO. The Id counsel for the assessee submitted that Id. AO has not disputed or drawn any adverse inference against the shareholders. Pertinent to state that these enquiry letters were issued in the course of first assessment proceedings. The Id. Authorized Representative stated that the assessee had issued shares to six share subscribers. The assessments were framed u/s 143(3) of the Act in the case of 5 subscribers out of total 6 subscribers. The Id. Authorized Representative further referring to the paper book submitted that all the evidences qua the subscribers were filed before the authorities below and also before this tribunal which is available very page nos. 15 to 261 of the paper books.



However, any of authorities below did not find any defect or deficiency in the said evidences filed by the assessee as well as by the subscribers. Therefore, the Id. Counsel for the assessee submitted that the finding of Id. CIT (A) estimating the profit at 50% of the total share capital/ share premium is perverse finding and may kindly be set aside by allowing the appeal of the assessee.

06. The Id. DR on the other hand fairly agreed when a query was put as to how the appellate authority estimated the profit at 50% of the share capital/ share premium amount that this was a wrong conclusion drawn by the Id. CIT (A) however , relied stongly on the order of the Id. AO wherein the addition was made of total amount of share capital/share premium.The Id DR submitted that the order of Id CIT(A) may be reversed and that of AO may be restored fully by dismissing the appeal of the assessee and by allowing the appeal of the revenue.
07. After hearing the rival contentions and perusing the materials available on record, we find that this is second round of litigation before the Tribunal and in the first round vide order dated 20.11.2020, passed in ITA No. 448/Kol/2020 A.Y. 2012-13, in para 4 the coordinate bench observed that though the documents filed by the assessee comprising cash book ledger, bank statements, audited accounts of the subscribers were submitted before the Id. AO which were not examined by the AO and consequently restored the matter back to the file of the AO for fresh adjudication after examining all these evidences and after affording reasonable opportunity of hearing to the assessee. We note that in the set aside assessment proceedings, the assessee furnished all the details before the Id. AO qua the share subscribers comprising names, addresses, PANs, audited bank statements, assessment orders u/s 143(3) etc.



However, the Id. AO has not done any enquiry on the same. Pertinent to state that in the first round of assessment, the notices u/s 133(6) of the Act were issued to all the investors and they have furnished their reply along with the details/ evidences as required by the Id. AO. We note that out of six subscribers, as many as five subscribers were subjected to scrutiny u/s 143(3) of the Act and assessment orders were available in the paper book.

08. In the appellate proceedings, the Id. CIT (A) simply in order to put litigation to end estimated the profit on share capital/ share premium at 50% thereby partly allowing the appeal by directing the deletion of the addition to the extent of ₹6,20,87,580/- and sustaining the addition by a similar amount. In our opinion, the conclusion drawn by the Id. CIT (A) is completely flawed and wrong and cannot be sustained. The Id. CIT (A) instead of commenting on the evidences filed by the assessee as well as the replies of the subscribers available in the assessment records chose a very cryptic and wrong manner while disposing off the appeal. In our opinion, the assessee has filed all the evidences before the Id. AO as well as before the Id. CIT (A) and both the authorities below have failed to carry out any meaningful and purposeful enquiry and draw any legal conclusion based on the said enquiry. For the aforesaid reasons, we are not in a position to sustain the order of the Id. CIT (A). Having examined and considered all the facts on records and in the paper book, we are of the considered view that the assessee has discharged its burden by furnishing all the evidences and both the authorities below have failed to conduct any enquiry into the same despite the tribunal specific direction. Accordingly, we set aside the order of Id. CIT (A) on this issue and direct the Id. AO to delete the addition. The appeal of the assessee is allowed.



09. The issue raised by the Revenue in ITA No. 2296/KOL/2024 for A.Y. 2012-13 is against the part deletion of addition to the extent of 6,20,87,580/- being 50% of the aggregate share capital/ share premium of ₹12,41,75,160/- which has been adjudicated by us in the assessee appeal (supra), wherein we set aside the order of CIT (A) and direct the Id. AO to delete the addition. Consequently, the appeal of the Revenue is dismissed.

010. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 24.02.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.02.2025

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