

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, KOLKATA**

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

**ITA No.2511/KOL/2024  
(Assessment Year:2012-2013)**

**Andromeda Communications  
Pvt. Ltd.  
6/7A, A.J.C. Bose Road, Kolkata,  
West Bengal, 700017**

**(Appellant)**

**PAN No. AACCA1519K**

**I.T.O., Ward - 7(1),  
Aayakar Bhawan, P-7,  
Chowringhee Square, Kolkata,  
West Bengal, 700069**

**(Respondent)**

**Assessee by** : Shri Manish Tiwari, AR  
**Revenue by** : Shri Ashutosh Kumar, DR

**Date of hearing:** 07.05.2025  
**Date of pronouncement :** 13.05.2025

**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 30.10.2023 for the AY 2012-13.

02. The only issue raised in the grounds of appeal is against the confirmation of addition of ₹1,65,60,806/- by the Id. CIT (A) as made by the Id. AO on account of unexplained cash credit u/s 68 of the Act in respect of share capital/ share premium.
03. The facts in brief are that the assessee filed the return of income on 27.09.2012, declaring total income of ₹37,317/-. The case of the assessee was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS) for the reason of large share premium received.

Accordingly, statutory notices and questionnaire were duly issued and served upon the assessee. During the assessment proceedings, the assessee partially made compliance before the Id. AO by furnishing certain evidences. The Id. AO pointed did not point out any defect or deficiency in the said evidences. In order to independently verify the transactions, the Id. AO also issued summon u/s 131 of the Act for which there was no compliance on the part of the assessee. During the year the assessee issued equity shares of face value of ₹10 each at a premium of ₹482 to three parties namely; Shri Ishwari Prasad Tantia, Smt. Laxmi Tantia, Smt. Anita Tantia, who were the existing shareholders or their relative. The Id. AO also issued notices u/s 133(6) of the Act, which were duly complied by the share subscribers but the Id. AO made the addition of the share capital/ share premium on the ground that there was no justification for issuing shares at such a high premium and that the same could not be verified as director did not appear before the Id. Assessing Officer despite being summoned u/s 131 of the Act.

04. In the appellate proceedings, the Id. CIT (A) confirmed the order of Id. AO on the ground that mere confirmation of investments by the subscribers did not close the matter and the genuineness and creditworthiness of the transactions remained to be verified. The assessee filed before the Id. CIT (A) the evidences qua the share subscribers' proof of identity and creditworthiness and genuineness of the transactions. The Id. CIT (A) called for the remand report from the Id. AO on 19.09.2023, which was submitted by the Id. AO on 31.10.2023. The Id. CIT (A) confronted the same to the assessee and thereafter dismissed the appeal of the assessee by upholding the finding given by the Id. Assessing Officer.

05. The Id. AR vehemently submitted before us that the findings of both the authorities below were that the assessee lacks the credential to issue shares at a very high premium is wrong and against the facts on record. The Id. AR referred to page no. 13 of the Paper Book, which is the audited profit and loss account of the assessee. The Id. AR stated that during the year the assessee has revenue from operation of ₹47,66,767/- and other income of ₹37,317/- with net profit of ₹3,88,704/-. The Id. AR further referred to page no. 20, which is the schedule of fixed assets and submitted that the gross assets of the assessee as on 31.03.2012, was ₹7,12,75,418/-. The Id. AR therefore prayed that the observations of the authorities below that the shares were issued without any credential or justification are based on surmises and presumptions and has no substantive basis. The Id. AR further submitted that the money was raised from the existing shareholders/ directors/ relative of the directors who have sufficient resources and creditworthiness to make the investments in the assessee company. The Id. AR, while referring to the page no.45 to 72 of the Paper Book, submitted that the letters issued u/s 133(6) of the Act were also complied with by these investors by furnishing all the information/details comprising copy of ITRs, Pass Books, computation of income, profit and loss accounts/ balance sheets. The Id. AR submitted that in case of Shri Ishwari prasad Tantia, income as per ITR was ₹2,45,97,718/-, whereas in case of Smt. Laxmi Tantia it was ₹17,34,339/- and in case of Smt. Anita Tantia it was ₹5,77,918/- for A.Y. 2012-13, the copies of ITR acknowledgements are attached at page nos.51,61 and 69 of the Paper Book. The Id. AR also referred to the copy of bank statements of these subscribers and submitted that all these subscribers were having sufficient financial strength to make the investments and therefore, the order of lower authorities are

based on presumption and surmises. The Id. AR submitted that assessee has filed all the evidences before the Id. AO as well as Id. CIT (A) qua these share subscribers and also that notices issued u/s 133(6) of the Act were also duly complied with by filing all the details and evidences called for. However, both the authorities below have not commented on the evidences furnished by the assessee and merely relied on the fact that the summons u/s 131 of the Act were not complied with. The Id. AR submitted that it is not the case of the Id. AO that the money was received from some shell companies and therefore, the order of Id. CIT (A) may kindly be reversed and AO may be directed to delete the addition. In defense of his arguments, the Id. AR relied on the following decisions:-

- (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.

06. The Id. DR while referring to page no.49,50 and 61 of the Paper books, pointed out that the money was received by the subscribers in their bank account on a day before make the investment in the assessee company and therefore lack genuineness. However, the same was controverted by the Id. AR by submitting that it is not a accommodation entry or any bogus entry received from shell companies and it is their own money and they are having a substantial

net worth/ income during the year. The Id. AR contended that the transactions cannot be coloured with taint merely on the ground that the money was credited in the bank account a day before.

07. After hearing the rival contentions and perusing the materials available on record, we find that in this case, the assessee has issued equity shares to three parties, who happened to be relative of directors/ share holders of the assessee company. The shares were issued at a face value of ₹10 at a premium of ₹492. We note that during the assessment proceedings, the assessee furnished the evidences qua these share subscribers. All these evidences were also submitted before the Id. CIT (A) and Id CIT(A) even the remand report was also called for, which was furnished on 31.10.2023. We note that the Id. AO has not pointed out any defect or deficiencies in the evidences furnished by the assessee. We further note that for independent verification of these transactions , the AO issued notice u/s 133(6) of the Act to all the subscribers which were duly complied by these subscribers by furnishing evidences/ details qua the investment made. We note that the Id. AO as well as the Id. CIT (A) have not commented on these evidences and have harped on the fact that there was no compliance by the directors of the assessee company to the summons issued u/s 131 of the Act. We have even examined the facts filed before us in the form of ITRs, bank statements, copy of computation of income , Profit and Loss account and balance sheet and find that the subscribers were having sufficient sources to invest in the assessee company. Therefore, we are not in a position to accept the conclusion drawn by the Id. CIT (A) on this issue. Moreover, the addition cannot be made merely on the ground that there was no compliance to the summons u/s 131 of the Act, where the assessee has furnished all the evidences/ details before the

Id. AO and there was no verification done by the Id. Assessing Officer to establish or to bring on record any contrary facts. The case of the assessee find support from a series of cases as referred to above wherein it has been held that where the assessee has furnished all the evidences qua the share transactions and the AO have not carried out any further verification or pointed out any defects in the evidences filed by the assessee, then it is not open to the AO to make addition on the ground that there was no compliance to the summons issued u/s 131 of the Act.

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

Order pronounced in the open court on 13.05.2025.

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

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 13.05.2025

*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