

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. No.650/Kol/2024
Assessment Year: 2009-10

Delta Dealers Pvt. Ltd.....Appellant
Baltikuri, Kalitala,
P.O. Dasnagar, Howrah-711113.
[PAN: AACCD9633P]

vs.

ITO, Ward-6(3), Kolkata.....Respondent

Appearances by:

Shri Akshay Ringasia, C.A & Taraknath Jaiswal, Advocate, appeared on behalf of the assessee.
Shri Raja Sengupta, CIT, DR, appeared on behalf of the Revenue.

Date of concluding the hearing : May 14, 2025

Date of pronouncing the order : June 30, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal of the assessee is directed against the order dated 27.09.2023 passed by the National Faceless Appeal Centre [hereinafter referred to as 'the 'ld. CIT(A)'] for the assessment year 2009-10.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2009-10 under the name of Orange Merchants Pvt. Ltd. being its PAN No.AABCO0792P. The return of the assessee initially processed u/s 143(1) of the Act. Subsequently, the case of the assessee was reopened u/s 147 of the Act and the assessee complied to the notices and assessment order was framed by determining total income of Rs.45,500/-. Immediately, thereafter the said assessment order was set aside by the ld. PCIT, Kolkata-2 by exercising his revisionary jurisdiction u/s 263 of the Act. In consequence to that, notice u/s 142(1) of the Act was issued to the assessee directing the assessee to submit detailed information regarding the shareholders along with supported evidences in respect of share capital and share

premium received during the assessment year. While doing so, the Assessing Officer issued notice u/s 131 of the Act to the concerned share subscribing companies and in compliance to the said notice, the share subscribing companies submitted requisite information and their directors were not personally appeared before the Assessing Officer. The Assessing Officer was not satisfied with the compliance made by the share subscribing companies and proceeded to treat the entire amount of share capital and share premium aggregating to Rs.16,26,00,000/- as unexplained cash credit u/s 68 of the Act primarily on the ground that the directors of share subscribing companies failed to appear in person even if the share subscribing companies were duly furnished all necessary details as was required by the Assessing Officer during the assessment proceedings.

3. Aggrieved by the said order, the assessee preferred an appeal before the ld. CIT(A). However, on the date of hearing, no one was appeared before the ld. CIT(A) and the ld. CIT(A) thereafter passed an ex parte order confirming the addition so made by the Assessing Officer u/s 68 of the Act. While doing so, the ld. CIT(A) stated that the basic documents like Form No.35 with all relevant annexures were not available in the system and the assessee failed to duly upload the such documents, therefore, finally the appeal of the assessee was dismissed treating it as defective.

4. Aggrieved by the above order, the assessee is in appeal before this Tribunal raising various grounds. The ld. AR at the time of hearing submitted that the assessee company since passing of the impugned order merged with Delta Dealers Pvt. Ltd. vide order of NCLT, Kolkata

dated 04.04.2019. He further stated that Assessing Officer issued summon u/s 131 which were duly complied by the shareholders and submitted details like ITR, audited financials, allotment letter, bank details, directors' details, confirmations etc. However, such submission and records were never confronted by the Assessing Officer. One such allottee included Delta Dealers Pvt. Ltd., the company in which the assessee later merged into and has now filed the present appeal before this Tribunal. He also stated that mere non-appearance may not be the ground for making addition especially considering the fact that the many of the subscriber companies were duly assessed by their own jurisdictional Assessing Officer and since all the shareholders being granted relief by the Assessing Officer, ITAT or before the Hon'ble High Court of Calcutta, therefore, allegation and doubts raised by the Assessing Officer with respect to creditworthiness and genuineness of the transaction, is bad in law. The ld. AR in order to prove his case drew our attention to pages 15 to 387 which are the evidences submitted by the subscribing companies before the Assessing Officer during the assessment proceedings. The ld. AR by submitting the above documents stated that the said evidences reflected the creditworthiness of the respective subscribers as per their audited financial statement, their PAN numbers and date and cheque numbers vide which such payments were made at page no.14 of the paperbook which is as under:

NAME OF THE COMPANY	PAN	DATE & CHEQUE NO	Amount	Net worth	Assessment appeal
ACCORD COMMODITIES PVT LTD	AAGCA7510A	186807 DT27.03.2009	48,00,000.00	9.42 crores	Y [AY 2010-11] Demand of Rs 4,15,480/-
		186821 DT31.03.2009	42,00,000.00		
AMRITVANI EXIM PVT LTD	AACCA1413E	945079 DT08.11.2008	46,00,000.00	41.34 crores	
ARYANVINCOM PVT LTD	AAGCA7753F	881270 DT03.11.08	48,00,000.00	7.83 crores	Y [AY 2010-11]
CHIRAG TREXIM PVT LTD	AADCC4340F	098409 DT17.10.2008	45,00,000.00	19.94 crores	Y [AY 2014-15 & 2015-16] ITA NO. 133/KOL/2023
		098432 DT02.03.2009	47,00,000.00		
DELTA DEALERS PVT LTD	AACCD9633P	903064 DT15.01.2009	40,00,000.00	15.51 crores	Y [AY 2009-10] High Court
		903067 DT19.01.2009	45,00,000.00		
DOPHIN GOODS PVT LTD	AADCD0480B	964556 DT28.02.2009	41,00,000.00	11.10 crores	Y [AY 2009-10] ITA No. 240/Kol/2020
ENERGY COMMOSE PVT LTD	AACCE1036D	971151 DT05.03.2009	40,00,000.00	9.74 crores	
HRIDAYVANJYA PVT LTD	AABCH9728A	881200DT.24.10.08	49,00,000.00	53.10 crores	
INNOCENT TRADECOMM PVT LTD	AABCI9412Q	903262 DT01.11.08	48,00,000.00	16.99 crores	Y [AY 2012-13]
JACKPOTAGENCIES PVT LTD	AACCI0565A	940856 DT30.10.08	47,00,000.00		Y [AY 2009-10] ITA no. 670/Kol/2014
KARNIMATA COMMERCE PVT LTD	AABCK1656J	943925 DT17.01.2009	45,00,000.00	23.70 crores	Y [AY 2009-10]
		943949 DT20.02.2009	40,00,000.00		
KEYNOTE SUPPLIERS PVT LTD	AADCK4679D	940907 DT06.11.2008	40,00,000.00	15.01 crores	Y [AY 2016-17]
		940919 DT20.01.2009	47,00,000.00		
KINGFISHER EXIM PVT LTD	AADCK4695D	964401 DT16.02.2009	34,00,000.00	25.57 crores	Y [AY 2015-16]
		964415 DT03.03.2009	39,00,000.00		
		964421 DT13.03.2009	48,00,000.00		
LANDMARKVINTRADE PVT LTD	AABCL5094P	988215 DT02.03.09	93,00,000.00	10.90 crores	Y [AY 2009-10] ITA No. 1789/Kol/2013
MARSHAALSUPPLIERS PVT LTD	AAF8M8009H	944352 DT16.01.2009	40,00,000.00	13.31 crores	
		944374 DT12.03.09	48,00,000.00		
MONARCHDEALERS PVT LTD		096111 DT23.02.09	30,00,000.00		
ORBIT VINTRADE PVT LTD	AABCO0670L	103819 DT08.11.2008	46,00,000.00	17.98 crores	Y [AY 2009-10] ITA No. 861/Kol/2014 and AY 2015-16
		103830 DT27.01.2009	45,00,000.00		
PRIMEROSETRADERS PVT LTD	AAECP7934M	942853 DT29.10.2008	40,00,000.00	12.44 crores	Y [AY 2009-10] ITA No. 1951/Kol/2019
PYRAMID TIE- UP PVT LTD	AAECP7569A	971707 DT12.03.09	49,00,000.00	11.87 crores	
SHRI RAM TRADEVIN PVT LTD	AAMCS3519H	971751 DT07.03.09	35,00,000.00	13.52 crores	Y [AY 2009-10] ITA No. 1086/Kol/2014 AY 2013-14, 2014- 15, 2015-16, 2016- 17 & 2017-18
TOUCHSTONE SUPPLIERS PVT LTD	AADCT0150C	942985 DT16.01.2009	40,00,000.00	37.49 crores	Y [AY 2009-10]
		999101 DT27.01.2009	45,00,000.00		
TULSHYANDISTRIBUTORS PVT LTD		939992 DT31.10.08	47,00,000.00	32.48 crores	
VAISHNODEVI VINIMAY PVT LTD	AACCV8259P	971662 DT14.03.2009	46,00,000.00	9.76 crores	
		971707 DT19.03.2009	49,00,000.00		
VANTAGETRADELINKS PVT LTD	AACCV6240L	940607 DT17.01.09	45,00,000.00	13.98 crores	Y [AY 2009-10] ITA NO. 741/Kol/2015
VASUKI FINVEST PVT LTD	AAACV8847R	961216 DT24.10.09	48,00,000.00		

4.1 The ld. AR pointed out that the copies of the order, judgement of the respective jurisdictional Assessing Officer, Tribunal and Hon'ble Calcutta High Court in the case of various shareholders is also referred therein which satisfied the Assessing Officer's allegation of non-existent of such companies and genuineness of their subscription. Considering the fact that the source has been upheld and needs to be genuine by various orders of this Tribunal and Hon'ble Calcutta High Court is also referred which clearly shows existence of subscriber companies' genuineness of transaction. The ld. AR further stressed on the issue that since the assessee has merged with Delta Dealers Pvt. Ltd. and the present appeal is in the name of Delta Dealers Pvt. Ltd., it has to be appreciated that the Delta Dealers Pvt. Ltd. is also one of the subscribers to the tune of Rs.95,00,000/- in the then Orange Merchants Pvt. Ltd. Thus, the assessee itself cannot be doubted to have contributed non-genuine money u/s 68 of the Act. The ld. AR further submitted that since the assessee, Delta Dealers Pvt. Ltd., the present appeal stands covered in the assessee own case in PCIT vs. Delta Dealers (P) Ltd. for the assessment year 2009-10 vide order dated 08.11.2024 in ITAT No.148 of 2024 in reported in [2025] 173 taxman.com 911 passed by the Hon'ble Jurisdictional Calcutta High Court. The ld. AR further stated that the addition made by the Assessing Officer is based on assumption and without dealing materials based on the record and non-appearance of the directors of the subscriber company cannot be a ground of making addition u/s 68 of the Act. In this connection, the ld. AR further relied on the decision of Hon'ble Jurisdictional High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT reported in 353 ITR 171, wherein, Hon'ble Jurisdictional High Court held that when the assessee files all necessary evidences and records before the Assessing Officer, then mere failure of the creditors to appear cannot be form basis to invoke section 68 of the Act. He further submitted that once the assessee has

submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the lower authorities have erred in treating the same as unexplained cash credit u/s 68 and 69C of the Act.

5. On the other hand, the ld. DR supported the order of the Assessing Officer but argued that the matter may be set aside to the file of the ld. CIT(A) as the same was ex parte order. In this context, counter statement made by the ld. AR is that all the evidences have been duly produced before the lower authorities and matter is covered in favour of the assessee by the binding precedents of the Calcutta High Court in assessee's own case. Thus the instant matter needs not required to be set aside to the file of the ld. CIT(A) since it is already covered by the decision of the Calcutta High Court. He further stated that as similar issue Hon'ble High Court as in the case of PCIT vs. M/s Hirak Vyapaar Pvt. Ltd. in ITAT 242/23 held that where Tribunal had gone through the entire evidences and notice stood complied u/s 133(6) by the subscribers the order of deleting addition u/s 68 was upheld. Therefore, the instant issue may be allowed in favour of the assessee by deleting the addition.

6. We, after hearing the rival submissions and perusing the materials available on record, find that in the present case, all necessary records were placed before the Assessing Officer and there is a judicial precedent which covered the case of the assessee and is binding upon. We have already gone through the entire exercise and detailed records to ascertain the applicability of section 68 of the Act. We also consider that Hon'ble Calcutta High Court on the similar point in the case of PCIT vs. M/s Hirak Vyapaar Pvt. Ltd. (supra) wherein the Hon'ble High Court held as under:

"The assessment for the year under consideration was completed by the Assessing Officer under [Section 143\(3\)](#) of the Act. Subsequently, the

Commissioner of Income Tax exercised power under [Section 263](#) of the Act and passed an order on 30th March, 2013 setting aside the assessment order and directing the Assessing Officer to examine the genuineness of the transaction, directing examination of the directors of the company and other matters. Thereupon the Assessing Officer took up the matter for consideration and completed the assessment by order dated 31st March, 2014 holding that the share application money received by the assessee during the year has to be disallowed and added back to the total income of the assessee as unaccounted cash credit as per the provisions of [Section 68](#) of the Act.

Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-17, [CIT(A)]. Before the Appellate authority the assessee did not appear and the Appellate authority by order dated 20th March, 2017 dismissed the appeal. The assessee carried the matter in appeal to the learned Tribunal. Learned Tribunal, as we find from the impugned order, has done a thorough and elaborate examination of the facts. It also took note of the response filed to the notices issued under [Section 133\(6\)](#) of the Act. Thereafter it proceeded to examine the resource and surplus of the companies which had subscribed to the shares of the assessee company and found that all the share subscribers are regularly assessed to tax, they are filing Income tax Returns; books of accounts were regularly maintained, financial statements were duly audited under the [Income Tax Act](#) and transactions have been carried out through banking channel and all the formalities required by the Registrar of Companies for the purpose of issuing share capital has been duly adhered and as on the date when the Tribunal considered the matter it found that all the share subscribers are active companies.

Thus, after taking into consideration the factual position, the Tribunal came to the conclusion that the assessee has successfully discharged the primary onus cast upon them to explain the investment.

Thus, we find that the Tribunal upon appreciation of the factual position has granted relief to the assessee and therefore, we hold that there is no question of law, much less substantial questions of law, arising for consideration.

The appeal is thus dismissed.”

7. We further find that the contention raised by lower authorities is that the director of the subscriber companies did not appear in response to the summons issued u/s 131 of the Act. On this aspect, the ld. counsel has submitted that the directors of the share subscriber companies though have shown inability to appear personally on the date fixed, however, they had duly responded to the summons issued and

sent the requisite details and evidences to the Assessing Officer. The Assessing Officer has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. In the present case, the assessee duly explained about the identity, creditworthiness and financials etc. of each of the share subscriber company. The Assessing Officer, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the Assessing Officer, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the Assessing Officer. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz.,

confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding.”

8. We note that the Hon'ble Supreme court time and again has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the Assessing Officer is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee.

9. It has to be further noted that though powers of the Id. CIT(A) are co-terminus with the Assessing Officer and the Id. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling

for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner citing the appeal as defective. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law in this case.

10. We further note that the assessee has provided detailed evidences to establish identity and creditworthiness and genuineness of the transaction in the shape of bank statements, acknowledgement of Income Tax Returns and transaction evidencing for each of the shareholders at the time of framing of assessment order. The non-appearance of the director of the assessee company before the Assessing Officer during the assessment proceedings, itself, cannot be ground for drawing adverse inference, particularly when the assessee has otherwise furnished supporting documentary evidence to substantiate the transaction. The Hon'ble Supreme Court in the case of CIT vs. Kamdhenu Steel & Alloys Ltd. in SLP(CC) No.15640 of 2012, dated 17-09-2012 held that mere non-appearance of director cannot be held to be justified in treating the share premium and share capital as unexplained income if sufficient documentary evidences are provided. In the present case of the assessee, the shareholders were scrutinised u/s 143(3)/147 of the Act, further detailed evidences were submitted to establish genuineness of the transactions. In this regard, we rely on the decision of the *Hon'ble Apex Court in the case of CIT vs Lovely Exports (P) Ltd. reported in (2008) 216 CTR 195 (SC)*, wherein, it was held that once company proves the existence and authenticity of shareholders, it had

discharged its burden u/s 68 of the Act. Furthermore, the share applicants have also been assessed under Income Tax Act from time to time and scrutiny assessment was carried out u/s 143(3) in their cases for different assessment years and the present appeal stands covered in the assessee's own case for the assessment year 2009-10 vide decision dated 08.11.2024 passed in the case of PCIT vs. Delta Dealers (P) Ltd. of Hon'ble Jurisdictional Calcutta High Court (supra). We further find that the share applicants were having sufficient net worth for making investments in the assessee company and in this regard, the Assessing Officer did not point out any defect or discrepancy in the evidences furnished by the assessee. Considering the facts and submissions and judicial precedents, we hold that the addition made by the Assessing Officer of Rs.16,26,00,000/- as unexplained cash credit u/s 68 of the Act is unsustainable since the assessee has sufficiently established the identity, creditworthiness and genuineness of the transaction relating to the share capital received during the relevant financial year. We, therefore, direct the Assessing Officer to delete the addition of Rs.16,26,00,000/- u/s 68 of the Act in the hands of the assessee.

11. The assessee has not pressed Ground No.6, therefore, this ground is dismissed as not pressed.

12. In the result, the appeal of the Revenue stands dismissed.

Kolkata, the 30th June, 2025.

Sd/-

[Rajesh Kumar]

लेखा सदस्य/Accountant Member

Dated: 30.06.2025.

RS

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches