

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

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

**ITA No.1432/KOL/2025
(Assessment Year:2017-18)**

**Suman Forwarding Agency
Private Ltd.**
C/o Subash Agarwal &
Associates, Advocates Sidha
Gibson, 1, Gibson Lane, Suite
213, 2nd Floor, Kolkata-700069
West Bengal

(Appellant)

Vs.

**DCIT, Circle 13(1),
P-7, Chowringhee Square,
Esplanade, Chowringhee North,
Bow Barracks, Kolkata-700069
West Bengal**

(Respondent)

PAN No. AAICS7247Q

Assessee by : Shri Siddarth Agarwal, AR
Revenue by : Shri S.B. Chakraborty, DR

Date of hearing: 04.09.2025
Date of pronouncement: 15.09.2025

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 11.06.2025 for the AY 2017-18.

02. The issue raised in ground no.1 is against the order of Id. CIT (A) confirming the addition of ₹4,46,00,000/- as made by the Id. AO u/s 68 of the Act in respect of share application money received from M/s Gajmurti Agency Pvt. Ltd.

03. The facts in brief are that the assessee filed the return of income on 30.10.2017, declaring total income at ₹4,46,88,680/-, which was

processed u/s 143(1) of the Act. Thereafter, the statutory notices u/s 143(2) of the Act and other notice u/s 142(1) of the Act along with questionnaire were issued and duly served upon the assessee. The assessee furnished before the Id. AO all the details and evidences qua the share capital of ₹4,46,00,000/- raised during the year by issuing 74,332 equity shares at face value at a premium of ₹500/- to M/s Gajmurti Agency Pvt. Ltd., which is a group company. The Id. AO also issued notices u/s 133(6) of the Act which was replied by the subscriber. The Id. AO also noted in Para no.7 of the assessment order that the inspector deputed to conduct on the spot enquiry could not trace the above subscribers and thereafter in para no.9, noted that no response was filed by the share subscriber to notice issued u/s 133(6) of the Act and assessee was requested to produce the director of the said investing company. However, the assessee also failed to produce the same. Finally, the Id. AO treated the said shares capital of ₹4,46,00,000/- as unexplained cash credit u/s 68 of the Income-tax Act, 1961 (the Act) and added to the income of the assessee.

04. The Id. CIT (A) in the appellate proceedings dismissed the appeal of the assessee by holding and observing as under: -

"Appellate findings and Decision:-

6.1. I have considered the statement of facts, grounds of appeal, written statement and order passed by the AO. In this regard, it is apt to mention here that the appellant filed its return of income for the Assessment Year 2017-18 on 30.10.2017 declaring a total income of Rs. 4,46,88,680/-. The case was selected for scrutiny under the Computer Aided Scrutiny Selection (CASS) and accordingly, a notice under section 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued on 10.08.2018. Thereafter, a notice under section 142(1) of the Act along with a detailed questionnaire was issued on 14.06.2019 to which the appellant responded through online submissions.

During the scrutiny proceedings, it was found that the appellant company had raised share capital amounting to Rs. 4,46,00,000/- during the relevant financial year by issuing 74,332 shares at a face value of Rs. 100/- each with a premium of Rs. 500/-

per share. The shares were allotted entirely to one company, namely M/s Gajmurti Agency Pvt. Ltd.

The Assessing Officer (AO), after examining the documents and verifying the information, passed the assessment order under section 143(3) of the Act on 30.12.2019, determining the assessed income at Rs. 9,07,15,680/- by making the following additions:

1. Rs. 4,46,00,000/- under section 68 of the Act on account of unexplained share capital;
2. Rs. 8,92,000/- under section 69C of the Act on account of unexplained expenditure (commission) for arranging share capital,
3. Rs. 5,00,000/- under section 68 of the Act on account of unexplained cash credit received from M/s Shree Shyam Trading Pvt. Ltd.;
4. Rs. 35,000/- under section 69C of the Act as further unexplained expenditure.

Aggrieved by the additions made, the appellant filed an appeal before this forum and submitted a written submission rebutting the findings of the AO.

The primary contention of the appellant in respect of the addition of Rs. 4,46,00,000/- under section 68 is that it had submitted all relevant documents including the ITR, financial statements, bank statements, share application form, Form No. 2 filed with the ROC, and a valuation report in respect of the shares issued to M/s Gajmurti Agency Pvt. Ltd. The appellant further contended that the investing company had responded to the notice issued under section 133(6) and that the Inspector's report, which allegedly found the company non-existent at its registered address, was not provided to the appellant, thus violating the principles of natural justice.

However, these contentions of the appellant cannot be accepted in light of the findings of the AO, supported by cogent material and logical analysis. It is settled law that the onus to prove the identity, creditworthiness of the creditor, and genuineness of the transaction lies squarely on the appellant when a sum is found credited in its books as per section 68 of the Act. This principle has been upheld by the Hon'ble Supreme Court in CIT vs. P. Mohanakala (291 ITR 278) and reiterated in CIT vs. Lovely Exports (P) Ltd. (216 CTR 195), wherein it was held that failure to discharge this threefold onus invites addition under section 68.

In the present case, despite repeated opportunities, the appellant failed to produce the directors of M/s Gajmurti Agency Pvt. Ltd. No agreement, communication, or rationale for such a substantial investment in a private limited company was presented. The Inspector deputed by the AO could not trace the sharesubscriber at the address provided, confirming doubts over the existence of the entity. The reply alleged to be submitted by the share subscriber was neither verified nor substantiated with credible evidence. The financials of M/s Gajmurti Agency Pvt. Ltd. revealed a meagre profit of Rs. 1,33,377/- during the relevant year, which is grossly disproportionate to the investment made. Its assets primarily consisted of share capital and loans and advances, without any substantial business activity or revenue generation.

Further investigation by the AO revealed that the source of the investment in the appellant company by M/s Gajmurti Agency Pvt. Ltd. was traced to six other companies such as NavarangDealtrade Pvt. Ltd., Ascent Dealmark Pvt. Ltd., and others. These entities were also found to be operating from common addresses, with negligible business operations, and showed a pattern of circular transactions-credits and immediate debits of large amounts through RTGS and NEFT-typical of accommodation entry providers. The bank statements and ROC data of these companies confirmed the absence of genuine business activity and pointed towards a deliberate attempt at layering of funds to introduce unaccounted income as share capital.

The appellant's argument that mere filing of documentary evidence is sufficient to discharge the onus under section 68 is misplaced. In *C/T vs. Precision Finance Pvt. Ltd.* (208 ITR 465) and *Korlay Trading Co. Ltd.* (232 ITR 820), the Hon'ble Calcutta High Court held that mere furnishing of PAN, ITR, or bank details is not sufficient, the appellant must establish the actual identity, financial capacity, and bona fide nature of the transaction.

In light of the above, the AO rightly concluded that the share capital of Rs. 4,46,00,000/- remained unexplained and thus made the addition under section 68, which is sustained.

With regard to the addition of Rs. 8,92,000/- under section 69C towards commission for availing accommodation entries, the AO estimated the payment at 2% of the share capital introduced. The nature and structure of the transaction, combined with the absence of any plausible explanation from the appellant, justify the estimation of commission paid. Section 69C allows for such an addition where the appellant fails to explain the source of an expenditure. Here, the presumption that the appellant must have paid some consideration to entry operators stands valid in absence of rebuttal, and the addition is accordingly upheld.

The addition of Rs. 5,00,000/- under section 68, being the amount received from M/s Shree Shyam Trading Pvt. Ltd., was also justified. Though the appellant submitted the ledger and bank details, the said party did not respond to notices under section 133(6), and no further supporting evidence was provided. As held by the Hon'ble Delhi High Court in *CIT vs. N.R. Portfolio Pvt. Ltd.* (29 taxmann.com 291). non-response by creditors, when viewed with surrounding facts, is sufficient to hold the credit as unexplained.

Lastly, the addition of Rs. 35,000/- under section 69C towards commission for the alleged accommodation entry of Rs. 5,00,000/- was also based on reasonable estimation. The explanation furnished was general in nature, without any concrete proof to counter the AO's findings. In such circumstances, estimations based on available material and precedence are acceptable in law.

The appellant's reliance on the principle of natural justice alleging denial of cross-examination or copy of the Inspector's report is without merit. The AO acted within the bounds of procedural fairness by issuing multiple notices and providing adequate opportunities. Moreover, cross-examination is warranted only when the primary burden is discharged and adverse material is introduced. Here, the burden was never shifted to the Department due to the failure of the appellant in the first instance.

6.2. The appeal of the appellant is hereby dismissed."

05. The Id. AR vehemently submitted before us that the assessee has raised share capital/ share premium from the group concern by issuing 74332 equity shares of face value of ₹10 at a premium of ₹500 to group company of M/s Gajmurti Agency Pvt. Ltd. The Id. AR submitted that the assessee is engaged in the business of carrying and forwarding agents of Railways and during the assessment proceedings submitted all the details and evidences which comprised of ITR, financial statements, bank statement, share application form, form no.2 filed with the ROC and valuation report in respect of shares before the Id. AO .Besides the Id. AO issued notice u/s 133(6) of the Act to the share subscriber and the said subscriber replied the said notice, a copy of which is available at page no.82 of the Paper Book by submitting all the details as called for by the Id. AO bearing the acknowledgement of the department dated 24th December, 2019. The Id. Counsel for the assessee submitted that the assessee has explained the source of the said money invested in the assessee company by the subscriber company and therefore, the source of source is also proved. Therefore, finding given by the Id. CIT (A) upholding the assessment order that the identity and creditworthiness of the investors and the genuineness of the transactions were not proved is wrong and fallacious and therefore may be reversed. The Id. Counsel for the assessee further submitted that the copy of the valuation certificate as filed before the authorities below is available at page no. 56, which certifies the market value of the shares at Rs.

565.36, while the assessee has issued shares at a price of Rs.600/- meaning thereby that the difference between the issued price and the valuation is less than 10% and therefore, no addition can be made on the ground that the shares were overpriced. The Id. AR in defense of his argument relied on the CBDT notification dated 25th September, 2023, wherein in GSR no. 685(3) in para no.4 has stated that where the sale consideration received by it not exceed by more than 10% of the price then the issue price shall be deemed to be fair market value of such shares. The Id AR also relied on the decision of the co-ordinate bench in the case of Ambarnuj Finance & Investment Pvt. Ltd. Vs. DCIT in ITA No. 4127/DEL/2024 vide order dated 09.04.2025. Therefore, the Id. Counsel for the assessee submitted that the addition as confirmed by the Id. CIT (A) is wrong and against the facts on record and may kindly be deleted.

06. The Id. DR on the other hand relied on the order of the authorities below.

07. After hearing the rival contentions and perusing the materials available on record, we note that the assessee has issued 74332 equity shares to its group concerns namely M/s Gajmurti Agency Pvt. Ltd. at a price of Rs. 600/- per share comprising face value of ₹100/- at a premium of ₹500/-. We note that the assessee has filed a valuation report before the Id. AO as well as the Id. CIT (A) and a copy of which is available at page no.66 of the Paper Book which valued the share price at ₹566.36. We also note that the assessee has filed all the details and evidences before the Id. AO as well as before the Id. CIT (A). We note that Id. CIT (A) has recorded a finding to this effect in the appellate order that assessee has filed the copies of ITR, financial statements, bank statement, share application form and form

no.2 and valuation report in respect of share issued. We also note that the Id. AO has issued notice u/s 133(6) of the Act to the investor which was duly replied and copy of reply was available at page no.82 of the PB, wherein the source of source is also explained. Therefore, we do not find any reason to sustain the order of the Id. Commissioner of Income-tax (Appeals). Accordingly, we set aside the order of the Id. CIT (A) and direct the Id. AO to delete the addition.

08. The issue raised in ground no.2 is against the confirmation of addition of ₹8,92,000/- by the Id. CIT (A) as made by the Id. AO in respect of unexplained commission for arranging share capital/share premium.

09. Since we have already treated the share capital/ share premium as genuine in ground no.1. Therefore, this ground is consequential to ground no.1 and the order of Id. CIT (A) is set aside on this issue and the Id. AO is directed to delete the addition.

010. The issue raised in ground no.3 is against the confirmation of ₹5.00 lacs by the Id. CIT (A) as made by the Id. AO u/s 68 of the Act in respect of unexplained cash credit received from Shree Shyam Trading Pvt. Ltd., for which the assessee has not furnished any details and notice u/s 133(6) of the Act issued to the said person was not replied. Likewise summon u/s 131 of the Act issued to the said party was also not complied. Finally, the summons was issued u/s 131 of the Act to the Director of the assessee company, again no one appeared. It was submitted that the directors were out of station and therefore, not possible to appear on the said date. Thereafter, the Id. AO noted that the said amount was a accommodation entry and added the same to the income of the assessee u/s 68 of the Act. The Id. CIT (A) also affirmed the order of the Id. Assessing Officer.

011. After hearing the rival contentions and perusing the materials available on record, we find that that the assessee is engaged in the business of clearing and forwarding agent of Railways and received ₹5.00 lacs from Shree Shyam Trading Pvt. Ltd on 22.11.2016. We note that the said amount has been received towards freight charges and has been included in the amount of income shown by the assessee from freight charges (trade). The assessee has also filed before us the copies of bills which are available at page no.92 to 94 of the Paper Book. Therefore, we do not find any reason to sustain the order of Id. CIT (A). Accordingly, we set aside the same and direct the Id. AO to delete the addition. The groundno. 3 is allowed.

012. The issue raised in ground no.4 is consequential to ground no.3 which is against the confirmation of addition of ₹35,000/- as made by the Id. AO u/s 69C of the Act on account of unexplained expenditure in respect of commission paid on accommodation entries. Accordingly, we set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition. The ground no. 4 is allowed.

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

Order pronounced in the open court on 15.09.2025.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 15.09.2025

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