

IN THE INCOME TAX APPELLATE TRIBUNAL BENCH-RANCHI
VIRTUAL HEARING AT KOLKATA

**Before Shri Sonjoy Sarma, Judicial Member
and Shri Ratnesh Nandan Sahay, Accountant Member**

I.T.A. No.11/Ran/2024
Assessment Year: 2011-12

Golden Goenka Commerce Pvt. Ltd.
(Earlier Known as Rajgaj Traders Pvt. Ltd.).....Appellant
25A, S.P Mukherjee Road, 4th Floor,
Bhawanipore, Kol-25,
[PAN: AABCR7503F]

vs.

ACIT, Circle-2(1), Jamshedpur.....Respondent

Appearances by:

Shri Devesh Poddar, AR, appeared on behalf of the appellant.
Shri Kumar Pranab, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : September 4, 2025

Date of pronouncing the order : October 10, 2025

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals) ["CIT(A)"], dated 21.12.2018, arising out of assessment framed under section 147 read with section 143(3) of the Income-tax Act, 1961 (the "Act") for the assessment year 2011-12.

2. The assessee has raised multiple grounds, the sum and substance of which is that the learned CIT(A) erred in upholding the addition of ₹4,73,00,000 made by the Assessing Officer ("AO") under section 68 of the Act towards share capital and share premium, ignoring the documentary evidences placed on record, and without conducting any independent enquiry.

3. Brief Facts of the case are that the assessee company filed its return of income for the assessment year 2011-12 declaring total income of ₹16,67,088. Subsequently, the case of the assessee was reopened

under section 147 of the Act on the ground that the assessee had raised share capital of ₹4,73,00,000 by issuing 4,73,000 equity shares of ₹10 each at a premium of ₹90 per share, which according to the AO was not satisfactorily explained. Notice under section 148 was issued and in compliance the assessee filed return of income declaring the same income. During the assessment proceedings, the AO noted that share capital of ₹4.73 crores had been received from three private limited companies:

M/s Aalekha Supply Pvt. Ltd. (1,90,000 shares)

M/s Rosy Delcom Pvt. Ltd. (1,28,000 shares)

M/s Shri Salasar Supplies Pvt. Ltd. (1,55,000 shares) respectively

The assessee filed details such as share allotment registers, copies of return of income of the investor companies, their audited financial statements, bank statements, PAN details, and confirmations. However, the AO was not satisfied with the submission of the assessee. According to him, the assessee failed to prove the identity and creditworthiness of the investors and the genuineness of the transactions. He noted that summons issued under section 131 to the directors of the subscriber companies were not complied with. Relying on judicial precedents, he held that the assessee had failed to discharge the onus under section 68 of the Act. Accordingly, the entire amount of ₹4.73 crores was treated as unexplained cash credit and added to the income of the assessee. Apart from the above, the AO also disallowed set-off of certain losses against capital gains and finally assessed the total income at ₹4,89,67,090 vide order dated 21.12.2018.

4. On appeal, the learned CIT(A) sustained the addition holding that in absence of compliance to summons under section 131 of the Act and on the basis of the identity, creditworthiness and genuineness of the investors were not established.

5. Aggrieved by the above order, the assessee is in appeal before this tribunal. At the time of hearing ld. AR submitted that the assessee had duly furnished complete documentary evidences including:

- a. Names, addresses, PAN and CIN of all three investor companies.
- b. Copies of ITR acknowledgments of the investors.
- c. Audited balance sheets and profit and loss accounts.
- d. Share allotment letters, resolutions and statutory records.
- e. Bank statements evidencing payments made through banking channels.
- f. Copies of ledger accounts reflecting the investments.

5.1 It was argued that these evidences were filed in the paper book running from pages 51 to 197 before the lower authorities. Despite this, both the AO and CIT(A) failed to make proper enquiry and mechanically rejected the evidences. It was further submitted that non-compliance of summons under section 131 by the directors of the investor companies cannot be a ground to disregard the evidences. The assessee cannot compel third parties to appear. In this respect, the AR relied on various judicial pronouncements including:

- a. CIT vs. Lovely Exports Pvt. Ltd. (216 CTR 195) (SC) wherein it was held that if share application money is received from identified persons whose details are furnished, then the addition cannot be made in the hands of the company.
- b. PCIT vs. NRA Iron & Steel (412 ITR 161) (SC) – distinguished on facts as in the present case complete evidences were filed.
- c. CIT vs. Orissa Corporation Pvt. Ltd. (159 ITR 78) (SC) – once assessee furnishes basic evidences, onus shifts to department.

5.2 The ld. AR further submitted that in the case of the assessee for the assessment year 2012-13 in ITA No.84/Kol/2024, the Coordinate Bench of ITAT, Kolkata had allowed the appeal of the assessee on the similar facts and issue. In that year, the addition made by the Assessing Officer u/s 68 of the Act was set aside. Therefore, it is prayed that since in the subsequent year i.e. 2012-13, the appeal of the assessee has been allowed on identical facts, the present appeal for the assessment year 2011-12 is deserved to be allowed on same reasoning. The AR accordingly prayed that the addition of ₹4.73 crores deserves to be deleted.

6. The learned Departmental Representative (“DR”) supported the orders of the authorities below. He submitted that the assessee had issued shares at an abnormally high premium of ₹90 per share without any justification of business performance or financial worth. The assessee had no substantial business activity to justify such valuation. The DR further argued that mere filing of papers does not establish genuineness. Since the directors of the subscriber companies did not appear in response to summons, the AO rightly concluded that the assessee failed to prove identity, creditworthiness and genuineness of the investors. He therefore urged that the order of the CIT(A) be upheld.

7. We have heard the rival submissions and carefully perused the material on record. The core issue before us is whether the assessee has satisfactorily discharged the onus cast upon it under section 68 of the Act in respect of share capital and premium of ₹4.73 crores received during the year. It is an admitted fact that the assessee filed voluminous evidences including PAN, ITR, bank statements, audited accounts, share allotment documents, etc. of the three investor companies. These evidences prima facie establish the identity of the investors. Regarding creditworthiness, the audited balance sheets of the investor companies reveal sufficient funds and net worth to invest in the assessee company.

The bank statements also show availability of balance prior to issuance of cheques. As regards genuineness, the transactions are routed through normal banking channels, duly reflected in the statutory records. The AO has mainly rejected the claim on the ground that summons issued to the directors under section 131 of the Act were not complied with. In our considered opinion, non-compliance of summons by third parties cannot be held against the assessee when the assessee has already furnished documentary evidences. The AO could have enforced the attendance by using powers vested under section 131(1) and section 133(6), which was not done. We find merit in the contention of the assessee that both the AO and the CIT(A) have brushed aside evidences without conducting meaningful enquiry. No independent investigation has been brought on record to controvert the evidences furnished. The Hon'ble Supreme Court in CIT vs. Lovely Exports Pvt. Ltd. (supra) has held that once the names and details of share applicants are furnished, the department is free to proceed against such applicants in accordance with law but no addition can be made in the hands of the company. Similarly, in Orissa Corporation (supra) it was held that once basic evidences are submitted, the onus shifts to the department. In view of the above legal position, we are of the considered view that the addition of ₹4.73 crores under section 68 is unsustainable. The AO also disallowed set-off of certain losses against capital gains. Since we have already held that the addition under section 68 is deleted, the AO is directed to recompute the income after allowing lawful set-off of brought forward or current year losses in accordance with law. In light of the above discussion and following binding precedents of the Hon'ble Supreme Court and High Courts, we hold that the assessee has duly discharged the onus cast upon it under section 68. Moreover, the Coordinate Bench had allowed the appeal of the assessee on the similar facts and issue for assessment year 2012-13 in ITA No.84/Kol/2024. In that year addition was made u/s 68 of the Act which was deleted by the Tribunal. Since the present case involves

identical facts, therefore, respectfully following the decision of the Coordinate Bench of ITAT, Kolkata, the present appeal of the assessee is also allowed. The addition sustained by the CIT(A) is therefore directed to be deleted. Accordingly, the appeal of the assessee is allowed.

8. In the result, the appeal filed by the assessee stands allowed.

Kolkata, the 10th October, 2025.

Sd/-
[Ratnesh Nandan Sahay]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 10.10.2025.

RS

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