

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**Before**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 142/KOL/2023  
Assessment Year: 2008-09**

M/s. Enfield Vyapaar Pvt. Ltd. <b>(Appellant)</b>	Vs.	I.T.O., Ward-1(1), Kolkata <b>(Respondent)</b>
<b>PAN: AABCE9251H</b>		

**Appearances:**

**Assessee represented by** : Soumitra Choudhury, Adv.

**Department represented by** : Monalisha Pal Mukherjee, JCIT, Sr.  
DR.

Date of concluding the hearing : 31-July-2025

Date of pronouncing the order : 21-October-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2008-09 dated 26.12.2022, which has been passed against the assessment order u/s 147/143(3)/263/144 of the Act, dated 24.03.2014.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*"1. Ld. CIT(A) NFAC erred in confirmation of addition to the tune of ₹ 3,93,00,00/- on account of unexplained credit.*



2. *The appellant craves leave to supplement, substitute, add, alter, amend, cancel or modify all or any ground at the time of hearing.*”

3. Brief facts of the case are that the assessee company filed its return of income for the AY 2008-09 showing total loss of ₹950/-. Subsequently, the case was reopened by the Assessing Officer (hereinafter referred to as Ld. 'AO') by issuing a notice u/s 148 of the Act and finally the reassessment was completed u/s 143(3)/147 of the Act on 31.12.2010 at the total income of ₹28,451/-. Thereafter, revision proceeding u/s 263 of the Act was initiated against the assessee company and finally a revision order u/s 263 of the Act was passed by the Hon'ble CIT, Kolkata-1 setting aside the order u/s 143(3)/147 of the Act directing the Ld. AO to complete the assessment afresh. The assessment proceeding pursuant to order u/s 263 of the Act was initiated against the assessee company and the assessment was completed *ex parte* by the Ld. AO u/s 144 r.w.s. 263 of the Act. The Ld. AO made an addition of ₹3,93,00,000/- on account of share capital along with share premium to the total income of the assessee treating the same as unexplained cash credit. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who went through the facts of the case and upheld the validity of the assessment order as the assessee did not respond to the notices issued by the Ld. AO. As regards the merits of the case, the Ld. CIT(A) went through the order of the Hon'ble Supreme Court in the case of **PCIT (Central-1) vs NRA Iron & Steel Pvt Limited** reported in **412 ITR 161 (SC) [05-03-2019]**, specifically para 14 and also paras 8.2, 8.3, 8.4, 9, 10 and 11 thereof and held that the assessee had not discharged the primary onus of proving the genuineness of the transactions, the identity of the creditors and creditworthiness of the investors (having the financial



capacity to make the investment in question) to the satisfaction of the Assessing Officer even after the Ld. AO affording opportunities to prove the same. As regards the additional ground of appeal regarding the service of notice, the Ld. CIT(A) went through the remand report of the Ld. AO and relied upon the decision of ITAT, Kolkata in the case of **Enfield Vyapaar Pvt. Ltd. Vs. CIT, ITA 1452/KOL/2014** order dated 10.08.2015 in which it is held that *the law does not require service of notice u/s 263 of the Act strictly as per the terms of section 282 of the Act. The only requirement enshrined in the provision is to give an opportunity of hearing to the assessee, which has been complied with in all such cases* and dismissed the additional ground of appeal. Further, relying upon the decision of Hon'ble Calcutta High Court in the case of **PCIT vs. Swati Bajaj & Others (2022) 139 taxmann.com 352 (Cal.)** and quoting para 101 of the order of Hon'ble ITAT reproduced in the order of the Hon'ble High Court, he held that the assessee had not discharged the primary onus of proving the genuineness of the transactions, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, even after affording opportunities to prove the same. The assessee had chosen not to respond and thus the genuineness of the transaction could not be proved by the assessee. The non-responsiveness of the assessee revealed that the receipt of share application money was just a facade for conversion of unaccounted money through sham transactions. Thus, it was opined that there was no need to interfere with the additions made u/s 68 of the Act in the assessment order. In view of the above discussion and following the ratio laid down in the decisions of Hon'ble Supreme Court and Hon'ble Jurisdictional High Court and



other cited above, all the grounds of appeal raised by the assessee were dismissed and accordingly, the appeal of the assessee stood dismissed.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. Before us, the Ld. AR submitted that the directors did not appear and the assessee is willing to produce the directors and requested that another opportunity may be provided to the assessee.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). Since the assessee had received the share capital, the onus was on the assessee to produce the directors of the investing companies/investors for cross-examination, more so in view of the decision of the Hon'ble Jurisdictional High Court in the case of **Swati Bajaj** (supra). Hence, in order to provide one more opportunity to the assessee to furnish the required evidence, the order of the Ld. CIT(A) is hereby set aside and the matter is remanded to the Ld. AO for the assessment to be done afresh after providing an opportunity to the assessee to produce the directors for cross-examination as the share applicants are the witnesses of the assessee and the onus lies on the assessee to prove the identity, creditworthiness of the share applicants and the genuineness of the transactions. The Ld. AO shall, after cross-examination of the directors and any other evidence filed by the assessee, pass an order as per law. Accordingly, the Ground No. 1 taken by the assessee in his appeal is allowed for statistical purposes while Ground No. 2 is general in nature and does not require any separate adjudication.



7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced in the open Court on 21<sup>st</sup> October, 2025.**

*Sd/-*

**[Sonjoy Sarma]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 21.10.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **M/s. Enfield Vyapaar Pvt. Ltd., P-58/1, Strand Bank Road, Ground Floor, Opp. Burra Bazar, Circular Road, Kolkata, West Bengal, 700006.**
2. **I.T.O., Ward-1(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata