

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA**

**SHRI SONJOY SARMA, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 326/Kol/2023  
(Assessment Year 2012-2013)**

**M/s Stupendors Traders Private Limited,**

25, Strand Road, Room No. 613,

Marshall House, Dalhousie,

Kolkata - 700001

[PAN: AADCS7524F]

..... **Appellant**

**vs.**

**DCIT, Circle-5(1), Kolkata,**

Ayakar Bhawan, P-7, Chowringhee Square,

Kolkata - 700069

..... **Respondent**

**Appearances by:**

Assessee represented by : Siddharth Agarwal, Advocate

Department represented by : P.N. Barnwal, CIT-DR

Date of concluding the hearing : 21.08.2025

Date of pronouncing the order : 13.10.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER**

1. The present appeal arises from order dated 23.03.2023, passed u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”) by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)]. The present matter involves second round proceedings as the first round was remanded back to the Ld. CIT(A) in the interests of natural justice (vide ITAT’s order dated 12.06.2019, ITA No. 2317/Kol/2017). The Ld. AO made an addition of Rs. 17,75,00,000/- u/s 68 of the Act, on account of alleged unverified share premium and share capital.

1.1 Before the Ld. CIT(A) also the assessee could not succeed and the

following findings of Ld. CIT(A) would summarize his stand:

*“5.2.2 On perusal of the assessment order, it is noted that the AO has stated that notices u/s 131 were issued to all the directors of shareholder companies of assessee asking for personal appearance for producing furnishing details/documents in support of n support of the justification for the investment made by them in the and other The AO has categorically assessee company mentioned that none of them appeared in response to such notices u/s 131 of the IT Act. The AO has categorically mentioned that show-cause was thereafter issued to the assessee. In absence of any explanation, addition was made.*

*5.2.3 In its reply before NFAC, the appellant has just submitted list of its shareholders without any further details about the source of such investments ie, creditworthiness of shareholders and also to establish the genuineness of the impugned transactions. Clearly, the onus was on appellant to submit these details before NFAC instead of claiming that all relevant details were filed before the AO, when the AO has clearly stated that these were not submitted before the AD as stated in the assessment order The assessee has claimed before the NFAC that its director had appeared (met the AO), However, the AO had issued notice u/s 131 to the share holder companies asking certain details and their directors to appear before the AD and not the director of assessee company. Moreover, if certain details of these companies were claimed to be submitted before the AO, the same should be submitted before NFAC also enabling examination of the same by the NFAC. However, no such details claimed to be filed before AD (which the AO has denied) were submitted before the NFAC It is necessary to point out that the appellant is a private limited company whose shareholders are limited in number and it should not be difficult to obtain and submit these details. Yet the appellant has failed to discharge its onus before the NFAC. It is noted that substantial amount of premium has been claimed to be paid by the new shareholders se, equity shares of Rs 10/-each were issued at a premium of Rs 990/- per share. Such high valuation details were also requested to be clarified by the appellant, which are necessary details to examine the genuineness of the transaction. Accordingly, vide hearing notice dated 24.02.2023, it was then pointed out to the appellant-*

*"Also you have not yet submitted any evidences you want to rely upon to prove the identity, genuineness and creditworthiness of the shareholders till date and hence onus of appellant has not been discharged. Also clarify basis of charging such high premium with details of supporting evidences. Complete reply should be furnished within seven days. Please note that no further opportunity will be granted.*

*However, while appellant had filed legal submissions to counter the claims the AD, no factual evidences to counter the finding of the AD have been submitted all by the appellant. From the above, it can be inferred that assessee has failed*

*prove the genuineness on and identity any factual details shareholders u/s 68 of INCOME TAX DEPARTMEN filed by the appellant such details have not bee*

*5.2.4 On perusal of details filed by the appellant before NFAC in response to abo hearing notices, it is noted that, the appellant has reiterated its earlier submission and submitted the order of the Hon'ble ITAT setting aside the case and proof payment of costs directed by Hon'ble ITAT, but no clarification to earlier hearing notices were submitted despite pointing out that compliance of hearing notice incomplete vide NFAC hearing notice u/s 250 dated 08.03.2023. Last opportunity was given for full compliance on 13.03.2023. however, till today there is no furth clarification from the appellant before NFAC. Thus, there is absence creditworthiness of the shareholders and the surrounding circumstances disproportionate quantum of premium without any justification suggests that impugned transactions are non-genuine transactions. Further, the appellant. co not produce any documents to prove the genuineness and creditworthiness of transactions.....”*

2. Aggrieved with this action of Ld. CIT(A), the assessee has approached the ITAT with the following grounds:

*“1. the order u/s 250 passed by the CIT (Appeals), NFAC is bad in law as well as on facts of the case.*

*2. That the order u/s 250 passed by the CIT (Appeals), NFAC 2. confirming the addition and disallowances made by Learned Assessing Officer is wrong in law & fact of the case.*

*3. That the CIT (Appeals), NFAC erred in law as well as on facts of the case by confirming that the addition made by Learned Assessing Officer disallowing a sum of Rs. 17,75,00,000/- by stating that the appellant has failed to discharge its onus of proving the identity, genuineness and creditworthiness of shareholders thus invoking Section 68 of the Income Tax Act, 1961 and by treating the same as unexplained cash credit.*

*That the appellant craves to leave, add, adduce or delete any of the grounds of appeal during the course of appellate proceedings.”*

2.1 Before us, the Ld. AR argued on the merit. His argument may be briefly summarized. In the AY 2012-13, the Company had raised share capital of Rs. 17,75,00,000 by issuing 1,77,50 equity shares of the face value of Rs.10 each at a premium of Rs.990 pe share. Seven corporate shareholders, all assessed to tax, subscribed to the aforesaid share capital raised by the Company and all payments were received through banking channels. During the course of assessment proceedings in response to notices issued by the Assessing Officer u/s 143(2) and 142(1) of the Act,

the assessee complied with all requisitions made by the Ld. AO, and produced the audited books of accounts, etc. In the assessment order, it has been alleged by the Ld. AO that no compliance was made to the summons issued under section 131 of the Act. However, actually in compliance to the notice U/s 131, the Director of the Appellant Company, Shri Vicky Kothari, had actually gone to the office of the Ld. AO but he was informed that due to some preoccupation of Ld. AO, his statement could not be recorded. It was averred that the assessee was also informed by the Principal Officers of some subscriber companies that they had received notices u/s 133(6) of the Act to which they had duly complied. Thus, the burden on the assessee in relation to section 68 of the Act, was discharged. Thereafter the Ld. AR relied on several case laws in support of his contention.

The Ld. AR concluded his arguments by bringing to our attention an affidavit filed by the Director of the assessee company as under:

*"I, Vicky Kothari S/o Vijay Kothari, aged about 48 years, resident of GC-227, SALT LAKE, SECTOR-III, BL-GD, Kolkata - 700106, presently serving as Director of M/s Stupendors Traders Pvt Ltd having its registered office at 25, Strand Road, Marshall House, 6th Floor, Room No. 613, Kolkata 700001, do hereby solemnly affirm and state as under:*

*1. That I am the Director of M/s Stupendors Traders Pvt Ltd (hereinafter referred to as "the Company") and am duly authorized to swear this affidavit on behalf of the Company.*

*2. That the Company is the appellant in the appeal filed before the Hon'ble Income Tax Appellate Tribunal, Kolkata Bench bearing Appeal No. 336/Kol/2023 for Assessment Year 2012-13:*

*3. That the Income Tax Officer/Assessing Officer had issued KUMAR Section 131 of the Income Tax Act, 1961, requiring the presence of directors of share applicants of the Company for recording of statement and furnishing of information/documents during the course of assessment proceedings.*

*4. That the aforesaid notice couldn't be compiled due to paucity of time and non-availability of the respective directors.*

*5. That I, the deponent herein, in my capacity as Director of the Company, undertake appear in person and produce the authorised representative/director of the share subscriber companies before the Income Tax Officer/Assessing Officer on a given date specified or any other date as may be fixed by the Officer, to give my statement and provide all necessary cooperation in the proceedings.*

*If, another opportunity is given for the same.*

*6. That the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom."*

2.2 The Ld. DR, on the other hand, relied on the findings of authorities below. He also stated that the issues were well settled against the assessee after the cases of BST Infratech Ltd. reported in 468 ITR 111 (Cal) and Balgopal Merchants reported in 468 ITR 136 (Cal). The Ld. DR drew our attention to the relatively poor financials of share subscribers and even of the assessee company. He concluded his arguments by stating that the high premia charged per share was unjustified and the authorities below were justified in invoking the provisions of section 68 of the Act.

3.0 We have heard the rival contentions and considered the documents filed by Ld. AR, as also the orders of authorities below. The points for consideration are whether the impugned transactions were justifiable on the strength of documents filed by the assessee or there was inadequacy in that regard. From various pages in the paper book, there is some evidence of poor financials of the assessee as well as of the share subscribers. Considering this fact, it would have been all the more prudent to examine the genuineness etc. of the 7 concerns which chose to repose considerable faith in the commercial future of the assessee to trust them with huge sums of money, to the extent that the share premia commanded (Rs 990 on face value of Rs. 10) would put to shade even a number of blue-chip companies listed on the Bourses. It was under somewhat similar circumstances when the Hon'ble Jurisdictional High Court upheld the doubtful nature of share premium monies being given to companies having weak commercial credentials, in the case of PCIT vs. BST Infratech Ltd. reported in [2024] 161 taxmann.com 668 (Calcutta). The Hon'ble Calcutta High Court had occasion to observe that in the said case investors had no reason to invest huge amounts in the business of that assessee and the entire transaction was done to circumvent the provisions of the Act. It has been held that the

action of the assessing officer in treating such share application money u/s 68 of the Act as undisclosed cash credit was justified. The relevant portion from this order deserves to be extracted as under:

*36. In Swati Bajaj, the court held that based on the foundational facts the department has adopted the concept of "working backward" leading to the assessee. The department would be well justified in considering the surrounding circumstances, the normal human conduct of a prudent investor, the probabilities that may spill over and then arrive at a decision.*

*37. Thus the CIT(A) was right in adopting a logical process of reasoning considering the totality of the facts and circumstances surrounding the allegations made against the assessee taking note of the minimum and proximate facts and circumstances surrounding the events on which charges are founded so as to reach a reasonable conclusion and rightly applied the test that a reasonable/prudent man would apply to arrive at a conclusion. On facts we are convinced to hold that the assessee has not established the capacity of the investors to advance moneys for purchase of above shares at a high premium. The credit worthiness of those investors companies is questionable and the explanation offered by the assessee, at any stretch of imagination cannot be construed to be a satisfactory explanation of the nature of the source. The assessee has miserably failed to establish genuineness of the transaction by cogent and credible evidence and that the investments made in its share capital were genuine. As noted above merely proving the identity of the investors does not discharge the onus on the assessee if the capacity or the credit worthiness has not been established.*

*38. In the light of the above discussion, we hold that the assessee has failed to discharge legal obligation to prove the genuineness of the transaction and the credit worthiness of the investor which has shown to be so by a "round tripping of funds. For all the above reasons, the revenue succeeds.*

*39. In the result the appeal is allowed, the order passed by the learned Tribunal is set aside and the order passed by the CIT(A) dated 28.11.2019 is restored and the substantial questions of law are answered in favour of the revenue."*

3.1 Considerable strength is also drawn from the case of PCIT vs. NRA Iron & Steel (P.) Ltd. reported in [2019] 412 ITR 161 (SC) in which share application money was approved for action u/s 68 of the Act even where the share applicants had filed confirmations and attempted to show that the transactions had taken place through normal banking channels, etc. In this case, the Hon'ble Apex Court has dealt with the issue from a legal perspective and some of the passages deserve to be extracted for reference:

*"This Court in the land mark case of Kale Khan Mohammad Hanif v. CIT (1963) 50 ITR 1 (SC) and, Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been*

*received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the Assessing Officer must conduct an inquiry, and call for more details before invoking section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments*

*made, it is open to the revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. (Para 8.2)*

*With respect to the issue of genuineness of transaction, it is for the assessee to prove by cogent and credible evidence, that the investments made in share capital are genuine borrowings, since the facts are exclusively within the assessee's knowledge. Merely, proving the identity of the investors does not discharge the onus of the assessee, if the capacity or credit-worthiness has not been established [Para 8.3]*

*The Assessing Officer ought to conduct an independent enquiry to verify the genuineness of the credit entries. In the instant case, the Assessing Officer made an independent and detailed enquiry, including survey of the so called investor companies from Mumbai, Kolkata and Guwahati to verify the credit-worthiness of the parties, the source of funds invested, and the genuineness of the transactions. The field reports revealed that the shareholders were either non-existent, or lacked creditworthiness. [Para 9]*

*The principles which emerge where sums of money are credited as Share Capital/Premium are:*

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, 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 Assessing Officer, so as to discharge the primary onus.*
- ii. The Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.*
- iii. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68. [Para 11]*

*In the instant case, the Assessing Officer had conducted detailed enquiry which revealed that:*

- i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies were non-existent, and had no office at the address mentioned by the assessee. The genuineness of the transaction was found to be completely doubtful.*
- ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90 lakhs to Rs. 95*

*lakhs in the assessment year 2009-10, for purchase of shares at such a high premium.*

*iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the assessee company at a high premium of Rs. 190 per share, even though the face value of the share was Rs. 10 per share.*

*iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested*

*v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under section 68. (Para 12)*

*The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer, failure of which, would justify addition of the said amount to the income of the assessee. (Para 14)*

*On the facts of the present case, clearly the assessee company-respondent failed to discharge the onus required under section 68, the Assessing Officer was justified in adding back the amounts to the assessee's income. [Para 15]."*

3.2. It is seen that in another case on somewhat similar facts, the Hon'ble Calcutta High Court in the case of *Balgopal Merchants (P.) Ltd. vs. PCIT* reported in [2024] 162 taxmann.com 465 (Calcutta) has held that action u/s 68 of the Act was justified. This case law has some similarity of facts with the present matter as the question of non-appearance of Directors for examination and very weak financials, as in the present case, were factors leading to the dismissal of assessee's appeal there. The head notes of this case law may be extracted for reference:

*Section 68 of the Income-tax Act, 1961- Cash credit (Share application money) -Assessment year 2012-13 Assessee-company was engaged in business of trading and dealing in land Assessing Officer noted that business of assessee was only investment and during previous year, assessee had received huge share application money along with premium-Assessing Officer issued summons under section 131 to directors of assessee-company calling upon them to produce proof of identity/PAN card, list of companies where assessee was a director or shareholder, etc. However, there was no compliance of summons - Assessing Officer, thus, completed assessment under section 143(3) by adding amount of share application money received along with premium amount under section 68 on ground that it was only a facade for conversion of unaccounted money It was noted that assessee was a newly incorporated company and it was in first year of its operation that to a broken year There was no noticeable business activity or book*

*value/earnings per share which could justify very high share premium Assessee had itself claimed that there was no noticeable business activity during year Whether thus, assessee having failed to establish basic ingredients required to be established under section 68 Le., identity, creditworthiness and genuineness of transaction of share capital received, addition made under section 68 was valid Held, yes [Paras 25, 30 and 31"*

3.3. A close reading of the case laws cited (supra) reveals that mere filing of confirmations and the income tax details etc. are not enough to justify payment of monies as share premium when the financial aspects of the recipient company would not merit such investments under any kind of prudent commercial consideration. In the present case, it is seen that summons were issued to the Principal Officers of the assessee Company and the share subscribers for establishing the genuineness, identity and creditworthiness aspects of the transactions, however, it is recorded in page 3 of the Ld. AO's order that the summons/notices sent to the Directors/Principal Officers of the assessee company and shareholders were not satisfactorily complied with. It is evident that even those share applicants who did file certain documents, were not sufficiently proved in the eyes of law to discharge the burden cast on the assessee regarding proving the genuineness, etc of the transactions.

3.4 We may also mention that the appellant has a nominal income, during the year under consideration and it is clear that sub-par financials would not, normally, justify high premiums per share, as recorded by the Ld. AO, and affirmed by the Ld. CIT(A), to any prudent investor. Accordingly, the insistence by the Id. AO for ensuring the presence of the Directors of the appellant company for verification was justified. Merely the filing of financial statements, income tax details and bank statements will not be enough to prove the genuineness of the transactions in a closely held company, which is certainly distinct from a widely held company in which the general public is invited to invest and, needless to say, the public invests on a fair appraisal of the financials and future prospects of that company. In this case, the Id. AO was right in insisting on more verification than whatever the appellant was willing to submit before him. In this

regard a recent case of the Hon'ble Calcutta High Court deserves to be discussed as well. In PCIT vs. One Point Commercial (P.) Ltd. reported in [2024] 161 taxmann.com 737 (Calcutta), on similar facts the Hon'ble Jurisdictional High Court has given an order which will help in deciding this case conclusively. Certain portions deserve to be extracted from the said order as under:

*“4. The Assessing Officer while completing the assessment under Section 143(3) of the Act by order dated 24th March, 2015 held that the assessee has failed to prove any one of the three ingredients which are required to be proved under Section 68 of the Act. Several decisions were referred to and the Assessing Officer concludes that there was no documents produced by the assessee to substantiate their claim. This order was affirmed by the Commissioner of Income Tax (Appeals)-9 (CIT(A) by order dated 21 January, 2019 holding that merely furnishing documents in a routine way does not explain the source of creditworthiness of the party. Further, it has been held that the basis on which premium has been charged for the shares has not been explained; no efforts have been made with the help of financial statements to justify the quantum of share premium charged. The CIT(A) placed reliance on the decision of Kolkata Bench of the Tribunal in the case of ITO v. Blessings Commercial (P.) Ltd. [2018] 91 taxmann.com. 176 in ITA 271/Kol/2014, dated 28 June, 2017 and other judgments and ultimately the appeal was dismissed. On an appeal preferred by the assessee before the Tribunal, the concurrent findings recorded by the Assessing Officer and the CIT(A) have been set aside and the appeal has been allowed. The impugned order passed by the Tribunal runs to 14 pages and in paragraph 11 (emphasis added) of the impugned order, the learned Tribunal has recorded that from the bare perusal of the paper book and the documents placed, it is revealed that all the share applicants are income tax assesseees, they are filing their income tax returns, share application form and allotment letter is available on record which were filed in response to the notice under section 133(6), share application money was made by account payee cheques, details of the bank accounts belonging to the share applicants and their bank statements have been furnished and all the share applicants are having substantial creditworthiness represented by their capital and reserves. Though such is the findings recorded by the Tribunal, it is not supported by facts. The Assessing Officer has held that the assessee was a Private Limited company which cannot issue shares in the same manner in which Public Limited company does and in so far as creditworthiness of the share subscribers in concerned, there must be positive evidence to shine the nature and source of resources of the share subscribers and if the assessee was serious enough to establish his case, it ought to have complied with the notices/ letters issued by the Assessing Officer and ought to have produced the directors of the subscribing companies before the Assessing Officer so that they could explain the sources from which the share subscription was made (emphasis added). It is stated that there is no compliance either from the end of the assessee company or from the end of the alleged subscriber company This finding recorded by the Assessing Officer as affirmed by the CIT(A), if required to be set aside by the learned Tribunal, reasons have to be assigned. Therefore, we find that the*

*conclusion arrived at by the learned Tribunal in paragraph 11 in insufficient to support its ultimate conclusion in allowing the assessee's appeal. Therefore, we are of the view that the matter has to be remanded back to the Tribunal for fresh consideration."*

3.5. It is clear that merely filing income tax details, share application form and allotment letter, bank details and details about the creditworthiness of the share applicants is not enough to prove a transaction from the point of view of Section 68 of the Act. In this case also, the appellant is seen to have filed documents, by and large, as mentioned in para 11 of the ITAT's order in M/s One Point Commercial (supra), but following the extracted portions from the Hon'ble Jurisdictional High Court's cases in BST Infratech (supra) and the Hon'ble Calcutta High Court's order in the case of One Point Commercial Pvt Ltd, as extracted (supra), it is held that the onus cast on the appellant, for escaping the rigours of provisions of Section 68 of the Act, have not been discharged.

3.6 However, we are also persuaded by the Affidavit (supra) filed by the Director of the assessee company that now they are willing to discharge the burden cast on them u/s 68 of the Act by appearing before the Ld. AO, etc. Accordingly, we set aside the impugned order and remand this case back to the file of Ld. AO with the following directions:

- (i) The assessee must produce for questioning before the Ld. AO, all relevant persons from the share subscribing entities;
- (ii) The Directors of the assessee company must present themselves for questioning before the Ld. AO;
- (iii) The Ld. AO would diligently examine the financial track record of the assessee, and assess the credibility of the depositions before him and give a clear finding in that context, following the cases of Balgopal Merchants (supra), BST Infratech (supra) and even the case of Mundhra Construction (P.) Ltd reported in 173 taxmann.com 361 (Calcutta), order dated 07-03-2025).

4.0 In result, this appeal is partly allowed for statistical purposes, having been remanded back to the file of Ld. AO.

Order pronounced on 13.10.2025

Sd/-  
**(Sonjoy Sarma)**  
**Judicial Member**

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

Dated: 13.10.2025  
AK, Sr. P.S.

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches