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

SHRI GEORGE MATHAN, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. Nos. 2219 & 2220/Kol/2024
Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Central Circle-1(2), Kolkata,
R. No. 310, 3rd Floor,
Aayakar Bhawan Poorva, 110,
Shanti Pally, Kolkata – 700107 ..... **Appellant**

vs.

Somani Services Private Limited,
16C, Synagouge Street, Kolkata,
Kolkata – 700001, West Bengal
[PAN : AAICS2046K] ..... **Respondent**

Appearances by:
Assessee represented by : Rakesh Jain, AR
Department represented by : Dheeraj, Sr. DR

Date of concluding the hearing : 25.08.2025
Date of pronouncing the order : 16.10.2025

O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. These are a batch of two appeals filed by the Revenue for the same Assessment Year (2012-13). Both of the appeals have interconnected facts and hence they are being disposed off through a single order.

1.1 Both the appeals have been belatedly filed and for the sake of convenience the application for condonation of delay in ITA No. 2219/Kol/2024 is being reproduced for consideration of condonation of said delay:

> *"With due respect, this is to inform you that in the above-mentioned case, appeal order was received in the office of Ld. PCIT, Central-1, Kolkata including in this office on 31/07/2024. Subsequently, Appeal Scrutiny Report in this case along*

with many other cases related to this group was finally submitted on 17/09/2024 through proper channel.

Utmost effort has been made to prepare all the desired ASRs of this group and others including the present case on time. It is pertinent to mention here that AO as well as PCIT were engaged in the 148-time barring matter during the month of August, 2024, which was introduced by Union Budget Finance (No.2) Bill-2024. It is also to be mentioned here that previous incumbent was on the verge of annual general transfer and new incumbent has taken over the charge of O/o DCIT/ACIT, Central Circle-1(2), Kolkata on 05/09/2024 and thereafter Appeal Scrutiny Report was submitted. The charge of PCIT, Central-1, Kolkata has also been taken over by the new incumbent on 17/09/2024. Thereafter, on 04/11/2024 the Ld. PCIT, Central-1, Kolkata has directed to file second appeal before the Hon'ble ITAT, Kolkata.

In view of the above, your honour is requested to kindly condone 38(Thirty Eight) days delay for filing appeal."

1.2 Considering the reasons mentioned in the said petition and also the relative shortness of delay (being 38 days), we hereby condone the delay and admit this appeal for adjudication. Since ITA 2220/Kol/2024 is on a similar footing, with a similar petition, that appeal is also admitted for adjudication after condonation of delay.

1.3 Here it needs to be mentioned that the Ld. AR has requested that in the absence of a day-to-day explanation for delay, the same may not be condoned. On this issue it needs to be considered that the Revenue's petition for condonation dated 05.11.2024 is also supported by a more detailed day-to-day explanation, as can be seen on the "JudiSIS" portal. Thus, this contention of the Ld. AR is rejected as untenable.

2. Both these appeals arise from orders u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") both dated 31.07.2024, passed by the Ld. Commissioner of Income Tax (Appeals)-20, Kolkata. These two cases have a unique set of facts which deserve to be briefly laid out for appreciating the controversy before us. In this assessee's case the first order was passed on 25.07.2014 u/s 143(3) of the Act. Through this order, an addition of Rs. 1,80,290/- was made u/s 14A of the Act read with Rule 8D of the I.T. Rules. Thereafter, another order was passed u/s 147/143(3) of the Act, dated 31.12.2018, through which an addition of Rs. 5,60,00,000/- was made u/s

68 of the Act on account of allegedly unproved share premium received by the assessee. Following this order, there was another order dated 27.11.2019 passed again u/s 147/143(3) of the Act. Through this last order a further addition of Rs. 1,00,00,000/- was made on account of allegedly unproved share capital introduction by a corporate entity not considered in the earlier order dated 31.12.2018. These two re-opened cases were taken before the Ld. CIT(A) who has granted relief on the basis of identical findings for both the cases. For the sake of convenience, the critical findings in ITA No. 2219/Kol/2024 are extracted for reference:

> *"3.1 I have considered the facts of the case and the submission of the appellant. The facts narrated above clearly suggest that the assessment in this case was already completed u/s 143(3) of the Act earlier. Copy of the original assessment order dated 25.7.2014 and 142(1) notice dated 4.4.2014 were also filed before me. The AO has again initiated the reassessment proceedings u/s 147 of the Act without bringing any fresh material on record. The AO has made the addition of Rs. 5,60,00,000/-the amount of share capital/share premium money received from 9 investor companies without conducting any fresh enquiry or bringing any new material on record. It is also a fact that enquiry were already conducted with these 9 companies by the AO in the earlier assessment completed u/s 143(3) of the Act and these companies had complied with the notices of the AO. While making the reassessment on the same issue again u/s. 147 of the Act, the AO has ignored this vital fact of the case without specifying any reasons on it. The AO has nowhere mentioned in the assessment order that as to why he is differing with the earlier decision made by the AO in this case.*
>
> *4.1 Therefore, in view of the above facts as discussed above and further replying on the decisions of Hon'ble Supreme Court in the cases of M/s Andaman Timbers Industries (Supra) and M/s Kelvinator of India (Supra), I am of the opinion that the additions made by the AO of Rs. 5,60,00,000/-cannot be justified on merit. As the action of AO can merely be termed as change of opinion" as no new fact has been brought on record, while making the said addition U/s 68 by the AO. Hence, the addition of Rs. 5,60,00,000/- is deleted."*

2.1 Aggrieved with this action of Ld. CIT(A), the Revenue has filed the present two appeals with the following grounds:

ITA 2219/Kol/2024

> *"1. That on the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the addition of Rs. 5,60,00,000/- of bogus share capital u/s 68 of the Income Tax Act, 1961 ignoring the fact that the assessee has failed squarely to prove the identity and creditworthiness of the subscriber-entity and the genuineness of the impugned transactions.*

2. That the revenue reserves its rights to substantiate, modify, delete supplement and/or alter any or all grounds of appeal at any the time of appeal proceedings."

ITA 2220/Kol/2024

"1. That on the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the addition Rs. 1,00,00,000/- of bogus share capital u/s 68 of the Income 1 Tax Act, 1961 ignoring the fact that the assessee has failed squarely to prove the identity and creditworthiness of the subscriber-entity and the genuineness of the impugned transactions.

2. That on the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the addition of unexplained cash credit of Rs. 1,00,00,000/- by placing his reliance upon the Andaman Timbers Industries Vs. Commissioner of Central Excise, Kolkata-II(SC) Civil Appeal No. 4228 of 2006 and CIT Delhi Vs. M/s Kelvinator of India Ltd. As the action of the AO can merely be termed as change of opinion as no new fact has been brought on record, while making the addition u/s 68.

3. That the revenue reserves its rights to substantiate, modify, delete supplement and/or alter any or all grounds of appeal at any the time of appeal proceedings."

3. Before us the Ld. DR assailed the action of Ld. CIT(A) by stating that the assessee could not conclusively demonstrate the kind of good financials that could have attracted an exorbitant premium amount of Rs. 23,75,00,000/- on a capital base of Rs. 1,25,00,000/-. It was the submission that for this year the total income as per the original return was Rs. 1,80,290/- (being the assessed income in the first-round proceedings u/s 143(3) of the Act). The Ld. DR took us through the financials of some of the share subscribers as depicted at page 6 of the impugned order (ITA No. 2219/Kol/2024). This may be reproduced here for illustration:

Name	*Total Share Capital Raised*	*Amount disallowed*	*Amount allowed*
Ratan Fashion Pvt. Ltd. (Formerly known as Bluesky Supplier Pvt. Ltd.)	*Rs. 1,00,00,000*	*Rs. 65,00,000*	*Rs. 35,00,000*
Dhansagar Sales Pvt. Ltd.	*Rs. 1,00,00,000*	*Rs. 30,00,000*	*Rs. 70,00,000*
Hoogly Jute Mills (Vizianagaram) Pvt. Ltd.	*Rs. 1,00,00,000*	*Rs. 30,00,000*	*Rs. 30,00,000*
True Valley Vyapar Pvt. Ltd.	*Rs. 80,00,000*	*Rs. 80,00,000*	*NIL*
Subhlabh Prints Pvt. Ltd.	*Rs. 1,05,00,000*	*Rs. 1,05,00,000*	*NIL*

Puspanjali Intrade Pvt. Ltd.	*Rs. 50,00,000*	*Rs. 50,00,000*	*NIL*
Pushkar Dealers Pvt. Ltd.	*Rs. 1,30,00,000*	*Rs. 1,30,00,000*	*NIL*
Winsher Vinimay Pvt. Ltd.	*Rs. 1,00,00,000*	*Rs. 60,00,000*	*40,00,000*
Navratan Vinimay Pvt. Ltd.	*NIL*	*Rs. 20,00,000*	*NIL*
Total	*7,65,00,000*	*5,60,000*	

It was the Ld. DR's submission that in the first order (dated 25.07.2014) there was no mention whatsoever about any enquiry or investigation carried out regarding share premium received by the assessee. To this extent relevant portions from the Ld. AO's order dated 25.07.2014 were pointed out as under:

> *"Return declaring an income of Rs. 35,550/- was filed on 06-12-2012 which was processed u/s. 143(1) of I.T. Act, 1961 on 15-01-2014.*
>
> *The case was selected for scrutiny under CASS. Notice u/s. 143(2) of I.T. Act, 1961 was issued on 08-08-2013 which was duly served on assessee company. The case was fixed for 30-10-2013. In response to above notice, the assessee company has filed the copy of return of income, computation of income and audited financial accounts along with power of attorney in favour of Shri B.C. Jain, FCA. Notice u/s. 142(1) along with questionnaire was issued on 04-04-2014. The case was fixed for 22-04-2014. In response to above notice and questionnaire, Shri B.C.Jain, FCA attended time to time filed details as asked for and the case was discussed with him.*
>
> *The assessee company has earned rental income from own properties as well as on subletting of tenanted properties. The assessee has also earned dividend on investments.*
>
> *During the course of assessment proceedings it was noticed that the assessee company has earned exempted income of Rs. 12,95,000/- in the form of dividend. Assessee company has not disallowed any expenses, incurred to earn the above dividend income, in the computation of income.*
>
> *The A/R of the assessee company was confronted that as to why the disallowance of expenses relatable to the exempt income may not be calculated as per provisions of section 14A read with Rule 8D of I.T. Rule, 1962. The A/R of the assessee company vide his letter dated 23-07-2014 has explained that:……*
>
> *The reply of the assessee company is duly considered. The facts of the case law cited above are not identical with the assessee's case as in the assessee's case the major part of the income [more than 70% of the total receipts] is exempt income in the form of dividend. Further, It is not possible that the assessee has not incurred any expenses to earn maximum part of its income. The possibility of use of infrastructure of the assessee including man power cannot be ruled out. In these*

> *circumstances, I am not satisfied with the claim made by the assessee that no expenditure has been incurred in relation to income which does not form the part of total income. Hence, the provisions of section 14A of I.T.Act, 1961 read with Rule 8D of I.T. Rules, 1962 are being invoked to calculate the amount of expenses incurred to earn the above exempt income which is as under :- ……"*

It was the submission that there was no question of "change of opinion" by the subsequent AO as no initial opinion was formed by the first round AO. It was the submission that the case of M/s Kelvinator of India reported in 320 ITR 561 (SC), was clearly distinguishable since in this case there was no visible enquiry conducted by the AO or even any mention that the case was selected for scrutiny for verifying share capital premia. It was the submission in that both the cases there was mention that the initial information was actually received from the Investigation Wing but thereafter, it was pointed out by the Ld. DR that the Ld. AOs in both cases, have duly analysed the said information and recorded their satisfaction. It was the submission that there was a live link between the information received from the Investigation Wing and the recording of satisfaction. Thus, there was no question of any "borrowed satisfaction". It was the submission that in ITA No. 2220/Kol/2024 it was clearly recorded by the Ld. AO that information or details pertaining to M/s Shubh Suppliers Pvt. Ltd. were not filed by the assessee. The Ld. AR concluded his arguments by relying on the Hon'ble Jurisdictional High Court's cases: (i) BST Infratech [468 ITR 111 (Cal); and (ii) Balgopal Merchants [468 ITR 136 (Cal].

3.1 Per contra, the Ld. AR argued with the help of written submission and detailed paper books in both the cases. The Ld. AR supported the findings of the Ld. CIT(A) and stated that for both the cases, the Ld. AOs' actions suffered from a legal fatality as they were based on mere change of opinion and borrowed satisfaction. The Ld. AR submitted a summarized version of his detailed written arguments, which may be reproduced to understand the assessee's stand point:

> *"1. No explanation has been furnished by the Income tax department for the delay of 38 days which is clearly evident from the condonation letter filed by the Income*

tax department along with the form 36 since there is no proper explanation for each day of delay therefore, it is prayed that the appeal need not be condoned and it should be dismissed.

2. In this case the Ld. AO is very much aware that original asst. was completed on the basis of selection of the case under scrutiny as per CASS(Large share premium) which is clearly mentioned on first page in the original scrutiny order dt. 25/07/2014 and is also in the knowledge of the Ld AO while passing order u/s 147.

3. The apex court has clearly ruled that on the same issue which was the subject matter u/s 143(3) scrutiny case the assessment cannot be reopened on the same issue as it tantamount CHANGE OF OPINION.

4. The AO has allowed part of share capital in the reassessment proceedings from the same shareholder and disallowed some portion for which I am attaching a chart for anomalies made by the Ld. AO in his Order u/s 147.

5. The reassessment has been done on the basis of borrowed information as provided by Inv. Wing but the Ld. AO has no applied his mind independently by acting on the own information i.e. by making any enquiry, verification independently as is evident from the Order.

6. The reopening was done on the basis of the statement given by one, Vinod Jajoo to the Inv. Wing. No Opportunity of cross examination of said Vinod Jajoo was provided by the AO which is against the principal of equity and natural justice. Infact the said Vinod Jajoo has retracted from his statement.

7. The Order has been passed only on the basis of suspicion, assumption, presumption and surmises.

8. Proper explanation was given to the Ld. AO challenging the reasons for reopening.

9. The AO never verified the details, documents from the assessment records/folder.

10.No defect has been pointed out by the AO in the submissions made and documents submitted during the course of re-opening assessment proceedings.

11.1 rely on my written submissions, paper book, Order of CIT(A) and case laws submitted during the course of hearing."

The Ld. AR also relied on a plethora of case laws to canvass the point that reopening could not happen on "change of opinion" or "borrowed satisfaction". For the first proposition he stated that the original AO had examined the share premia issue and thus the subsequent AOs could not have sat in judgement on the same set of facts. He relied on the Kelvinator case (supra) for this. For the second proposition he stated that there was considerable judicial literature available to indicate that raw information, as received from the Investigation Wing, could not form the basis for reasons to believe. He relied on a number of case laws as placed before us

in his paper book. He concluded his arguments by stating that the basis for enquiry, being a statement by one Vinod Jajoo, was subsequently retracted and thus had no evidentiary value for these cases.

4.0 We have carefully considered the arguments of Ld. DR/AR and have gone through the various documents presented for our consideration, including paper books and compendium of case laws filed by the Ld. AR. We may take up the various issues involved.

4.1 We may deal with the allegation that the AO in the first round, vide order dated 25.07.2014, had duly examined the issue of share capital introduction and thereafter subjecting the very same issue to re-assessment proceedings was not permissible in law considering the case of Kelvinator of India (supra). From the extract of Ld. AO's order dated 25.07.2014, passed u/s 143(3) of the Act (supra) it is very much evident that there is not a whisper about the enquiry and investigation done by the Ld. AO at that stage. It is, though, seen that the Ld. AO had asked the assessee to furnish documents regarding the said share capital, which were apparent done. However, as mentioned earlier, by the Ld. AO's order in absolutely silent about the reasons for his satisfaction regarding that issue. In fact, there is no mention about this issue in that order at all. It is seen that the Ld. CIT(A) has relied upon the case of M/s Kelvinator (supra) to hold that the subsequent actions of AOs' were based on a change of opinion. At this juncture, we need to see what actually was the finding in the Full Bench decision of the Hon'ble Delhi High Court's in the Kelvinator case [reported in 256 ITR 1 (FB-Delhi)], which eventually travelled up to the Hon'ble Apex Court. In this regard, a critical passage from the Hon'ble Delhi High Court's order deserves to be extracted:

> *"21. Another aspect of the matter also cannot be lost sight of. A statute conferring an arbitrary power may be held to be ultra vires article 14 of the Constitution of India. If*
>
> *two interpretations are possible, the interpretation which upholds constitutionality, it is trite, should be favoured.*
>
> *In the event it is held that by reason of section 147 if the ITO exercises its jurisdiction for initiating a proceeding for reassessment only upon mere change of opinion, the*

same may be held to be unconstitutional. We are, therefore, of the opinion that section 147 does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceeding upon his mere change of opinion.

We, however, may hasten to add that if 'reason to believe' of the Assessing Officer is founded on an information which might have been received by the Assessing Officer after the completion of assessment, it may be a sound foundation for exercising the power under section 147 read with section 148. *(emphasis added)*

Thus, a look at the reasons communicated to the assessee reveals that specific information was received from the Investigation Wing which triggered the re-assessment proceedings. Admittedly, the information was received from the Investigation Wing after the initial assessment was done and over with. Thus, this matter would be covered under the exceptions mentioned in the extract from the Hon'ble Delhi High Court's case in Kelvinator (supra). Accordingly, we are unable to persuade ourselves that the Ld. AO acted on the basis of "mere change of opinion" and thus the action of Ld. CIT(A) on this basis is not supported.

4.2 Regarding the issue of reassessment proceedings being bad in law on account of "borrowed satisfaction", we may discuss this issue. It is correct that for both the reassessment proceedings information apparently in piecemeal basis, was received from the Investigation Wing regarding the doubtful nature of few share subscribers with respect to the assessee. Thereafter, the Ld. AO is seen to have recorded his satisfaction on the basis of this information and proposed to carry out enquiry and investigation. It is pertinent to note that the amendment to the Act w.e.f. 01.04.2021 brought about qualitative changes to the procedure for issuance of notice u/s 148 of the Act. Through this amendment, there is a prescription that the Ld. AO would conduct some enquiries before arriving at the conclusion that notice u/s 148 is required to be issued. It is clear that prior to this amendment this requirement was not there. Accordingly, we see that the Ld. AO has used the information from the Investigation Wing as a trigger for recording his satisfaction and thereafter issuing the notice u/s 148 of the Act. The second limb of the findings of the Ld. CIT(A) revolves around the concept of "borrowed satisfaction". In this regard, we draw strength

from three judgments of the Hon'ble Jurisdictional High Court whereby this aspect has been discussed and the issue has been dealt with in favour of the AO. We may briefly discuss these cases by extracting their head notes as under:

(a) PCIT Vs. Reena Jain reported in 174 taxmann.com 849 (Calcutta)

"Section 68, read with sections 10(38) and 147, of the Income-tax Act, 1961 - Cash credits (Reassessment) - Assessment year 2015-16 - Assessing Officer issued reopening notice on ground that assessee had received accommodation entry of bogus LTCG from trading in penny scrip -Tribunal quashed assessment order on ground that Assessing Officer had acted on borrowed satisfaction without recording his own satisfaction - It was noted that Assessing Officer had taken note of ITBA data which revealed that assessee had received accommodation entry from trading in penny scrip during relevant year Furthermore, he had also pointed out that assessee had not submitted any documentary evidence regarding alleged transactions Whether since Tribunal failed to take into consideration any of reasoning given by Assessing Officer or by Commissioner (Appeals), conclusion arrived at by Tribunal was factually incorrect - Held, yes - Whether thus, impugned order passed by Tribunal was to be set aside - Held, yes [Paras 7 and 9]"

(b) PCIT-9 Vs. P L Goenka HUF reported in [2025] 174 taxmann.com 588 (Calcutta)

"Section 10(38), read with section 147, of the Income-tax Act, 1961 - Capital gains - Income arising from transfer of long term securities (Reassessment) - Assessment year 2013-14 - Assessment order was passed in case of assessee under section 147 read with section 144B - Subsequently, Assessing Officer issued reopening notice against assessee on ground that information was received from investigation wing that assessee was one of beneficiaries who received accommodation entry which was used to avail bogus LTCG/STCL - Tribunal held that Assessing Officer had not formed an opinion and he had mechanically followed report of investigation wing, hence, reopening was not justified - However, it was noted that Assessing Officer had discussed entire facts relating to transactions done by assessee in respect of purchase of shares of company 'T', resulting in huge capital gains to assessee - Assessing Officer had also verified contract note and share certificate submitted by assessee and other details of transactions done by assessee as well as details furnished in return of income -Assessing Officer had also taken note of profit and loss account of said company 'T' and its balance sheet, asset statement and statement of cash flow and came to conclusion that fundamentals of company 'T' were very weak and transaction in shares of 'T' by assessee was a pre-arranged transaction in form of accommodation entry managed through collusive transactions by group of entry

operators and shell entities - Whether, on facts, Tribunal committed an error in coming to a conclusion that Assessing Officer had not applied his mind for reopening assessment under section 147 Held, yes Whether therefore, impugned reopening notice issued against assessee was justified - Held, yes [Paras 10, 11 and 12]."

(c) PCIT-2, Vs. Seaside Projects (P.) Ltd. reported in [2025] 175 taxmann.com 891 (Calcutta)

Section 68, read with section 148, of the Income-tax Act, 1961 - Cash credit (Bogus loss) -Assessment year 2012-13 Assessing Officer received information that SFIO had carried out investigation in NSEL which had discussed issue of client code modification in case of few brokers - He noted that NSEL had provided list of modified clients which included name of assessee - He, thus, issued reopening notice on ground that assessee was a beneficiary of bogus loss on client code modification and accordingly, made additions in income of assessee - It was noted that on basis of information collated and analysis done by Assessing Officer, he was of view that assessee - company had not disclosed true and full income - It was also noted that despite opportunity being granted to assessee, no evidence was produced to show that it was not beneficiary of client code modification - Whether, thus, impugned reopening notice was justified - Held, yes [Paras 4 and 6]."

Considering the discussion above, it is held that the Ld. AO acted on specific information made available by the Investigation Wing and thereafter proceeded to issue the notice u/s 148 of the Act to the assessee. In conclusion, even this action of Ld. CIT(A) does not find favour with us.

4.3 Regarding the assessee's claim that it has submitted sufficient documents to prove the identity and creditworthiness of the share subscribers and also to prove the genuineness of the transaction. In this regard, it deserves to be mentioned that merely submitting income tax details etc. would not be sufficient to escape the rigours of section 68 of the Act. As of now there is considerable judicial precedent available from no less than the Hon'ble Jurisdictional High Court, which clearly lays down that significantly more effort and documentation is required from the assessee when he receives share premium, which appears excessive, especially considering the financials and business prospects of the share premium recipient. In a coordinate Bench case of ***M/s Bhikshu Polymers Pvt. Ltd., ITA No. 1538/Kol/2024, dated 23.12.2024***, the following finding is relevant for our proposed issue here:

"3.1. It is seen that the profit and loss account filed by the assessee paints a rather grim picture about the qualitative aspect of commercial activity which does not seem

to justify the kind of premiums charged by the appellant. Thus, total revenues of Rs 12,873, with profit of Rs 1,723, for the year ending on 31.3.2009 is visible (pages 7-12 of the paper book), which cannot be said to indicate a healthy bottom-line or even a robust business model. Also, the total assets of this Company reveal the following position:

(a) Total Assets- Rs 1,35,781.19.

(b) Net Fixed Assets- Rs. Nil.

(c) Investments- Rs. 1,32,960.

(d) Net Current Assets- Rs 2,745.55

(e) Misc. Expenditure- Rs. 75.64

Considering this fact, it would have been all the more prudent to examine the genuineness etc. of the 17 concerns which chose to repose considerable faith in the commercial future of the assessee to trust them with huge sums of money. It would be seen from the summary of Ld. AO's findings [paragraph 1.1 supra; points (i) to (vii) supra] that this exercise was duly undertaken and the adverse conclusions flowed therefrom. 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). Hon'ble Calcutta High Court had occasion to observe that in the said case investors had no reason to invest huge amounts in 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."

3.2. 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]"

3.3. 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. The head note 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 i.e., identity, creditworthiness and genuineness of transaction of share capital received, addition made under section 68 was valid - Held, yes [Paras 25, 30 and 31"

3.4. 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, at least on the basis of financials presented before us in the detailed paper book filed by the appellant. In the present case, it is recorded in paras 10 and 11 at page 6-7 of Ld. AO's order that summons were issued to the Principal Officer of the Companies for establishing the genuineness, identity and creditworthiness aspects of the transactions, however, most of the summons/notices sent to the Directors/Principal Officers of the assessee company and shareholders were either returned by the postal authorities or remained uncomplied with. It is evident that even those share applicants who did file certain documents, were not sufficient in the eyes of law to discharge the burden cast on the assessee regarding proving the genuineness, etc of the

transactions. The profit and loss account statement extracted (supra) would normally paint a grim picture to any prudent investor, however, in this case it seems to have encouraged 17 entities to transfer huge sums of money by way of share premia, ranging from Rs. 90 to Rs. 900 per equity share.

3.6. It is also required to advert to the cases relied upon by the Ld. AR, in his favour. Thus, in the case of M/s Daniel Commodities Pvt Ltd (supra), it is seen that the Coordinate Bench has substantially dealt with the issue of reopening u/s 147 of the Act and also the issue of Share Capital. For the latter the Coordinate Bench has quoted with favour from the CIT(A)'s finding and after extracting extensively from the said order, have decided the issue in favour of the assessee by holding that all relevant documents were supplied by the assessee to the AO and, importantly, not only were all notices u/s 133(6) of the Act were complied with, but summons issued by the AO to the Directors were also complied with. The statements of the Directors were recorded by the Ld. AO. These facts have been recorded with favour in paragraph 14 of this order of ITAT. It is clearly evident that the present case differs substantially with the M/s Daniel Commodities case (supra), on facts, when we confine ourselves to finding on section 68 of the Act. Furthermore, regarding the case of Aastha Vincom Pvt Ltd (supra), it is seen that in the said order the Coordinate Bench was seized of second round proceedings, initiated after an order u/s 263 of the Act, in which case apparently on same set of facts the first round AO had accepted the claim of assessee about the genuineness of share premium. Also, this order was passed on 26.8.2022, which pre-dates the Hon'ble Jurisdictional High Court's orders in the cases of BST Infratech (supra) and Balgopal Merchants (supra) and thus the Hon'ble Members of the Coordinate Bench did not have the benefit of being guided by these binding Court orders. Again, in the case of Magestic Vyapaar Ltd (supra) the Coordinate Bench has distinguished the Balgopal Merchants case (supra) in para 8 of their order by clearly recording that in the case before the Hon'ble High Court the summons issued to the Directors were not complied with, whereas in the case before the Coordinate Bench the Directors had duly complied with the summons. It deserves to be noted that in the present case also there was inadequate compliance to summons, etc and thus, not only is the case of Magestic Vyapaar distinguishable but it would tend to support any view against this Appellant. Lastly, the case of Hirak Vyapaar Ltd of the Hon'ble Calcutta High Court is required to be discussed. In this case the Hon'ble High Court has observed, with favour, that there was an elaborate fact finding recorded in the impugned ITAT's order through which the compliance to notices issued by the Ld AO and the positive examination of the fiscal health of that Respondent (assessee) was noted and recorded. On this basis it has been held that there was no question of law arising in the said appeal. In the present case, as would be discussed later in this order, there is similarity of facts to the cases relied upon by the Ld. DR and not the case of Hirak Vyapaar (supra).

3.8. 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 the onus cast on the appellant for escaping from the rigours of provisions of Section 68 of the Act have not been discharged. Considering the case laws cited (supra) the financial health of the assessee and the inadequate discharge of onus, we hold this case to be a fit case for application of Section 68 of the Act and thereby confirm the impugned addition."

Considering the detailed finding as extracted above, it deserves to be held that the assessee did not discharge the onus cast upon him u/s 68 of

the Act. We have no hesitation in holding that the action of Ld. CIT(A) cannot be supported under any circumstances for deciding the issues in the present matter.

5. However, we are conscious of the fact that the assessee has not produced detailed justification as to why such heavy premium could be commanded by him especially when the shares subscribers were largely companies with weak financials. Thus, in the interests of substantive justice and fact finding, it is felt that the assessee deserves a chance to prove conclusively the facts surrounding the impugned amounts received as share capital/premium. Accordingly, we set aside the impugned order and direct as under:

(a) the retractions statement filed by the assessee pertaining to Mr. Vinod Kumar Jajoo deserves to be examined and since the assessee has relied on this particular retraction then he is duty bound to produce Mr. Jajoo for cross examination by the Ld. AO. The assessee must do so.

(b) Considerable information, apart from the information contained in the retracted statement, is available from the ROC website. The assessee must present details of financials of the share subscribers and also details therein pertaining to bank accounts from which the transaction occurred

between them and the assessee. The Ld. AO must examine them thoroughly and see if the share subscribers had the necessary creditworthiness to subscribe in the assessee's share with such heavy premium.

(c) The assessee would produce its directors for recording of statement and other verification before the Ld. AO.

(d) The assessee must produce before the AO the principal officers of the share subscribing companies and in case the same is not possible then the location and address of such persons/corporate entities would be provided to the Ld. AO for issuing summons u/s 131 of the Act.

(e) After collecting the necessary information, the Ld. AO would pass a reasoned order keeping in mind the Hon'ble Calcutta High Court judgments in the case of BST Infratech Ltd. reported in 468 ITR 111 (Cal) and Balgopal Merchant reported in 468 ITR 136 (Cal). We direct accordingly.

6. The decisions arrived at above by us would apply equally for the two cases/appeals under consideration.

7. In result, the appeals filed by the Revenue are treated as partly allowed for statistical purposes.

Order pronounced on 16.10.2025

Sd/-	Sd/-
(George Mathan)	**(Sanjay Awasthi)**
Judicial Member	**Accountant Member**

Dated: 16.10.2025
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