

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

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

**ITA No.1817/KOL/2025  
(Assessment Year: 2012-13)**

**Caravan Corporate  
Management Pvt. Ltd.**  
C/o Subash Agarwal &  
Associates, Advocates Sidha  
Gibson, 1, Gibson Lane, Suite  
213, 2<sup>nd</sup> Floor, Kolkata-700069  
West Bengal

**Vs.**

**Income Tax Officer-6(1),  
Kolkata**  
Aayakar Bhawan Poorva, P-7,  
Chowringhee Square,  
Kolkata-700069, West Bengal

**(Appellant)**

**(Respondent)**

**PAN No. AACCC2572L**

**Assessee by** : Shri Siddarth Agarwal, AR  
**Revenue by** : Shri Raja Sengupta, DR

**Date of hearing:** 14.10.2025  
**Date of pronouncement:** 04.11.2025

**ORDER**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 19.06.2025 for the AY 2012-13.

02. At the time of hearing the assessee's counsel pressed the ground no.2, which is against the order of Id. CIT (A) confirming the addition of ₹7,11,00,000/- as made by the Id. AO on account of unexplained cash credit u/s 68 of the Act in the form of share capital/ share premium.

03. The facts in brief are that the assessee filed the return of income on 30.03.2013, declaring total income at ₹nil. The case of the assessee was selected for scrutiny and statutory notices along with questionnaire were duly served and upon the assessee. There was no compliance to the notice issued by the Id. AO u/s 143(2) and 142(1) of the Act. Therefore, the Id. AO issued summon u/s 131 of the Act to the Director of the assessee company which was not complied with. Thereafter, final show cause notice was given to the assessee for which also, according to the Id. AO there was also not complied but the facts on records showed otherwise. However without taking into account the reply/submissions/documents by the assessee framed the assessment u/s 144 of the Act. The Id. AO observed from the details available in the assessment folder that the assessee has received dividend of ₹56,800/- and incurred expenditure of ₹1,63,337/-. The Id. AO also noted that the company was formed on 15.03.1996. The Id. AO noted that during the year the assessee raised share capital/ share premium of ₹7,11,000/-. The Id. AO also issued summons u/s 131 of the Act to the Director of the subscribing companies to explain the money invested in the assessee company as share capital/share premium. The Id. AO noted that only one director Shri Pradeep Goyal appeared and his statement was recorded. It was also noted by the Id. AO that the said person could not prove the creditworthiness and genuineness of the investments made by the subscriber in the assessee company. Thereafter, the Id. AO noted that the Shri Anand Kumar Gupta appeared and filed certain details in compliance to notice u/s 131 of the Act and also the details of replies to summons issued were also filed. Finally, the Id. AO treated the amount of share capital/ share premium as unexplained cash credit

and added the same to the income of the assessee in the assessment framed u/s 144 of the Act dated 18.03.2025.

04. In the appellate proceedings, the Id. CIT (A) confirmed the order of the Id. AO by passing a very cryptic order by not taking into account the reply and submissions of the assessee which is extracted in Para no. 4.2 of the appellate order. While dismissing the appeal, the Ld. CIT(A) observed that the assessee has failed to establish identity, creditworthiness of the subscribers and genuineness of the transactions as the share premium was received.
05. Ld. Counsel for the assessee vehemently submitted before the bench that the order passed by the Ld. CIT(A) is wrong and against the facts on record and various decisions given by different judicial forum. The Ld. AR ,while referring to the evidences filed by the assessee as well as by the subscribers, submitted that the assessee as well as the subscribers in two cases have filed all the evidences proving the identity and creditworthiness of the subscribers as well as genuineness of the transactions. The Ld. AR referred to the replies filed in response to summons u/s. 131 of the Act and submitted that the AO has not pointed out any defect or deficiency in these evidences, which abundantly proved the three conditions of section 68 of the Act. The Ld. AR stated that where the assessee has filed all the evidences qua the subscribers consisting of names and addresses, PANs, audited accounts, bank statements etc. and AO has not carried out any further verification, then the addition cannot be made merely on the ground that there was no compliance to summon issued u/s. 131 of the Act. The Ld. AR stated that even the information sought by the AO in the summons issued u/s. 131 of the Act were duly complied in two cases. In defense of his argument he relied on the following decisions:

- (i) *CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC);*
- (ii) *CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom);*
- (iii) *Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol);*
- (iv) *ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012) and*
- (v) *Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020).*

06. The Ld. D.R strongly controverted and opposed the arguments as put forth by the Ld. A.R by submitting that the share application money was received by the assessee from various subscribers who were not having any creditworthiness. The Ld. D.R submitted that replying to the summons issued u/s 131 of the Act did not mean that the ingredients as envisaged in section 68 of the Act were duly satisfied. Besides the Id DR stated that the enquiries and investigation could not be carried out by the AO when the subscribers did not appear personally in compliance to summons issued u/s 131 of the Act. Therefore the Ld. D.R ,therefore, submitted that the addition was rightly made by the AO and also confirmed by the Ld. CIT(A) after taking into account the reply of the assessee and the various circumstantial evidences.

07. After hearing the rival contentions and perusing the materials available on record, we find that in this case though the Id. AO has passed the order u/s 144 of the Act but the facts on record reveal that the assessee has complied with the show cause notice issued by the Id. AO submitting all the details in respect of share subscribing companies, a copy of which is available at page no. 17 and 18 of the Paper Book. We observed from the said details that during the year the assessee has issued equity shares to ten subscribers by allotting 71,100/- equity shares of ten each at a premium of ₹990/-. We also find that the subscribers have subscribed the said amount by cheque/

RTGS. The assessee thus, raised share capital/ share premium to the tune of ₹7,11,000/-. We also note that the assessee filed before the Id. AO the copy of ITRs, audited financial statements, bank statements, application of equity shares, details of sources of funds in the hands of the subscribers, etc., the details whereof are available at page no. 20 to 219 of the Paper Book. We also note that in some cases Shri Punit Dhanuka, Director of Megha Associate Private Limited and Parthsarathi Mercantile Private Limited appeared before the Id. AO and filed letter dated 16.03.2015 which was duly acknowledged by the office of the Id. AO. Similarly, Shri Anish Chowdhury of Tirupati Mercantile Private Ltd., appeared before the Id. AO and filed letter dated 16.03.2015, which was also duly acknowledged by the office of the Id. Assessing Officer. However, the Id. AO has not pointed out any defect or deficiency in the information furnished by the Id. Assessee in respect of this share subscribers as stated hereinabove and only harped on the fact that there was no compliance to the summons and therefore, creditworthiness and genuineness of the transactions could not be verified. Similarly, before the Id. CIT (A) also passed a very cryptic order thereby uphold the order of the Id. AO without taking into account the details filed by the assessee along with documents explaining the investments in the assessee company. We note that the assessee filed before the Id. CIT (A) the submissions on two occasions namely; 06.03.2023 and 04.03.2024 copies of which are available at page no. 229 to 272 of the Paper Book. In our opinion, the order passed by the Id. CIT (A) acknowledging all the facts on record is contrary to law and cannot be sustained. In our opinion, the assessee has filed all the detail/evidences qua the share subscribers before both the authorities below and they have failed to carry out any meaningful enquiry into the same nor any defect or deficiency was

ever pointed out. In our opinion, the share capital / share premium cannot be treated as unexplained and added to the income of the assessee merely on the ground that there was no compliance on the part of the share subscribers or directors of the assessee company. The case of the assessee is squarely covered by the series of decisions relied by the Id. AR. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A). We find support from the decision of Hon'ble Supreme Court in the case of Orissa Corporation Ltd. (supra)

*“That in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”*

08. The case of the assessee is also squarely covered by the decisions of Hon'ble Calcutta High Court in the case of Crystal Networks Pvt. Ltd. vs. CIT (supra ) wherein it has held that where all the evidences were filed by the assessee proving the identity and creditworthiness of the loan transactions , the fact that summon issued were returned unserved or no body complied with them is of little significance to prove the genuineness of the transactions and identity and creditworthiness of the creditors. The relevant portion of the decision is extracted below:

*“We find considerable force of the submissions of the learned Counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the Ld. CIT(A) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important.*

The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or note. When it was found by the Ld. CIT(A) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact findings. Indeed the Tribunal did not really touch the aforesaid fact finding of the Ld. CIT(A) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows:

*“The Income-Tax Appellate Tribunals performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and records its findings on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law.”*

*The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its findings on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

*Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Ld. CIT(A). We also found no single word has been spared to up set the fact finding of the Ld. CIT(A) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

*Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Ld. CIT(A). The appeal is allowed.”*

09. The case of is also covered by the decision of the coordinate bench by ITO Vs M/s Cygnus Developers India Pvt. Ltd. (supra) the operative part whereof is extracted below:

“8. We have heard the submissions of the learned D.R, who relied on the order of AO. The learned counsel for the assessee relied on the order of Ld. CIT(A) and further drew our attention to the decision of Hon’ble Allahabad High Court in the case of CIT vs. Raj Kumar Agarwal vide ITA No. 179/2008 dated 17.11.2009 wherein the Hon’ble Allahabad High Court took a view that non-production of the director of a Public Limited Company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs. Devinder Singh Shant in ITA No. 208/Kol/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of Ld. CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of share holder. In this regard it is seen that for AY 2004-05 Shree Shyam Trexim Pvt. Ltd. was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd. was assessed to tax u/s 143(3) for AY 2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd. was assessed to tax for AY 2005-06 by the very same ITO, Ward-9(3), Kolkata assessing the assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon’ble Allahabad High Court as well as ITAT, Kolkata Bench on which

*reliance was placed by the learned counsel for the assessee also supports the view that for non-production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.”*

010. Similar ratio has been laid down by the Hon’ble Mumbai High Court in the case of CIT Vs Orchid Industries (P) Ltd (supra) by holding that provisions of section 68 of the Act cannot be invoked for the reasons that the person has not appeared before the AO where the assessee had produced on records documents to establish genuineness of the party such as PAN ,financial and bank statements showing share application money .

011. In the instant case before us also, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but AO has not commented on these evidences filed by the assessee. Under these facts and circumstances and considering underlying facts in the light of ratio laid down in the decisions as discussed above , we are inclined to set aside the order of Ld. CIT(A) by directing the AO to delete the addition.

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

Order pronounced in the open court on 04.11.2025.

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

Sd/-  
(RAJESH KUMAR)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 04.11.2025

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Kolkata