

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.1291/Kol/2024
Assessment Year: 2009-10**

ITO, Kolkata.....Appellant

vs.

**Sumeru Retailers Pvt. Ltd.....Respondent
P-27, Princer Street,
Dharmotolla, Kolkata-72.
[PAN: AAMCS2504C]**

**C.O. 15/Kol/2024
(in ITA No.1291/Kol/2024)
Assessment Year: 2009-10**

Sumeru Retailers Pvt. Ltd.....Cross-Objector

**P-27, Princer Street,
Dharmotolla, Kolkata-72.
[PAN: AAMCS2504C]**

vs.

ITO, Kolkata.....Respondent

Appearances by:

Shri Miraj D Shah, AR, appeared on behalf of the assessee.

Shri Anup Biswas, Addl. CIT- DR, appeared on behalf of the Revenue.

Date of concluding the hearing : October 27, 2025

Date of pronouncing the order : November 19, 2025

ORDER

Per Pradip Kumar Choubey, Judicial Member:

The appeal has been preferred by the Revenue and cross-objection by the assessee against the order of the NFAC, Delhi [hereinafter referred to as the 'CIT(A)'] dated 02.02.2024 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') for A.Y 2009-10.

2. At the outset, we notice that there is delay in filing of the appeal by the Revenue by 66 days and condonation petition for the said delay has been filed by the revenue. On perusal of the contents of the condonation petition, we find that the reasons mentioned therein are valid and

reasonable. Hence, we condone the delay and admit the appeal of the revenue for adjudication.

3. ITA No.1291/Kol/2024 - Brief facts of the case are that the assessee company filed its return of income for the assessment year 2009-10 on 25-08-2009 declaring a total loss of Rs. 3,960/-. The case was reopened under section 147 of the Act and Assessing Officer concluded the assessment by passing an order u/s 147/143(3) determining the total income at Rs.77,290/-. Subsequently revisions proceeding u/s 263 were initiated by the Ld. CIT, Kolkata - 1 against the said order and eventually, a revision order u/s 263 was passed by the Ld. CIT setting aside the order passed by A.O. u/s 147/143(3) with the direction to the A.O. to complete the assessment afresh. Accordingly, the Assessing Officer initiated assessment proceeding pursuant to the order of the Ld. CIT passed u/s 263 by issuing notice u/s 142(1) of the Act. The Assessing Officer concluded the re-assessment by passing an order u/s 143(3)/263/147 of the Act dated 31/03/2016 making an addition of Rs. 10,00,00,000/- in respect of the share capital & security premium raised by the assessee company during the year F.Y. 2008-09 relevant to A.Y. 2009-10. Aggrieved by the said order, the assessee preferred appeal before the ld. CIT(A) and the ld. CIT(A) vide its order dated 04.09.2018 confirmed the additions made by the Assessing Officer. Aggrieved, the assessee preferred appeal before the Hon'ble ITAT wherein the ITAT vide its order in ITA No. 2587/Kol/2018 dated 21.02.2020 has set aside the matter to the AO for fresh order after allowing another opportunity. Following the directions of the Hon'ble ITAT, the Assessing Officer issued notice u/s. 142(1) of the Act to the assessee to submit the certain details. During the course of the assessment proceeding, the Assessing Officer noticed that the assessee company is maintaining Current A/c No. 0515624547050 with IndusInd bank which was opened with initial credit/deposit of Rs 10,000/- on 13/09/2008 by Smt. Vasudha Jain,

one of the Directors of assessee Company and the money started flowing in this account from 04/02/2009 onwards till 23/03/2009. Within the span of just 47 days, the assessee Company's bank account was credited with an aggregate sum of Rs.10,00,00,000/- and the funds credited in each case were immediately transferred out on the day of credit itself. In order to clarify the same, the Assessing Officer issued another notice u/s 142(1) along with detailed questionnaire was issued to the assessee on 30-03-2021 asking the assessee to file explanations and replies with supporting evidences. After verification of the submission of the assessee, the Assessing Officer observed that the assessee was simply given the same illogical explanation which was nothing but repetition of the replies submitted before the then Assessing Officer and the appellate authorities and accordingly based on the facts of the case concluded that Rs.10 crores was nothing but routing of funds and accordingly added back the same as unexplained cash credit u/s 68 of the Act.

4. Aggrieved by the said order, the assessee preferred appeal before the ld. CIT(A) wherein the appeal of the assessee has been allowed.

5. Being aggrieved and dissatisfied, the revenue has preferred the present appeal by raising the following grounds of appeal:

1. That on the fact and circumstances of the case, the Ld CIT(A), NFAC, erred in passing the order by deleting the amount Rs. 10,00,00,000/- as unexplained cash credit u/s 68 without verifying the genuineness creditworthiness and identity of the transactions.
2. That the decision of the Ld. CIT(A)(NFAC) Delhi is contrary to the judgment of the Hon'ble Division Bench, High Court at Calcutta in ITAT/67/2024 (IA NO. GA/2/2024) in the case of Principal Commissioner of Income Tax, (Central-2), Kolkata Vs BST Infratech Limited.
3. That the appellant craves for leave to add, delete, amend or modify or modify any grounds before or at the time of appellate proceedings

6. The ld. AR has supported the impugned order thereby submitting that in the course of assessment proceedings, several documents were submitted by the assessee and also in respect of shareholders such as Audited Final Accounts of the assessee, ITR Acknowledgement of the assessee, Certificate of incorporation, Bank statements and also in respect of shareholders, Share Application Form, Share Allotment Letter, IT Intimation u/s. 143(1), Source of source certificate etc. He further submitted that in response to notices issued u/s 133(6) of the Act, the all the share applicants had filed their replies and also in response to the notice u/s 131 of the Act, the directors duly appeared before the Assessing Officer and their statements were duly recorded u/s. 131 wherein they admitted about the investment made by them into the assessee-company. The ld. AR also submitted that the Assessing Officer has not drawn any adverse inference on the documents submitted by the assessee. He further stated the transactions were done through banking channels and also the directors have confirmed the transaction in their statement. The ld. AR further submitted that the ld. CIT(A) has elaborately discussed this issue and thereafter allowed the appeal.

7. Upon hearing the submissions of the counsels of the respective parties, we have perused the facts of the case and find that the assessee had submitted all the relevant documents relating to shareholder companies i.e., ITR Acknowledgement, COI, Final accounts and bank statement of all the share applicants and copies ITR Acknowledgement, COI, Final accounts and bank statement of all the share applicants. We also find that all the shareholders are income tax assesseees, share applications have been received through account payee cheques and their net worth was much more than the investment made by them in the assessee company by way of share application, the following chart depicting the details as under:

Sl No	Name of the Companies	Net-worth	Investment
1	Adonis Suppliers Pvt. Ltd.	10,00,70,787/-	1,60,00,000/-
2	Ankur Suppliers Pvt. Ltd.	10,00,69,286/-	60,00,000/-
3	Daniel Commodities Pvt. Ltd.	10,60,67,645/-	1,20,00,000/-
4	Daniel Commodities Pvt. Ltd.	10,60,67,645/-	1,60,00,000/-
5	Mainak Suppliers Pvt. Ltd	21,07,48,139/-	1,60,00,000/-
6	Sargam Suppliers Pvt. Ltd.	10,00,68,245/-	60,00,000/-
7	Srijan Retailers Pvt. Ltd.	10,00,71,190/-	60,00,000/-
8	Sumeru Dealers Pvt. Ltd.	10,00,71,335/-	60,00,000/-
9	Welcome Commotrade Pvt. Ltd.	10,00,70,610/-	1,60,00,000/-

7.1 We note that the assessee submitted relevant documents such as ITR & financials etc. and also, the directors of the share applicant companies were personally appeared before the Assessing Officer in response to notice u/s 131 of the Act and their statements were duly recorded and the Assessing Officer found no discrepancy. We further note that the above 9 companies who have introduced money in the appellant company during the year have been admitted to be the group companies of the appellant and also all the share applicants had filed their replies in response to notice u/s 133(6) of the Act. It is pertinent to mention here that the money was received through banking channels and the genuineness of the transaction has been substantiated by the assessee by submitting relevant documents such as share application form, share allotment letter, certificate of incorporation and also bank details of the shareholders. We find that most of companies which have invested in the appellant were newly incorporated in the year 2008-09 and all these companies have raised funds as share application/premium and the amount which was collected was transferred to the assessee claiming the same as investments. We also note that all the relevant documents duly submitted by the assessee and the assessee had discharged its initial burden to prove the identity and

creditworthiness of the share subscribers and genuineness of the transaction, now the burden shifted upon the Assessing Officer to examine the evidences furnished and even if he can make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee confronting the same with the assessee, which was laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd. [(2019) 103 taxmann.com 48 (SC)] and in this case, the Assessing Officer failed to do. Going over the above discussion, we do not find any infirmity in the impugned order wherein the learned CIT(A) has discussed facts as well as judicial pronouncement. Accordingly, appeal filed by the revenue bearing ITA No.1291/Kol/2024 is hereby dismissed.

8. C.O No.15/Kol/24 - The assessee has not pressed the present cross-objection and the same is also dismissed as infructuous.

9. In the result, the appeal filed by the revenue is dismissed and cross-objection of the assessee is also dismissed as not pressed.

Kolkata, the 19th November, 2025.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 19.11.2025.

RS

Copy of the order forwarded to:

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

//True copy//

By order

Assistant Registrar, Kolkata Benches