

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.594/MUM/2023
(Assessment Year: 2012-13)

M/s. Sapphire Fintech Private Limited

6th Floor-1, Plot 165,
161/169 Hirachand Fulchand Trust Building,
Perin Nariman Street, Fort,
Mumbai – 400001
PAN: AAHCS0312H

..... Appellant

v/s

**Deputy Commissioner of Income Tax -
3(3)(1),**

Room No.609, Aayakar Bhavan,
M.K. Road, Mumbai,
Mumbai – 400020

..... Respondent

Assessee by : Shri Mahaveer Jain, Adv.
Shri Shobit Mishra, Adv.

Revenue by : Shri Swapnil Choudhary, Sr.AR

Date of Hearing – 17/11/2025

Date of Order - 02/01/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 04.01.2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds: -

"1. The Learned Commissioner of Income Tax (Appeals) erred in law and facts in confirming the addition of Rs. 1,21,00,000/- u/s. 68 of the Act without considering the documents submitted by the appellant and summarily alleging that the capital introduction lacks creditworthiness.

2. The Learned Commissioner of Income Tax (Appeals) erred in law and facts in confirming the adhoc addition of Rs.6,05,000/- alleging the same as unaccounted transaction charges/ commission/ brokerage.

3. The Learned Commissioner of Income Tax (Appeals) erred in law and facts in confirming the disallowance of Rs.4,39,494/- u/s 14A of the Act without appreciating that the disallowance could not exceed the exempt income of Rs. 1,36,840/- earned by the Appellant during the year under consideration."

3. Ground No.1, raised in assessee's appeal, pertains to the addition of Rs.1,21,00,000/- under section 68 of the Act on account of share application money received by the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of investment. For the year under consideration, the assessee filed its return of income on 13.10.2012, declaring a total loss of Rs.7,97,080/-. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. From the perusal of the balance sheet of the assessee, it was observed that during the year under consideration, the assessee received share capital of Rs.1,21,000/- and share premium of Rs.1,19,79,000/- and had issued and allotted 12,100 preference shares of Rs.10/- each at the premium of Rs.990/- per preference share. During the assessment proceedings, the assessee provided the name and address of the parties who had invested in the assessee. Since the assessee did not submit confirmation of the said parties and justification for

paying such a huge premium, notice under section 133(6) of the Act was issued to these parties. Out of the total eight parties, notices issued to five parties were returned with the remark "*left / not known*", and the remaining three parties did not respond to the notice issued. The said fact was brought to the notice of the assessee, and vide order-sheet noting dated 12.03.2015, the assessee was asked to produce all parties from whom share capital/share premium was received, along with supporting documents to prove the identity and creditworthiness of the parties, and genuineness of the transaction. However, the assessee did not produce any of the parties as directed. Since the assessee did not make compliance with some notices issued during the assessment proceedings, notice was issued to the assessee to show cause as to why the share application money of Rs.1,21,00,000/- on issue of 12100 preference share be not added to its total income under section 68 of the Act in the absence of proof of identity and creditworthiness of the parties, and genuineness of the transaction. In response, the assessee submitted copy of the income tax returns, audited financial statements, and bank statements, highlighting the payment made to the assessee and a ledger confirmation issued by the parties to justify the genuineness of the share application money of Rs. 1,21,00,000/- received during the year.

5. The Assessing Officer ("AO"), vide order dated 25.03.2015 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that the assessee only received dividend income during the year under consideration and no business activity was carried out, justifying investors to invest their money in the assessee company. Further, the AO held

that the assessee had not filed the confirmations, while the same were specifically asked for during the assessment proceedings and the notices issued at the addresses provided by the assessee of the share applicants were also returned unserved with remarks "*left / not known*". The AO further held that the assessee has also not produced these parties with the necessary supporting evidence to justify its claim of receipt of a sum in the form of share application money, and the copy of the resolution of the board meeting of these share applicants supporting the investment in the assessee company was also not produced. The AO further noted that most of these companies invested more than their net worth and are earning meagre income during the year under consideration. Accordingly, the AO held that the identity and creditworthiness of these share applicants and the genuineness of the transaction have not been established by the assessee beyond doubt. Accordingly, the entire share application money amounting to Rs.1,21,00,000/- was treated as unexplained credit under section 68 of the Act and added to the total income of the assessee.

6. The learned CIT(A), vide impugned order, upheld the addition made by the AO under section 68 of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee, during the assessment proceedings, furnished all the details to prove the identity and creditworthiness of the share applicants and the genuineness of the transactions. The learned AR further submitted that if some share applicants did not respond to the notices issued

by the AO, then such non-response cannot go against the assessee, as these share applicants are independent companies not under the control of the assessee. In order to substantiate the existence of these share applicants, the learned AR during the hearing also furnished the status of these companies on the portal of the Ministry of Corporate Affairs ("MCA"). The learned AR also submitted that the entire payment was received by the assessee through the banking channel, and there is no allegation that unaccounted money of the assessee was returned to the assessee through these entities. It was also submitted that in the year under consideration, there was no requirement to prove source-of-source of the investment in the assessee company.

8. On the other hand, the learned Departmental Representative ("*learned DR*") submitted that the AO made an independent inquiry during the assessment proceedings and issued notice under section 133(6) of the Act to the share applicants. However, either these notices were returned unserved, or the share applicants did not file a response to them. The learned DR submitted that the high net worth of these share applicants is also the investment in other dubious parties, and the same only represents a balance sheet item, which does not reflect the money available with these share applicants for investment in the assessee company.

9. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee issued and allotted 12,100 preference shares of Rs.10/- each at a premium of Rs.990/- per preference share. As a result, the assessee received share capital of Rs.1,21,000/- and share premium of Rs.1,19,79,000/-. It is

evident from the record that in order to examine the nature and source of these credits in the accounts of the assessee, the AO issued notice under section 133(6) of the Act to the following share applicants: -

- a. Aditya Fashion Pvt. Ltd.
- b. Raghuraj Trading Pvt. Ltd.
- c. Albatross Share Registry Pvt. Led. V
- d. City Distributor (Bombay) Pvt. Ltd.
- e. Pet Plastic Ltd.
- f. South East Asia Packaging Pvt. Ltd.
- g. Statford Textile Specialities Ltd.
- h. Young Grow Marketing India Pvt. Ltd.

10. In response to the same, the notices issued to the following parties were returned with remark "*left / not known, etc.*", while the remaining parties did not respond to the notice: -

- a. Aditya Fashion Pvt. Ltd.
- b. Raghuraj Trading Pvt. Ltd.
- c. City Distributor (Bombay) Pt. Ltd.
- d. South East Asia Packaging Pvt, Ltd.
- e. Young Grow Marketing India Pvt. Ltd.

11. It is further evident from the record that the said fact was brought to the notice of the assessee, and the assessee was specifically asked to produce these parties from whom share application money was received, along with supporting evidence to prove the identity and creditworthiness of the parties, and the genuineness of the transaction. However, the assessee neither produced any of the parties before the AO nor furnished updated address of the share applicants. During the assessment proceedings, the assessee furnished the documents, such as a copy of the ITR, audited financial statements, and bank statements of these parties, highlighting the payment made to the assessee by these share applications to prove the identity and creditworthiness of the share applicants and the genuineness of the transaction. The AO, not being satisfied with the response of the assessee,

proceeded to make the addition of the entire share application money of Rs. 1,21,00,000/- received by the assessee under section 68 of the Act.

12. During the hearing, the learned AR reiterating the submissions made by the assessee before the lower authorities, placed reliance upon the documents forming part of the paper book, which comprises of copy of ITR acknowledgement, audited annual account, relevant extract of bank statement of the share applicant and the assessee, ledger confirmation and preference share certificate issued by the assessee to the share applicants, to prove the identity and creditworthiness of the share applicants and genuineness of the transaction. From the perusal of these documents, forming part of the record, we find that in respect of share applicants, namely, Aditya Fashion Pvt. Ltd., Young and Grow Marketing India Pvt. Ltd., Rajguru Trading Pvt. Ltd. and South East Asia Packaging Pvt. Ltd., no acknowledgment of ITR for the year under consideration has been placed on record by the assessee. It is further pertinent to note that the assessee has not furnished a copy of the resolution passed in the board meeting of any of these eight share applicants for making the investment in the assessee company.

13. During the hearing, the learned AR placed reliance upon the decision of the Co-ordinate Bench of the Tribunal in ITO vs. Albatross Share Registry Pvt. Ltd., in ITA No. 3788/Mum/2019, for the assessment year 2010-11, vide order dated 23.07.2023 and submitted that the Co-ordinate Bench had examined similar transaction in case of one of the share applicants in the present case. From the perusal of the said decision of the Co-ordinate Bench of the Tribunal, we find that the decision pertains to the assessment year 2010-11, while the

year under consideration is 2012-13. Further, the issue under consideration before the Co-ordinate Bench was the investment in Albatross Share Registry Pvt. Ltd. instead of the investments by Albatross Share Registry Pvt. Ltd. in the assessee company. Therefore, the transaction under consideration before us was not under scrutiny before the Co-ordinate Bench in the aforesaid decision, and thus, we are of the view that the reliance placed upon the aforesaid decision does not in any manner support the case of the assessee.

14. During the hearing, the learned AR also furnished the data available on the MCA portal to support its contention that the share applicants are not paper/shell companies and are in existence. From the perusal of the said details as furnished by the learned AR, we find that the learned AR did not provide any information regarding Raghuraj Trading Pvt. Ltd., City Distributor (Bombay) Pvt. Ltd. and Pet Plastic Ltd. Further, from the details filed before us, we find that, insofar as the share applicants, namely, South East Asia Packaging Pvt. Ltd. and Young and Grow Marketing India Pvt. Ltd., are concerned, their status is mentioned as "*Strike Off*". In any case, we are of the considered view that the status on the MCA portal is not proof that the entity is not a sham or a bogus entity. Thus, to prove the identity of these share applicants in the year under consideration, mere reliance on data available on the MCA portal is insufficient.

15. During the hearing, the learned AR furnished the following details in respect of the share applicants and submitted that they had sufficient net

worth for investment in the assessee-company, and therefore, their creditworthiness cannot be doubted: -

<i>Name of the Allotee</i>	<i>Net Worth as on 31 March 2012</i>	<i>Net Worth as on 31 March 2011</i>	<i>Investment in shares of Appellant</i>
<i>Albatross Share Registry Pvt. Ltd</i>	<i>212751719</i>	<i>212267000</i>	<i>1000000</i>
<i>Pet Plastic Ltd.</i>	<i>129387000</i>	<i>123507000</i>	<i>2000000</i>
<i>Startford Textile Specialities Ltd.</i>	<i>37164738</i>	<i>37000000</i>	<i>3000000</i>
<i>City Distributor (Bombay) Pvt. Ltd.</i>	<i>21014979</i>	<i>20905192</i>	<i>1500000</i>
<i>Aditya Fashions Pvt. Ltd.</i>	<i>17303501</i>	<i>17138837</i>	<i>1000000</i>
<i>Young & Grow Marketing India Pvt. Ltd.</i>	<i>14691000</i>	<i>13376000</i>	<i>1600000</i>
<i>South East Asia Packaging Pvt. Ltd.</i>	<i>70208352</i>	<i>70172670</i>	<i>1000000</i>

16. However, perusing net worth declared by these companies vis-à-vis the gross income declared during the year under consideration, we find merits in the submissions of the learned DR that this net worth is merely a balance-sheet item, which does not prove sufficient liquidity with the share applicants for making huge investments in the assessee-company.

17. From the perusal of the decision of the Hon'ble Bombay High Court in PCIT vs. Ami Industries India (P) Ltd., reported in [2020] 116 taxmann.com 34 (Bom.), relied upon by the learned AR, we find that a board resolution was passed by the creditor companies for the investment in the taxpayer company. However, as noted above, in the present case, no such board resolution of any of the share applicants has been placed on record to support the contention that the investment in the assessee company was genuine. Further, from the decision of the Co-ordinate Bench of the Tribunal in ITO vs. Confiance Trading

Pvt Ltd., in ITA 199/Mum/2020, dated 24.01.2022, relied upon by the learned AR, we find that the AO did not issue the notices under section 133(6) of the Act. However, it is evident from the record that in the present case, an independent inquiry was conducted by the AO during the assessment proceedings and notices under section 133(6) of the Act were issued to the share applicants. Thus, we are of the considered view that even this decision, placed reliance upon by the learned AR, is factually distinguishable and hence not applicable to the present case. As regards the other decisions relied upon by the learned AR in support of its contentions that the share application money received by the assessee from these entities is genuine, we find from the perusal of these decisions that the same have been rendered in their own facts, and each case needs to be examined qua the facts involved. Accordingly, we are of the considered view that none of the decisions relied upon by the learned AR apply to the facts of the present case.

18. It is pertinent to note that in the present case despite the fact of notices issued to the share applicant being returned back with remark '*left / not known*', etc., and some of these parties not responding the same being brought to the notice of the assessee, it is evident from the record that the assessee did not furnish latest address of these parties to the AO for necessary examination and all the details which were furnished before the AO was only submitted by the assessee and none of these details came from any of these share applicants. In this regard, it is pertinent to note the following findings of the Hon'ble Supreme Court in PCIT vs. NRA Iron and Steel Pvt. Ltd., reported in (2019) 412 ITR 161 (SC): -

"11. 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 credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness 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 enquiries 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 of the Act.

12. In the present case, the A.O. 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:

For example:

a. The companies Hema Trading Co. Pvt. Ltd. and Eternity Muiti Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.

b. The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.

c. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be non-existent at the address provided.

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. 90,00,000 to Rs. 95,00,000 in the Assessment Year 2009-10, for purchase of shares at such a high premium.

For example:

Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. - Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000 in the Assessee Company - Respondent.

Another example is of Ganga Builders Ltd. - Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company - Respondent, etc.

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 of the Act.

13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.”

19. Since, in the present case, the preference shares were issued to the share applicants through private placements, i.e., off-market transactions, we are of the considered view that the assessee can only have the information and knowledge as to how these preference shares were issued and allotted to these share applicants, and as to how these share applicants got in touch with the assessee for this transaction. Therefore, in such circumstances, it is all the more relevant that the assessee furnishes all the information regarding

the share applicants and the mode/manner of allotment of preference shares beyond doubt to the satisfaction of the AO. However, in the instant case, neither such information was brought on record by the assessee before the lower authorities, nor was the same placed before us. In this regard, it is pertinent to note the following findings of the Hon'ble Supreme Court in NRA Iron Steels Pvt. Ltd. (supra): -

*"14. 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 AO, failure of which, would justify addition of the said amount to the income of the Assessee.**"*
(emphasis supplied)

20. In this regard, it is also relevant to note the following observations of the Hon'ble Delhi High Court in CIT vs. Navodaya Castles (P.) Ltd., reported in [2014] 367 ITR 306 (Delhi): -

*"18. In case of private limited companies, generally persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call money, dividends, warrants, etc. have to be sent and the relationship remains a continuing one. Therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain un-served and uncomplied. As a general proposition, it would be improper to universally hold that the assessee cannot plead that they had received money, but could do nothing more and it was for the Assessing Officer to enforce shareholders' attendance in spite of the fact that the shareholders were missing and not available. **Their reluctance and hiding may reflect on the genuineness of the transaction and creditworthiness of the creditor.** It would be also incorrect to universally state that an Inspector must be sent to verify the shareholders/subscribers at the available addresses, though this might be required in some cases. Similarly, it would be incorrect to state that the Assessing Officer should ascertain and get addresses from the Registrar of Companies' website or search for the addresses of shareholders themselves. **Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account, when circumstances requires that there should be some more evidence of positive nature to show that the subscribers had made genuine investment or had, acted as angel investors after due diligence or for personal reasons.** The final conclusion must be pragmatic*

and practical, which takes into account holistic view of the entire evidence including the difficulties, which the assessee may face to unimpeachably establish creditworthiness of the shareholders.”

(emphasis supplied)

21. As, in the present case, the assessee has failed to prove the nature and source of share application money received from the share applicants, beyond doubt, we are of the considered view that the AO was justified in making the impugned addition under section 68 of the Act. Accordingly, the impugned order on this issue is upheld, and Ground No.1 raised in the assessee's appeal is dismissed.

22. Ground No.2, raised in assessee's appeal, pertains to the addition of 5% as commission on the aforesaid transaction under section 69C of the Act. Since the main transaction of receipt of share application money has been treated as bogus and the addition has been upheld under section 68 of the Act, we do not find any infirmity in the addition made on account of commission payment at 5% under section 69C of the Act. Accordingly, Ground No.2 raised in assessee's appeal is dismissed.

23. Ground No.3, raised in the assessee's appeal, pertains to the disallowance under section 14A of the Act.

24. The brief facts of the case are that during the year under consideration, the assessee has shown dividend income of Rs.1,36,840/- and claimed the same as exempt under section 10(34) of the Act. Accordingly, the assessee was asked to show cause as to why the disallowance under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("*the Rules*") should not be made.

In response, the assessee submitted that while computing its total income, it had voluntarily disallowed expenses to the extent of exempt income under section 14A of the Act based on judicial pronouncements. The AO, vide order passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that all the expenses connected with the exempt income have to be disallowed under section 14A of the Act, regardless of whether they are direct or indirect, fixed or variable and mandatorily or financial. Accordingly, the AO computed the disallowance of Rs.4,39,494/- under section 14A read with Rule 8D of the Rules. The learned CIT(A), vide impugned order, upheld the disallowance made by the AO. Being aggrieved, the assessee is in appeal before us.

25. Having considered the submissions of both sides and perused the material available on record, we find that there is no dispute regarding the fact that during the year under consideration, the assessee earned dividend income of Rs.1,36,840/-, which was claimed as exempt under section 10(34) of the Act. The Hon'ble Jurisdictional High Court in the case of Nirved Traders Pvt. Ltd. vs. DCIT, in ITA NO.149 of 2017, vide judgment dated 23.04.2019, has held that disallowance under section 14A of the Act cannot be more than the exempt income. Thus, respectfully following the decision of the Hon'ble Jurisdictional High Court cited supra, we direct the AO to restrict the disallowance made under section 14A of the Act to the exempt income earned by the assessee and if it is found that the assessee has already disallowed the expenses to the extent of exempt income under section 14A of the Act, then

no further disallowance be made. Accordingly, Ground No.3 raised in assessee's appeal is allowed for statistical purposes.

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

Order pronounced in the open Court on 02/01/2026

**Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER**

**Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 02/01/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai.