

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

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

**ITA No. 1719/KOL/2025
(Assessment Year: 2009-10)**

**Savera Commotrade Private
Limited**
Martin Burn House, Room
No.312, 1, R.N. Mukherjee Road,
3rd Floor, Kolkata-700001, West
Bengal

(Appellant)

PAN No. AAMCS1790G

ITO, Ward 5(3)
Aaykar Bhawan, P-7,
Chowringhee Square, Kolkata-
700069, West Bengal

(Respondent)

Assessee by : Shri Akkal Dudhwewala, AR
Revenue by : Shri V Vidhyadhar, DR

Date of hearing: 13.01.2026
Date of pronouncement: 10.02.2026

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 05.06.2025 for the AY 2009-10.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of addition of Rs. 6,99,50,000/- by the Id. CIT(A) as made by the Id. AO in respect of share capital / share premium by treating the same as unexplained cash credit u/s 68 of the Income-tax Act, 1961 (hereinafter referred to as the Act).
3. The facts in brief are that, the assessee has filed the return of income on 30.03.2010, showing loss of Rs.184/-. The return was processed

u/s 143(1) of the Act. Thereafter, the case of the assessee was reopened u/s 147 of the Act. It is observed that the Id. AO had called for the details of share capital issued by the assessee and after examining the details, the assessment was framed u/s 147/143(3) of the Act vide order dated 23.08.2011, assessing the total income at Rs.28,500/-. Thereafter, the Id. PCIT, in exercise of the jurisdiction u/s 263 of the Act, revised the assessment dated 23.08.2011 on the ground that the Id. AO has not made any proper enquiries as regards to the source of share capital/ share premium and directed the Id. AO to frame the assessment afresh after affording a reasonable opportunity of hearing to the assessee. The Id. AO accordingly issued notice u/s 142(1) of the Act along with questionnaire and called upon the assessee to furnish all the details qua the share subscribers. The Id. AO thereafter also issued notices u/s 133(6) of the Act to all the share subscribers. Complying with the said notices, each of the share subscribers had submitted before the Id. AO all the information comprising names, addresses, PAN Numbers, copies audited balance sheets, profit and loss accounts, audited reports, bank accounts, etc. The Id. AO also issued summons u/s 131 of the Act to the directors of the shareholding companies. However, none appeared. The Id. AO was of the view that, if the assessee is serious enough to establish its case, it ought to have produced the directors of the subscribing companies so that they could explain their source of the payment. The Id. AO observed that there was no compliance from the share subscribers and therefore the genuineness of the transactions could not be proved. The Id. AO thereafter analysed the data from the returns filed by the assessee and observed that the assessee did not have any future prospects and therefore, no prudent person could have invested in its shares. Thereafter, the Id. AO treated the share capital /share premium

of Rs. 6,99,50,000/- as unexplained cash credit and added to the income of the assessee in the assessment framed.

4. In the appellate proceedings, the Id. CIT(A) dismissed the appeal of the assessee and confirmed the addition. The AR also pointed out that the Id. CIT(A) had copy pasted the findings rendered in the case of some other assessee while rejecting the grounds raised by the assessee by referring to the findings given in the appellate order.
5. After hearing the rival contentions and perusing the materials available on record, we find that that the assessee has raised share capital from 20 share subscribers by issuing 2,79,400 equity shares of face value of Rs.10/- each at a premium of Rs.240/- per share and thus, received Rs. 6,99,50,000/- as share capital/ share premium. We note that the assessee had furnished the details of all the share subscribers, based on which the Id. AO made independent enquiries from each of them u/s 133(6) of the Act. The records placed before us revealed that the notices issued u/s 133(6) of the Act were served upon the share subscribers which substantiated that they were found existing at their given addresses. It is also seen that each of the 20 share subscribers had filed the details including PANs, ITRs, audited financial statements, allotment advices, bank statements, explanation regarding their source of payment. We find that though all the relevant details were furnished by the share subscribers, the Id. AO had conspicuously omitted to take note of the same in the impugned assessment order. Rather, the Id. AO is found to have erroneously observed that there was no compliance from the share subscribers, whereas, the contemporaneous facts showed otherwise.

5.1. Having perused the details furnished by the share subscribers, we observe that each of them held valid PAN and CIN and the proof of

service of notices u/s 133(6), established the identity of the share subscribers. It is also observed that, the share subscribers were regular income-tax filers and their financials demonstrated sufficient strength to justify the amounts subscribed by them. The details of their net worth vis-à-vis the amounts paid by them is noted to be as under:

Sl No.	Name of the Shareholder	Amount	Networth
1	AbhilashiniCommosales Pvt. Ltd.	4,50,000	10,49,00,000
2	Banke bihariVyapaar Pvt. Ltd.	35,00,000	2,91,00,000
3	Bright Tracom Pvt. Ltd.	40,00,000	4,11,50,000
4	Decent Professional services Pvt. Ltd.	20,00,000	2,49,07,744
5	Deora Finance Pvt. Ltd	57,00,000	29,80,01,588
6	Jai Mata Texo Traders Pvt. Ltd	35,00,000	7,18,14,900
7	Lahoti Agro Pvt. Ltd	40,00,000	2,01,57,000
8	Lambodar Commotrade Pvt. Ltd	25,00,000	7,15,00,000
9	Lifeline Properties Pvt. Ltd	10,00,000	4,12,50,000
10	Lingard Mercantile Pvt. Ltd	25,00,000	1,60,00,000
11	Luxo Foams Pvt. Ltd	31,00,000	5,61,30,000
12	Maa Tara Vyapaar Pvt. Ltd	22,00,000	2,46,00,000
13	Paropkar Consultants Pvt. Ltd	33,50,000	15,45,00,000
14	Promising Vinimay Pvt. Ltd	45,00,000	8,98,00,000
15	Pyramid Vanijya Pvt. Ltd.	32,00,000	5,39,00,000
16	Sanghash Commercials Pvt. Ltd	45,00,000	6,04,50,090
17	Shree Dealcom Pvt. Ltd.	35,00,000	6,18,00,000
18	Sindhu Tracom Pvt. Ltd.	50,00,000	8,39,00,000
19	Sterling Commosales Pvt. Ltd.	30,00,000	7,33,92,874
20	Sydney Agencies Pvt. Ltd.	43,00,000	11,90,50,000

5.2. We have perused the decision of the Hon'ble Calcutta High Court in the case of *PCIT vs. Omkar Parivahan Finance Pvt Ltd (ITAT No. 227 of 2024) dated 01.01.2025* wherein it is held that, the fact that the networth is much higher than the investments made by the share subscribers, their creditworthiness stands established. The share subscribers are found to have also furnished their bank statements, evidencing the source of payments along with a separate explanation regarding the same. It is observed that none of the lower authorities were able to point out any specific falsity therein. We thus note that the assessee was able to discharge its initial onus of establishing the

genuineness of the transactions as well. It is thus noted that the three ingredients laid down in Section 68 of the Act was met by the assessee.

5.3. It is observed that the Id. AO had laid much emphasis on the non-compliance of summons by the share subscribers to the enquiry being conducted after more than seven (7) years from the date of transactions. The Id. AR has rightly relied on the decision of the Hon'ble Calcutta High Court in the case of *PCIT vs. Jealous Commercial Private Limited (308 taxman 80)* wherein on similar facts, it was held that mere non-appearance of directors before the AO cannot prompt the AO to render a finding that no satisfactory explanation u/s 68 was offered by the assessee. The relevant findings are as follows:

"18. In the facts and circumstances of the present case, the shareholders who applied for the shares in the assessee stands identified. The source of funds stands satisfied. The assessee reflected the entire issue and allotment of shares at a premium in its books of accounts and submitted the same contemporaneously to the statutory authority, namely, Ministry of Corporate Affairs.

19. Before the Assessing Officer, the assessee produced all such relevant materials with regard to the transaction in question. The absence/non-appearance of the Directors of the assessee before the Assessing Officer would not prompt the Assessing Officer, to render a finding that no explanation within the meaning of Section 68 of the Act of 1961 was offered by the assessee particularly in the factual matrix of the present case.

20. In such circumstances, we do not find any substantial question of law involved for the purpose of consideration by this Court as contended on behalf of the appellant."

5.4. We also rely on the decision of the Hon'ble jurisdictional High Court in the case of *PCIT vs. Balaka Vinimay Pvt Ltd (GA No. 2 of 2025) dated 21.07.2025*. In this case also, the assessee and the share subscribers had furnished all the relevant details in support of the share application monies before the AO. The AO however disbelieved the explanation since there was non-compliance of summons u/s 131 by the directors of the share subscribers. Taking note of the practical difficulty that the assessee cannot be called upon to produce the share subscribers after a gap of 10 to 12 years, and having regard to the

documents placed on record, the Hon'ble High Court dismissed the Revenue's appeal and upheld the order of this Tribunal deleting the addition u/s 68 by observing as under:

".....It is not in dispute that the assessee had filed complete details of each of the shares to prove the identity and creditworthiness of the shareholders and the genuineness of the transactions was proved by producing copies of the confirmation letters, bank statements, audited financial statements, identity proofs, source of funds, investments by the share subscribers in the assessee company, replies which were given to the notice issued under Section 133(6) of the Act and various other details to show that most of the share subscribers have also passed through scrutiny proceedings. These details were placed before the learned Tribunal by way of paper books in three volumes. The learned Tribunal has in extenso referred to the details which have been furnished. Furthermore, the shareholders have responded to the notice under Section 133(6) of the Act directly to the Assessing Officer and their respective assessment orders framed under Sections 147/143(3) of the Act were also placed before the Assessing Officer as well as before the learned Tribunal. Thus, it is evident that the assessee has produced all the documents before the Assessing Officer not once but twice and the authority except indicating a theory of routine entries of paper companies/shell companies, no discrepancies had been pointed out in the financials of the alleged cash creditors. Furthermore, all the share subscribers are private limited companies duly registered with the Ministry of Corporate Affairs and have been furnishing the audited financial statements in the portal of the Ministry. That apart, the share subscribers have also demonstrated that there was immediate source of funds available in the bank accounts which had been applied for making investments in the equity shares of the assessee company. One more particular important factor which was lost sight of is, that the matter pertains to the financial year 2007-08 and the scrutiny assessment was completed on 27.09.2021. After a gap of 13/14 years, after actual transactions had taken place and final assessment orders had been passed, proceedings was initiated.

Thus, the predicament faced by the assessee was taken note by the learned Tribunal and it had observed that it is practically difficult that after a gap of 10 to 12 years, the assessee can call for the share subscribers who invested long time before and there is every possibility that the shareholders would have sold their equities and new shareholders would have taken their place. The learned Tribunal referred to the decision of the co-ordinate Bench in the case of True- Man Consultants Pvt. Ltd. vs. ITO in ITA No.1158/Kol/2023, wherein almost identical issue of unexplained share capital from various share subscribers came up for adjudication and after considering the factual aspect and following the judicial pronouncements, the appeal filed by the assessee was allowed by the Tribunal. The revenue preferred an appeal before this Court in ITAT/203/2024 and by order dated 25th April, 2025, the appeal filed by the revenue was dismissed.

Thus, we find that the factual issues have been thoroughly adjudicated by the Tribunal apart from noting that the assessee had been put to multiple levels of scrutiny and the assessee was able to bring on record documents in support of their claim. Therefore, we are of the view that the addition made under Section 68 of the Act was rightly ordered to be deleted.

For the above reasons, we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and the same is dismissed. The substantial questions of law are answered against the revenue."

5.5. The case of the assessee is also supported by the decision of the Hon'ble Calcutta High Court in the case of *PCIT vs. Bright Commoddeal Pvt Ltd (ITAT No. 162 of 2025) dated 28.08.2025*, wherein, it was held as under:

"We have perused the reasons assigned by the learned Tribunal for allowing the assessee's appeal. It is seen that the assessing officer issued notice under Section 133 (6) of the Act to the investing companies and both the parties have complied with the said notice and furnished the requisite details.

Summons under Section 131 of the Act was issued to the Director of the assessee company to be personally present and also to produce the Directors of the investing company for examination of genuineness of the transaction, identity and creditworthiness of the lenders. The Tribunal noted that the Directors appeared pursuant to the summons but the assessing officer wrongly recorded that the Directors of the assessee company failed to appear in response to the summons issued under 131 of the Act. Furthermore, the Tribunal examined the factual position and noted that the assessee has filed evidences as called for by the assessing officer in respect of the assessee as well as the investing companies. The evidences filed comprised of income tax returns, audited balance sheet, profit and loss account, audited report, bank statement and master data in respect of each of the subscribers. Furthermore, both the parties have submitted their reply pursuant to the notice issued under Section 133(6) of the Act. After noting these facts, the Learned Tribunal held that the assessing officer as well as the CIT(A) did not cause any verification or conduct any enquiry into the evidences which were filed by the assessee and merely harped on non-compliance of the summons issued under Section 131 of the Act, which is factually incorrect.

Learned Tribunal placed reliance on the decision of the Hon'ble Supreme Court in CIT - Vs- Orissa Corporation Ltd. (1986) 159 ITR 78 (SC) as well as the decision of this Court in Crystal Networks Pvt. Ltd. -Vs- CIT, (353) ITR 171 (Cal). The Tribunal also noted the decision of the Co-ordinate Bench in the case of ITO -Vs- M/S Cygnus Developers India Pvt. Ltd. (ITA/282/Kol/2012) wherein the factual position was also similar to that of the case of the assessee.

Thus, we find that the facts have been examined by the Tribunal and the conclusion has been arrived at and therefore, no question of law, much less substantial questions of law, arises for consideration in this appeal."

5.6. In so far as the analysis of the assessee's return of income undertaken by the Id. AO is concerned, we are of the view that the same was of no relevance to ascertain the identity, creditworthiness

and genuineness of the investors. In the instant case before us, the assessee has furnished all the evidences proving identity and creditworthiness of the investors and genuineness of the transactions but Id. AO has not commented on these evidences filed by the assessee. Besides the investors have also furnished complete details/evidences before the Id. AO which proved the identity, creditworthiness of investors and genuineness of the transactions. The case of the assessee is found to be supported by series of decisions of Hon'ble Calcutta High Court namely, *PCIT v. Ambe Tex Fab (India) (P.) Ltd* (173 taxmann.com 392), *PCIT v. Delta Dealers (P.) Ltd* (173 taxmann.com 911), *PCIT v. Goodview Marketing Pvt Ltd* (ITAT No. 114 of 2024), *PCIT v. Rajshree Integrated Cold Chain Pvt Ltd* (ITAT No. 286 of 2024), *PCIT v. True Man Consultants Pvt Ltd* (ITAT No. 203 of 2024), *PCIT v. Hirak Vyapaar Pvt Ltd* (ITAT No. 242 of 2023), *PCIT v. One Point Commercial (P.) Ltd* (478 ITR 183) and *PCIT v. Mainak Suppliers Pvt Ltd* (ITAT No. 253 of 2023). 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 Id. CIT(A) by directing the Id. AO to delete the addition.

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

Order pronounced in the open court on 10.02.2026.

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

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 10.02.2026

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