

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

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No. 2389/Kol/2025
(Assessment Year 2012-2013)**

DCIT, Central Circle-1(4), Kolkata,
Aayakar Bhawan Poorva,
110, Shantipally, Kolkata - 700107 **Appellant**

vs.

Ambica Dhatu Private Limited,
234/3A, 5th Floor, AJC Bose Road,
Kolkata – 700020, Kolkata
[PAN: AACCA6054D] **Respondent**

Appearances by:

Assessee represented by : Amit Agarwal, Advocate

Department represented by : Aditya Bikram, Sr. DR

Date of concluding the hearing : 04.02.2026

Date of pronouncing the order : 05.03.2026

ORDER

Per Rajesh Kumar, AM

The present appeal filed by the revenue arises from order dated 31.12.2024 passed u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") by the Ld. Commissioner of Income Tax (Appeals)-Kolkata, 20 (hereinafter referred to 'the Ld. CIT(A)] for A.Y. 2012-13.

2. At the outset, we observe from the appeal folder that the appeal of the revenue is barred by limitation by 115 days for which the condonation petition was filed. After perusing the contents of the application, we find that the delay is attributable to bonafide and genuine reasons. Therefore, we are inclined to condone the delay and admit the appeal for adjudication.

3. The only issue raised by the Revenue is against the deletion of Rs. 2,50,00,000/- by the Ld. CIT(A) as made by the Assessing Officer on account of unexplained share capital received by the assessee from the shell entities.

4. The facts in brief are that the assessee filed return of income on 27.09.2012 declaring total income of ₹ 51,74,720/-. The case of the assessee was selected for scrutiny and statutory notices along with questionnaire were issued and duly served upon the assessee. The assessee duly complied with the said questionnaire by furnishing all the details/evidences before the AO. Pertinent to state that the assessee company is engaged in manufacturing and trading in chemicals & non-ferrous metals. During the year, the assessee has raised share capital including share premium of ₹ 2,50,00,000/- by issuing shares at a premium of ₹ 90/- each. The assessee company had furnished the details before the Assessing Officer of subscribers along with other documents such as names, addresses, PANs, audit balance sheets, bank accounts etc. The Assessing Officer in order to independently verify the transactions of 9 share subscribers issued notices under Section 131 of the Act to the subscribers which were duly complied by them by furnishing their replies along with evidences. However, the Assessing Officer made addition by treating the share capital/share premium of ₹ 2,50,00,000/- as unexplained investment on the ground that the subscriber companies did not appear personally in compliance of summons issued under Section 131 of the Act.

5. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after taking into consideration the submissions of the assessee, evidences filed and the remand report as called for by the Assessing Officer and also rebuttal filed by the assessee in the said remand report. The Ld. CIT(A) has passed a very comprehensive and speaking order from page no. 40 to 49. The Ld. CIT(A) discussed the details of 9 parties from whom the

said subscription/share premium were received by the assessee. The Ld. CIT(A) also discussed the issue of summons under Section 131 of the Act to the Principal Officers of 9 investor companies and also replies received from the said companies though none appeared personally. The Ld. CIT(A) noted that the Assessing Officer only added the amount of ₹ 2,50,00,000/- as unexplained on the ground that the transactions remained unexplained when the subscriber did not appear before the AO. The Ld. CIT(A) also discussed the documents filed by the assessee as well as by the subscribers before the Assessing Officer in para 6.4. The Ld. CIT(A) noted that ,in the remand proceedings, the Assessing Officer was asked to conduct enquiry under Section 133(6) of the Act from three parties and the Assessing Officer accordingly conducted enquiry from three parties and submitted remand report on the same. The Ld. CIT(A) noted that the six parties also complied to the notices issued under Section 133(6) of the Act by Assessing Officer. Finally, the Ld. CIT(A) deleted the addition by relying on the decision of Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC) and CIT Vs. Sophia Finance Ltd. (1993) 70 taxmann.com 69 (1994) 205 ITR 98. The Ld. CIT(A) deleted the addition by holding that the order of Assessing Officer is not sustaining in the eyes of law.

6. After hearing the rival contention and perusing the material on record. We note that the undisputed fact that the assessee filed before the Assessing Officer or all the evidences qua 9 shares subscriber and all the subscriber responded to the said sale by filing their replies though none attended personally. The Assessing Officer added the share capital/share premium as unexplained for the reason that the same remained are unexplained when the subscriber did not turnover personally in compliance to summons issued under Section 131 of the Act and added the total income of the assessee. We note that during the appellate proceedings, the Ld. CIT(A) called for remand report and directed the Assessing Officer to issue the notice under Section 133(6) of the Act to three

parties which were duly served and which are replied to the said notices. We have examined the appellate order which is a very reasonable and detailed order body of each and every aspect of the issue involved. We note that the Ld. CIT(A) discussed in every comprehensive manner the details of the share subscriber documents filed summons issued under Section 131 of the Act and replies thereto and also notice under Section 133(6) and recorded a very reasoned finding that the Assessing Officer has not done any enquiry on the evidences filed by the assessee whereas the assessee has duly discharged its onus. The case of the assessee is squarely covered by the decisions of (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. Consequently, we are inclined to dismiss the appeal of the revenue by upholding the order of Ld. CIT(A) on this issue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 05.03.2026

Sd/-
(Pradip Kumar Choubey)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 05.03.2026
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

