

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]**

**I.T.A. No. 605/Kol/2015  
Assessment Year: 2007-08**

***Advance PowerInfra Tech Ltd.....Appellant***  
***Formerly and originally as A P Electricals P. Ltd.***  
***Then AP Electricals Ltd.***  
***4., Chandni chowk street,***  
***3<sup>rd</sup> Floor,***  
***Kolkata - 700072***  
***[PAN : AACCA 6066 D]***

***Dy. Commissioner of Income Tax Circle-8.....Respondent***  
***Aayakar Bhawan***  
***P-7 Chowringhee Square***  
***3<sup>rd</sup> Floor***  
***Kolkata - 700 069***

**Appearances by:**

*Shri K. M. Roy, FCA, appeared on behalf of the assessee.*

*Shri David Z. Chawngthu, Addl. CIT, Sr.DR, appearing on behalf of the Revenue.*

Date of concluding the hearing : August 03, 2017

Date of pronouncing the order : August 23, 2017

**O R D E R**

**Per J. Sudhakar Reddy :-**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter the 'Id. CIT(A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 31/12/2009, for the Assessment Year 2007-08.

2. The assessee is a company and is engaged in the business of distribution of transformers. It filed its return of income on



In compliance the assessee has submitted ledger copy of share application money containing information with regard to receipt of share application money as under i.e. column 1 to 5:

5:

Date	Name	Amount	Cheque No. with name of bank	No. of shares FV Rs. 10/- Premium Rs. 40/-	As per detail submitted on 29.12.2009 ROC - No. of Share Premium Rs.10/-	Value (Rs.)
1	2	3	4	5	6	7
19.10.2006	1) NKP Fincom (P) Ltd.	20,00,000	000001 Kotak Mahindra Bank	40,000	1,00,000 share	20,00,000
	2) Star Trafim (P) Ltd.	20,00,000	784585 ABN Amro	40,000	2,00,000 share	40,00,000
30.10.2006	Star Trafim (P) Ltd.	20,00,000	673623 ABN Amro Bank Ltd.	40,000		
31.10.2006	Apsara Fin Trade (P) Ltd.	20,00,000	994392 Standard & Chartered Bank	40,000	1,00,000 share	20,00,000
09.11.2006	1) Rup Trade Commercial (P) Ltd.	20,00,000	700363 ABN Amro	40,000	1,00,000 share	20,00,000
	2) Rajesh Vinimay & Byapar (P) Ltd.	<u>20,00,000</u>	000005 Kotak Mahindra Bank Ltd.	40,000	75,000 share	<u>15,00,000</u>
07.02.2007	Baliwal Finvest P. Ltd.	<u>5,00,000</u>	439952 Standard & Chartered Bank	50,000 shares without premium	1,00,000 share	<u>20,00,000</u>
31.03.2007	Venus Const. Pvt. Ltd.	5,00,000	Not mentioned	5,00,000 shares	Nil	Nil
TOTAL		1,30,00,000				1,35,00,000
	Apsara Avasan Pvt. Ltd.	Nil	Nil	Nil	1,25,000 share	25,00,000
	Beetee Credit	Nil	Nil	Nil	50,000 shares	10,00,000

Marketing Pvt. Ltd.						
Cube Trafim Pvt. Ltd.	Nil	Nil	Nil	Nil	1,00,000	20,00,000
Evergreen Traffim Pvt. Ltd.	Nil	Nil	Nil	Nil	1,25,000	25,00,000
Gyan Chand Kotia	Nil	Nil	Nil	Nil	50,000	10,00,000
Irish Commercial Pvt. Ltd.	Nil	Nil	Nil	Nil	1,00,000	20,00,000
Jalsagar Dealers Pvt. Ltd.	Nil	Nil	Nil	Nil	1,25,000	25,00,000
Raj Kavira Mercantile Pvt. Ltd.	Nil	Nil	Nil	Nil	2,75,000	55,00,000
Sreyams Vyapaar Pvt. Ltd.	Nil	Nil	Nil	Nil	1,25,000	25,00,000
Total		1,30,00,000				3,50,00,000

*“ The assessee was not only asked to submit necessary evidence with regard to genuineness and creditworthiness of the share applicant*

but also reminded vide order sheet 02.12.2009 and 24.12.2009. On 29.12.2009 the assessee submitted an evasive reply stating "Share Application Money of Rs.125.00 lakh has already been allotted on 31.12.2008 and filed to ROC inclusive of Rs.500/- and the xerox copy of the same is enclosed." The said information submitted to ROC Office was compared with the Ledger A/c. as submitted in course of hearing and listed above. The detail contained in ROC information are listed in column 6 & 7. On comparison following discrepancies are noted:

- 1) The premium amount charged as per ledger a/c. is Rs. 40/- whereas as per information submitted to ROC it is Rs.10/- only.
- 2) In some cases i.e. Baliwal Finvest pvt. Ltd. 50,000 shares have been allotted for Rs.5,00,000/- as per ledger a/c. i.e. without charging any premium.
- 3) In the case of Venus Construction 5,00,000 shares have been allotted for Rs.5,00,000/- i.e. at the cost of Re. 1/- each share.
- 4) As per ledger a/c. Rajesh Vinimay and Vyapaar pvt. Ltd. has invested Rs.20,00,000/- for 40,000 shares but as per ROC the said company has invested only Rs.15,00,000/- for 75,000 shares.
- 5) M/s. Baliwal Finvest Pvt. Ltd. has invested Rs.5,00,000/- for 50,000 shares as per ledger a/c. but as per ROC the said company has invested Rs.20,00,000/- for 1,00,000 shares."

Besides these, in all cases there is difference in share application as per ledger a/c. and ROC. In the light of aforesaid facts the undersigned is left with no alternative than to consider that the

share application money for Rs.1.30 crore as per ledger a/c. said to have been received from different persons during the year are unexplained as the assessee failed to establish the genuineness, creditworthiness and transaction of the money though specifically asked time and again. The detail i.e. information submitted to ROC was also examined and discrepancies with regard to several factors including premium amount, no. of shares applied/allotted, amount invested etc. are found and discussed. In the circumstances Rs.1,30,00,000/- is being added to the total income considering the same as unexplained. **Penalty proceedings u/s.271(l)(c) is being initiated.**

**Reliance is placed on the following judgment of the Hon'ble Court for considering it as unexplained-**

(i) In a recent decision of *Hindus than Tea Trading Co. Ltd. v. CIT [2003] 263 ITR 289 (Cal.)* it was held that the power of the A.O. u/s.68 is not an absolute one. It is subject to his satisfaction where an explanation is offered. The Power is absolute where the assessee offers no explanation. The satisfaction with regard to the explanation is in effect an in-built safeguard in section 68 protecting the interest of the assessee. It provides for an opportunity to the assessee to explain the nature and source of the fund. Once it is explained, it is incumbent on the A.O. to consider the same and form an opinion whether the explanation is satisfactory or not.

Duty of A.O. if the conclusion is adverse: If the conclusion is adverse wholly or in a part to the interest of the assessee, it is incumbent on the A.O. to intimate or inform the conclusion arrived at the assessee. When such information or intimation is received by the assessee, the onus shifts on the assessee. He may furnish further explanation or information to support it contention. If further information or materials are furnished, the A.O. is bound to examine the same and form his final opinion and pass

*an appropriate order. Such opinion is also subject to examination by the Commissioner (Appeals) or the Tribunal and if it involves a question of law, it is also subject to scrutiny by the High Court.*

*(ii) The Calcutta High Court in C. Kant & Co. v. CIT [1980] 126 ITR 63 (Cal) held that in the case of cash credit entry it is necessary for the assessee to prove not only the identity of the creditors but also to prove the capacity of the creditors to advance the money and the genuineness of the transactions. On whom the onus of proof lies in a particular case is a question of law. But whether the onus has been discharged in a particular case is a question of fact.*

*Northern Bengal Jute Trading Co. Limited v. CIT [1968] 70 ITR 407 (Cal)- There cannot be one general or universal proposition of law which could be the guiding yardstick in the matter of cash credit. Each case has got to be decided to be considered must however be objective facts, evidence adduced before the taxing authorities, presumption of facts based on common human experience in life and reasonable conclusions. In holding a particular receipt a income from undisclosed source, the fate of the assessee cannot be decided by the revenue on the basis of surmises, suspicions or probabilities.*

3. The assessee carried the matter in appeal. The Id. First Appellate Authority, confirmed this addition by observing as under:-

"9.1.4. I would just add the following further observations:

- *There is total mix-up of Names.*
- *There is total mix-up of amounts – of subscription application as also premium.*

- The premium at Rs.40/- compared to the share face value at Rs.10/- only, and compared to the past record of the company is irrationally disproportionate.
- Details/Names as per the Leger do not match with the 'details/names' filed with the RoC.
- Filing with the RoC is mere routine paper-work compliance only. It does not grant authenticity and reality.
- Like-wise merely getting PAN is mere routine only. It does not certify that the PAN holder is a genuine tax-payer, nor on the credentials.
- PAN and CIN etc, are mere elementary and can be misused/masqueraded.

9.1.5. Section 68 of the Act requires that the 'nature' and 'source' be explained, and if the Assessing Officer is not satisfied with the explanation, the sum may be charged to income-tax. Here, definitely the 'source' is not explained." (Emphasis supplied)

4. The assessee has filed revised grounds of appeal, which read as follows:-

- "1. That the disallowance of interest on unsecured loan for Rs.2,33,941/-.
2. That the addition of Rs.1.25 crores on account of Share Application money is perverse in the absence of any positive evidence.
3. The appellant reserves the right to raise additional grounds during hearing."

5. The Id. Counsel for the assessee, Mr. K. M. Roy, did not press Ground No. 1, and hence the same is dismissed as not pressed.

6. On Ground No. 2, the Id. Counsel for the assessee vehemently submitted that the assessee has discharged the burden of proof that lay on it in proving the identity, creditworthiness as well as the genuineness of the transactions of receipt of share capital, at a premium from a number of Private Limited Companies. He submitted that the identity of the applicants was proved as they are all registered companies having certificate of incorporation and that all the statements were filed. He further submitted that the evidence of source was provided by furnishing PAN Number of the share applicants and as the transactions were cheque transactions, the genuineness of the transactions is proved. He relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Lovely Exports 216 CTR 195*. He further submitted that in case the ITAT requires any further evidence, on this issue, the matter may be remanded to the Assessing Officer for enabling the assessee to fill in the gaps on evidences and prove its case to the satisfaction of the authorities.

7. The Id. DR, on the other hand, opposed the contentions of the assessee and submitted that a remand report was called for by the Id. CIT(A) and the assessee did not submit the same. He pointed out that the finding of the Id. CIT(A) that the premium amount of Rs.40/-



charged for the shares for face value of Rs. 10/- is irrationally disproportionate. He relied on the order of the Id. CIT(A) and submitted that the assessee is not offering any explanation on the same.

8. After hearing the rival submissions, perusing the papers on record, orders of the Authorities below and the case laws cited, we hold as follows:-

8.1. The Id. First Appellate Authority, has granted opportunity to the assessee by calling for the remand report from the Assessing Officer. So, in our view ample opportunity was given to the assessee by the revenue authorities to prove its claim. The assessee has not attempted to file any additional evidence before this Bench of the ITAT. Under these circumstances, the question of remanding the matter to the file of the Assessing Officer for giving the assessee fresh opportunity does not arise. Hence this request is rejected.

9. The Id. First Appellate Authority, at para 9.1.4. and the 9.1.8. has dealt with the issue adequately. We fully endorse the same and for the sake of brevity, we do not extract the same.

9.1. Merely furnishing PAN Numbers in routine way, does not explain the source or the creditworthiness of the party. The basis on which

premium has been charged for the shares has not been explained. A perusal of the financial statements do not justify the quantum of share premium charged. This Tribunal in the case of *M/s. Blessings Commercial Pvt. Ltd, being I.T.A. No. 271/Kol/2014, for the Assessment Year: 2010-11, order dt. 28.06.2017* has held as follows:-

*“11. The second argument of the ld. Counsel for the assessee, is that the assessee has proved the identity and creditworthiness of the creditor company as well as the genuineness of the transactions. We are not able to agree with the same. A 10 rupees share has been issue at a premium of 990 rupees. On a question, the assessee has not even attempted to justify the amount of share premium. A perusal of the audited statement of accounts of these companies demonstrate that there is hardly any income was disclosed or any expenditure worth mentioning was claimed. There is no activity whatsoever in these companies. The Reserve Bank of India, the Institute of Chartered Accountants of India, and certain other organisations, have laid down various methods based on which the amount of share premium can be decided. None of these methods have been followed in this case. The exorbitant quantum of share premium collected shocks the conscience of any reasonable person. A mockery has been made of the whole system. These are not transactions which can be justified by any stretch of imagination. Thus, in our view, the genuineness of these transactions is not proved.”*

The Bench of the ITAT confirmed the addition u/s 68 of the Act on the ground that the assessee has not proved the genuineness of the transactions.

10. Applying the propositions of law laid down in the case of *M/s. Blessings Commercial Pvt. Ltd (supra)*, we uphold the order of the Id. First Appellate Authority and dismiss this appeal of the assessee.

11. In the result, this appeal of the assessee is dismissed.

***Kolkata, the 23<sup>rd</sup> day of August, 2017.***

Sd/-

**[S.S. Viswanethra Ravi]**

Judicial Member

Dated : 23.08.2017

{SC SPS}

Sd/-

**[J. Sudhakar Reddy]**

Accountant Member

*Copy of the order forwarded to:*

**1. Advance PowerInfra Tech Ltd  
 Formerly and originally as A P Electricals P. Ltd.  
 Then AP Electricals Ltd.  
 4., Chandni chowk street,  
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 3<sup>rd</sup> Floor  
 Kolkata - 700 069**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
 Head of Office/ D.D.O. ITAT, Kolkata Benches