

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

Before

**SRI RAJPAL YADAV, VICE PRESIDENT
&
SRI MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 548/Kol/2020
Assessment Year: 2012-13**

***M/s. Combined Merchants Private Limited.....Appellant
[PAN: AAEC 0503 F]***

Vs.

ITO, Ward-12(2), Kolkata.....Respondent

Appearances by:

*Sh. S.K. Tulsiyan, Adv. &
Smt. Puja Somani, CA, appeared on behalf of the Assessee.*

Sh. Biswanath Das, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 20th, 2022

Date of pronouncing the order : August 4th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-16, Kolkata [in short Id. "CIT(A)"] dated 23.09.2020 which is arising out of the assessment order framed u/s 144/143(3) of the Act dated 02.03.2015.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that the order of the Ld. CIT(A) is arbitrary, illegal and had in law.

2. For that the Ld. CIT(A) erred in confirming the addition of Rs. 35,00,000/- as unexplained cash credit whereas the same were received from the group companies/relative of the directors of the company.

3. For that the Ld. CIT(A) erred in confirming the addition of Rs. 35,00,000/- merely by doubting the creditworthiness of the company.

4. For that under the facts and circumstances of the case, the Ld. CIT(A) erred in assessing Rs. 35,00,000/- as unexplained cash credit merely based upon his own surmises and conjectures.

5. For that the under the facts and circumstances of the case the Ld. CIT(A) erred in considering the share application money of Rs. 35,00,000/- as unexplained cash credit whereas all the information were duly on records.

6. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company. E-return of income for AY 2012-13 filed on 08.11.2013 disclosing income of Rs. 340/-. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings Ld. AO observed that the assessee has issued 31,800 equity shares of face value of ₹ 10/- each at a premium of ₹ 40/- per share. Details were called for regarding the issue of share capital of ₹ 31,80,000/- and security premium of ₹ 1,27,20,000/-. The assessee failed to furnish necessary details. As a result, Ld. AO framed best judgement u/s 144 of the Act and

made the addition for unexplained cash credit u/s 68 of the Act at ₹ 1,59,00,340/- and assessed the income at ₹ 1,59,00,340/-.

4. Aggrieved, the assessee preferred appeal before the Ld. CIT(A) and filed complete details of name and address of the share applicants, ledger accounts of share applicants, relevant bank statements, income tax returns, audited balance sheets in case of corporate investors along with Memorandum of Association & Article of Association and copy of board resolutions. Similarly, details were also filed to prove the identity, genuineness and creditworthiness of the individual cash creditor namely Sadgi Agarwal. The Ld. CIT(A) sent these documents to Ld. AO and called for remand report. However, no such remand report was received by and, therefore, Ld. CIT(A) completed the appellate proceedings after examining the details and except for the share application money received from Sadgi Agarwal at ₹ 11 lakh and Milestone Commosales Pvt. Ltd. at ₹ 24 lakh totalling to ₹ 35 lakh, deleted the remaining addition u/s 68 of the Act made for share application money received from Tobu Engineering Ltd., Reward Suppliers Pvt. Ltd., Mahamaya Dealtrade Pvt. Ltd., Appear Distributors Pvt. Ltd. holding that these corporates have sufficient net worth to make investment in the assessee company and the identity and genuineness of the transaction was not in dispute. Thus, Ld. CIT(A) confirmed the addition u/s 68 of the Act at ₹ 35 lakh on the ground that the assessee company failed to prove the creditworthiness of the two cash creditors namely Sadgi Agarwal and Milestone Commosales Pvt. Ltd.

5. Aggrieved, the assessee is now in appeal before the Tribunal. Ld. Counsel for the assessee reiterated the submissions made before Ld. CIT(A) and also stated that both the share applicants namely Sadgi Agarwal and Milestone Commosales Pvt. Ltd. were having sufficient creditworthiness to invest in the equity shares. It was also stated that both these share applicants took the alleged amount as loan from M/s. Tobu Engineering Ltd. for making investment in share application money. It is also stated that Tobu Engineering Ltd. is also one of the share applicant and Ld. CIT(A) has accepted the identity and creditworthiness of this company and the genuineness of the transaction of making investment in equity share capital of the Assessing. It is also submitted that the assessee discharged the primary onus casted upon it u/s 68 of the Act and it is for the Revenue to prove otherwise. For this proposition, reliance placed on the judgement of the Hon'ble Apex Court in the case of *CIT vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 0078* and *CIT vs. Lovely Exports Pvt. Ltd. [2008] CTR 195 (SC)*. Further, reliance also placed on the judgement of Hon'ble Delhi High Court in the case of *CIT vs. Value Capital Services Pvt. Ltd. (2009) 221 CTR 0511 (Del)* and *CIT vs. Steller Investment Ltd. (1991) 192 ITR 287 (Del)*.

6. Per contra ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions referred by the Ld. Counsel for the assessee. The assessee has raised six

grounds of appeal of which Ground No. 1 and 6 are general in nature and the remaining ground nos. 2 to 5 are only challenging the finding of the Ld. CIT(A) confirming the addition for unexplained cash credit of ₹ 35 lakh made by the Ld. AO u/s 68 of the Act.

8. We observe that the assessee company issued 31,800 equity shares of face value of ₹ 10/- at a share premium of ₹ 40/- each thereby increasing its paid-up capital by ₹ 31,80,000/- and security premium account by ₹ 1,27,20,000/-. Ld. AO made addition u/s 68 of the Act at ₹ 1,59,00,000/- for unexplained share capital and security premium. When the matter travelled before the first appellate authority, the assessee got part relief and dispute before us is only limited to the addition of ₹ 35 lakh for the following amount invested in share application money i) Sadgi Agarwal – 11,00,000/- and ii) Milestone Commosales Pvt. Ltd. – 24,00,000/- totalling to ₹ 35,00,000/-. For the assessee not to fall under the provisions of Section 68 of the Act it needs to prove the identity and creditworthiness of the share applicant and the genuineness of the transaction. As far as the identity of the above referred share applicants and genuineness of the transaction is concerned the same is not in dispute before us as Ld. CIT(A) has accepted both these limbs. However, Ld. CIT(A) sustained the addition on the ground that both the share applicants do not have sufficient creditworthiness to make such investment in the assessee company.

9. On going through the records and the paper book filed by the assessee running into 22 pages dated 13/07/2022, we observe that the bank accounts of both the share applicants are filed. On going through the bank account of Sadgi Agarwal placed at page 3 of the paper book, we notice that the investment of ₹ 11 lakh was made on 18/05/2011. On the very same day Sadgi Agarwal received loan of ₹ 11 lakh from M/s. Tobu Engineering Ltd. and just before receiving this loan the brought forward bank balance was Rs. 7,61,459/-. Similar is the case for Milestone Commosales Pvt. Ltd. which also invested ₹ 24 lakh on 07/02/2012 and on the very same day it received a credit transfer from M/s. Tobu Engineering Ltd. at ₹ 24 lakh. So, the common fact is that both the alleged share applicants received loan from M/s. Tobu Engineering Ltd. and applied the alleged amount for making investment in the assessee company and, therefore, on the date of making the investment both the alleged share applicants had sufficient credit in their account to make an investment. So, *prima facie* the assessee has proved the source of source of the share application money by placing on record the proof that the assessee company received share application money from Sadgi Agarwal and Milestone Commosales Pvt. Ltd. and both these share applicants received loan from M/s. Tobu Engineering Ltd.

10. It is also worth noting that M/s. Tobu Engineering Ltd. is also one of the share applicants which applied for the equity shares of the assessee company and the sum so invested was added by Ld. AO. However, Ld. CIT(A) after duly examining the relevant documents, financial statements, income tax return, bank

statements came to the conclusion that the net worth of M/s. Tobu Engineering Ltd. is approx 18.09 crore which was sufficient to explain the creditworthiness of this company to make investment in the equity shares of the assessee company.

11. Now, when the creditworthiness of M/s. Tobu Engineering Ltd. is not dispute before us and is accepted by the Revenue authorities, identity and genuineness of the transaction is not in dispute then there remains no reason to treat the alleged share application money as unexplained. Also, the Revenue authorities have made no efforts on their part to examine the creditworthiness of the alleged share applicants even when the assessee has duly discharged its onus by providing necessary material to prove the creditworthiness of the share applicants.

12. Hon'ble Apex Court in the case of *Lovely Exports Pvt. Ltd.(supra)* has held that *"if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Ld. AO, then the Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share application money cannot be regarded as undisclosed income u/s 68 of the Act."*

13. Honourable Delhi High Court in the case of *Value Capital Services Pvt. Ltd. (supra)* held that *"it is quite obvious that it is very difficult for the assessee to show the creditworthiness of strangers. If the Revenue had any doubt with regard to their ability to make the investment, their returns might be reopened by the Department. In any case, what was clinching was the additional burden on the*

Revenue. It must show that even if the assessee did not have the means to make the investment, the investment made by the assessee actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. As this had not been done in so far as the present case was concerned, addition made was to be deleted.”

14. Honourable Delhi High Court in the case of *Steller Investment Ltd. (supra)* held that “it is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons, who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself.”

15. We, therefore, respectfully following the ratio laid down by the Hon’ble Courts and under the given facts and circumstances of the case wherein the assessee has successfully discharged its onus by proving the identity, genuineness of the transaction and the creditworthiness of these two share applicants namely Sadgi Agarwal and Milestone Commosales Pvt. Ltd. which utilised the loan taken from another company namely M/s. Tobu Engineering Ltd. for making investment in the assessee company and also

under the given facts and circumstances where the share application money received from M/s. Tobu Engineering Ltd. by the assessee stands explained before Ld. CIT(A), we find no merit in the addition made by Ld. AO. We, therefore, reverse the finding of Ld. CIT(A) and delete the addition of Rs. 35 lakh made u/s 68 of the Act. Thus, Ground Nos. 2, 3, 4 & 5 of the assessee are allowed.

16. In the result, the appeal filed by the assessee is allowed.

Kolkata, the 4th August, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 04.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **M/s. Combined Merchants Private Limited, C/o. Rajesh Mohan & Associates, Unit No. 18, 5th Floor, Bagati House, 34, Ganesh Chandra Avenue, Kolkata-700 013.**
2. **ITO, Ward-12(2), Kolkata.**
3. CIT(A)-16, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata