

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member**

**I.T.A. No.176/Kol/2023**  
Assessment Year: 2012-13

**M/s Brightstar Vincom Pvt. Ltd.....Appellant**  
**18/1, 4<sup>th</sup> Floor,**  
**Room No.48, M.D. Road,**  
**Burrabazar, Kolkata-700007.**  
**[PAN: AADCB2082R]**

**vs.**

**ITO, Ward-3(3), Kolkata..... Respondent**

**Appearances by:**

Shri Miraj D. Shah, AR, appeared on behalf of the appellant.

Shri Abhijit Kundu, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : December 14, 2023

Date of pronouncing the order : February 21, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 30.01.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

*"1. For that in the facts and circumstances of the case the addition of Rs. 3,58,00,000 on account of unexplained cash credit being share capital and premium u/s 68 of the Income Tax Act, 1961 which was not even received during the said year was bad in law and was not justified and thus the same deserves to be deleted.*

*2) For that the Assessment order passed was in violation of principals of natural justice and hence the entire proceeding was bad in law and thus the assessment order be cancelled / quashed.*

*3) For that the order passed by the learned CIT (Appeals) is bad in law and therefore the same be reversed.*

*4) For that the learned CIT (Appeals) erred in confirming the interest u/s 234 A/B/C the same was unjustified and hence the same be deleted.*

*5) The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*

*6) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.”*

3. A perusal of the above grounds of appeal would reveal that the assessee has agitated against the addition of Rs.3,58,00,000/- made by the Assessing Officer treating share capital and share premium received by the assessee as unexplained income of the assessee u/s 68 of the Act.

4. At the outset, the ld. counsel for the assessee has invited our attention to the impugned assessment order to submit that the only observation made by the Assessing Officer in the impugned order is that the assessee during the year had received share capital/share premium of Rs.3,58,00,000/- and he treated the said amount as unexplained income of the assessee by way of a non-speaking order and in a mechanical manner. The assessee had duly furnished all the details relating to the identity and creditworthiness of the creditors and genuineness of the transaction. Further, the Assessing Officer, however, without examination any of the documents, did not point out any defect, discrepancy or infirmity in the evidences furnished by the assessee and made the impugned addition in a mechanical manner. The ld. counsel has further invited our attention to the impugned order

of the CIT(A) to submit that the assessee had made detailed submissions before the CIT(A), which have also been reproduced in the impugned order. However, the ld. CIT(A), without considering any of the submissions and evidences furnished by the assessee, confirmed the addition in a mechanical manner.

5. We have heard the rival contentions and gone through the record. The ld. counsel for the assessee has invited our attention to the paper-book to submit that the assessee had furnished the following details not only before the Assessing Officer but also before the CIT(A):

- 1) Details of share application and share applicants
- 2) ITR acknowledgement of the assessee for A.Y 2012-13
- 3) ITR acknowledgement of the assessee for A.Y 2011-12
- 4) Audited accounts of the assessee as on 31.03.2012
- 5) Bank statement of the assessee for the period 01.04.11 to 31.03.12
- 6) Allotment letter of the shares issued by the assessee
- 7) ITR Acknowledgement, Balance Sheet, Bank Statement of the shareholders.

5.1 Even the assessee replied to the notice issued by the Assessing Officer u/s 142(1) of the Act. The copy of the reply dated 05.11.2014 has also been placed at page 243 of the paper book, whereby, the assessee furnished the relevant details and documents including audited accounts and tax audit report of the assessee for A.Y 2011-12 and A.Y 2012-13, books of account and other supporting documents, bank statement, PAN and recent addresses of the directors and further PAN and address of the companies holding more than 10% of the

shares and details of the directors of the said companies. The assessee also produced details of the investments made by the assessee company. However, a perusal of the assessment order would reveal that the Assessing Officer did not bother to examine a single document furnished by the assessee. He, without examining and pointing out any error or infirmity in the said documents for forming the belief that the assessee had introduced unaccounted money in the form of share capital, simply by way of a cryptic order, made the impugned additions. The relevant part of the order of the Assessing Officer is reproduced as under:

*“The assessee company is a closely held company in which public are not substantially interested. Keeping this in consideration, notice under section 131 were issued and sent to the assessee requiring it to appear personally along with all the Principal Officers, Directors of all the investor companies and/or individual investors as the case may be for the purpose to primarily verify the identity and credit worthiness of the shareholders and genuineness of the transaction made by them in the assessee company, as well as analysis of various entries in bank statements, cash book, ledger etc. for ascertainment of primary sources reasons for raising capital , rationality of reasons for investment by the investors procedure and certifications involved in respect of -calculation and determination of such a high premium amount in their respective parts for business and financial justification etc in presence and discussion with all the directors at a time for the purpose of providing the opportunities of cross interaction and cross examination regarding above especially for ascertaining primary sources etc. However, in spite of having opportunities the assessee failed to justify his return with the evidences as discussed which will justify the primary sources etc of its capital raised.*

*Reference is also invited to the elaborate discussion and decision of the Hon'ble ITAT in the cases of M/s Star Griha Pvt. Ltd vs ÇIT and M/s, Bisakha Sales Pvt. Ltd.,Kolkata (PAN: AADCB 0527F) .(Appellant)-Vs-CIT(Kol.-I), Kolkata ..(Respondent).*

*The Hon'ble Apex Court in the case of CIT VS Durga Prasad More 82 ITR 540 and in the case of Sumati Dayal vs CIT 214 ITR 801 has expounded that revenue authorities are also supposed to consider the surrounding*

*circumstances and apply the test of human probability. In these cases the transactions though apparent were held to be not real ones.*

*In the light of the above discussion, the entire amount of money received on account of issue of shares along with the quantum of premium paid for issue of shares is added back as unexplained.”*

A perusal of the above reproduced assessment order would reveal that the Assessing Officer simply issued notice u/s 131 of the Act to the assessee requiring to appear personally along with all the Principal Officers, directors of all the investor companies and individual investors, as the case may be, to verify the transactions without going through the details, evidences furnished by the assessee which included the details of the share subscribers, their creditworthiness and also the books of account and bank statements etc. furnished by the assessee to prove the genuineness of the transaction. The Assessing Officer without examining any of the documents, simply made the addition on account of failure of the assessee to produce share subscribers. The AO has not pointed out in the Assessment Order as to what were the discrepancies in the documents furnished by the assessee and what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

6. The ld. counsel for the assessee, on the other hand, has explained that the observation of the Assessing Officer that there was very high premium received by the assessee as compared to the market value of the shares was wrong. He has submitted that the book value on the date of issue of shares was Rs.191/- per each share and the shares were sold at Rs.200/- each and therefore, the observation of the Assessing Officer simply on the basis of assumptions and presumptions was not justified. He has further explained that the share capital was raised by the assessee for its business requirements for further investing the said amount in the group company of the assessee i.e.

CNG Agrocare Pvt. Ltd which was engaged in the business of manufacturing of organic fertilizers. That the assessee continues to hold shares of CNG Agrocare Pvt. Ltd. even on date. That the share capital was raised from 9 corporate entities and 27 individual shareholders, details of which were duly furnished before the Assessing Officer. The Assessing Officer has not pointed out any specific doubt about the identity and creditworthiness of any of the share subscribers. The ld. counsel has further submitted that the assessee was having share subscription from the said subscribers for the last 10 years and all the details were furnished before the Assessing Officer. That it was beyond the control of the assessee to produce all the shareholders/directors of the corporate entities before the Assessing Officer. The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company.

6.1 The Assessing Officer, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the assessee could not produce the directors of the subscriber companies before the Assessing Officer, even then, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84

taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

*"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."*

7. So far as the reliance of the Ld. DR on the decision of the hon'ble Supreme Court in the case of "PCIT v/s NRA Iron & Steel (P) Ltd." (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold

*that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.”*

Thereafter the hon’ble Supreme Court summed up the principles which emerged after deliberating upon various case laws as under:

**“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.”*

The Hon’ble Supreme court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound conduct to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above,



the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of PCIT vs. NRA Iron and Steel Pvt. Ltd., impugned additions are not warranted in this case.

8. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of *Commissioner of Income-tax vs. Manish Build Well (P.) Ltd.* reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law.

9. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted.

10. In the result, the appeal of the assessee stands allowed.

**Kolkata, the 21<sup>st</sup> February, 2024.**

Sd/-

[गिरीश अग्रवाल /Girish Agrawal]

लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 21.02.2024.

RS

*Copy of the order forwarded to:*

1. M/s Brightstar Vincom Pvt. Ltd
2. ITO, Ward-3(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches