

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

**Before Shri P.M. Jagtap, Vice-President  
& Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2246/KOL/2017  
Assessment Year: 2012-2013**

*Deputy Commissioner of Income Tax,.....Appellant  
Circle-3(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
4<sup>th</sup> Floor, Room No. 19,  
Kolkata-700069  
-Vs.-*

*M/s. Alishan Steels Pvt. Limited,.....Respondent  
Martin Bur Building, 2<sup>nd</sup> Floor, Room No. 210,  
1, R.N. Mukherjee Road, Kolkata-700001  
[PAN: AAACG9883E]*

**Appearances by:**

*Shri Imokaba Jamir, CIT, for the Appellant  
Shri K.M. Roy, F.C.A., for the Respondent*

Date of concluding the hearing : January 23, 2020  
Date of pronouncing the order : March 18, 2020

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President:**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-9, Kolkata dated 11.07.2017.

2. At the outset, it is noted that there is a delay of ten days on the part of the Revenue in filing this appeal before the Tribunal. In this regard, the Revenue has moved an application seeking condonation of the said delay and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of ten days on the part of the Revenue in filing this appeal before the Tribunal. Even the Id. Counsel for the assessee has not raised any objection in this regard. We, therefore,

condone the said delay and proceed to dispose of this appeal of the Revenue on merit.

3. Grounds No. 1 to 3 of the Revenue's appeal involve a common issue relating to the deletion by the Id. CIT(Appeals) of the addition of Rs.6,00,00,000/- made by the Assessing Officer on account of share capital and share premium received by the assessee during the year under consideration by treating the same as unexplained cash credit under section 68.

4. The assessee in the present case is a Company which is engaged in the business of manufacturing of MS Ingots. The return of income for the year under consideration was filed by it on 29.09.2012 declaring a loss of Rs.92,81,581/-. During the course of assessment proceedings, the claim of the assessee of having received share capital and share premium amount aggregating to Rs.6,00,00,000/- was examined by the Assessing Officer. On such examination, he recorded the following findings/observations:-

*"(1) The assessee company entered into a sham transaction with the investor to introduce the unaccounted income in form of share application/allotment.*

*(2) The assessee company did not have any regular business transaction or regular acquaintance with the investor.*

*(3) The investor has no reason to invest such huge amount in the business of the assessee.*

*(4) The investor has no business transaction with the assessee company in past or future except this one time entry.*

*(5) Assessee cannot withstand the cross examination before AO, if the above questions arise.*

*(6) Entire transactions were done to beat the new provision of Income Tax Act".*

On the basis of the above findings/observations recorded by him in the assessment order, the Assessing Officer treated the entire share capital and share premium amount aggregating to Rs.6,00,00,000/- as unexplained cash credit and an addition to that extent was made by him under section 68 to the total income of the assessee in the assessment completed under section 143(3) vide an order dated 07.03.2015.

5. The addition of Rs.6,00,00,000/- made by the Assessing Officer under section 68 by treating the share capital and share premium amount as unexplained cash credit was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), the following submission, *inter alia*, was made on behalf of the assessee in support of its case that there being no cash or cheque payment received against the issue of share capital with premium, section 68 had no application:-

*"3.1. The Appellant Company most humbly and respectfully submits that the Assessing Officer was not justified in invoking the provisions of section 68 of the Income Tax Act, 1961 when the Appellant Company did not receive any sum of money for allotment of shares of the face value of Rs.10/- each issued and allotted at a premium of Rs.90/- each to the aforesaid two shareholders against the purchase of their investment in shares of Zest Marcom Private Ltd vide two separate agreements both dated 27.03.2012 and that the assessee company did not receive any sum of money for such allotment of shares. The issue of the shares at premium of Rs.6,00,00,000/- was recorded in the books of accounts of the Assessee Company by way of Book Entry.*

*It is submitted on behalf of the Appellant Assessee Company that the shares were issued to two corporate entities namely M/s. Gokul Realtors Pvt. Ltd and M/s. Arman Advisory Pvt Ltd and in consideration of such allotment of shares no cash was received. The Appellant assessee company issued shares against the purchase of shares from the corporate entities; therefore, it is a book entry. According to the law of the land prevailing during the relevant period, the consideration received in respect of the issue of shares was not in cash then the provision of section 68 of the Income Tax Act, 1961 cannot be invoked".*

6. The above submission made by the assessee was forwarded by the Id. CIT(Appeals) to the Assessing Officer for verification. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer accepted on verification that there was no payment received by the assessee-company against the issue of share capital along with premium by cash or through banking channel. Keeping in view this finding of fact recorded by the Assessing Officer in the remand report and the ratio of the judicial pronouncements cited on behalf of the assessee-company including the decision of the Hon'ble Calcutta High Court in the case of Jatia Investment Co. -vs.- CIT [206 ITR 718], the Id. CIT(Appeals) held that section 68 had no application when the shares were allotted by the assessee-company under a barter system. He accordingly deleted the addition made by the Assessing Officer under section 68.

7. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. Representatives of both the sides this issue involved in the Revenue's appeal is squarely covered in favour of the assessee, *inter alia*, by the decision of the Coordinate Bench of this Tribunal rendered in the case of ITO -vs.- M/s. Bhagwat Marom Pvt. Limited vide its order dated July 31, 2019, wherein a similar issue was decided by the Tribunal in favour of the assessee for the following reasons given in paragraph no. 6 to 7 of its order:-

*"6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that its shares were issued by the assessee company during the year under consideration at premium to certain companies in lieu of the shares held by the said companies and there was thus no inflow of cash involved in these transactions. The said transactions were entered into in the books of account of the assessee company by way of journal entries and it did not involve any credit to the cash amount. The learned DR at the time of hearing has not brought anything on record to rebut or controvert this position. He however has contended by relying on the decision of Hon'ble Madhya Pradesh High Court in the case of V.I.S.P. (P) Ltd. (supra) as well as the decision of Mumbai Bench of this Tribunal in the case of Panna S. Khatau (supra) that section 68 was still applicable in the present case involving credit to the share capital and share premium amount. It is however observed that the facts involved in the case of V.I.S.P. (P) Ltd. were different in as much as the liability in*

question in the said case represented trading liability of the assessee accruing as a result of purchases made by the assessee during the relevant year and since the said liability was found to be a bogus liability, addition made by the AO was held to be sustainable by the Hon'ble Madhya Pradesh High Court.

7. In the case of Panna S. Khatau (*supra*) cited by the learned DR, both section 68 and 56 (2)(vi) were held to be applicable by the Tribunal but no concrete or cogent reasons were given to justify the applicability of section 68 to the credits not involving any receipt or inflow of cash in the relevant year. Moreover, the view taken by the Tribunal in the said case is contrary to the decision of Hon'ble Calcutta High Court in the case of Jatia Investment Co. (*supra*) relied upon by the Ld. CIT(A) to give relief to the assessee on issue under consideration in the present case. In the said case, the three NBFCs had taken loans from proprietary concern belonging to the same group. Since the said loans were required to be liquidated as per the RBI guidelines and there was no cash available with the NBFCs to repay the loans, the shares held by the three NBFCs were transferred to a partnership firm namely Jatia Investment Co., and the amount receivable against the said sale of shares was adjusted by the NBFCs against the loan amount payable to proprietary concern. The partnership firm of M/s. Jatia Investment Co. thus received shares from the three NBFCs and also took over the loans payable by the said NBFCs to the proprietary concern. These transactions were entered into in its books of account by the partnership firm through cash book by debiting the investment in shares and crediting the loan amount of the proprietary concern. This credit appearing in the books of account of the partnership firm, M/s. Jatia Investment Co. was treated by the AO as unexplained cash credit u/s 68 and on confirmation of the same, when the matter reached to the Hon'ble Calcutta High Court, it was held by their lordship that when the cash did not pass at any stage and since the respective parties did not receive cash nor did pay any cash, there was no real credit of cash in the cash book and the question of inclusion of the amount of the entry as unexplained cash credit could not arise. In our opinion, the ratio of this decision of the Hon'ble Jurisdictional High Court in the case of Jatia Investment Co. (*supra*) is squarely applicable in the facts of the present case and the Ld. CIT(A) was fully justified in deleting the addition made by the AO u/s 68 by holding that the said provision was not applicable.

8. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of M/s. Bhagwat Marom Pvt. Limited, we respectfully follow the decision of the Coordinate Bench of this Tribunal rendered in the said case vide order dated July 31, 2019 (*supra*) and uphold the impugned order of the Ld. CIT(Appeals) deleting the addition of Rs.6,00,00,000/- made by the Assessing Officer under section 68 on account of share capital and share premium. Grounds No. 1 to 3 of the Revenue's appeal are accordingly dismissed.

9. In Ground No. 4, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the disallowance of Rs.1,61,21,595/- made by the Assessing Officer on account of provisional power expenditure.

10. In its books of account, the provision was made by the assessee-company on account of power charges payable to Damodar Valley Corporation (in short 'DVC') for the period from January, 2012 to March, 2012. According to the Assessing Officer, this provision made by the assessee was contingent liability and not the actual liability. He, therefore, disallowed the power expenditure of Rs.1 61,21,595/- claimed by the assessee on provisional basis.

11. The disallowance of Rs.1,61,21,595/- made by the Assessing Officer on account of provision made for power expenditure was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted on behalf of the assessee-company that the amount provided for was on account of electricity actually used for the purpose of its business and the same was duly paid in the subsequent year to the DVC. This submission made on behalf of the assessee-company was forwarded by the Id. CIT(Appeals) to the Assessing Officer for verification. In the remand report submitted to the Id. CIT(Appeals), the Assessing Officer accepted on verification that the amount in question was actually paid by the assessee-company to DVC towards electricity bills. The Id. CIT(Appeals) accordingly deleted the disallowance made by the Assessing Officer on this issue.

12. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the provision made by the assessee for power charges payable to DVC was disallowed by the Assessing Officer on the ground that the said provision

did not represent actual liability of the assessee. However, as found by the Assessing Officer himself in the remand proceedings on verification of the relevant bills issued by the DVC, the provision made by the assessee-company was an actual liability payable to DVC on account of electricity used for the purpose of its business. As clearly stated by the Assessing Officer in the remand report submitted to the Id. CIT(Appeals), the said bills were actually paid by the assessee to DVC during the subsequent year. Keeping in view these categorical findings given by the Assessing Officer in the remand report on verification, the Id. CIT(Appeals) deleted the addition made by the Assessing Officer on this issue and we do not find any infirmity in his impugned order allowing relief to the assessee on this issue. Ground No. 4 of the Revenue's appeal is accordingly dismissed.

**13. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on March 18, 2020.

**Sd/-**  
**(A.T. Varkey)**  
**Judicial Member**  
**Kolkata, the 18<sup>th</sup> day of March, 2020**

**Sd/-**  
**(P.M. Jagtap)**  
**Vice-President**

- Copies to :
- (1) **Deputy Commissioner of Income Tax,  
Circle-3(1), Kolkata,  
Aayakar Bhawan, P-7, Chowringhee Square,  
4<sup>th</sup> Floor, Room No. 19, Kolkata-700069**
  - (2) **M/s. Alishan Steels Pvt. Limited,  
Martin Bur Building, 2<sup>nd</sup> Floor, Room No. 210,  
1, R.N. Mukherjee Road, Kolkata-700001**
  - (3) **Commissioner of Income Tax (Appeals)-9, Kolkata;**
  - (4) **Commissioner of Income Tax- , Kolkata**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**