

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA**  
(समक्ष श्री ए.टी. वर्की, न्यायिक सदस्य एवं डॉ ए.एल. सैनी, लेखा सदस्य)  
[Before Shri A. T. Varkey, JM & Dr. A.L. Saini, AM]

**I.T.A. No. 2691/Kol/2018**  
**Assessment Year: 2012-13**

Blooming Tradelink Pvt. Ltd. (PAN: AAECB5584F)	Vs.	Income-tax Officer, Ward-10(1), Kolkata
Appellant		Respondent

For the Appellant	Shri Subash Agarwal, Advocate
For the Respondent	Shri Supriyo Pal, JCIT, DR

Date of Hearing	04.02.2020
Date of Pronouncement	28.02.2020

**ORDER**

**Per Shri A.T.Varkey, JM:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-15, Kolkata dated 11.12.2018 for AY 2012-13.

2. The sole issue involved in this appeal of assessee is against the action of Ld. CIT(A) in confirming the addition of Rs.5,01,00,000/- made by AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on account of bogus share capital including share premium.

3. Briefly stated facts as observed by the AO are that in the year under consideration, the assessee has raised share capital including share premium to the tune of Rs.5,01,00,000/-. The AO added back the entire amount of share capital including premium raised treating the same as unexplained cash credit u/s. 68 of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of AO. Aggrieved, assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. The addition u/s. 68 of the Act was resorted by the AO and confirmed by the Ld. CIT(A) on the share capital and premium of Rs.5,01,00,000/-. However, according to the assessee, no sum of money has been collected for transfer of shares, whereas shares have been received by the assessee in lieu of exchange of its shares, therefore, no

addition u/s. 68 of the Act can be made. In support of its submission, the Ld. AR relied on the following case laws:

- i) Jatia Investment Co. Vs. CIT 206 ITR 718(Cal);
- ii) V. R. Global Energy Pvt. Ltd. Vs. ITO, 407 ITR 145 (Mad);
- iii) ITAT, Kolkata Bench in the case of ITO Vs. M/s. Saffron Comtrade Pvt. Ltd. dated 28.08.2019;
- iv) ITAT, Kolkata bench in the case of ITO Vs. M/s. Pansu Commercial Pvt. Ltd. dated 08.05.2019 and
- v) ITAT, Kolkata Bench in the case of ITO Vs. M/s. Sunglow Dealcom Pvt. Ltd. dated 16.11.2018.

5. We note that this issue is no longer res integra. We also find that there is no cash transferred for the shares by the assessee. We note that the assessee had swapped shares in lieu of shares. We note that this Tribunal has already held that section 68 of the Act is not attracted in such transfer and the Tribunal in the case of ITA No. 2178/Kol/2016, ITO Vs. M/s. Sunglow Dealcom private Limited for AY 2012-13 order dated 16.11.2018 has held as under:

*“3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-*

*4. The undisputed fact in this case is that the allotment of shares were for consideration other than by way of cash. The four companies which applied for allotment of shares, have sold their investment to the assessee company and the assessee company, has as consideration for the purchase of those shares had allotted shares at a premium. It is a case of swapping of shares. The shares were allotted for consideration other than cash. The question is whether under these facts and circumstances Section 68 of the Act, would be attracted.*

*4.1. The ld. D/R, submits that the premium is not justified and that the ld. CIT(A) was wrong in holding that the assessee has proved the identity, creditworthiness and genuineness of the transaction. He relied on the order of the Assessing Officer. In reply the ld. Counsel for the assessee, submits that each of the above companies have filed replies before the Assessing Officer to the notice issued u/s 133(6) of the Act. He further pointed out that the ld. CIT(A) called for a remand report the Assessing Officer had not disputed the identity, creditworthiness of the share subscribers as well as the genuineness of the transactions. He relied on the order of the ld. CIT(A).*

*4.2. The undisputed fact is that shares were issued at a premium, as consideration for the purchase of shares from the share applicant companies. This issue is squarely covered by the decision of the Kolkata ‘C’ Bench of the Tribunal in the case of ITO vs. M/s. Anand Enterprises Ltd., ITA No. 1614/Kol/2016 & C.O. No.56/Kol/2016; dt. 26/09/2018, wherein under identical circumstances, at para 4.3. it was held as follows:-*

“4.3. In view of the aforesaid observations, in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the Id. AO had erroneously invoked the provisions of section 68 of the Act to the facts of the instant case, which, in our considered opinion, are not at all applicable herein. This is a simple case of acquiring shares of certain companies from certain shareholders without paying any cash consideration and instead the consideration was settled through issuance of shares to the respective parties. Moreover, in the balance sheet of the assessee company in the schedule to share capital, it is very clearly mentioned by way of note that the fresh share capital was raised during the year for consideration other than cash. Hence we hold that provision of section 68 of the Act are not applicable in the instant case and accordingly the entire addition deserves to be deleted which has rightly been done by the Id. CIT(A) which does not require any interference. Accordingly, grounds raised by the revenue are dismissed.”

4.2. The Hon'ble Jurisdictional High Court in the case of *Jatia Investment Co .v. Commissioner of Income-tax [1994] 206 ITR 718 (CAL.)* held as follows:-

“Section 68 of the Income-tax Act, 1961 – Cash credits – Assessment year 1976- 77 – Partners of assessee-firm were members of one ‘J’ group running several businesses and industries – Accounts of assessee-firm showed that it had borrowed certain amount from GB, a proprietary concern of one of its partners JM, which was invested in purchase of shares – ITO found that GB had no cash balance to advance said amount to assessee – He, thus, concluded that source of funds for purchase of shares by assessee was not explained, and consequently, assessed that amount as income from undisclosed sources – It was contended by assessee that notional cash entries were made to reduce indebtedness of three companies of ‘J’ Group to GB in order to comply with certain directions of RBI – Assessee-firm substituted three companies of ‘J’ Group as debtor to GB – It was further stated that question of cash credit did not arise, there being no actual passing or receipt of cash but transactions were mere book entries – Whether, in aforesaid circumstances, effect and import of transaction was that assessee took over liability of aforesaid three companies to ‘GB’ in exchange for shares and, therefore, amount of loan in question could not be treated as assessee’s income from undisclosed sources – Held, yes”

4.3. Recently, the Hon'ble Madras High Court in the case of *V. R. Global Energy (P.) Ltd. v. Income-tax Officer, Corporate Ward 3(4), Chennai [2018] 96 taxmann.com 647 (Madras)* while dealing with a case where cash credit towards share capital were admittedly, only by way of book adjustments and no actual cash was received towards share subscription money held as follows:-

“25. However, the second question is answered in favour of the assessee and against the Revenue by the judgment of the Division Bench of this Court in *Electro Polychem Ltd., (supra)* and *Steller Investment Ltd., (supra)*.

26. This case is distinguishable from the case of *CIT v. Lovely Export (P.) Ltd. [2008] 216 CTR 195 (SC)* in that the transactions were only book transactions, and there was no cash receipt. The decisions in (i) *CIT v. Focus Exports (P.) Ltd. [2014] 51 taxmann.com 46/228 Taxman 88 (Delhi) (Mag.)*; (ii) *CIT v. Globus Securities & Finance Pvt. Ltd. [2014] 41 taxmann.com 465/224 Taxman 237 (Delhi)*; (iii) *Onassis Axles (P.) Ltd. v. CIT [2014] 364 ITR 53/224 Taxman 80 (Mag.)/44 taxmann.com 408 (Delhi)*; (iv) *Olwin Tiles India (P.) Ltd. v. Dy. CIT [2016] 382 ITR 291/237 Taxman 342/66 taxmann.com 8 (Guj.)*; (v) *B.R. Petrochem (P.) Ltd. v. ITO [2017] 81 taxmann.com 424 (Mad.)*; and (vi) *Rajmandir Estates (P.) Ltd. v. Pr. CIT [2016] 386 ITR 162/240 Taxman 306/70 taxmann.com 124 (Cal.)*, cited on behalf of the respondent are distinguishable, in that the cash credits towards share capital were admittedly only by way of book

*adjustment and not actual receipts which could not be substantiated as receipts towards share subscription money.”*

*5. Applying the propositions of law laid down in the above cases to the facts of this case, we uphold the order of the ld. First Appellate Authority and dismiss this appeal of the revenue.”*

6. In the facts and circumstances of the case and respectfully following the aforesaid judicial precedents relied upon hereinabove, we hold that the AO had erroneously invoked the provisions of section 68 of the Act to the facts of the instant case, which, in our considered opinion, are not at all applicable herein. This is a simple case of acquiring shares of certain companies from certain shareholders without paying any cash consideration and instead, the consideration was settled through issuance of shares to the respective parties. Hence we hold that provisions of section 68 of the Act are not applicable in the instant case and accordingly, the entire addition deserves to be deleted and we delete the addition as confirmed by the Ld. CIT(A) and allow the appeal of the assessee.

7. In the result, appeal of assessee is allowed.

Order is pronounced in the open court on 28th February, 2020.

Sd/-  
(Dr. A. L. Saini)  
Accountant Member

Sd/-  
(A. T. Varkey)  
Judicial Member

Dated: 28th February, 2020

*Jd. Sr. PS*

Copy of the order forwarded to:

1. Appellant – M/s. Blooming Tradelink Pvt. Ltd., C/o, Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite 213, 2<sup>nd</sup> floor, Kolkata-700 069.
2. Respondent – ITO, Ward-10(1), Kolkata.
3. CIT(A)-15, Kolkata. (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata. (sent through e-mail)

True Copy,

By order,  
Assistant Registrar  
ITAT, Kolkata Benches