

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

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 218/KOL/2020
Assessment Year: 2012-2013**

***Shristi Sales Pvt. Limited,.....Appellant
45, Dobson Road, Gangotri Apartment,
3rd Floor, Howrah-711101
[PAN: AARCS2061F]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-13(4), Kolkata,
110, Shanti Pally, E.M. By-Pass,
Kolkata-700107***

Appearances by:

*Shri Shashi Murarka, Advocate, appeared on behalf of the
assessee*

*Shri Vijay Kumar, Addl. CIT, appeared on behalf of the
Revenue*

Date of concluding the hearing : January 16, 2023

Date of pronouncing the order : January 18, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-5, Kolkata dated 08.08.2019 passed for A.Y. 2012-13.

2. In Column No.10 of Form 36, assessee was required to plead grounds of appeal but it has submitted that grounds are annexed in a separate sheet. It is very difficult to discern the grounds in the separate sheet. It is running into 30 pages, whereas the impugned order in itself is running into 10 pages only.

3. In brief, the sole grievance of the assessee is that ld. CIT(Appeals) has erred in confirming the addition of Rs.1,43,50,000/-, which was added by the ld. Assessing Officer with the aid of section 68 of the Income Tax Act.

4. Brief facts of the case are that the assessee-company has filed its return of income electronically on 12.02.2013 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On verification of the accounts, it revealed to the ld. Assessing Officer that assessee-company has received share capital of Rs.1,43,50,000/-. The subscribers to the share capital have paid a huge premium of Rs.499/- per share while the value of per share was Rs.1/-. The ld. Assessing Officer directed the assessee to explain the genuineness of the transaction, the creditworthiness of the share applicants, but nothing was submitted before the ld. Assessing Officer and he made an addition of Rs.1,43,50,000/-.

5. The Id. 1st Appellate Authority has taken note of various details from the record including the details of the applicants for subscribing assessee's shares. The finding recorded by the Id. CIT(Appeals) is worth to note reads as under:-

"3.1. I have gone through the submission of the appellant and perused the assessment order and relevant records. The AO had disallowed share capital and premium amounting to Rs. 1,43,50,000/- u/s 68 of the IT Act as the appellant company had not responded to the show cause notice as to why the entire transaction amounting to Rs.1,43,50,000/- would not be treated as income of the company. On perusal of the records, it is noticed that the subscriber to the share capital have paid a huge premium of Rs.499/- per share while subscribing to the shares of this company. The proportion of share value and premium thereon is as follows:

*Value per share is Rs.1/-
Premium per share Rs.499/-*

In this case, the application money deluding premium was received in cash. This was confirmed by notices u/s 133(6) of the I.T. Act, 1961 which were issued to all the share applicant parties and reply received accepting that they had paid cash for subscribing to the shares of the appellant company. The receipt of such huge amounts of share premium in cash raised doubts about the genuineness of these transactions.

There are plethora of case laws which have held that it was incumbent on the appellant not only to prove the identity but also the creditworthiness of the share applicants and genuineness of the transactions. The analysis of the ITR of the share allottee companies revealed that the most of the companies had nil income which raises doubts about such huge investment in the appellant company. The details of the return income of the allottee companies are given below:

Sl. No.	Name of the party	No. of share	Total amount of investment including premium (Rs.)	R. I.
1	M/s Devesh Sales Pvt Ltd	7100	35,50,000/-	0
2	M/s Nikhil Oilfiled Supply & Service Pvt Ltd	7200	36,00,000/-	0
3	M/s Shree Ranisati Commercial Pvt Ltd	7200	36,00,000/-	0
4	M/s Sidhanta Vyapar Pvt Ltd	7200	36,00,000/-	0

The perusal of the ITR of the share allottee companies revealed that all the share applicants have NIL income. The fact that the

companies have invested huge amounts in the appellant company raises doubts about the creditworthiness of these companies. These doubts are strengthen that the share applicants company had paid entire amount by cash for shares in the appellant company at a premium. The amount of investment as follows:

SI. No.	Name of the party	No. of share	Total amount including premium (Rs.)		Explanation of source
1	M/s Devesh Sales Pvt Ltd	7100	35,50,000/-	By cash	Not given
2	M/s Nikhil Oilfiled Supply & Service Pvt Ltd	7200	36,00,000/-	By cash	Not given
3	M/s Shree Ranisati Commercial Pvt Ltd	7200	36,00,000/-	By cash	Not given
4	M/s Sidhanta Vyapar Pvt Ltd	7200	36,00,000/-	By cash	Not given

On perusal of the records, it is revealed that the appellant had received share capital including premium in cash. During both assessment and appeal proceedings, the A/R of the appellant could not provide details about the source of investment made by the applicant company. On perusal of the audited Balance sheet, the appellant company had brought in the share capital including share premium of Rs.1,43,50,000/- in assessment year 2012-13. What was interesting to note was that in the financial year 2011-12, relevant to the A.Y 2012-13, the assessee company had declared Nil income. The high premium for shares of the company with nil income, has given rise to serious doubts about the genuineness of the transactions. The share capital including premium was also subscribed by companies reflecting Nil income as discussed hereinabove. Moreover, the high premium which is not supported by the fundamentals of the company has been adversely commented upon in a number of judicial decisions. The appellant company had not issued any dividend and the high premium for shares raises the suspicion that they are bogus. Similar is the case with the share allottee companies who could not explain the source of cash. On examination of the balance sheet of these companies it is found that they had no fixed assets and Nil income. The appellant company have not declared any dividend income since inception. Therefore it may be concluded that no sane person would invest in shares of such a company with no financial prospects by paying huge premium.

The Jurisdiction Bench of the ITAT in the case of 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 had ruled on the issue of disproportion of high premium which are not supported by the fundamental of the company as follows:

11. The second argument of the Id. 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 Jurisdictional Bench of the ITAT, confirmed the addition u/s 68 of the Act, on the ground that the appellant could not justify the huge premium, and therefore held that the genuineness of the transactions was in doubt.

The appellant company has hardly any economic activity. There is no logical reason why share premium of Rs.499/- would be paid for the share such a company. The A/R of the appellant could not give any reason to justify the high share premium. The high share premium raises the suspicion that the transactions were bogus to sole objection to launder unaccounted money. Reference is also made to the decision of of the Nagpur Bench of the Hon'ble ITAT in the case of Sanjay Bimalchand Jain vs. ITO Ward-4(2), Nagpur in ITA No.61/Nag/2013 where it has held that when no cogent evidence could be furnished to substantiate the substantial increase in share value of a private company without strong financials, the entire transactions are bogus and sham".

Thereafter Id. CIT(Appeals) made reference to a large number of decisions, which are running into rest of the six pages of her finding.

6. During the course of hearing, we put it to the Id. Counsel for the assessee to demonstrate the financial health of the assessee, who can command a premium of Rs.499/- against the value of share at Rs.1/-. His only submission before us was that in order

to avoid registration fees, the assessee had received the share capital in cash. We have duly gone through the paper book submitted by the ld. Counsel for the assessee and statement of facts, wherein the assessee has demonstrated as to how the order of the ld. CIT(Appeals) is erroneous. In response to our question about the financial health, the ld. Counsel for the assessee submitted that this is the first year of the Company and, therefore, it's not having any taxable income, however, when we ask him the source of funds, how it contemplates to run its business, what are the project reports and what circumstance an share applicant would infuse his money in a start-up company, but nothing is available on the record. Neither the share applicant companies have any financial strength as noticed by the ld. CIT(Appeals). They have not given any explanation of the source of money in their hands for making payments to the assessee as share application money in cash. Therefore, revenue authorities have rightly treated it as bogus and sham transactions. The ld. Assessing Officer has rightly made the addition. We do not find any merit in this appeal. It is dismissed.

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

Order pronounced in the open Court on 18th January, 2023.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 18th day of January, 2023

Copies to :(1) **Shristi Sales Pvt. Limited,**
45, Dobson Road, Gangotri Apartment,
3rd Floor, Howrah-711101

(2) **Income Tax Officer,**
Ward-13(4), Kolkata,
110, Shanti Pally, E.M. By-Pass,
Kolkata-700107

(3) Commissioner of Income Tax (Appeals)-5,
Kolkata;

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

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

Laha/Sr. P.S.