IN THE INCOME TAX APPELLATE TRIBUNAL: RANCHI BENCH, RANCHI

BEFORE SHRI S.S.GODARA, JM AND DR. A. L. SAINI, AM

I.T.A No.77/Ran/2017
Assessment Year: 2012-13

Mangalsidhi Tradelink Pvt. Ltd. 3rd Floor, Room No.5, 16, India Exchange Place, Kol-1.	vs.	ITO, Ward-2(1), Ranchi
PAN/GIR No. : AAHCM5446J		
(Appellant)	..	**(Respondent)**

Appellant by	None
Respondent by	Shri Indrajeet Singh, CIT(DR)

Date of hearing	03.03.2020
Date of pronouncement	03.03.2020

O R D E R

PER BENCH(Oral):

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals), Ranchi dated 15.12.2016 passed in appeal no.69/Ran/Co/15-16 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Case called twice. None appears at assessee's behest. Case file suggests that the Registry has already sent a RPAD notice 1dated 12.02.20 to the assessee. It is accordingly proceeded ex parte.

2. We notice at the outset that this appeal suffers from 5 days delay in filing which is condoned on account of no objection from Revenue side.

3. We have heard learned CIT-DR. He took us to CIT(A)'s detailed discussion confirming the Assessing Officer's action treating assessee's share application money of Rs.4,00,00,000/- as unexplained cash credits as under:

[6.1] The appellant explained that it had entered into tripartite agreements with its shareholders and investee companies whereby the share application money from one company was invested in the share application of the other company, and similarly the share capital of the second company was invested in the share capital of the third company. Further, the share capital of the third company was invested in the capital of the first company. All these transactions were of the equal amount of ₹2,00,00,000/- each and the amount of one company was invested in other company. The entire transaction was revenue neutral, as no amount of cash or fund accrued to any of the company. The company allotted shares to its shareholders on the strength of this agreement, as shares issued for 'consideration other than cash'. Such act of the company is permitted under the provisions of Sec. 75(1) of the Companies Act. 1956. The shares were issued at a premium which the management of the concerned companies thought fit and reasonable. Even otherwise, the amount of share premium is only a part of the net worth of the company and the same gets divided among the shareholders in accordance of the NAV of the company and therefore none of the shareholders get any undue advantage out of it. This position of the law was in vogue up till 31st March, 2012, after which the act has been amended to allow share premium as to be determined under the prescribed manner.

[6.2] This fact was brought to the knowledge of the Ld. Assessing Officer, during the course of first hearing of the case, under the cover of our letter dated 12.01.2015. This had obviated the need for a bank account for the purpose of raising of share capital and this fact has been explained to the Ld. Assessing Officer, under the cover of the letter as mentioned above. The

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appellant had furnished the copies of tripartite agreements and the balance sheets of both the investing companies, wherein they had shown as having invested the amount in the appellant company. The copy of the relevant Form 2, regarding the allotment of shares filed with the ROC was also filed at the time of hearing. *Thus, the source of our share capital was fully and adequately explained.* Further no element of cash was involved in this tripartite agreement, and therefore, there was no cash credit in the matter.

[6.3] The appellant further explained that the Ld. Assessing Officer doubted the share capital as the shares were subscribed at a premium "a high premium of ₹990/-" and that too for a "company with no credential". However he failed to site any specific reason or finding for such doubt. His findings on the issue were more of academic nature than having any specific findings in the case. In this context the appellant drew attention to the order dated 31.03.2015 of the Ld. ITAT, Mumbai, in the case of Elder IT Solutions Pvt. Ltd. vs. CIT in Appeal No. ITA No.3325/Mum/2014 wherein the ITAT quashed the order u/s.263 on issue of shares at a high premium.

[6.4] It is the submission of the appellant that in the assessment order the Ld. Assessing Officer mentioned that "notices u/s.133(6) were issued to both the share applicant companies. The Assessing Officer stated that the companies had not responded to the notices. The appellant was of the view that this could not be a ground for doubting the genuineness of the shareholders. The Assessing Officer has also cited the fact of non-compliance to the notices as one of his reason for drawing the adverse conclusions against the investment as were made by the shareholder companies. However he did not initiate any step for forcing the compliance by issuing summons u/s.131 nor initiated any penalty proceeding for the failure. The Assessing Officer's argument to add back the whole of the share capital subscribed by both the corporates based on the alleged noncompliance to the notice defied logic, according to the appellant. In this context it was required to be noted that the subscribers were not individuals but companies registered

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under the Companies Act, 1956 by the Registrar of Companies appointed by the Government of India. They were also having PAN and were being assessed to income tax apart from filing periodic returns under the Companies Act. The said amount of share capital continues in the balance sheets of the share holder companies even till today.

[6.5] As for the 3 tests of identity, credit worthiness and genuineness, the appellant submitted that : -

a> As the shareholders are all companies, registered with the Registrar of companies, the identity was established. These companies were filing their requisite papers to various authorities ever since their incorporation and were monitored and were directed by able directors

b> As the amount was taken and invested by the three entities on a reciprocal arrangement basis, and no amount had come or been applied, the test of credit worthiness was taken care of., and

c> As all the above transactions were clearly shown in the relevant balance sheets of the concerned companies, and the fact that the return of allotment was duly filed with ROC , the genuineness of the transactions was clearly established.

[6.6] The Ld. Assessing Officer in this regard has noted that on verification of the Balance Sheet of the appellant company, it was seen that the appellant company had received share application money of ₹4,00,00,000/- for 40000 shares on a nominal value of ₹10/- each per share at a premium of ₹990/-. Thus, the appellant company received total premium of ₹3,96,00,000/- during the Financial Year-2011-12 on total 40,000 shares. The Ld. Assessing Officer noted that the appellant company was not engaged in any substantial economic activity and only a return of loss was filed for the relevant year but it allotted shares on a premium of ₹990/- each during the Financial Year-2011-12.

[6.7] To verify this aspect the Ld. Assessing Officer issued a letter to the appellant company which reads as under : -

"In connection with the scrutiny assessment of your case for the Assessment Year-2012-13, you are hereby required to furnish the following papers/documents/details/positively on 04.02.14.

1. *Reasons for formation of company.*
2. *What is your relation with the persons who have invsted in your company. What is the reasons of such a huge investments?*
3. *Exact nature of business of the company. Why there is no business during the year?*
4. *Current position of share holding and investment i.e. on 31.03.2014.*
5. *Memorandum of Articles depicting the amount up to which the capital may be raised [upto which limit the share may be issued].*
6. *Please furnish the bank statement reflecting the transaction alongwith mode of receipt.*
7. *It is seen that the amount of 4 crores has been invested by you in equity shares. Please furnish the bank account reflecting the same alongwith the bank account/Balance Sheet of the company/person with whom investment has been made.*
8. *How the persons who have purchased share of your company, came in your contract?*
9. *Please present the present Directors of the company in person."*

[6.8] Again vide show cause letter was issued which is reproduced as under : -

"In connection with the scrutiny assessment of your case for the Assessment Year-2012-13, letters calling for information u/s.133(6) were written to both the two companies, M/s. Wizone Trade Pvt. Ltd. and M/s. Shreedhan Distribuiors (P) Ltd., to whom shares were claimed to have been allotted on a very high premium. These letters were issued on the addresses provided by you on 14.01.15. But, no information whatsoever has been received from these two companies till date. No bank statement reflecting such transaction has been furnished either by you or by the companies to whom shares were issued. Further, major portion of the questionnaire has also been unattended.

In view of the above, the identity of the above transaction remains un-explained. Thus, you have failed to discharged the onus in so far as

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furnishing the information regarding the identity of the transaction under reference is concerned. Accordingly, you are required to show cause as to why the amount so credited on account of share premium and share capital should not be added back. Compliance should be made positively on or before 13.03.15.

It may be noted that if your fail to make compliance on the above date, assessment will be completed ex parte on the basis of materials available on record."

[6.9] The Ld. Assessing Officer has noted that till the date of passing of the assessment order no documentary evidence, such as copy of bank statement reflecting the said transaction were received. Further, no confirmatory letter from the companies who had purchased share on such a high premium, was received. In absence of this, the identity, creditworthiness and genuineness, which are the three pillars for supporting any transaction, remained unverified. Mere allotment of shares of any one and filing of allotment papers to Registrar of Companies were not sufficient to prove genuineness of transaction. Thus, the primary requirements, which should have been satisfied in such cases such as identification of the shareholder, creditworthiness of shareholder and genuineness of the transaction were absent. These three requirements had to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct. The appellant company did not provide any relevant documents to prove the creditworthiness and genuineness of transaction. Further, there was no apparent reason as to why such huge amount of share premium would be paid for obtaining share of face value of ₹10/- each from a company which was running in loss and not engaged in any business activity. Any normal prudent person who makes investment in shares would make the investment in accordance with the fair market values of the shares. In the light of facts discussed in detail supra, all the share application money of ₹4,00,00,000/- claimed to have been received was being added back to the total income of the appellant.

[6.10] Since, the Ld. Assessing Officer, while passing the assessment order had mentioned that no details were furnished while it was the claim of the appellant that all the details were furnished, a letter was written to the Ld. Assessing Officer : -

F.No.CIT(A)/Ran/Remand Report/2016-17/1103 **19th August, 2016.**

To,

The Income Tax Officer,
Ward-2(1),
Ranchi.

Sub: Submission of Remand Report in the case of M/s Mangal Sidhi Tradelink, Pvt. Ltd. C/o Sujit Sharma, 3rd Floor, Room No.5, 16 India Exchange Place, Kolkata for the A.Y. 2012-13, PAN-AAHCM5446.

Ref: Appeal No.69/Ran/Oth/15-16.

Kindly refer to the above.

2. The only issue in appeal is regarding the addition of ₹4,00,00,000/-. The appellant had received share application money of ₹4,00,00,000/- for 40000 shares with a face value of ₹10/- each and a premium of ₹990/- per share. The Ld. Assessing Officer, at page 3 of the assessment order, has stated that the appellant was not able to prove creditworthiness and genuineness of the transaction. Identity of the applicants was also not proved as relevant documents in this regard were not produced. Accordingly an addition of ₹4,00,00,000/- was made.

3. In the appellate proceedings, the appellant has stated that all necessary details were submitted during the course of assessment proceedings and vide its letter dated 12.01.2015. These included the Tripartite agreement with its share holders and the Investee Companies and the balance sheet of the investee companies. Copy of form 2 regarding allotment of shares filed with ROC were also submitted. The detailed submissions and evidences submitted during the course of appellate proceedings are being forwarded for examination as the same was not done during the course of assessment proceedings.

4. You are requested to go through the submission of the appellant and submit your comments in the form of Remand Report to this office by **22.09.2016**. The appellant may be granted an opportunity of being heard.

Encl : As above.

Sd/-
[Sanjay Prasad]
Commissioner of Income Tax (Appeal)
Ranchi.

[6.11] The Ld. Assessing Officer, after examining the documents, submitted his comments vide his letter No.F.No. ITO/W-2(1)/Ran/2016-17/3364 dated 07th Oct, 2016 (duly endorsed by the Jt.CIT ide his letter No.F.No.JCIT(2)/Remand Report/2016-17/1129 dated 19.10.2016) in the form of a Remand Report. Regarding the submission of documents during the course of assessment proceedings, the Ld. Assessing Officer in the Remand Report has stated "Except copy of agreement, other necessary documents were produced before Assessing Officer making assessment. So far agreement is concerned, whether this had been called for is not clear. For the end of equity & justice this may be considered under Rule-46A of the Income Tax Rules, 1962." The Remand Report of the Ld. Assessing Officer was forwarded to the appellant for his counter comments if any vide this office letter No.F.No. CIT(A)/Ran/Remand Report/2016-17/1573 dated 20th Oct, 2016. The Authorized Representative of the appellant attended on 10.11.2016 and stated that he had no further comment to make. The order in appeal is being made considering all the above documents.

[6.12] I have considered the submissions of the appellant, have perused the assessment order and have also gone through the Remand Report of the Ld. Assessing Officer. Before the matter is analysed, it would be worthwhile to consider the main tenets of the agreements which led to the investment of share application money into the appellant company.

Agreement 1: -

1. M/s. Wizone Trade Pvt. Ltd. a company registered under the Companies Act, 1956, having its registered office at I-37, 3rd Floor, Lajpat Nagar-III, Delhi-110024, in the state of Delhi. CIN No.U51909DL2010PTC205450, PAN No.AAACW9798A hereinafter in this agreement referred to as the part of the First part

2. M/s. Mangalsidhi Tradelink Private Limited, a company registered under Companies Act, 1956, having its registered office at 16, India Exchange Place, 3rd Floor, R.N.5, Kolkata-700001, in the state of West Bengal, CIN No.U51909WB2011PTC158875 PAN No.AAHCM5446J, hereinafter in this agreement referred to as the party of the Second part.

And

3. M/s. Instant Cinemagic Pvt. Ltd. a company registered under the Companies Act, 1956, having its registered office at A-102, Chandan Valley, Opp. Shivar Garden, M.B. Road, Mira Road (East), Thane, Mumbai-401107, CIN No.U92419MH201225, PAN No.AACCI5520L hereinafter in this agreement referred to as the party of the Third part.

Whereby the party of the first part desires to invest a part of its share capital amounting to ₹2,00,00,000/- (Two Crores) into the share capital of the second part and the party of the second part company desires to invest similar amount of its share capital into the share capital of the party of the third part.

And further, the party of the third part also desires to invest the similar amount of its share capital into the share capital of the party of the first part.

Each of these companies are different and independent corporate entities having its separate management team and separate set of business.

Each of the companies are engaged in the business of investing into and financing various companies.

Now, the net impact of these arrangement as far as the movement of funds is concerned is revenue neutral, in the sense that the amount received from one company gets invested into the other company and the amount received from third company gets invested into the first company.

In the event, the companies approached each other to make arrangements by which they agree to pass necessary entries into each other's books to show the effect and impact of these transactions without necessitating the movement of funds from one company to other and again receiving the same amount from the third company.

It is hereby now agreed by and between the parties as hereunder : -

1> That the party of the second part issue equity shares of the face value of ₹10/- each to the party of the first part at a premium of ₹990/- per share.

2> That the party of the thrid part issue equity shares of the face value of ₹10/- each to the party of the second part at a premium of ₹990/- per share.

3> That the party of the three first part issue equity shares of the face value of ₹10/- each to the party of the third part at a premium of ₹990/- per share.

4> That the parties hereto make journal entries in their respective Books of Accounts for the year ended 31st March, 2012. to give effect to the arrangements as above.

5> That the respective companies issue to the invsting companies share allotment advices and share certificates signifying the issue of shares as agreed by and between the parties.

6> That the investee companies show the effect of the above fact in their books by including the same in their investment.

7> That the invested company file the requisite forms with Registrar of Companies, signifying the issue of share to the investee company.

8> That the parties hereto accept and agree to the mutual rights and liabilities which the above arrangements brings about.

9> That the parties hereto have fully understood the above arrangements and are of then signatures hereto as a mark of acceptance of the arrangements.

10> That the persons signing on behalf of their respective companies are competent to enter into contract and have been so authorized by their respective companies.

Agreement 2: -

1. M/s. Shreedhan Distributors Pvt. Ltd. a company registered under the Companies Act, 1956, having its registered office at 2B, Grant Lane, 2nd Floor, R.N.74, Kolkata-700012, in the state of West Bengal. CIN No.U51909WB2011PTC61092, PAN No.AAUCS3911M hereinafter in this agreement referred to as the part of the First part

2. M/s. Mangalsidhi Tradelink Private Limited, a company registered under Companies Act, 1956, having its registered office at 16, India Exchange Place, 3rd Floor, R.N.5, Kolkata-700001, in the state of West Bengal, CIN No.U51909WB2011PTC158875 PAN No.AAHCM5446J, hereinafter in this agreement referred to as the party of the Second part.

And

3. M/s. Digital Projections Pvt. Ltd. a company registered under the Companies Act, 1956, having its registered office at a-102/103, Chandan Valley, Opp. Shivar Garden, M.B. Road, Mira Road (East),

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Thane, Mumbai-401107, CIN No.U92412MH2010PTC207744. PAN No.AADCD5906E hereinafter in this agreement referred to as the party of the Third part.

Whereby the party of the first part desires to invest a part of its share capital amounting to ₹2,00,00,000/- (Two Crores) into the share capital of the second part and the party of the second part company desires to invest similar amount of its share capital into the share capital of the party of the third part.

And further, the party of the third part also desires to invest the similar amount of its share capital into the share capital of the party of the first part.

Each of these companies are different and independent corporate entities having its separate management team and separate set of business.

Each of the companies are engaged in the business of investing into and financing various companies.

Now, the net impact of these arrangement as far as the movement of funds is concerned is revenue neutral, in the sense that the amount received from one company gets invested into the other company and the amount received from third company gets invested into the first company.

In the event, the companies approached each other to make arrangements by which they agree to pass necessary entries into each other's books to show the effect and impact of these transactions without necessitating the movement of funds from one company to other and again receiving the same amount from the third company.

It is hereby now agreed by and between the parties as hereunder : -

1> That the party of the second part issue equity shares of the face value of ₹10/- each to the party of the first part at a premium of ₹990/- per share.

2> That the party of the thrid part issue equity shares of the face value of ₹10/- each to the party of the second part at a premium of ₹990/- per share.

3> That the party of the three first part issue equity shares of the face value of ₹10/- each to the party of the third part at a premium of ₹990/- per share.

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4> That the parties hereto make journal entries in their respective Books of Accounts for the year ended 31st March, 2012, to give effect to the arrangements as above.

5> That the respective companies issue to the invsting companies share allotment advices and share certificates signifying the issue of shares as agreed by and between the parties.

6> That the investee companies show the effect of the above fact in their books by including the same in their investment.

7> That the invested company file the requisite forms with Registrar of Companies, signifying the issue of share to the investee company.

8> That the parties hereto accept and agree to the mutual rights and liabilities which the above arrangements brings about.

9> That the parties hereto have fully understood the above arrangements and are of then signatures hereto as a mark of acceptance of the arrangements.

10> That the persons signing on behalf of their respective companies are competent to enter into contract and have been so authorized by their respective companies.

[6.13] It would be seen from the above agreements that they have been drawn on identical lines. I have gone through the balance sheets of the other two concerns and they show the following:

SHREEDHAN DISTRIBUTOR PRIVATE LIMITED
16, INDIA EXCHANGE PLACE, 3RD FLOOR, ROOM NO. 5, KOLKATA – 700 001
BALANCE SHEET AS AT 31ST MARCH, 2012

Particulars	Note No.	As At 31.03.2012	As At 31.03.2011
		₹	₹
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
(a) Share Capital	2	5,00,000.00	
(b) Reserves and Surplus	3	3,95,93,590.00	
(2) Current Liabilities			
(c) Other Current Liabilities	4	2,500.00	
Total Equity & Liabilities		**4,00,96,090.00**	
II. ASSETS			
(1) Current Assets			
(a) Current investments	5	4,00,00,000.00	
(b) Cash and cash equivalents	6	87,050.00	
(c) Other current assets (Preliminary Expenses not written off)		9,040.00	
Total Assets		**4,00,98,090.00**	

NOTES TO ACCOUNTS
Notes referred to above and attached there to form an integral part of Balance Sheet
This is the Balance Sheet referred to in our Report of even date.
FOR ARUN JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

FOR SHREEDHAN DISTRIBUTORS PRIVATE LIMITED

Sd/-
(CA. ARUN KUMAR JAIN)
PROPRIETOR
Membership No. : 053693
Firm Reg. No. : 325867E

(DIRECTOR) (DIRECTOR)

PLACE : KOLKATA
DATED : 31/08/2012

SHREEDHAN DISTRIBUTOR PRIVATE LIMITED
16, INDIA EXCHANGE PLACE, 3RD FLOOR, ROOM NO. 5, KOLKATA – 700 001
PROFIT & LOSS STATEMENT FOR THE PERIOD ENDED ON 31ST MARCH, 2012

Particulars	Note No.	As At 31.03.2012	As At 31.03.2011
		₹	₹
I. Other Income			
II. II. Total Revenue			
III. Expenses :			
Depreciation and Amortization Expense	-	2,260.00	
Other Administrative Expenses	8	4,150.00	
IV Total Expenses (IV)	(II-IV)	6,410.00	
V Profit before tax		(6,410.00)	
VI Tax expense :			
(1) Current tax			
(2) Deferred tax			
VII Profit/(Loss) for the period	(V-VI)	(6,410.00)	
VIII Earning per equity share :			
(1) bASIC		(0.13)	
(2) (2) Diluted		(0.13)	

NOTES TO ACCOUNTS
Notes referred to above and attached there to form an integral part of Profit & Loss Statement
This is the Profit & Loss Statement referred to in our Report of even date.
FOR ARUN JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

FOR SHREEDHAN DISTRIBUTORS PRIVATE LIMITED

Sd/-
(CA. ARUN KUMAR JAIN)
PROPRIETOR
Membership No. : 053693
Firm Reg. No. : 325867E

(DIRECTOR) (DIRECTOR)

PLACE : KOLKATA
DATED : 31/08/2012

WIZONE TRADE PRIVATE LIMITED
i-37, 3RD FLOOR, LAJPAT NAGAR – III, DELHI – 110 024
BALANCE SHEET AS AT 31ST MARCH, 2012

Particulars	Note No.	As At 31.03.2012	As At 31.03.2011

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		₹	₹
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
(a) Share Capital	2	5,00,000.00	1,00,000.00
(b) Reserves and Surplus	3	3,95,85,623.00	(6,701.00)
(2) Current Liabilities			
(c) Other Current Liabilities	4	5,000.00	2,500.00
Total Equity & Liabilities		**4,00,90,623.00**	95,799.00
II. ASSETS			
(1) Current Assets			
(a) Current investments	5	4,00,00,000.00	
(b) Cash and cash equivalents	6	81,245.00	83,295.00
(c) Other current assets		9,378.00	12,504.00
Total Assets		**4,00,98,090.00**	95,799.00

NOTES TO ACCOUNTS
Notes referred to above and attached there to form an integral part of Balance Sheet
This is the Balance Sheet referred to in our Report of even date.

FOR ARUN JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

FOR WIZONE TRADE PRIVATE LIMITED

Sd/-
(CA. ARUN KUMAR JAIN)
PROPRIETOR
Membership No. : 053693
Firm Reg. No. : 325867E

Sd/-
(DIRECTOR)

Sd/-
(DIRECTOR)

PLACE : KOLKATA
DATED : 31/08/2012

WIZONE TRADE PRIVATE LIMITED
I-37, 3RD FLOOR, LAJPAT NAGAR – III, DELHI – 110 024
PROFIT & LOSS STATEMENT FOR THE PERIOD ENDED ON 31ST MARCH, 2012

Particulars	*Note No.*	*As At 31.03.2012*	*As At 31.03.2011*
		₹	₹
I. Other Income	16		
II. III. Total Revenue(I+II)			
III. Expenses :			
Depreciation and Amortization Expense	23	3,126.00	3,126.00
Other Administrative Expenses	24	4,550.00	3,575.00
IV Total Expenses (IV)		7,676.00	6,701.00
V Profit before tax	(II-IV)	(7,676.00)	(6,701.00)
VI Tax expense :			
(1) Current tax			
(2) Deferred tax			
VII Profit/(Loss) for the period	(V-VI)	(7,676.00)	(6,701.00)
VIII Earning per equity share :			
(1) Basic		(0.11)	(0.67)
(2) (2) Diluted		(0.11)	(0.67)

NOTES TO ACCOUNTS
Notes referred to above and attached there to form an integral part of Profit & Loss Statement
This is the Profit & Loss Statement referred to in our Report of even date.

FOR ARUN JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

FOR WIZONE TRADE PRIVATE LIMITED

Sd/-
(CA. ARUN KUMAR JAIN)
PROPRIETOR
Membership No. : 053693
Firm Reg. No. : 325867E

Sd/-
(DIRECTOR)

Sd/-
(DIRECTOR)

PLACE : KOLKATA
DATED : 31/08/2012

[6.14] The first issue is how did the share of such companies got valued so as to command a premium of ₹990/- per share. In general terms, there are three approaches to valuation – Income Approach, Market Approach and Net Assets Value Approach. The approaches, rules and principles involved in share valuation as laid down by law, statutory guidelines, and decisions of courts as well as established valuation practices.

> ***Income Approach*** *- The potential earning power of a company is generally a paramount factor for valuation of share. In the absence of any other special motive, an investor is principally interested in a company's ability to continue earning profits. The dominance of profits for valuation of share was emphasised in McCathies case (Taxation, 69 CLR 1) where it was said that "the real value of shares which a deceased person holds in a company at the date of his death will depend more on the profits which the company has been making and should be capable of making, having regard to the nature of its business, than upon the amount which the shares would realise on liquidation". This has had the approval of the Indian Courts in Commissioner of Wealth Tax v. Mahadeo Jalan's case (S.C.) (86 ITR 621) and Additional Commissioner of Gift Tax v. Kusumben D. Mahadevia (S.C.) (122 ITR 38).*
>
> ***Discounted cash flow****- Discounted Cash Flow model indicates the fair market value of a business based on the value of cash flows that the business is expected to generate in future. This method involves the estimation of post-tax cash flows for the projected period, after taking into account the business's requirement of reinvestment in terms of capital expenditure and incremental working capital. These cash flows*

are then discounted at a cost of capital that reflects the risks of the business and the capital structure of the entity.

Maintainable profit basis *- In this method a reasonable estimate of the average future maintainable profits is made by considering past earnings, their trend and future plans of the company. The estimated average future maintainable profit after deducting the preferred rights, if any, is capitalised at an appropriately selected rate to arrive at the value of the equity. This approach to valuation of shares needs the determination of two factors, viz. (1) average future maintainable profits and (2) the rate of capitalisation.*

Dividend discount model *- It is the simplest model for valuing equity. It equals the value of a share to the present value of dividends expected to be received. It works similar to the discounted cash flow model.*

Market approach *- Compared to the income approach that provides a company specific and intrinsic value, market approach or relative valuation aims to provide the value of a business, based upon how similar assets are priced in the market. The use of relative valuation is widespread, especially in equity research reports and acquisition valuations.*

Net asset approach- *Valuation of shares on asset basis attempts to measure the value of the net assets of a company against each share. It is computed by taking the net value of a company's assets, subtracting therefrom the amount of the liabilities and preferred share-holders' claims and dividing the remainder among the equity shareholders according to their individual rights.*

[6.15] Also important in valuing the shares of the company are the intangibles. Intangible assets are the assets that do not have a physical identity.

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These represent a company's right or claim to future benefits arising from their use. Corporate intellectual property items such as patents, trademarks, copyrights, business methodologies, goodwill and brand recognition are all common intangible assets in today's marketplace.

[6.16] On evaluation of various methods of valuation it can be seen that the premium charged by each of the company for the shares of other companies do not subscribe to any method stated above. None of the companies, including the appellant company have any active business. It appears that the companies were registered only for making this collusive transaction. No evidence has been furnished to show the basis of such high fixation of premium. Clearly, the transactions are collusive in nature.

[6.17] Another argument of the appellant is that entire transaction was revenue neutral, as no amount of cash or fund accrued to any of the company and therefore, addition was not called for in terms of section 68 of the Act. It is also the contention of the appellant that as the shareholders are all companies, registered with the Registrar of companies, the identity was established. Further, as the amount was taken and invested by the three entities on a reciprocal arrangement basis, and no amount had come or been applied, the test of credit worthiness was taken care of, and as all the above transactions were clearly shown in the relevant balance sheets of the concerned companies, and the fact that the return of allotment was duly filed with ROC, the genuineness of the transactions was clearly established.

[6.18] On evaluation of the submission of the appellant I am in agreement with the issues regarding the identity of the creditors. As regards genuineness, the method chosen by each of the three companies to value their shares and the subsequent investment has been held to be collusive.

[6.19] Coming to the issue of creditworthiness, I find that the mere fact that no money was paid actually satisfies the condition, is not tenable. Under the mercantile system of accounting also known as Accrual System of Accounting all the transactions are recorded irrespective of period of amount received or paid. Therefore, the fact that share application money was paid/accrued would need to satisfy the creditworthiness condition. The investee companies in the shares of the appellant company were Wizone Trade Pvt. Ltd. & Instant Cinematic Pvt. Ltd. The data of their transactions (as stated above) do not satisfy the condition of creditworthiness. The Hon'ble Bombay High Court in the case of Lata Mangeshkar vs. CIT 88 ITR 336 (Bom) wherein it has been held that *"The other argument advanced was that once the assessee indicated reasonably a source to which the amount of ₹95,000/- could well be attributed the assessee has discharged the burden of proof on her and it was for the department, thereafter, to show how the amount could not have come as it did from the solicitor. The argument amounts merely to saying this that if a person comes and says that he paid a certain amount to the assessee, the assessee has completely discharged the burden of proving the source of that amount. In our opinion, we cannot entertain such an argument for the simple reason that it is not enough to show that a person says that he paid the money but it must be shown from where the money actually came, i.e., the source. That has not been established in this case."*

[6.20] Coming to the argument of the appellant that such allocation of shares was sanctioned by section 75 of the Companies act 1956. The section states : -

"(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within thirty days thereafter,-

(a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations of the allottees, and the amount, if any, paid or due and payable on each share: 3 Provided that the company shall not show in such return any shares as having been

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allotted for cash if cash has not actually been received in respect of such allotment.]

(b) in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(c) file with the Registrar-

(i) in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares;

(ii) in the case of issue of shares at a discount a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Court sanctioning the issue and where the maximum rate of discount exceeds ten per cent., a copy of the orders of the Central Government permitting the issue at the higher percentage.]"

[6.21] Section 75(1)(b) is very important as it casts its onus on the company once shares are allotted both as fully or partly paid up otherwise than in cash, **produce for the inspection and examination of the Registrar a contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted;.** The appellant has not been able to submit any evidence with regard to the fulfilment of this clause.

[6.22] The appellant has relied upon the judgment of the Hon'ble Delhi High Court in the case of CIT V Five Vision Promoters (P) Ltd. 380 ITR 289. However, the facts of the case were very different. In that case the issues, inter alia were whether mere fact that some of investors have a common address is a valid basis to doubt their identity or genuineness an d whether fact that shares of assessee were subsequently sold at a reduced price is germane to question of genuineness of investment in share capital of assesse.

[6.23] The case of CIT v Precision Finance (P) Ltd. v 208 ITR 465 (Cal) the facts were that the assessee-company was doing the business of loan financing. In course of the assessment for the Assessment Year-1978-79, the Assessing Officer found several cash credits in the assessee's books of account for which the assessee gave the income-tax file numbers of the creditors. On investigation, it was found that except in two cases either the files did not exist as per details furnished by the assessee or the records did not tally with the details mentioned by the assessee. The Assessing Officer, therefore, made an addition of ₹4,45,000/- as cash credits and also disallowed interest relatable to those loans for the Assessment Year-1978-79. For the Assessment Year-1979-80, he made similar addition as income from other sources as the Assessing Officer found similar defects in respect of cash credits. He also added interest relatable to those fictitious loans.

[6.24] As would be seen, the facts of both the cases relied upon by the appellant are completely different and do not aid the contention of the appellant.

[6.25] It, is accordingly, held that the appellant, which had the credits in its books of accounts failed to establish the creditworthiness of the creditors in terms of section 68 of the Act. Ground of appeal is **dismissed.**

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4. It is sufficiently clear from a perusal of the above extracted lower appellate discussion that the assessee has filed to prove identity, creditworthiness and genuineness of the investor party(ies). No rebuttal on facts emerges in the case file. We thus affirm the impugned addition made in the lower appellate proceedings.

5. This assessee's appeal is dismissed.

Order is pronounced in the open court on 03.03.2020.

Sd/-	Sd/-
(A. L. SAINI)	**(S. S. GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 03.03.2020.

RS

Copy of the order forwarded to:
1. The Appellant
2. The Respondent
3. The CIT concerned
4. The CIT(A) -
5. The DR, ITAT, Ranchi
6. Guard File

BY ORDER

Sr. P.S., ITAT, Ranchi (on Tour)